65TACD2021

Between/

[redacted]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeal Commission as an appeal against the decision made by the Respondent on the 12th of September 2018 that the Appellant had been charged to the correct amount of income tax and USC on a redundancy payment received by the Appellant in December 2017.

B. Background and facts relevant to the Appeal

2. The appeal proceeded by way of an oral hearing and I heard submissions on the facts and the law from the Appellant and from the Respondent in the course of the hearing. I also received written submissions from the parties both prior and subsequent to the hearing.

3. Before turning to the facts of the instant appeal, I believe it is relevant to set forth a brief overview of the taxation of *ex gratia* payments made to individuals on the termination of their employment, including termination by redundancy. The legislation governing this taxation, and the reliefs and exemptions therefrom, are set forth in detail later in this Determination.

4. Non-contractual, *ex gratia* payments made on termination of employment are charged to tax under section 123 of the Taxes Consolidation Act, 1997 as amended (hereinafter **"TCA 1997"**).

5. There are, however, four principal reliefs which either exempt or else relieve a termination payment from income tax, namely:-

(i) **Statutory Redundancy**: statutory redundancy payments are exempt from income tax pursuant to section 203 of TCA 1997;

(ii) **Basic exemption**: pursuant to section 201(1)(a) and section 201(5)(a)of TCA 1997, employees are entitled to a basic exemption €10,160 plus €765 for each complete year of service up to the date of the termination of an employment;

(iii) **Increased exemption**: pursuant to Schedule 3, paragraph 8 of TCA 1997, the basic exemption may, in certain circumstances, be increased by an amount of €l0,000 less the present value of a tax-free pension lump sum due or receivable by the individual, unless the right to take the tax-free lump sum is waived; and,

(iv) **Standard Capital Superannuation Benefit**: if more favourable than the basic or increased exemption, an individual may claim an amount called the Standard Capital Superannuation Benefit (hereinafter **"SCSB"**), pursuant to Schedule 3, paragraph 6 of TCA 1997. The SCSB is based on the employees' average annual remuneration for the 36 months preceding the date of termination and is calculated according to a statutory formula.

6. Once the tax-free portion of a termination payment has been calculated, the taxable part is the remaining part of the termination package. Income tax is assessed on the taxable part of the termination payment at the individual's top rate of tax. USC also applies to the taxable portion but PRSI is not applicable.

7. There was little if any dispute between the parties in relation to the facts relevant to this appeal. The facts which I believe to be relevant for the purposes of this Determination are set forth hereunder, and constitute my material findings of fact.

8. The Appellant was employed by [redacted] between the [redacted] 1998 and the [redacted] 1998. The Appellant was a member of the [redacted] pension scheme during the term of his employment there.

9. The Appellant was employed by [redacted] between the [redacted] 1998 and the [redacted] 2005. When the Appellant began his employment with [redacted], he became a member of the [redacted] pension scheme. At the same time, the Appellant effected a transfer-in to the [redacted] pension scheme from the pension scheme operated by his previous employer, [redacted].

10. On the [redacted] 2005, the Appellant was made redundant from his employment with [redacted] and on foot of that redundancy he received a redundancy package. The Appellant was advised at the time that he had the right to elect to waive his right to take a tax-free pension lump sum from his [redacted] pension on retirement, in which case the then present value of that lump sum would be ignored for the purposes of calculating the tax exemption applicable to the redundancy package.

11. The Appellant did not waive his right to a tax-free lump sum under the [redacted] pension scheme. The present value in 2005 of that tax-free pension lump sum was calculated as €1,670.13. The Appellant had seven complete years of service with [redacted] and so his basic exemption amounted to €15,515 (*i.e.* €10,160 plus €765 for each complete year of service. He was then entitled to an increase in the basic exemption of €8,329.87 (*i.e.* €10,000 less the €1,670.13 present value of the tax-free lump sum). His increased exemption therefore amounted to a total of €23,844.87 (*i.e.* €15,515 plus €8,329.87). The

SCSB to which the Appellant was entitled was calculated, in accordance with the statutory formula, as being €17,164.80. As the increased exemption was greater than the SCSB, the tax payable on the Appellant's redundancy payment was calculated by reference to the increased exemption.

12. The Appellant began an employment with [redacted] Limited (hereinafter "[redacted]") on the 31st of July 2006 and effected a transfer-in of his [redacted] pension to the [redacted] pension scheme.

13. On the 31st of December 2017, the Appellant was made redundant by [redacted], on foot of which the Appellant received a redundancy package. Again, the Appellant elected not to waive his right to take a tax-free pension lump sum from his [redacted] pension on retirement and so the then present value of that lump sum was taken into consideration when calculating the tax payable by the Appellant on his redundancy payment.

14. The tax-free element of the Appellant's redundancy package was calculated by reference to the SCSB, as this was more favourable than the increased exemption available to him. The calculation of the Appellant's SCSB pursuant to the statutory formula included a deduction of €9,631 which was the then present value of the tax-free lump sum (hereinafter **"PVLS"**) of the amount receivable by the Appellant from the [redacted] pension scheme on retirement.

