AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

44TACD2024

**Between**

[redacted]

**Appellant**

and

The Revenue Commissioners

**Respondent**

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**Determination**

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# Contents

**Introduction**

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("TCA 1997") brought on behalf of [redacted] ("the Appellant") against a decision of the Revenue Commissioners ("the Respondent") to refuse claims for repayment of income tax made by the Appellant, in accordance with the provisions of **section 865 TCA 1997**, in respect of the years of assessment 2017, 2018 and 2019 ("the relevant years").

2. The amount of overpayment of income tax at issue is in the sum of [redacted] for the year **20**[redacted] the sum of [redacted] for the year **20**[redacted] and the sum of [redacted] for the year **20**[redacted] The total amount of repayment of income tax claimed by the Appellant is in the sum of [redacted]

3. The Appellant argues that valid claims for repayment of income tax were made pursuant to section 865(3) TCA 1997. However, it is the Respondent's position that the Appellant has not made valid claims, because the Appellant has not provided the necessary information which it reasonably requires to enable the Respondent to determine if and to what extent a repayment of income tax is due, in accordance with the provisions of section 865(1)(b) TCA 1997.

4. On 17 November 2022, the Appellant duly appealed to the Commission. The appeal proceeded by way of a hearing on **5 October 2023**. The Appellant and Respondent were represented by Counsel. The Commissioner heard sworn oral evidence from [redacted] expert witness on behalf of the Appellant, in addition to legal submissions from Senior Counsel for the Appellant and Junior Counsel for the Respondent.

**Background**

5. The Appellant submits that in 2014, he became a [redacted] tax resident and with effect from January 2015, he has been treaty resident in [redacted] under the terms of the [redacted] Double Taxation Agreement ([redacted] DTA"). Prior to taking up tax residence in [redacted], the Appellant invested in an Approved Retirement Fund ("ARF"), with [redacted] being appointed as the Qualified Fund Manager ("the QFM").

6. On [redacted] **20**[redacted] the Appellant filed his income tax return for **20**[redacted] An acknowledgement letter issued from the Respondent on the same day, which indicated that the Appellant was entitled to a repayment of income tax in the sum of [redacted].

7. On [redacted] **20**[redacted] a Notice of Amended Assessment issued on foot of information received from the QFM, which indicated that the Appellant was entitled to a repayment of income tax in the sum of [redacted].

8. On [redacted] **20**[redacted] the Appellant filed his 2018 income tax return for **20**[redacted] An income tax acknowledgement letter of Self-Assessment issued from the Respondent on the same day, which indicated that the Appellant was entitled to a repayment of income tax in the sum of [redacted]

9. On [redacted] **20**[redacted], the Appellant filed his **20**[redacted] income tax return and an income tax acknowledgement letter of Self-Assessment issued from the Respondent on the same day, which indicated that the Appellant was entitled to a repayment of income tax in the sum of [redacted]

10. The Appellant received distributions from his ARF, as set out in the Respondent's outline of arguments, as follows[1]:-

| **Year** | **Gross (€)** | **PAYE withheld (€)** | **USC Withheld(€)** |
|---|---|---|---|
| 20[redacted] | [redacted] | [redacted] | [redacted] |
| 20[redacted] | [redacted] | [redacted] | [redacted] |
| 20[redacted] | [redacted] | [redacted] | [redacted] |

11. The amounts of the distribution had been automatically populated in the Appellant's Form 11 on foot of P35s returned by the QFM, which set out the distributions made, and the PAYE and USC withheld on distributions made to the Appellant.

12. The Appellant's Agent subsequently amended the pre-populated figures on the Form 11 to nil and the Appellant filed his returns on that basis, which resulted in an automatic refund arising to the Appellant, as set out in the Respondent's outline of arguments, as follows[2]:

| **Year** | **Refund Amount Generated** |
|---|---|

[1] Bundle of Pleadings & Expert Reports, page 45
[2] Bundle of Pleadings & Expert Reports, page 46

| | |
|---|---|
| 20[redacted] | [redacted] |
| 20[redacted] | [redacted] |
| 20[redacted] | [redacted] |
| | [redacted] |

13. It is the Respondent's position that there exists no valid claims for repayment of income tax, by reason of the Appellant having failed to provide information that the Respondent may reasonably require to enable it to determine if and to what extent a repayment of tax is due, in accordance with section 865(1)(b)(ii) TCA 1997.

14. On 1 June 2021[3], via MyEnquiries, the Respondent made the following request of the Appellant: "*To allow Revenue to process your client's claim, please provide a breakdown of the distributions for all years into their constituent parts vis a vis income (interest income, dividends), gains, return of capital. These elements will be examined with reference to the relevant articles of the* [redacted] *DTA to ascertain the taxing rights. Full or partial refunds may be due to your client, depending on the breakdown.*"

15. The Appellant argues that he made a true and full disclosure of all material facts necessary for the making of an assessment, filing his income tax returns annually, by way of the prescribed Form 11, on the basis that the distributions from his ARF were outside the scope of Irish tax under the terms of the [redacted] DTA.

16. Moreover, the Appellant argues that the Form 11 is a prescribed form of the Respondent pursuant to Section 861(2)(b) TCA 1997 and the Appellant has completed his income tax returns and self-assessment in line with his tax obligations, upon receipt of professional advice, for each year since [redacted]. Yet, the Respondent has not made a repayment of income tax for the relevant years, despite repayment being made to the Appellant for the years prior to the relevant years.

17. On **21 October 2022**, the Respondent wrote to the Appellant via MyEnquiries to formally state that it was refusing the Appellant's claims for the repayment of the income tax for the relevant years, on the grounds that the information it reasonably required to establish

[3] Bundle of Correspondence, page 9

a right to such repayment had not been supplied, and therefore, valid claims for repayment, in accordance with section 865(3) TCA 1997, had not been made.

**Legislation and Guidelines**

18. The legislation relevant to this appeal is as follows:-

19. Section 865 of the TCA 1997, Repayment of Tax, *inter alia* provides:-

*"(1)…*

*'valid claim' shall be construed in accordance with paragraph (b).*

*(b) For the purposes of subsection (3) –*

*(i) Where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –*

*(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and*
*(II) the repayment treated as claimed, if due -*

*(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or*

*(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time.*

*ii) Where all information which the revenue commissioners may reasonably require, to enable them determine if and to what extent a repayment of taxes due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable shall be treated as a valid claim when that information has been furnished by the person, and*

*…….*

*(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose*.

*(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made—*

*(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,*

*(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and*

*(c) in the case of claims made—*

*(i) under subsection (2) and not under any other provision of the Acts, or*

*(ii) in relation to any chargeable period beginning on or after 1 January 2003, within 4 years,*

*after the end of the chargeable period to which the claim relates.*

(*6*)*…….*

*(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.*

20. Section 784A TCA 1997, Approved retirement fund, *inter alia* provides:-

*(1) (a) In this section -*

*“approved retirement fund" means a fund which is managed by a qualifying fund manager and which complies with the conditions of section 784B;*

*……..*

*"qualifying fund manager" means –*

*(a) a person who is a holder of a licence granted under section 9 or an authorisation granted under section 9A of the Central Bank Act 1971, or a person who holds a licence or other similar authorisation under the law of an EEA state, other than the State, which corresponds to a licence granted under the said section 9*,

21. Section 784E TCA 1997, Returns, and payment of tax, by qualifying fund managers, *inter alia* provides:-

*(1) A qualifying fund manager shall, within 14 days of the end of the month in which a distribution is made out of the residue of an approved retirement fund, make a return to the Collector-General which shall contain details of –*

*(a) the name and address of the person in whose name the approved retirement fund is or was held,*

*(b) the tax reference number of that person,*

*(c) the name and address of the person to whom the distribution was made,*

*(d) the amount of the distribution, and*

*(e) the tax which the qualifying fund manager is required to account for in relation to that distribution (hereafter in this section referred to as "the appropriate tax")*

*(2) The appropriate tax in relation to a distribution which is required to be included in a return shall be due at the time by which the return is to be made and shall be paid by the qualifying fund manager to the Collector-General, and the appropriate tax so due shall be payable by the qualifying fund manager without the making of an assessment; but appropriate tax which has become so due may be assessed on the qualifying fund manager (whether or not it has been paid when the assessment is made) if that tax or any part of it is not paid on or before the due date.*

22. Section 790D TCA 1997, Imputed distribution from certain funds, *inter alia* provides:-

*(1) 'approved retirement fund' has the meaning assigned to it by section 784A and for the purposes of this section the expression 'ARF' shall be construed accordingly;*

*……*

*'qualifying fund manager' has the meaning assigned to it by section 784A;*

…….

