



**NAME OF APPELLANT REDACTED**

**11TACD2021**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

## **DETERMINATION**

### **Introduction**

1. This is an appeal against assessments to income tax for the years **Redacted** in respect of the Appellant's claim for relief for gifts made to the State pursuant to TCA, section 483. It is the Appellant's assertion that the act of foregoing his entitlement to his ministerial pension constituted a "*gift of money made to the Minister for Finance for use for any purpose for or towards the cost of which public moneys are provided*" and therefore entitled to claim relief under TCA, section 483 against his other income in respect of the years under appeal.
2. The Respondent disagreed with the Appellant's interpretation and raised an assessment for **Redacted** that taxed the Appellant's full pension of €**Redacted** that included the foregone pension of €**Redacted**. That assessment also allowed corresponding relief of €**Redacted** pursuant to TCA, section 483. Similarly for the year **Redacted**, the Respondent applied the same treatment by taxing the pension foregone of €**Redacted** but granted corresponding relief for the gift in accordance with TCA, section 483.

### **Material Findings of Fact**

3. From the evidence, I have made the following material findings of fact:
  - (a) The Appellant was a Teachta Dala ("TD") for **Period Redacted**, at which time he retired from public service.
  - (b) **Date Redacted**, the Appellant wrote to the Minister for Finance, the **Minister's Name Redacted**, "*to confirm my approval to forego my Office-holders pension for the duration of this Dáil*". The term ended on **Redacted**.
  - (c) On **Date Redacted** the Minister for Finance wrote to the Appellant thanking him for his "*very generous gesture*". The relevant part of that letter is set out below:



*“As you are deemed to have gifted your pension to the Minister for Finance, you are entitled to income tax relief under section 483 of the Taxes Consolidation Act 1997, and we have advised the Revenue Commissioners accordingly. The necessary arrangement has been made with the Paymaster General’s Office to process your request”*

- (d) During a telephone call, the Appellant was advised by the Minister for Finance to make a TCA, section 483 claim on his tax return.
- (e) The Appellant was thereafter furnished with documents entitled *“Gift made under section 483 of the Taxes Consolidation Act 1997 – Certificate from the Department of Finance”* for the years **Redacted** in the amounts of **€Redacted** and **€Redacted** respectively.
- (f) The Appellant thereafter claimed relief under TCA, section 483 on his **Redacted** and **Redacted** income tax returns in the amounts of **€Redacted** and **€Redacted** respectively.
- (g) No pension was paid to the Appellant from **Redacted** until **Redacted** when he withdrew the gift.
- (h) On **Redacted** the Appellant received a letter issued by the Department of Finance informing him that he must sign a form confirming that he wished to *“cease to make any further payments....under Section 483...with effect from **Date Redacted.**”*
- (i) In the initial notice of assessment dated **Redacted**, the Appellant was assessed on a pension of **€Redacted** which excluded the pension foregone but was allowed relief of **€Redacted** in respect of a ‘Donation to Approved Bodies’.
- (j) **By letter *Date Redacted***, the Respondent wrote to the Appellant’s agent setting out its arguments as to why TCA, section 483 relief was not due as the gift was an application of the pension and therefore the pension remained taxable.
- (k) A notice of amended assessment issued on **Date Redacted** that denied the Appellant relief for the ‘Donation to Approved Bodies’ of **€Redacted**.
- (l) Subsequent correspondence ensued culminating in a letter from the Respondent dated **Redacted**, in which the Respondent notified the Appellant of its intention to amend the **Redacted** assessment to include the Appellant’s full amount of pension



that included the element of surrendered pension of € Redacted but also to grant relief of €Redacted pursuant to TCA, section 483.

- (m) As a consequence on Date Redacted, the Respondent issued an amended Income Tax Assessment for Year Redacted which assessed the Appellant's full pension of €Redacted and provided relief for the TCA, section 483 gift of €Redacted.
- (n) On Date Redacted, that assessment was appealed.
- (o) On Date Redacted, the Respondent issued an amended Income Tax Assessment for Year Redacted which assessed the Appellant's full pension of €Redacted and coded in relief for the TCA, section 483 gift of €Redacted. No explanation was proffered on the difference between the amount specified on the TCA, section Gift Certificate issued by the Department of Finance of €Redacted and the amount of €Redacted allowed on the assessment.
- (p) There is no dispute between the parties as to whether that assessment was appealed.