(3) *This section applies for any tax year in which an individual –*

*(a) has a relevant fund, and*

*(b) is aged 60 years or over for the whole of that tax year*.

23. Section 861 TCA 1997, Documents to be in accordance with form prescribed by Revenue Commissioners, provides:-

*(1) Every assessment, charge, bond, warrant, notice of assessment or of demand, or other document required to be used in assessing, charging, collecting and levying income tax, corporation tax or capital gains tax shall be in accordance with the forms prescribed from time to time in that behalf by the Revenue Commissioners, and a document in the form prescribed and supplied or approved by them shall be valid and effectual.*

*(2) (a) In this subsection, "return" includes any statement, declaration or list.*

*(b) Any return under the Tax Acts and the Capital Gains Tax Acts shall be in such form as the Revenue Commissioners prescribe.*

**Evidence and Submissions**

*Appellant's evidence*

24. [redacted] ("the Appellant's witness") gave sworn oral evidence and the Commissioner sets out hereunder a summary of the evidence given by the Appellant's witness-

24.1. The witness referred to his statement and a correction required at paragraph 15, line 6, wherein it states an amount of [redacted]. The witness testified that the figure should read an amount of [redacted]. The witness stated that the correction occurs, in circumstances where a more junior member of staff prepared the document and on review by the witness, he discovered a typo in the amount which is required to be amended to reflect the correct schedule that is included in his witness statement. The witness confirmed that his statement is true and accurate.

24.2. The witness testified that he is a [redacted], with [redacted] years' experience. The witness confirmed that he has a [redacted] The witness testified that he started his career in [redacted] as an [redacted] within [redacted]

[redacted], then in [redacted], he became a [redacted] with responsibility for directly engaging with clients in respect of their financial affairs and investments, in [redacted] he was appointed a [redacted] and in [redacted] he was appointed a [redacted], running a team of advisors that specialise in managing the financial affairs of senior executives and professionals, and continues to work with a small group of private clients on a daily basis.

24.3. In relation to ARFs, the witness testified that he deals with them on a regular basis and has done so for many years. The witness stated that ARFs are used to provide pension income for clients and generally, in the vast majority of cases, they are funded from occupational pension schemes. The witness said that once a person retires from work, pension funds are migrated into an ARF to provide a retiree with an income in retirement. The witness stated that he does not act as a QFM, but [redacted] fulfil that role, such that [redacted] is the QFM herein.

24.4. The witness testified that he has been involved with the Appellant's affairs since [redacted] when [redacted] became involved in the establishment of the investment portion of the Appellant's occupational pension scheme, with [redacted] being transferred, in [redacted]. The witness confirmed that [redacted] calculated the amount of the tax free lump sum and the balance, then it was transferred into an ARF. In addition, a small piece was transferred into an Approved Minimum Retirement Fund ("AMRF"). The witness stated that the amount of [redacted] was transferred into an ARF, with [redacted] being transferred into the AMRF. The witness testified that subsequently, a further payment came through from [redacted] in respect of another pension scheme of an amount in or around [redacted], and that was added to the Appellant's ARF.

24.5. The witness testified that in [redacted], an investment account was established with [redacted], which is within the ARF and [redacted] of ARF assets were transferred into that sub-account. The witness confirmed that there were assets in the ARF at that point in time. The witness gave evidence that prior to the transfer, there would have been accumulated gains within that portion of the assets and there would have been income which those assets would have generated and then been reinvested. The witness stated that post the movement of those funds into the [redacted] element of the portfolio, a similar growth would have occurred. The witness said that he did not have responsibility for the investment management of those assets, so could not speak as to the investment strategy around those particular assets.

24.6. The witness testified that in late [redacted], the [redacted] ARF was set up, but that [redacted] remained the QFM in respect of all of the ARF structuring, because there is a statutory requirement that if a person has over [redacted] of assets within an ARF or multiple ARFs, then one QFM is appointed to manage those distributions. The witness stated that the role of the QFM is to make payment to the underlying beneficiary and to remit the tax for those payments to the Respondent.

24.7. The witness confirmed that for each year, the QFMs role was to calculate the distribution, deduct tax, remit that to the Respondent on behalf of the Appellant and then pay a net distribution to the Appellant's [redacted] bank account.

24.8. The witness testified that he has prepared a schedule setting out the growth of the ARF in each year, which is attached to his statement[4] and all the ARF assets are consolidated together. The witness gave evidence as to the contents of the schedule. The witness testified that the most pertinent piece is the summary in bold at the bottom, which shows the start value in [redacted] of zero, the transfer of pension assets into the ARF of [redacted], which includes the AMRF and in [redacted] it shows the first time distributions were taken from the Appellant's ARF assets of [redacted].The witness gave evidence that distributions began in September 20[redacted], and every year subsequent to that distributions were made. The witness testified that importantly, in [redacted], the Appellant turned 61, and this is when the mandatory ARF distributions began to kick in, such that the amount of [redacted] represents 6% of the value of the combined ARF assets, as at the 30 November of that year, and again those larger distributions are being made year-on-year thereafter.

24.9. The witness testified that the key point to note, is that at no point did the value of the combined ARF assets fall below the starting value. The witness said that is despite nearly [redacted] of distributions being made, as outlined in the schedule. The witness gave evidence in relation to the documents relating to the establishment of the ARF[5] and explained the meaning and consequence of each document.

24.10. The witness was cross examined by Counsel for the Respondent. The witness confirmed that the amount of [redacted] was transferred into the Appellant's ARF. The witness gave evidence in relation to an expanded version of the

[4] Witness Statement of [redacted], dated 2 October 2023, pages 1-6
[5] Establishment of AFT documentation, pages 1-111

spreadsheet which was provided at the hearing of the appeal. The witness confirmed that the QFMs systems provide a very detailed analysis of the transactions and that the Appellant was in regular contact, depending on what was going on in the markets. The witness testified that the QFM would produce valuations and transaction reports in relation to the Appellant's ARF and that biannual statements were provided to the Appellant. The witness testified that the statements are valuation statements, such that the statements outline the value of the assets held, the movement in the value of those assets on a combined basis and transactions within the account, over that particular time frame, but that the statements do not provide gains. The witness confirmed that the QFM does not provide statements that show chargeable gains for pension assets.

24.11. The witness confirmed that the Appellant was provided with quarterly valuations from 2019 onwards and biannual valuations from [redacted] through to 2019, showing the movements, the transactions, the assets bought and sold, whether dividends were paid and cash movements in and out.

24.12. In re-examination by Senior Counsel for the Appellant, the witness stated that he is aware that the Respondent sought information on the breakdown of income, capital gains and capital for the relevant years, as the Appellant approached him in relation to gathering that information. The witness stated that the QFM is an [redacted], not a tax advisor, so an external firm of expert tax advisors was approached to attempt to produce what was requested by the Respondent, namely [redacted] tax advisors, and the tax advisors were provided with the valuation statements. The witness testified that he engaged with the tax advisors over a period of three weeks, significant fees were incurred trying to ascertain the composition of the distributions that were made and at the end of the period the tax advisors were unable to provide a statement that they were comfortable standing over.

25. [redacted] ("the Appellant's expert witness") gave sworn oral evidence and the Commissioner sets out hereunder, a summary of the evidence given by the Appellant's expert witness:-

25.1. The witness testified that he is a qualified [redacted] and has worked in financial services, specifically the pension's area, for over 35 years. The witness confirmed that he is a [redacted],

[redacted], has appeared before several committees of the Oireachtas on pensions matters and has tutored and delivered seminars to students in relation to pensions matters.

25.2. The witness gave evidence in relation to the pensions system in Ireland, such that there are three pillars of pensions, the first pillar refers to the social welfare system, the second pillar refers to occupational pension schemes and the third pillar captures other forms of pension saving mechanisms.

25.3. The witness testified that the traditional pension structure was a defined benefit scheme ("DB"), with the inherent feature being a promise, which is now backed with legislation, to make sure that the employer has the assets available. The witness said that from the mid-20th century onwards, there has been a movement away from DB, as they are perceived by employers to be too large a burden and there has been a move towards defined contribution schemes ("DC"). The witness gave evidence that a DC changes the nature of the promise, such that the employer now promises to put a certain amount of money into a fund, but that the amount of income generated is at the risk of the employee. The witness gave evidence that the risk has now moved from the employer to the employee with the move from DB to DC. The witness testified that there are three stages of a pension namely, accumulation, investment and decumulation.