## Legislation

- 4. The charge to tax in respect of Schedule E type earnings is in accordance with TCA, section 19, the relevant provisions of which are set out below:

(1) *"The Schedule referred to as Schedule E is as follows:*

### SCHEDULE E

- 1. *In this Schedule, "annuity" and "pension" include respectively an annuity which is paid voluntarily or is capable of being discontinued and a pension which is so paid or is so capable.*
- 2. *Tax under this Schedule shall be charged in respect of every public office or employment of profit, and in respect of every annuity, pension or stipend payable out of the public revenue of the State, other than annuities charged under Schedule C, for every one euro of the annual amount thereof.*
- 3. *Tax under this Schedule shall also be charged in respect of any office, employment or pension the profits or gains arising or accruing from which*



would be chargeable to tax under Schedule D but for paragraph 2 of that Schedule.

4. *Paragraphs 1 to 3 are without prejudice to any other provision of the Income Tax Acts directing tax to be charged under this Schedule, and tax so directed to be charged shall be charged accordingly.*
  5. *Subsection (2) and sections 114, 115 and 925 shall apply in relation to the tax to be charged under this Schedule.”*
- (2) *Tax under Schedule E shall be paid in respect of all public offices and employments of profit in the State or by the officers respectively described below –*
- (a) *offices belonging to either House of the Oireachtas;*
  - (b) *offices belonging to any court in the State;*
  - (c) *public offices under the State;*
  - (d) *officers of the Defence Forces;*
  - (e) *offices or employments of profit under any ecclesiastical body;*
  - (f) *offices or employments of profit under any company or society, whether corporate or not corporate;*
  - (g) *offices or employments of profit under any public institution, or on any public foundation of whatever nature, or for whatever purpose established;*
  - (h) *offices or employments of profit under any public corporation or local authority, or under any trustees or guardians of any public funds, tolls or duties;*
  - (i) *all other public offices or employments of profit of a public nature.*
5. The basis of assessment is in accordance with TCA, section 112(1) and states:

*“Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits*



*whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment."*

6. TCA, section 118B taxes remuneration foregone under a salary sacrifice arrangement which is defined as:

*"any arrangement under which an employee forgoes the right to receive any part of his or her remuneration due under his or her terms or contract of employment, and in return his or her employer agrees to provide him or her with a benefit"*

7. TCA, section 483 provides that where a person makes a gift to the Minister for Finance for any purpose for which, or towards the cost of which, public moneys are provided, a deduction may be claimed equal to that amount in computing total income in the year in which the gift was made. The relevant provisions are as follows:

- (1) (a) *In this subsection, "public moneys" means moneys charged on or issued out of the Central Fund or provided by the Oireachtas.*
- (b) *This section shall apply to a gift of money made to the Minister for Finance for use for any purpose for or towards the cost of which public moneys are provided and which is accepted by that Minister.*
- (2) *Where a person who has made a gift to which this section applies claims relief from income tax or corporation tax by reference to the gift, subsection (3) or, as the case may be, subsection (4) shall apply.*
- (3) *For the purposes of income tax for the year of assessment in which the person makes the gift, the amount of the gift shall be deducted from or set off against any income of the person chargeable to income tax for that year and income tax shall, where necessary, be discharged or repaid accordingly, and the total income of the person .... shall be calculated accordingly."*

### **Submissions - Appellant**

8. The approach to be taken in determining this appeal is to consider each section separately. The first issue to determine is whether the surrender of the pension falls within TCA, section 112 and therefore taxable. Thereafter, the tax relief entitlement under TCA, section 483 should be considered.



9. There is no reference in TCA, section 483 to TCA, section 112 or to the interaction of both sections. It merely provides that if a gift falls within that section the entitlement to relief applies.