25.4. The witness testified that ARFs were introduced by the Finance Act 1999 to provide an alternative option to annuities in the pension market. Reference was made to Tab 12 of the witness's Expert Report[6] and to a Dail debate dated 16 January 1999, which the witness said sets out the rationale for the introduction of ARFs, by the then Minister for Finance. The witness gave evidence that the ARF provides greater control than an annuity[7]. The witness also referred to the comments of the Minister for Finance on 23 March 1999[8], such that the ARF seeks to provide greater choice, flexibility and say in relation to how a pension scheme is run.

25.5. The witness referred to the Finance Act 2000 and the changes made to an ARF, in terms of the manner in which it is taxed. The witness testified that an ARF

[6] Expert Report of [redacted] and Appendices, Tab 12, page 270
[7] Expert Report of [redacted] and Appendices, Tab 12, page 271
[8] Expert Report of [redacted] and Appendices, Tab 12, page 278

arises only on the decumulation phase and that all DC arrangements rely on having a pool of assets to generate a return. The witness gave evidence that the benefit a person receives is always linked to a pool of assets, as there is no other way of receiving a benefit under a DC arrangement, such that it is entirely dependent on the value of an allocated fund to provide the person with the benefit, the same as the ARF.

25.6. The witness was cross examined on his evidence by Counsel for the Respondent. The witness confirmed that he is [redacted] which is an ARF provider. The witness confirmed that [redacted]. The witness said that the firm had clients that may be interested in the outcome of this appeal.

25.7. The witness confirmed that generally an employer has very little role in an ARF and that imputed distributions do not arise in relation to an occupational pension scheme, because with DC, it cannot pay the benefits directly and in most cases benefits are provided by transferring out of the DC arrangement into an annuity or an ARF.

*Appellant's submissions*

26. Senior Counsel made submissions on behalf of the Appellant. The Commissioner sets out hereunder a summary of the submissions made:-

26.1. The distributions made to the Appellant consist of regular monthly distributions to support his lifestyle, augmented by an annual sum to bring the amount distributed in line with section 790D TCA 1997.

26.2. The Respondent made a repayment of income tax to the Appellant in respect of the tax years [redacted], without query. However, the Respondent has not made a repayment of income tax for the relevant years and the amounts appear as due and owing to the Appellant on the Revenue Online System ("ROS"). In addition, no assessment has issued to the Appellant to alter that position. Yet, the Respondent has not made a repayment of income tax to the Appellant, despite the Appellant's claims.

26.3. Through his advisors, the Appellant engaged in an exchange of correspondence with the Respondent in an effort to have his outstanding claims for repayment of income tax paid by the Respondent, in respect of the relevant years. The Respondent delayed significantly in dealing with the matter and eventually, the

Respondent sought a breakdown of the distributions into capital, income and capital gains. Further, the Respondent then insisted that a valid claim for a repayment of income tax on distributions from an ARF, must be made using the form entitled “Refund of Taxes paid on ARF Distributions – Claim Form to be completed by non-resident complainant” (“ARF 2021 Form”) and not by way of the income tax return Form 11.

26.4. The ARF 2021 Form only came into existence in June 2021, subsequent to the Appellant’s claims for repayment of income tax for the relevant years having been made using the Form 11, as prescribed by law. It would have been impossible for the Appellant to have completed the ARF 2021 Form when making the claims for the relevant years and it was not deemed by the Respondent to be a necessary pre-condition for the repayments made to the Appellant without query in [redacted] and [redacted]. There is no statutory basis whatsoever either for the requirement to break down each distribution or the requirement to use a form which did not exist.

26.5. The request for a breakdown is irrelevant, in circumstances where section 784(A)(3) TCA 1997 treats the distribution from an ARF as “emoluments” subject to income tax under Schedule E and the Appellant is entitled to a full refund, pursuant to the [redacted] DTA.

26.6. The definition of "Approved Retirement Fund" is provided for under section 784A(1)(a) TCA 1997, which states that: "‘*Approved retirement fund' means a fund which is managed by a qualifying fund manager and which complies with the conditions of section 784B*” and at (1)(b) it states that: "*For the purposes of this chapter, references to an Approved Retirement Fund shall be construed as a reference to assets in an Approved Retirement Fund which are managed for an individual by a qualifying fund manager and which are beneficially owned by the individual*."

26.7. Section 784A(3) TCA 1997 specifically provides that the “*amount or value of any distribution… in respect of assets held in an Approved Retirement Fund shall, … be treated as a payment to the person beneficially entitled to the assets in the fund of emoluments…and… the qualifying fund manager shall deduct tax…”.* The section recognises that an ARF contains “assets”. By definition in the subsection, a distribution has to be of “assets”. The statute makes no distinction between different types of assets or between “capital”, “the proceeds of capital

gains" or "income". All distributions of assets are to be treated as emoluments. That is what the statute directs.

26.8. The distribution of assets in the ARF is "treated as" a payment of emoluments to which Schedule E applies. The QFM has no discretion in the making of the "distribution" or the deduction of PAYE and USC. It is deferred income that has been earned originally, put aside, has grown in a growth fund and it is income back to the pensioner. That is why it is taxed under Schedule E and the mechanism of doing that is to treat it as an emolument, in accordance with section 784A(3) TCA 1997.

26.9. A 6% mandatory annual "Distribution" applies to an ARF pursuant to section 784D TCA 1997. This provision reflects the policy of ensuring a minimum income in retirement for beneficiaries of an ARF. That income is then taxed as an emolument under Schedule E.

26.10. The form referred to in section 865(1)(b)(i)(I) TCA 1997 must be the Form 11, as the section refers to a statement or return that has been furnished in accordance with the provisions of the TCA and that is treated as a valid claim. By definition, the Form 11 must contain all the information that the Respondent may reasonably require. It identifies the sources of the taxable income, it identifies the PAYE and USC deducted. The Respondent also had the return from the QFM.

26.11. The key words in section 865(1)(b)(ii) TCA 1997 are "*which the Revenue Commissioners may reasonably require*". The Respondent's demands for a breakdown of income, capital gains and capital for some indeterminate period of time, without any ordering rules having been prescribed by the Respondent and at significant cost, is not a reasonable requirement.

26.12. Reference was made to section 865(2) TCA 1997 and that this is a situation where in respect of a chargeable period, the Appellant has paid an amount of tax which is not due by him and was paid on his behalf by the QFM.

26.13. Reference was made to section 959C TCA 1997 which deals with the making of assessments. This is one of the key provisions of the TCA and it goes to the foundation of the rule of law. The State cannot levy tax except by the prescribed method, by way of an assessment. The assessment provides a considerable amount of information to a taxpayer. It identifies the income, profits or gains which are being brought within the charge to tax, the amount of tax chargeable, the amount of tax payable, having regard to tax, for example, already paid and it also

identifies the amount that is available for repayment. That is what imposes the liability to tax and is what brings the income into the charge to tax, the income in this case being the amount of the distribution. That income has never been brought into the charge to tax by an assessment from the Respondent. Therefore, a repayment was automatically due and should have been paid on request.

26.14. In order for the Respondent to bring the amount of the distributions into the charge to tax, it is required to raise an assessment, having regard to the fact that the existing self-assessment shows those sums as being outside the charge to tax. The only assessment to tax on the Appellant in respect of the relevant years is the self-assessment, which has been left undisturbed by the Respondent. The Appellant cannot have an additional liability to tax, in the absence of an assessment.

26.15. Since 1 April 2021, the Respondent has stated that if the information is not received then the claims will be disapproved and a Notice of Amended Assessment will issue. Yet, no Notice of Amended Assessment issued to the Appellant, in order to bring the distributions for the relevant years within the charge to tax.

26.16. Reference was made to the [redacted] DTA and the applicable provisions. Article 18 of the [redacted] DTA is applicable herein. However, if the Commissioner concludes that Article 18 is not applicable, Article 21.1 becomes relevant.

26.17. Reference was made the following decisions in the context of ascertaining capital and income: *Douglas Harvey Barber v The Guardian Royal Exchange Assurance Group* Case c262/88, *Wielockx* (Case C-80/94), *Scottish Provident v Allan* [1903] 4 TC 409, *Scottish Provident v Allan* [1903] 4 TC 591, *Walsh -v- Randall (HM Inspector of Taxes)* [1940] 23 TC 55 *Patuck v Lloyd (HM Inspector of Taxes)* [1944] 26 TC 284, *Scottish Provident Institution v Farmer* [1912] 6 TC 34, O'Sullivan v O'Connor [1947] IR 416.

26.18. Reference was made to the Respondent's Tax and Duty Manual entitled "The Remittance Basis of Assessment Part 05-01-21A[9]" which states that "*Any remittances out of an account containing capital and income are treated as first*

[9] Additional Bundle of Authorities, page 76

*coming out of the income part of the fund until such income is fully remitted (see the tax case of Scottish Provident Institution v Allen – 4 TC 409)".*

26.19. Reference was made to the Respondent's Tax and Duty Manual entitled "Pay As You Earn (PAYE) system Employee payroll tax deductions in relation to non Irish employments exercised in the State Part 42-04-65[10]" which states that "*Any remittances out of an account containing capital and income are treated as first coming out of the income part of the fund until such income is fully remitted (see the tax case of Scottish Provident Institution v Allen – 4 TC 409)".*

26.20. Reference was made to a decision of a former Appeal Commissioner in 36TACD 2019 and 28TACD2023 and that the former Appeal Commissioner was wrong in her determination of the issue in these appeals, in relation to the matter of income and capital.

*Respondent's submissions*

27. Counsel made submissions on behalf of the Respondent. The Commissioner sets out hereunder a summary of the submissions made:-

27.1. The amount claimed is a significant sum, approximately [redacted] and it has been refused because there is insufficient information to process the claims. These claims remain, in effect, live and active claims and remain open. To date, the Respondent has not received the information it requires to assess the repayments, but it is certainly hoped, in light of the evidence in this appeal, that there is information that may be available that could assist in this process.

27.2. The evidence was that the QFM operate a very sophisticated system to provide its clients with very specific details of the movements of their investments. So, from [redacted] to [redacted], there are 26 statements available and they would be of considerable assistance to the Respondent in processing the claims.

27.3. If there is a cost to the Appellant in providing the necessary information to the Respondent, so that it can be satisfied that it has no taxing rights in circumstances where the Appellant has the burden of proof of satisfying the Respondent that he is entitled to a repayment, well so be it. This is no different to a mother being asked to submit a receipt from her consultant, and a [redacted]

[10] Additional Bundle of Authorities, page 86

[redacted] repayment has to be approached with the appropriate level of prudence and investigated further.

27.4. The concern is whether the distributions from the Appellant's ARF are taxable under Irish law. It is very likely that the Appellant is entitled to a repayment here. However, further information is required to determine that. The Respondent is not seeking to mount a case that the distributions are capital in nature. The Respondent only wishes to carry out an exercise to understand the constituent parts of the distribution and how that is to be taxed by reason of the DTA. There is a mixed fund, with shares being bought and sold, there are dividends coming in and the Respondent wants to understand if it has any taxing rights.

27.5. The Respondent accepts that the ARF 2021 Form was not required for a claim for repayment of income tax paid on distributions made from the Appellant's ARF, during the relevant years. However, it remains the case that the claims were not valid by reason of it not containing "*all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period...*" in accordance with section 865(1)(b)(i)(I) TCA 1997.

27.6. There are no valid claims here by reason of the Appellant having failed to provide the necessary information to enable the Respondent to "*determine if and to what extent a repayment of tax is due*" and section 865(3) TCA 1997 applies. The Appellant's repeated refusal and/or failure to provide this information has meant that it is not possible for the Respondent to process his claims and renders his claims invalid by reason of section 865(3) TCA 1997. It is reasonable for the Respondent to require this breakdown between income, gains and capital, so that it can ascertain how the distributions are to be taxed under the [redacted] DTA.

27.7. An ARF is not itself a legal entity, but a fund created in accordance with a statutory scheme designed to enable taxpayers to contribute to a post-retirement benefit structure in a tax efficient manner. An ARF is described as "a post-retirement vehicle which contains a capital fund". By reason of it being a capital fund, the fund itself can give rise to both capital receipts (such as capital gains) and income receipts (such as interest or dividend income). An ARF is beneficially owned by the individual whose fund it is. The assets in the ARF are held by the QFM as a bare trustee only. As such, the income and gains which arise in the ARF arise directly to the beneficial owner.

27.8. Reference was made to the decisions of a former Appeal Commissioner in 28TACD2023 and 36TACD2019. In the case of non-residents, distributions from an ARF are chargeable in accordance with the ARF provisions of the DTA, where such provisions exist. Under Irish domestic legislation, a distribution from the ARF is the taxable event in Ireland. But there is no equivalent provision under the [redacted] DTA, nor does the DTA allocate taxing rights to either jurisdiction in respect of such ARF distributions.

27.9. Reference was made to Articles 2, 6, 10, 11 13, 18 and 21 of the [redacted] DTA.

27.10. The Dail debates cannot be use as an aid to statutory interpretation and in that regard, reference was made to the following decisions:- *Crilly -v- Farrington* [2001] 3 IR 251, *The HSE v Laya Healthcare Limited* [2019] IEHC 502.

27.11. Reference was made to Vogel on Double Tax Conventions.[11] Vogel is clear that this is not a pension given its lack of periodic nature. Reference was made to section 790D(4) TCA 1997. This section is purely for the purposes of collecting 6% of the value annually, but that does not make it a periodic payment. There is no obligation to withdraw 6% of the fund and while it may make economic sense to do so, what matters is that the legislation only imputes it, but it does not mandate it.

**Material Facts**

28. Having read the documentation submitted, and having listened to the sworn oral evidence and submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

28.1. On [redacted] 2018, the Appellant filed his income tax return for 2017. An acknowledgement letter issued from the Respondent on the same day, which reflected the income tax return and indicated that the Appellant was entitled to a repayment in the sum of [redacted].

28.2. On [redacted] 20[redacted], a Notice of Amended Assessment issued on foot of information received from the QFM, which indicated that the Appellant was entitled to a repayment in the sum of [redacted]

[11] Bundle of Authorities, Tabs 28 and 30

28.3. On [redacted] 20[redacted], the Appellant filed his 20[redacted] income tax return for 20[redacted]. An income tax acknowledgement letter of Self-Assessment issued from the Respondent on the same day, which indicated that the Appellant was entitled to a repayment in the sum of [redacted].

28.4. On [redacted] 202[redacted], the Appellant filed his [redacted] income tax return and an income tax acknowledgement letter of Self-Assessment issued from the Respondent on the same day, which indicated that the Appellant was entitled to a repayment in the sum of [redacted]

28.5. The Appellant received distributions from his ARF as set out in the Respondent's outline of arguments, as follows[12]:-

| Year | Gross (€) | PAYE withheld (€) | USC Withheld(€) |
|---|---|---|---|
| 20[redacted] | [redacted] | [redacted] | [redacted] |
| 20[redacted] | [redacted] | [redacted] | [redacted] |
| 20[redacted] | [redacted] | [redacted] | [redacted] |

28.6. The amount of the distributions had been automatically populated in the Appellant's Form 11 on foot of P35s returned by the QFM, which set out the distributions made and the PAYE and USC withheld on distributions made to the Appellant.

28.7. The Appellant's Agent subsequently amended the pre-populated figures on the Form 11 to nil and the Appellant filed his returns on that basis, which resulted in an automatic refund arising to the Appellant as set out in the Respondent's outline of arguments, as follows[13]:

| Year | Refund Amount Generated |
|---|---|
| 20[redacted] | [redacted] |

[12] Bundle of Pleadings & Expert Reports, page 45
[13] Bundle of Pleadings & Expert Reports, page 46

| | |
|---|---|
| 20[redacted] | [redacted] |
| 20[redacted] | [redacted] |
| | [redacted] |

28.8. On 1 June 2021, via MyEnquiries, the Respondent made the following request of the Appellant: "*To allow Revenue to process your client's claim, please provide a breakdown of the distributions for all years into their constituent parts vis a vis income (interest income, dividends), gains, return of capital. These elements will be examined with reference to the relevant articles of the* [redacted] *DTA to ascertain the taxing rights. Full or partial refunds may be due to your client, depending on the breakdown.*"

28.9. The Form 11 is a prescribed form of the Respondent pursuant to Section 861(2)(b) TCA 1997.

28.10. The QFM for the Appellant's ARF is [redacted].

28.11. On 21 October 2022, the Respondent wrote to the Appellant via MyEnquiries to formally state that it was refusing to repay the tax as claimed on the grounds that the information required to establish a right to such repayment had not been supplied and therefore a valid claim for a repayment in accordance with section 865(3) TCA 1997, has not been made.

28.12. The total amount of the claims for repayment of income tax is in the sum of [redacted]

28.13. Following the distributions being made, the Appellant filed his Form 11 income tax returns, on time, for the relevant years.

28.14. The Form 11 filed for each of the relevant years states that the Appellant's country of residence is [redacted]

28.15. The ARF 2021 Form only came into existence in June 2021, subsequent to the Appellant's claims for repayment of income tax for the relevant years, having been made using the Form 11, as prescribed by law.

28.16. The ARF 2021 Form was not required for a valid claim to be made for a repayment of income tax paid on distributions made from the Appellant's ARF for the relevant years.