#### *General Principles in Interpretation of Tax Statutes*

10. The provisions regarding the interpretation of statutes have been considered in many cases and in brief the rules are encapsulated as follows:

- (a) First, it is well established that liability for tax must be clearly imposed and that the provisions of tax statutes are strictly construed. In *Swaine v C.V.E.*, Kenny J. stated that it was:

*"not necessary to cite authority for the proposition that liability for tax must be imposed by plain words and that the courts are not to construe Revenue legislation in a manner which will impose tax liabilities in order to avoid anomalies".*

- (b) Similarly, in *Inspector of Taxes v Kiernan*, Henchy, J. enunciated "three basic rules of statutory interpretation", the second of which is particularly relevant in the present context:

*"... if a word or expression is used in a statute creating a penal or taxation liability, and there is looseness or ambiguity attaching to it, 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."*

- (c) In *McGrath v McDermott* (1988) IR 258, the Supreme Court reaffirmed the principles of statutory construction applicable to Finance Acts as follows:

*"It is clear that successful tax avoidance schemes can result in unfair burdens on other taxpayers and that unfairness is something against which courts naturally lean. The function of the courts in interpreting a statute of the Oireachtas is, however, strictly confined to ascertaining the true meaning of each statutory provision, resorting in cases of doubt or ambiguity to a consideration of the purpose and intention of the legislature to be inferred from other provisions of the statute involved, or even of other statutes expressed to be construed with it. The courts have not got a function to add to or delete from the express statutory provisions so as to achieve objectives*



*which to the courts appear desirable. In rare and limited circumstances words or phrases may be implied into statutory provisions solely for the purpose of making them effective to achieve their expressly avowed objective ...*

*In the course of the submissions such a necessity was denied but instead it was contended that the real, as distinct from what is described as the artificial, nature of the transactions should be looked at by the Court, and that if he were, the section could not apply to them. I must reject this contention. Having regard to the finding in the case stated, that these transactions were not a sham, the real nature, on the facts by which I am bound, of this scheme was that the shares were purchased and the purchaser became the real owner thereof; that shares were sold and the vendor genuinely disposed thereof and that an option to purchase shares really existed in a legal person legally deemed to be connected with the person disposing of them. In those circumstances, for this Court to avoid the application of the provisions of the Act of 1975 to these transactions could only constitute the invasion by the judiciary of the powers and functions of the legislature, in plain breach of the constitutional separation of powers."*

- (d) In *Texaco (Ireland) Ltd v Murphy*, McCarthy, J. stated that: *"it is an established rule of law that a citizen is not to be taxed unless the language of the statute clearly imposes the obligation."*
- (e) In this context, he adopted the following observations in the judgment of Rowlatt, J. in *Cape Brandy Syndicate v Inland Revenue Commissioners*:

*". . . in a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

- (f) McCarthy, J. also referred to the following passage from the judgment of Kennedy, C. J. in *Revenue Commissioners v Doorley*:

*"The duty of the Court ... 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, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within*



*the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred."*

- (g) The principles stated in *Cape Brandy Syndicate* and *Doorley* were also reaffirmed by the Supreme Court in *Saatchi & Saatchi Advertising Ltd v McGarry*.
- (h) As a corollary of the principle considered above, if a legislative provision in a taxation statute is ambiguous or reasonably capable of two alternative meanings, the taxpayer is entitled to the benefit of the doubt and the more favourable of the alternative meanings.
- (i) In *Wilcox v. Smith* it was held that: "*if the Act is ambiguous (In the sense that the Court has a reasonable doubt as to the import of the legislation) the subject is entitled to the benefit of the doubt.*"
- (j) Similarly, in *Inland Revenue Commissioners v Ross*, Lord Thankerton stated that: "*if the provision [in a taxation statute] is reasonably capable of two alternative meanings, the courts will prefer the meaning more favourable to the subject.*"
- (k) In *Cory & Sons Limited v Inland Revenue Commissioners* Lord Reid emphasised the danger of stretching the words of a taxation statute against the subject as follows:

*"Counsel for the respondent said, no doubt truly, that if this appeal were allowed the door would be open for wholesale evasion of stamp duty. But this consideration has never prevailed over the rule that the words of a taxing act must never be stretched against a taxpayer. And there is a very good reason for that rule. So long as one adheres to the natural meaning of the charging words the law is certain, or at least as certain as it is possible to make it. But if courts are to give a liberal construction, who can say just how far this will go? It is much better that evasion should be met by amending legislation."*