28.17. There is no statutory basis either for the requirement to breakdown each distribution or the requirement to use a form which did not exist at the time the claims for repayment were made by the Appellant.

28.18. The Respondent's analogy with a request by the Respondent for a certificate of payment of a medical consultant's fee for a medical expense claim, is incorrect.

28.19. The request for information herein was not a case of simply producing an existing document to determine a claim, it was information that was not readily available.

28.20. The uncontroverted evidence suggests that what was requested by the Respondent namely, the breakdown of the distributions into capital, capital gains and income, could not be reconstructed.

28.21. On the Appellant's instruction, the QFM approached an external firm of expert tax advisors to try and produce the information required by the Respondent and the tax advisors were furnished with the Appellant's valuations in order to carry out the exercise.

28.22. Over a period of three weeks, significant fees were incurred in trying to ascertain the composition of the distributions that were made as per the Respondent's request.

28.23. The uncontroverted evidence was that at the end of the period, the tax advisors were unable to provide a statement that they were comfortable standing over.

28.24. Information that was requested from the Appellant that does not exist and which caused him to incur significant costs, is not information that is reasonably required by the Respondent.

28.25. The evidence does not suggest that the Appellant failed to ascertain the information requested by the Respondent.

28.26. The Respondent made no specific request for the 26 statements referred to at the hearing of the appeal. The request was for a breakdown of distributions into capital, capital gains and income.

**Analysis**

29. It is trite law that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated

    *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".*

30. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes,* wherein he states that:

    "*Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute…"*

31. The Appellant's appeal relates to a refusal by the Respondent to permit claims for repayment of income tax pursuant to section 865 TCA 1997, made by the Appellant in respect of the relevant years, in the amounts of [redacted] [redacted] and [redacted] respectively, as the claims were not valid claims in accordance with the provisions of **section 865(3) TCA 1997**.

**Jurisdiction of an Appeal Commissioner**

32. The Appellant submits that the issues for consideration in this appeal are twofold. Firstly, whether the Appellant has complied with the requirements of section 865 TCA 1997, in particular subsection (3) thereof. Subsection (3) provides that a valid claim to repayment must be made and the question arises did the Appellant's claims contain all of the information that the Respondent reasonably required to determine if and to what extent a repayment was due. The Appellant argues that he made valid claims and the Respondent's requests for additional information, is not information that is reasonably required to determine the claims. Secondly, the Commissioner is asked to consider whether as a matter of law, the distributions from the Appellant's ARF are entitled to the benefit of the [redacted] DTA, in particular Article 18, as pensions or other similar remuneration, or if not, Article 21 and therefore, that the Appellant had a legal entitlement to the repayment of the income tax as a result of the provisions of the [redacted] DTA being applicable to the distributions from his ARF.

33. The Commissioner notes that this appeal arises pursuant to section 865(7) TCA 1997, from a decision of the Respondent on **21 October 2022**, to refuse the claims for repayment of income tax for the relevant years. The Commissioner observes that the decision letter of the Respondent dated 21 October 2022, states that:

*"…….*

*Response to the substantive issue regarding the charge to tax on the ARF Distributions is as follows:*

*The Revenue Commissioners are formally refusing to repay the tax as claimed on the grounds that the information required to establish the right to such repayment has not been supplied and therefore a valid claim has not been made. In informing a taxpayer of a decision to refuse a repayment claim, the taxpayer must be informed they have a right of appeal against the refusal to repay.*

*The taxpayer in this instance has made a claim for repayment and Revenue are refusing it because under section 865(3) TCA 1997 a repayment is not due because a "valid claim" has not been made. A valid claim would be one where the taxpayer has given Revenue all the information required to determine how much of a repayment is due, see requirements for a "valid claim" in section 865(1)(b) TCA.*

*……*

*Revenue requires a breakdown of the ARF distribution to determine the repayment whereas the taxpayer is contending that an ARF is a pension and is seeking a full refund of the tax deducted. It is the Revenue's Technical Services (RTS) and Revenue's legislative Services (RLS) view, that the decision made by Revenue to refuse the repayment is by reference to a provision of section 865 TCA and therefore the taxpayer can appeal that decision to the Appeal Commissioners within 30 days of the notice of that decision.*

*……..……."*

34. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. Section 6(2) of the Finance (Tax Appeals) Act 2015 sets out the functions of an Appeal Commissioner appointed pursuant to that Act. The Commissioner's jurisdiction is as set out in statute and the Commissioner's functions are limited to those conferred by the TCA 1997.

35. The scope of the jurisdiction of an Appeal Commissioner, has been discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 (hereinafter

"*Lee*"), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 and is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Appeal Commissioner or based on undisputed facts as the case may be.

36. The Commissioner's jurisdiction is clearly set out by the Court of Appeal in the Judgment in *Lee,* wherein Mr Justice Murray states at paragraph 20 of his decision that:

> "*The issue is, first and foremost, one of statutory construction. The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation*".

37. More recently in the Judgment of the Court of Appeal in *Colm Murphy v The Revenue Commissioners* [2023] IECA 160, Mr Justice Noonan, when considering the jurisdiction of an Appeal Commissioner, applied the principles enunciated by Murray J. in the *Lee* decision.

38. As aforementioned, the Appellant's appeal is made pursuant to section 865(7) TCA 1997 and relates to a decision of the Respondent to refuse a repayment of income tax pursuant to section 865(3) TCA 1997. Consequently, the Commissioner's considerations and jurisdiction in this appeal are confined to that decision and consideration of whether valid claims were made in accordance with the provisions of section 865 TCA 1997 and in particular, whether the Respondent had all the information it may reasonably require to determine the repayment due, in accordance with the provisions of section 865(1)(b) TCA 1997.

39. The Commissioner does not consider that she has a wider jurisdiction to consider whether, as a matter of law, the Appellant is entitled to repayment of income tax on foot of the [redacted] DTA and no Notice of Assessment is under appeal herein that relates to any decision of the Respondent based on the [redacted] DTA. The only matter under appeal is the decision of the Respondent dated **21 October 2022**, to refuse repayment of income tax pursuant to section 865(3) TCA 1997. Therefore, the Commissioner is satisfied that this is the sole matter for consideration in this appeal.

40. The Respondent argues that the Appellant as a [redacted], received distributions from his ARF which were collected by the PAYE system and he sought a repayment of income tax. However, the Respondent submits that the Appellant must demonstrate why he is entitled to those repayments and as part of that process, under section 865(1)(b) TCA 1997, the Respondent sought additional information. The Respondent contends that as the information was not provided, the Respondent formed the view that the claims for repayment were not valid.

41. Of note, Counsel for the Respondent stated in her submissions at the hearing of the appeal that the claims for repayment of income tax have been refused, because there is insufficient information to process the claims, but that the claims remain live and active claims and remain open to date. Counsel stated that the Respondent has not received the information it requires to assess the claims for repayment, but that it is certainly hoped that there is information now that may be available to assist in this process.

42. The Appellant rejected that submission in its entirety and directed the Commissioner to the decision of the Respondent that issued to the Appellant on 21 October 2022, formally refusing the Appellant's claims for a repayment of income tax.

43. The Commissioner is satisfied that when the Respondent issued that formal correspondence on **21 October 2022**, rejecting the Appellant's claims under section 865(3) TCA 1997 for a repayment of income tax for the relevant years, on the basis the claims were not valid claims, the matter was determined by the Respondent. The matter now comes before the Commissioner on appeal, in accordance with the applicable legislative provisions. It is that decision of the Respondent that permitted the Appellant to appeal to the Commission. The Commissioner is satisfied that the Respondent's statement that there remains live and active claims, is incorrect.

44. Before proceeding to consider the issue in this appeal, the Commissioner considers that it is important to acknowledge that during the hearing of the appeal, the Commissioner heard evidence from two witnesses for the Appellant. The Commissioner has referenced the evidence of the Appellant's witness throughout her determination, as she considers that his evidence is relevant to the issue that arises herein, in relation to the validity of the Appellant's claims for repayment of income tax. The Commissioner also heard evidence from the Appellant's expert witness. However, whilst interesting and useful to the Commissioner's understanding of the history of pensions in Ireland and the establishment of an ARF, his evidence is not referenced throughout the Commissioner's determination, as the Commissioner considers that his evidence was less relevant to the issue to be determined.

45. The Commissioner will now proceed to set out the background facts to this appeal, how the Appellant's ARF was established and the relevant distributions from same.

**Chronology/Background**

46. The Appellant [redacted] ("the company") and a member of the occupational pension scheme while in the company. The Commissioner notes that this is the source of the funds that is now being distributed out of the Appellant's ARF. In or around [redacted], the Appellant ceased employment with the company.

47. Thereafter, the Appellant established a [redacted] for whom he went to work for a short period. This enabled the company to transfer the amount that was held in respect of the Appellant's occupational pension with the company into the [redacted] company retirement plan. The Appellant submits that the [redacted] company took over the role of employer in respect of the pension scheme. In [redacted], the amount that was transferred to the [redacted] company's retirement plan was in the sum of [redacted].[14]

48. Thereafter, in [redacted], the Appellant took retirement from the [redacted] company and the trustees instructed the QFM, that a tax free lump sum of [redacted] be paid to the Appellant. On [redacted], [redacted] was transferred to the Appellant's ARF and [redacted] was transferred to his AMRF. Subsequently, on [redacted], a small transfer of [redacted] was transferred in to the ARF from a separate retirement plan that was held with [redacted]. At that stage, the Appellant had not reached the age wherein mandatory distributions were required, as he was still under the age of 60 years.

49. In [redacted], on the Appellant's instruction, the QFM established an investment account with [redacted] for the Appellant's ARF. On [redacted], on the Appellant's instruction, [redacted] of ARF assets were transferred into the ARF sub account in [redacted]

50. In [redacted], the Appellant instructed the transfer of [redacted] of ARF assets held, to an ARF that he established with [redacted] A portion of these transfers were made in [redacted], in the sum of [redacted], with the balance of [redacted], being completed in [redacted].

51. In [redacted], mandatory distributions commenced in accordance with section 790D TCA 1997. The evidence of the Appellant's witness was that the QFM deducted and paid

[14] Transcript, Day 1, page 152

over all tax due on each and every distribution made by the ARF[15]. In addition, the evidence of the Appellant's witness was that all distributions made by the QFM have been paid to the Appellant's [redacted] bank account[16].

52. Prior to considering the arguments made on behalf of the Appellant and Respondent in relation to the claims and before proceeding to consider the applicable legislative provisions, the Commissioner considers it both appropriate and useful to set out hereunder, the jurisprudence establishing the well settled principles of statutory interpretation relating to taxation statutes. It is this jurisprudence that will guide the Commissioner in her consideration of the relevant legislative provisions herein.

**Statutory Interpretation**

53. In relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the Judgment of Kennedy CJ. in *Revenue Commissioners v Doorley* [1933] I.R. 750 at page 765 wherein he held that:

> "*The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms...for no person is to be subject to taxation unless brought within the letter of the taxing statute, that is...as interpreted with the assistance of the ordinary canons of interpretation applicable to the Acts of Parliament*."

54. In relation to the relevant decisions applicable to the interpretation of taxation statutes, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores* and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders*, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") at paragraph 74:

> "*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were*

[15] Transcript, Day 1, page 156
[16] Transcript, Day 1, page 156

*reaffirmed recently in Bookfinders. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*

*(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

*(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

*(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

*(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

*(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is*

*not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible."*

55. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other Judgements. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, as per the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

56. Furthermore, the Commissioner is cognisant of the recent decision in *Heather Hill* and that the approach to be taken to statutory interpretation must include consideration of the overall context and purpose of the legislative scheme. The Commissioner is mindful of the dicta of Murray J. at paragraph 108 of his decision in *Heather Hill*, wherein he states that:

*"it is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose- it is not clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed".*

57. Where there is an ambiguity in a tax statute it must be interpreted in the taxpayer's favour. In *Bookfinders*, O'Donnell J. explained that this rule against doubtful penalisation, also described as the rule of strict construction, means that if, after the application of general principles of statutory interpretation, there is a genuine doubt as to whether a particular provision creating a tax liability applies, then the taxpayer should be given the benefit of any doubt or ambiguity as the words should be construed strictly "*so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language*".

58. If there is any doubt, then a consideration of the purpose and intention of the legislature should be adopted. Then, even with this approach, the statutory provision must be seen in context and the context is critical, both immediate and proximate, but in some circumstances perhaps even further than that.

59. There is abundant authority for the presumption that words are not used in a statute without meaning and are not superfluous, and so effect must be given, if possible, to all the words used, for the legislature must be deemed not to waste its words or say anything in vain. In particular, the Commissioner is mindful of McKechnie J's dictum in *Dunnes Stores* at paragraph 66, wherein he states that:

> *"each word or phrase has and should be given a meaning, as it is presumed that the Oireachtas did not intend to use surplusage or to have words or phrases without meaning."*

60. The Commissioner will now in accordance with the guidance of statutory interpretation as summarised in *Perrigo* go through the various steps. The Commissioner must give the words their ordinary, basic and natural meaning and that should prevail. Then, even with this approach, the statutory provision must be seen in context and the context is critical, both immediate and proximate, but in some circumstances perhaps even further than that. Nonetheless, whatever approach is taken, as confirmed in *Perrigo*, the Commissioner must give each word and phrase used in the statute a meaning, as it is presumed that the Oireachtas did not intend to use words or phrases without meaning.

61. The purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the Court or Tribunal is to seek to ascertain the meaning of the words. The general principles of statutory interpretation are tools used for clear understanding of a statutory provision. It is only if, after that process has been concluded, a Court or Tribunal is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language.

**Section 865(3) TCA 1997**

62. Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section includes income tax and capital gains tax. It also covers: any interest, surcharge or penalty relating to the tax, levy or charge; any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to the

Respondent; and amounts paid on account of tax (for example, payments in excess of liability).

63. The Appellant has been denied a repayment of income tax by the Respondent on the grounds that he does not meet the criteria as outlined by section 865(3) TCA 1997. Section 865(3) TCA 1997 provides that a repayment of tax referred to in section 865(2) TCA 1997 is not due unless a valid claim to repayment has been made. A valid claim is regarded as a return or statement which a person is required to deliver under the Acts and which contains all the information that the Respondent may reasonably require to determine if and to what extent a repayment is due. Section 865(1)(b) TCA 1997 is relevant in this regard.

64. The Commissioner is satisfied that the Appellant furnished a return for each year by way of a Form 11, which was delivered to the Respondent. The evidence from the Appellant's witness is that the QFM, in accordance with section 784E TCA 1997, is required to make a return and remit any tax payable to the Respondent, following distributions being made. The evidence of the Appellant's witness was that the QFM complied with its obligations each year, in this regard.

65. The Commissioner notes that on [redacted], [redacted] and [redacted], the Appellant's Agent filed his returns with the Respondent for the relevant years and the question arises, was all the information which the Respondent may reasonably require to enable it to determine if and to what extent a repayment of tax is due for that chargeable period, contained in the return, in order for it to be considered a valid claim. The Commissioner considers therefore that the words "may reasonably require" in the statute are important words for consideration and interpretation in this appeal**.**

66. The Commissioner is satisfied that the word "reasonably" is an ordinary word, capable of a literal interpretation and a word which is unambiguous. The word reasonably is an adverb and the Oxford Dictionary meaning of the word reasonable is "*in a sensible way*". The Cambridge Dictionary describes the meaning of the word reasonably as "*using good judgment*".

67. The Commissioner notes from the facts that following receipt of the Appellant's returns by way of his Form 11, on 11 January 2021, the Respondent corresponded with the Appellant's Agent via MyEnquiries stating that the Appellant's income tax returns had been selected for verification and a request was made initially for certain information,

namely "*a statement of final liability from* [redacted] *showing that the ARF income was taxed in* [redacted] *for the purposes of the double taxation agreement*."[17]

*The Form 11*

68. The Commissioner notes that the Appellant filed his income tax returns annually on the basis that the distributions from his ARF were outside the scope of Irish tax under the [redacted] DTA. The Commissioner is satisfied that it is the case that the Respondent was aware of the distributions as a result of the returns of the QFM. Section 784E(1) TCA 1997 provides that a QFM shall, within 14 days of the end of the month in which a distribution is made out of the residue of an ARF, make a return to the Collector-General which shall contain details of *inter alia* the tax number of the Appellant, the amount of the distribution and the tax which the QFM is required to account for in relation to that distribution. As aforementioned, the Commissioner heard evidence that the QFM complied with its obligations in this regard.

69. Following the distributions being made, the Appellant in accordance with his obligations filed his Form 11 income tax returns, on time, for the relevant years. The Appellant submits that being a [redacted] tax resident, he took the view on advice from his tax Agent that the pension payment that he was receiving from the ARF was not taxable in Ireland under the [redacted] DTA and that gives rise to a net repayment of income tax by the QFM in accordance with section 784E(1) TCA 1997. The Commissioner notes that the Form 11 filed for each of the relevant years states that the Appellant's country of residence is [redacted].