#### *Application to section 112 TCA 1997*

11. Following on from these cases, in a consideration of TCA, section 112 and applying the words of that section literally to circumstances where a person cannot direct how the money foregone is to be applied, there is simply no income received. In the circumstances here the Appellant indicated that he did not wish to receive his pension, rather he was surrendering it. As such, the Paymaster General would not have to make a





payment of pension. The Appellant did not apply it in any way. He did not direct that it should be given to the Minister for Finance for particular purposes; He did not direct that it should be held in any particular fashion. He gave up any entitlement to direct or apply it in any way.

12. The Appellant, having written **Date Redacted** to the Minister for Finance stating: "*I wish to confirm my approval to forego my Office-Holder's Pension for the duration **Date Redacted***" confirmed that he was foregoing his pension and did not direct in any way what is to be done with it. In fact, during that period he was unable to take back his pension or to direct how it might be otherwise used. He had surrendered the entitlement to the State.
13. On a proper analysis, the Appellant gave up his entitlement to the pension and therefore the Appellant's pension was no longer payable to him. It was argued for that period of time, he was not in any position to "apply" the pension in any way as his rights to that pension had been surrendered. For example, he could not decide to spend his pension on a holiday for himself or his family nor was he in a position to gift the pension to a charity in that period.
14. As a consequence of this surrender, he therefore never received or directed or applied those monies. Further, he was not in a position where he could have changed his mind and thereafter received, directed or applied the monies. There is no remaining income source to tax as no pension is payable and as such there is nothing liable to tax under section 112 under Schedule E assessment.
15. The Respondent has stated that in order for the Appellant to make a gift for the purposes of TCA, section 483 that he had to apply his pension income, the right to which he had surrendered and which infers he had an entitlement to the income in the first instance. The position of the Respondent that the Appellant should be subject to tax on the pension, on the basis that on the surrender of the right, and using similar wording to that contained in *Dewar v IRC*, there is no enjoyment by the Appellant of the pension income, there is no gain, he had received no profit and there is nothing in his hands which will answer the test of what is meant by income.
16. Furthermore, the provisions of TCA, section 118B do not apply because the Appellant did not receive any benefit from his Employer for the surrender.



*Application to Section 483 TCA 1997*

17. Relief under TCA, section 483 applies to a gift made and accepted by the Minister for Finance for use by the Minister for any purpose for or towards the cost of which public moneys are provided.
18. The Appellant did not make a monthly gift of money to the Minister for Finance. Instead, he surrendered entitlement to his pension for a period of time (i.e. the remaining duration of **Date Redacted**). He did this by foregoing the payment of his pension to himself. The gross amount of pension surrendered amounted to €**Redacted** in **Year Redacted** and €**Redacted** in **Year Redacted**.
19. The result of the Appellant's surrender of the right to pension payments was a cash benefit to the Paymaster General, which used public moneys to meet its pension liabilities for previous Oireachtas office holders.
20. In his letter dated **Redacted**, the Minister for Finance confirmed his opinion that the surrender of the pension was a gift for the purposes of TCA, section 483. He further stated that the Appellant was therefore entitled to tax relief under TCA, section 483. The Minister's view was further backed up by Department of Finance officials who issued the relevant TCA, section 483 Gift Certificates to the Appellant to facilitate his claim for relief. The relief was duly claimed in the Appellant's tax returns.

*Does the pension foregone qualify under section 483 Taxes Consolidation Act, 1997?*

21. TCA, section 483 requires that the Appellant must have made a gift to the Minister for Finance. In this regard, the Appellant wrote to that Minister and informed him of his intention to forgo his pension for the duration of the **Date Redacted**. The gross value of the pension that the Appellant would have been entitled to in that period amounted to €**Redacted** (i.e. €**Redacted** for **Year Redacted** and €**Redacted** for **Year Redacted**). In surrendering his pension, that sum of money became available to the Minister for Finance and was at his disposal and discretion as to how the Minister would use those funds.
22. The Appellant made a gift to the Minister for Finance when he wrote to him stating that he would forego the payment of his pension. The Minister acknowledged this gift in his letter of the **Date Redacted** and informed the Appellant that he was entitled to income tax relief under TCA, section 483. The Appellant did not expect that he could still have a liability to pay income tax and levies on the pension that he had surrendered. Had that been the case, he would have had to pay the Respondent approximately €**Redacted** each



month when his surrendered pension did not arrive. This seems to be a ludicrous suggestion.