70. The Form 11 is a form prescribed by statute and is a self-assessment tax return for self-employed individuals or individuals with additional income, such as rental income or investment income. The Form 11 provides information on an individual's income, expenses, and tax credits and is used to calculate the amount of tax owed to the Respondent. Section 861(2)(b) TCA 1997 provides that "*any return under the Tax Acts and the Capital Gains Tax Acts shall be in such form as the Revenue Commissioners prescribe*". The Commissioner is satisfied that there was an onus on the Appellant to complete the information required in the Form 11 and that the Appellant duly completed his income tax returns and his self-assessment in line with that prescribed Form 11, as was his tax obligations, upon receipt of professional advice, for each year since [redacted].

71. The Commissioner notes that it was on that basis that the Appellant was afforded a refund of the income tax paid for [redacted] and [redacted] but that for the relevant years, the Appellant was not provided with an automatic refund as a consequence of the Respondent making a request for additional information outside of the information contained in the Appellant's

[17] Bundle of Correspondence, page 1

Form 11 for each of the relevant years. The Commissioner notes that this is despite the fact that the Respondent issued a Notice of Amended Assessment to the Appellant for the relevant years, showing a refund in the aforementioned sums.

*Information reasonably required*

72. Whist the Commissioner is satisfied that the Appellant completed a Form 11 for each of the requisite years as required and which were filed on time using ROS, the question arises whether the Respondent has the power to make a request for additional information, other than what is contained in a Form 11. The Respondent argued that for example a PAYE worker might seek a refund as to medical expenses, such as a consultant's fee, which may be an unusually large sum that may not have been claimed previously. Further, the Respondent argued that it is permitted to look into such a claim and may ask for supporting documentation. The Respondent submits that is a reasonable request, as the receipt must be kept by the claimant. The Respondent submits that it is the same situation herein, such that the Appellant is seeking a [redacted] refund and it has to be approached with the appropriate level of prudence and be investigated further by the Respondent.

73. The Commissioner does not consider it unreasonable of the Respondent to seek to verify information, as it did on 21 January 2021, by requesting as aforementioned, a statement of final liability from [redacted] showing that the ARF income was taxed in [redacted]. The Commissioner presumes that if the Appellant's income was subject to taxation in [redacted] on the basis of the applicability of the [redacted] DTA, the request to provide a statement showing the final liability was a reasonable request to satisfy the Respondent that the claims for repayment of income tax, are valid claims.

74. The Commissioner notes that this information was not forthcoming from the Appellant. In correspondence dated 29 April 2021,[18] in response to the Respondent's request for a statement of final liability from [redacted] showing that the ARF income was taxed in [redacted], the Appellant's representatives set out the Appellant's circumstances and make reference to the applicable provisions of the [redacted]. The correspondence does not enclose a statement of final liability from [redacted] showing that the ARF income was taxed in [redacted], as requested by the Respondent to verify the Appellant's claims for repayment of income tax.

75. However, the Commissioner observes that subsequent to the correspondence dated 29 April 2021 from the Appellant's Agent, on 1 June 2021[19], the Respondent makes a far

[18] Bundle of Correspondence, page 5
[19] Bundle of Correspondence, page 9

more wide reaching request of the Appellant, in relation to the distributions from the Appellant's ARF and the Respondent requests that:

"*….to process your client's claim, please provide a breakdown of the distributions for all years into their constituent parts vis a vis income (interest income, dividends), gains, return of capital. These elements will be examined with reference to the relevant articles of the* [redacted] *to ascertain the taxing rights. Full or partial refunds may be due to your client, depending on the breakdown."*

76. The initial request for a statement of final liability from [redacted] showing that the ARF income was taxed in [redacted] is not mentioned again in correspondence by the Respondent and the Respondent proceeds to insist thereafter on a breakdown of the distributions into capital, capital gains and income.

77. On 24 November 2021 and on 14 December 2021[20] the Appellant's Agent corresponds with the Respondent to state that:

"*We have considered your correspondence both on 1 June 2021 and 1 December 2021. It is our view that [the Appellant] is entitled to a refund of the withheld amounts under the* [redacted] *DTA on the basis that the distributions fell within Article 18 (pensions) or Article 21 (other income) of the DTA, and therefore no breakdown of the distributions into their constituent parts are required*."

78. On 7 March 2022,[21] the Respondent corresponds again with the Appellant's Agent to state that:

"*Revenue's position is outlined in the pensions Manuel, Chapter 23 and in relation to this case that is that is that the distributions do not fall within Articles 18 or 21 of the* [redacted] *DTA.*

*With effect from 22 December 2017, to determine where the taxing rights lie in relation to a distribution, from an ARF, the distribution is broken down between the underlying income, gains or capital which it represents. The appropriate articles of the DTA are then applied accordingly, as at the dates on which the income and gains arose to the ARF*".

79. On 11 April 2022,[22] the Appellant's Agent corresponds with the Respondent to state that:

"*It is our strong opinion that to split the distributions into capital and income is not the correct approach, and therefore we have not sought to do this exercise.*"

[20] Bundle of Correspondence, pages 11 and 12
[21] Bundle of Correspondence, page 20
[22] Bundle of Correspondence, page 22

80. On 2 August 2022,[23] the Respondent corresponds with the Appellant's Agent and states that:

> "*A valid claim is made through the Form "Refund of taxes paid on ARF Distributions – claim form to be completed by non-resident claimant" (link below) by providing the ARF income breakdown and information requested therein. Claim form link…*
>
> *I will reconsider your applications on receipt of your valid claims*"

81. Further, on the 23 September 2022[24], the Appellant's Agent corresponds with the Respondent to state that:

> "*Without prejudice to the above, we confirm that it is not possible for [the Appellant] to provide a complete breakdown of ARF funds between income, gains, and capital in respect of an ARF which pre-dates the coming into existence of the form by some ten years. Furthermore, as set out previously, it is our strong opinion that to split the distributions into capital and income is not the correct legal and technical approach*."

*ARF 2021 Form*

82. Thereafter, the Commissioner notes from the correspondence that the Respondent insists that a "valid claim" for a refund of tax on distributions from an ARF had to be made using the form ARF 2021 Form and not by way of the income tax return Form 11.

83. The Commissioner notes that the ARF 2021 Form only came into existence in June 2021, subsequent to the Appellant's claims for repayment for the relevant years having been made using the Form 11, as prescribed by law. The Commissioner agrees that it would have been impossible for the Appellant to have completed the ARF 2021 Form when making the claims for the relevant years and it was not deemed by the Respondent at that time to be a necessary pre-condition for the repayments made to the Appellant without query in [redacted] and [redacted]. The Appellant states that there is no statutory basis whatsoever either for the requirement to break down each distribution or the requirement to use a form which did not exist. The Commissioner notes that the Respondent now accepts that the ARF 2021 Form was not required for a valid claim for repayment of income tax to be made on distributions from the Appellant's ARF, for the relevant years.

84. The Commissioner notes that the Respondent explains that this change in practice was because "*there was no legislative basis for the previous position which allowed a non-resident to receive these ARF payments essentially free of tax".*[25] The Commissioner agrees with the Appellant's submission that this was a change in administrative practice

[23] Bundle of Correspondence, page 25
[24] Bundle of Correspondence, page 26
[25] Transcript, Day 2, page 26

to insist on the ARF 2021 Form, as it is not a form that has been prescribed under the TCA 1997. The Respondent states that this whole exercise was simply so that the Respondent could double-check that the repayments sought by the Appellant were due and to ascertain whether Ireland had any taxing rights, which is a reasonable exercise to carry out. The Respondent states that the Appellant's refusal to provide the information requested, precluded it from carrying out that exercise.

85. The Appellant states that the Form 11 income tax return is a prescribed form within the meaning of section 874A TCA 1997 and as such, is a form prescribed, authorised and approved by a Revenue Commissioner or an officer of the Revenue Commissioner not below the grade or rank of Assistant Secretary, so authorised. Thus, the Appellant by completing his income tax returns in line with his statutory obligations for self-assessment has completed forms that carry the utmost statutory importance and that the Respondent's request for a breakdown of ARF distributions between income, gains, and capital in respect of the ARF, which breakdown would pre-date the coming into existence of the ARF 2021 Form by some ten years, is entirely unreasonable.

*Conclusion*

86. The Commissioner is satisfied that the Respondent is not precluded from making a request for additional information in relation to matters contained in a Form 11, in accordance with section 865(1)(b) TCA 1997. The Commissioner does not accept that the Respondent is bound solely by the information that is provided in the Form 11 and can raise additional queries in respect of information contained in that Form 11. To preclude the Respondent from doing so, would seem absurd to the Commissioner given the intention of the self-assessment regime in Ireland and the taxing acts as a whole. Nevertheless, the legislature has imposed boundaries upon that right, such that section 865(1)(b) TCA 1997 states that it must be information which the Respondent "*may reasonably require*". The Commissioner has addressed the meaning of the word "reasonably" in the preceding paragraphs.

87. The Appellant states that the Form 11 is a prescribed form within the meaning of section 874A TCA 1997 and as such, is a form prescribed, authorised or approved by a Revenue Commissioner or an officer of the Revenue Commissioner not below the grade or rank of Assistant Secretary so authorised. Thus, the Appellant by completing his income tax returns in line with his tax obligations and self-assessment, has completed forms that carry the utmost statutory importance and that the request for the breakdown information is entirely unreasonable.

88. In terms of the Respondent's request, the Commissioner observes that the Appellant has maintained throughout his correspondence that it is "*in fact impossible for such a*

*breakdown to be provided by the Appellant in relation to his ARF, a mixed fund*" and that it is "unreasonable" and "unnecessary" and "irrelevant".

89. The Commissioner is satisfied that having regard to the evidence and submissions in relation to the validity of the Appellant's claims for repayment of income tax in this appeal, the Appellant has shown on balance that the Respondent's requests for a breakdown "*of the distributions for all years into their constituent parts vis a vis income (interest income, dividends), gains, return of capital*" was not information that the Respondent may reasonably require, to ascertain the repayments due to the Appellant for the relevant years.

90. The Commissioner is satisfied from the evidence adduced that the Respondent's request required the Appellant to produce certain information going back to the establishment of the Appellant's ARF and information that was not readily available to the Appellant. Moreover, it is information that does not exist and which the uncontroverted evidence of the Appellant's witness suggests is problematic and unreliable to attempt to recreate.

91. Counsel for the Respondent directed the Commissioner to the evidence of Appellant's witness and submitted that it is clear from the evidence that from [redacted] onwards, the Appellant received biannual statements and from [redacted] onwards he received quarterly statements. Moreover, the Commissioner notes that the Respondent submits that from [redacted] to [redacted], there are probably 26 statements available to the Respondent, which would be of considerable assistance to the Respondent in processing the Appellant's claims. The Respondent argues that the claims for repayment of income tax have been refused to date on the basis that this information was not forthcoming from the Appellant.

92. The Commissioner is satisfied that this is not what was requested of the Appellant. The Commissioner is satisfied that the correspondence referred to in this appeal, as set out in the Bundle of Correspondence and referenced in this determination, explicitly set out that the Respondent was trying to ascertain whether or not Ireland had any taxing rights under the [redacted] DTA and thus, required the Appellant to provide a breakdown "*of the distributions for all years into their constituent parts vis a vis income (interest income, dividends), gains, return of capital*". Whilst there may have been an initial request for information pertaining to taxes paid in [redacted], this was superseded by the Respondent's insistence on a breakdown of the distributions, as set out above.

93. The Commissioner had the benefit of the uncontroverted evidence of the Appellant's witness that he was aware that the Respondent was seeking information on the breakdown

of the Appellant's distributions from his ARF into income, capital gains and capital, as the Appellant approached him in relation to that information being sought by the Respondent.[26]

94. The Commissioner heard evidence from the Appellant's witness that they approached an external firm of expert tax advisors to try and produce the information required by the Respondent. The Appellant's witness stated that the tax advisors were furnished with the Appellant's valuations in order to carry out the exercise. Moreover, the witness stated that he engaged with the tax advisors over a period of three weeks, significant fees were incurred in trying to ascertain the composition of the distributions that were made and at the end of the period the tax advisors were unable to provide a statement that they were comfortable standing over. The Commissioner found the Appellant's witness to be a credible witness and accepts the evidence of the Appellant's witness. It is clear to the Commissioner from the Appellant's evidence that he has been involved in the Appellant's affairs for a considerable period of time and is an experienced professional.

95. Furthermore, the Commissioner notes that the Respondent submits that the evidence suggests that the Appellant "*could have complied with the request for information from the [the Respondent]*".[27] The Commissioner is satisfied that there is no evidence to suggest that the Appellant failed to ascertain the information required by the Respondent, as submitted by the Respondent at the hearing of the appeal. The availability of 26 statements does not suggest that the Appellant could have complied with the request, as this was not the information requested by the Respondent. The Commissioner is satisfied that it was not the annual, biannual or quarterly statements that were requested by the Respondent, but a breakdown of the Appellant's distributions from the Appellant's ARF into capital, capital gains and income.

96. The Appellant submits that "*when you take into account the observation of the [Respondent] in their closing submissions that* [redacted] *maintain quite sophisticated systems, it emphasises the unreasonableness of the request. That with their quite sophisticated systems and the engagement with tax advisors* [redacted] *over many weeks and the incurring of considerable expense they couldn't produce the information required. And that goes to reasonableness*". The Commissioner agrees with this observation of the Appellant.

97. Moreover, it is argued by the Appellant that the Respondent's request was unspecific, such that the Respondent provided no ordering rules for the distributions. The Appellant submits that this is important because the breakdown has to be income, capital gains and then, as a final resort, the original capital, but the income is not just the income earned in that year,

[26] Transcript Day 1, page 178
[27] Transcript Day 2 page 56

it is all of the income that has been earned each year from [redacted] onwards to the extent to which it has not been distributed out at all. Moreover, how are the different transfers that have taken place to the [redacted] and to [redacted] ARF approached in terms of the request of the Respondent. The Respondent submits that it is a straightforward exercise to be carried out by the Appellant.[28] The Commissioner is satisfied that in fact, the evidence is to the contrary.

98. As stated, the Commissioner does not accept that the Respondent's request is a "straightforward exercise" for the Appellant and that the evidence of the Appellant's witness herein supports that it was not straightforward. The Commissioner is satisfied the Appellant's witness, an experienced practitioner, who was given the task by the Appellant of trying to comply with the Respondent's request, could not do so, despite the expenditure of many weeks and considerable sums of money with external tax advisors.

99. The Commissioner is satisfied that the evidence supports the argument being made that the information sought from the Appellant is not something that the Respondent may reasonably require or that it was even possible to achieve a reliable breakdown of the information sought herein, in relation to the distributions from the Appellant's ARF. The Commissioner does not accept that this is something akin to a PAYE worker being required to verify a medical expense claim by producing a consultant's fee note. The Commissioner considers that the Respondent's analogy herein is incorrect. The request of the Respondent was not a case of simply producing an existing document to determine a claim, this information was not readily available and the uncontroverted evidence suggests that it could not reliably be reconstructed. The Commissioner considers that a request for information in the form of a certificate of payment of a medical professionals fee, in circumstances where that would be an usual claim for the individual making the claim, is information that is in existence, that can be acquired with minimal effort and without incurring significant costs. It is information that the Respondent may reasonably require. Such a request bears no resemblance to the request made of the Appellant herein.

100. Counsel for the Respondent argues that "*if there is a cost to him in providing the necessary information to the Revenue Commissioners so that the Revenue can be satisfied that it has no taxing rights in circumstances where [the Appellant] has the burden of proof of satisfying the Revenue Commissioners that he is entitled to a refund, well so be it.*"[29] The Commissioner is satisfied that the Respondent is entitled to verify a claim for

[28] Transcript, Day 2, page 50
[29] Transcript, Day 2, page 106

repayment outside of the information contained in a Form 11, but that in accordance with section 865(1)(b) TCA 1997, it must be information that the Respondent may reasonably require. The Commissioner does not consider that the foregoing argument, in relation to costs being incurred, assists the Respondent in its argument that it is information that it may reasonably require.

101. Accordingly, in the circumstances, the Commissioner is satisfied that the information requested by the Respondent on **1 June 2021**, namely a breakdown "*of the distributions for all years into their constituent parts vis a vis income (interest income, dividends), gains, return of capital*" is **not information that the Respondent may reasonably require,** in accordance with section 865(1)(b) TCA 1997.

**Determination**

102. As such and for the reasons set out above, the Commissioner determines that the Appellant has succeeded in showing that the Respondent was **incorrect** to apply the provisions of section 865(3) TCA 1997.

103. Consequent to that finding, the Commissioner is satisfied that the Appellant's claims for repayment of income tax for the relevant years, in accordance with the provisions of section 865 TCA 1997, were **valid claims**. Hence, the decision of the Respondent dated **21 October 2022**, refusing the Appellant's claims in accordance with section 865(3) TCA 1997 was incorrect.

104. The Commissioner's findings in accordance with section 865 TCA 1997 determine the matter herein.

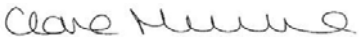
105. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

**Notification**

106. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ (5) and section 949AJ (6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ (6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

**Appeal**

107. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
13 December 2023