23. It is a fair and reasonable interpretation of the Minister's letter to take the view that the Appellant was entitled to income tax relief under TCA, section 483 as a result of his gift. The Respondent's case is that the Appellant should have interpreted the Minister's letter to mean that the Appellant would not have to pay income tax on the surrendered pension rather than what the letter actually states.... "*you are entitled to income tax relief under Section 483...*"
24. Had the Appellant been informed of the full tax consequences as now proffered by the Respondent, he would have refused to surrender his pension and would have instead written a monthly cheque to the Minister for Finance for the net pension received by him. This would have had the exact same effect for the Exchequer but would have ensured the Appellant's entitlement to the TCA, section 483 relief.
25. Both the comments made in his telephone call between the Minister for Finance and the Appellant and the Minister's letter created a legitimate expectation of tax relief which was then reinforced by the issue of the Certificates of Gift from the Department of Finance in the amounts of €Redacted and €Redacted for Year Redacted & Year Redacted respectively. Following the Minister's verbal instruction that a claim should be made in the Appellant's tax return, such claims were duly made.
26. However and notwithstanding the Appellant's submission that he had a legitimate expectation to the entitlement to the TCA, section 483 relief, as explained at the hearing, the jurisdiction of the Tax Appeals Commission does not extend to a consideration of the activities of the Respondent or indeed to determine whether such actions were *ultra vires*.

### *Conclusion*

27. The Respondent is incorrect to argue that if the Appellant had not been taxed in respect of the pension foregone that he cannot be entitled to relief under TCA, section 483. These sections are not interlinked under the legislation. Therefore, it is necessary to analyse them separately.
28. In the circumstances where the Appellant wrote "*I forego my office holders pension*" then in those circumstances it seems clear that TCA, section 112 does not apply. There was never any receipt of income. There was never any application. There was never any direction as to what was to be done with it.



29. In recognition of the fact that the Exchequer would no longer be required to pay these moneys to the Appellant, the Minister for Finance accepted this gift from the Appellant as entitling him to tax relief under TCA, section 483. As such, Certificates of Gift under TCA, section 483 were issued to the Appellant entitling him to claim relief in his tax return. Despite his initial reluctance to agree to his entitlement, the Respondent acknowledged the Appellant's right to tax relief under TCA, section 483 in the Notices of amended assessment for **Years Redacted**.

### **Submissions - Respondent**

30. The administrative reaction to a gifting by public servants of a salary or pension was, at the material time, as follows :
- The public servant makes a gift and evidences the making of a gift by declaration;
  - The relevant Minister accepts the gift;
  - A certificate noting the acceptance of a gift in respect of a specified taxpayer is issued to the Paymaster General/Accountant General;
  - A notification is issued by the appropriate Inspector of Taxes under TCA, section 984 excluding the gift from the emoluments that are subject to the operation of PAYE; and
  - The Paymaster General/Accountant General adapts the payroll system so that the gross salary of the person is reduced by the amount of the gift which, in this case, was the pension.
31. Adoption of this administrative procedure did not contemplate that a taxpayer would, in addition to the resultant reduction in the income figure, claim an entitlement to relief under TCA, section 483.
32. In the instant appeal, a letter from the **Minister's Name Redacted** issued to the Appellant. This letter thanked the Appellant and referred to a claim to relief under TCA, section 483 in respect of that portion of a pension which was foregone.
33. The letter from that Minister did not state that the entitlement to relief is in addition to the reduction of income for the purposes of tax and does not authorise the receipt of a double benefit.



34. Whatever view is taken by the Commission of the documents issued by the **Minister's Name Redacted** or the administrative treatment of the Appellant, the documents issued to the Appellant are not determinative of how the situation of the Appellant is to be analysed.
35. The arguments advanced on behalf of the Appellant do not address the interaction between the twin concepts of "income" and "gift". Taken in isolation, the Appellant has made a superficially attractive argument that money which one has never received is not susceptible to tax.
36. Arguing that the assessment to tax should be premised on this net figure of €**Redacted**, however, is inconsistent with an argument that relief under TCA, section 483 is available to the Appellant in addition to this reduction.
37. Key to the application of this section is the concept of a "gift" construed in accordance with TCA, section 483.
38. "Gift" is defined in several provisions of the TCA and other tax legislation. For example, in TCA, section 825 "gift" is defined as "*a gift of property to the State which ... becomes vested ... in a State authority*". Dictionary definitions also focus on the act of giving or transferring, without expectation of anything in return, that are at the heart of the definition of a "gift".
39. Central to the concept of a gift is that the person giving has possession or has title to the object or property which is being given. Even if not presently in the possession of the donor, a gift necessarily constitutes the transfer of possession and/or the property, benefit, estate or entitlement in the object. This is part of the word's ordinary, natural meaning.
40. The concept that a donor must have possession and/or be entitled to donate, before he is capable of making a gift is summarised in law by the Latin as *nemo dat quod non habet*. It is a principle that has been applied in cases too numerous to mention.
41. If the Appellant contends for the application of TCA, section 483 TCA, which is consistent with the correspondence with the **Minister's Name Redacted** and other documents, it follows that his income should be stated in the gross amount, since he could not 'give' something unless (at least notionally) he had received it. On the other hand, if contending for a net figure of income, in reliance on his P60 and other documents, it is difficult to see how it can be argued by the Appellant that there has been a gift - since he



is arguing that he gave something and at the same time is arguing that he never had it to give.

## Analysis

### Overview

42. The appealed assessment to tax for the year **Redacted** that issued on **Date Redacted** taxed the Appellant's full pension of €**Redacted** that included the foregone pension of €**Redacted**. That assessment also allowed corresponding relief of €**Redacted** pursuant to TCA, section 483. Similarly for the **Year Redacted**, the Respondent applied the same treatment by taxing the pension foregone of €**Redacted** but granted corresponding relief for the gift in accordance with TCA, section 483.
43. Therefore the first issue to determine is whether the pension foregone for the **Year Redacted** and **Year Redacted** is chargeable to tax pursuant to TCA, section 112. Thereafter the entitlement to TCA, section 483 relief on the foregone pension is considered.

### Charge to tax

44. In his letter of **Date Redacted**, the Appellant informed the Minister for Finance that he would "*forego my Office-holders pension for the duration **Period Redacted***". As a consequence, the Appellant received no pension or indeed money from **Date Redacted** until **Date Redacted**. Therefore for the year **Redacted**, the amount of pension foregone was €**Redacted**.
45. The Respondent asserted that the assessment deemed the Appellant "*to have had a pension which he then gifted to the State and as a result of which he claimed TCA, section 483 relief*". Such an argument is not without merit as it is not possible to gift something which is not in your possession.
46. However there is no deeming provision in TCA, section 112 which states:

*"Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits*



*whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.”*

47. Therefore TCA, section 112 imposes a charge to tax under Schedule E on an individual *“to whom any annuity, pension ..... chargeable under that Schedule is payable”*. The use of the adjective *“payable”* that brings the person in receipt of the *“pension”* within the charge to Schedule E mandates that the pension must be or is capable of being paid to the individual. In his letter to the Minister of **Date Redacted**, the Appellant explicitly stated that he would forego his pension and as a consequence the Appellant could not or indeed was incapable of receiving his pension during the remaining life **Date Redacted**. As a consequence, the Appellant had no legal claim to the surrendered pension from **Date Redacted** and therefore cannot be assessed to tax for the year **Redacted** on the element of pension foregone as no pension was *“payable”* to him.
48. Correspondingly for the year **Year Redacted**, no charge to tax arises on the element of pension foregone.

#### *Relief for Gift*

49. The Appellant asserted that the act of foregoing his entitlement to his ministerial pension constituted a *“gift of money made to the Minister for Finance for use for any purpose for or towards the cost of which public moneys are provided”* and therefore entitled to claim relief under TCA, section 483 against his other income. The Appellant’s argument is further bolstered by the issuing by the Department of Finance, documents entitled *“Gift made under section 483 of the Taxes Consolidation Act 1997 – Certificate from the Department of Finance”* for the years **Redacted** and **Redacted** in the amounts of **€Redacted** and **€Redacted** respectively.
50. Furthermore the Appellant submitted that had he known that he would be denied relief, *“he would have refused to surrender his pension and would have instead written a monthly cheque to the Minister for Finance for the net pension received by him. This would have had the exact same effect for the Exchequer but would have ensured the Appellant’s entitlement to the TCA, section 483 relief.”* However such an argument is self-defeating as the Appellant would appear to have accepted the validity of the assessment dated **Redacted**, which assessed the Appellant’s full pension of **€Redacted** including the element foregone and allowed corresponding relief for the TCA, section 483 gift of **€Redacted**.



51. The Respondent argued that the Appellant is seeking, contrary to the intention of the Oireachtas, to procure a double benefit by removing foregone pension from the charge to tax while at the same time seeking to claim relief for that loss of income against the Appellant's other income.
52. In coming to my determination, I rely on the explicit wording of TCA, section 483 which applies relief to "a gift of money made to the Minister for Finance for use for any purpose for or towards the cost of which public moneys are provided and which is accepted by that Minister." [Emphasis added]. The relieving provisions of TCA, section 483 thereafter provide:
- (2) *"Where a person who has made a gift to which this section applies claims relief from income tax or corporation tax by reference to the gift, subsection (3) or, as the case may be, subsection (4) shall apply.*
- (3) *For the purposes of income tax for the year of assessment in which the person makes the gift, the amount of the gift shall be deducted from or set off against any income of the person chargeable to income tax for that year and income tax shall, where necessary, be discharged or repaid accordingly, and the total income of the person .... shall be calculated accordingly."*
53. As noted above, on **Date Redacted**, the Appellant forfeited his future entitlement to receive his ministerial pension for the period **Redacted**. From that date, the Appellant was not entitled to receive "*money*" that would have been derived from the after taxed pension. Furthermore as noted above, the Appellant could not demand payment of that pension and as a consequence could not have been in a position to make a "*gift of money*".
54. The surrender of the pension was acknowledged by the Minister in a letter dated **Date Redacted** whereby the Appellant was "*deemed to have gifted your pension to the Minister for Finance*" and certificates of tax relief pursuant to TCA, section 483 for the years **Redacted** and **Redacted** issued thereafter. As such from **Date Redacted**, the Minister received the Appellant's entitlement to a future income stream for what transpired to be a period of **Redacted** months. In this regard, in **Date Redacted**, the Appellant disposed of his right to a future pension stream as opposed to having made a contemporaneous "*gift of money*".





## Determination

55. In his letter to the Minister of the **Date Redacted**, the Appellant explicitly stated that he would forego his pension and as a consequence the Appellant could not or indeed was incapable of receiving his pension during the remaining **Period Redacted**. As a consequence, the Appellant had no legal claim to the pension foregone **Date Redacted** and therefore cannot be assessed to tax on the element of pension foregone as no pension was “payable” to him.
56. The surrender of the pension by the Appellant was acknowledged by the Minister for Finance in a letter dated **Date Redacted** and certificates of tax relief pursuant to TCA, section 483 for the years **Year Redacted** and **Year Redacted** issued thereafter. As such from **Date Redacted**, that Minister was entitled to the Appellant’s right to a future income stream for what transpired to be a period of **Period Redacted**. In this regard, in **Date Redacted**, the Appellant disposed of his right to a future pension stream as opposed to having made a contemporaneous “*gift of money*”. Therefore the Appellant could not have made a “*gift of money*” as he was not in his possession of the “*money*” and as a consequence is not entitled to relief pursuant to TCA, section 483.
57. Therefore pursuant to TCA, section 949AK, the assessment to tax for the **Year Redacted** and **Year Redacted** are to be amended to exclude the element of pension foregone and to deny the entitlement to relief pursuant to TCA, section 483.

---

**Conor Kennedy**  
**Appeal Commissioner**  
**30<sup>th</sup> November 2020**

**No request was made to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997 as amended.**