15. The Appellant questioned the actuaries of the [redacted] pension scheme as to how the PVLS figure of €9,631 had been arrived at, and he was informed by email dated the 12th of January 2018 that it was comprised of:-

(i) €7,575, which was the PVLS attributable to the benefits accrued in respect of the [redacted] pension scheme by reason of the Appellant's employment with HP between 2006 and 2017; and,

(ii) €2,056, which was the PVLS attributable to the pension benefits which the Appellant had transferred in from the [redacted] pension scheme to the [redacted] pension scheme.

16. The Appellant had, since the 8th of December 2017, engaged with the Respondent's PAYE Customer Services section to query whether the PVLS in respect of the lump sum benefit attributable to the [redacted] pension (*i.e.* the figure

of €2,056) should properly be taken into account when calculating the SCSB applicable to his redundancy payment.

17. Following a number of exchanges between the Appellant and PAYE Customer Services, the Respondent informed him on the 12th of September 2018 that the correct amount of tax had been deducted from the Appellant's redundancy payment. It is against that decision that the Appellant has brought the instant appeal.

18. I should also record for the sake of completeness that the Appellant also engaged in correspondence with the Revenue Board Chairman's Office between May of 2018 and November of 2018. I do not believe it necessary to recite the detail of that correspondence because it effectively mirrored the submissions made by the parties in the course of this appeal, which are set forth in greater detail hereunder.

C. Relevant Legislation

19. The relevant portions of section 123 of TCA 1997 provide as follows:-

> *(1) This section shall apply to any payment (not otherwise chargeable to income tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been so made.*
>
> *(2) Subject to section 201, income tax shall be charged under Schedule E in respect of any payment to which this section applies made to the holder or past holder of any office or employment, or to his or her executors or administrators, whether made by the person under whom he or she holds or held the office or employment or by any other person.*

(3) For the purposes of this section and section 201, any payment made to the spouse or any relative or dependant of a person who holds or has held an office or employment, or made on behalf of or to the order of that person, shall be treated as made to that person, and any valuable consideration other than money shall be treated as a payment of money equal to the value of that consideration at the date when it is given.

(4) Any payment chargeable to tax by virtue of this section shall be treated as income received on the following date-

(a) in the case of a payment in commutation of annual or other periodical payments, the date on which the commutation is effected, and

(b) in the case of any other payment, the date of the termination or change in respect of which the payment is made,

and shall be treated as emoluments of the holder or past holder of the office or employment assessable to income tax under Schedule E…

20. Section 201(1)(a) defines "*the basic exemption*" and section 210(5)(a) provides that:-

Income tax shall not be charged by virtue of section 123 in respect of a payment of an amount not exceeding the basic exemption and, in the case of a payment which exceeds that amount, shall be charged only in respect of the excess.

21. Section 210(6) then goes on to provide that:-

The person chargeable to income tax by virtue of section 123 in respect of any payment may, before the expiration of 4 years after the end of the year of assessment of which that payment is treated as income, by notice in writing to the inspector claim any such relief in respect of the payment as is applicable to the payment under Schedule 3 and, where such a claim is duly made and allowed, all such repayments and assessments of income tax shall be made as are necessary to give effect to such a claim.

22. Schedule 3 of TCA1997 provides as follows:-

SCHEDULE 3

Reliefs in Respect of Income Tax Charged on Payments on Retirement, Etc

PART 1

Interpretation and preliminary

1. (1) In this Schedule—

"the relevant capital sum in relation to an office or employment" means, subject to subparagraph (2), the aggregate of—

(a) the amount of any lump sum (not chargeable to income tax) received,

(b) the amount equal to the value at the relevant date of any lump sum (not chargeable to income tax) receivable, and

(c) the amount equal to the value at the relevant date of any lump sum (not chargeable to income tax) which, on the exercise of an option or a right to commute, in whole or in part, a pension in favour of a lump sum, may be received in the future,

by the holder in respect of the office or employment in pursuance of any scheme or fund described in section 778(1);

"the standard capital superannuation benefit", in relation to an office or employment, means a sum determined as follows:

(a) the average for one year of the holder's emoluments of the office or employment for the last 3 years of his or her service before the relevant date (or for the whole period of his or her service if less than 3 years) shall be ascertained,

(b) one-fifteenth of the amount ascertained in accordance with clause (a) shall be multiplied by the whole number of complete years of the service of the holder in the office or employment, and

(c) an amount equal to the relevant capital sum in relation to the office or employment shall be deducted from the product determined in accordance with clause (b).

(2) (a) The relevant capital sum in relation to an office or employment shall include the amount mentioned in clause (c) of the definition of "the relevant capital sum in relation to an office or employment" whether or not the option or right referred to in that clause is exercised.

(b) Where, under the conditions or terms of any scheme or fund described in section 778(1), the holder of the office or employment is entitled to surrender irrevocably the option or right referred to in clause (c) of the definition of "the relevant capital sum in relation to an office or employment" and has done so at the relevant date, the relevant capital sum in relation to an office or employment shall not include the amount mentioned in that clause.

2. Any reference in this Schedule to a payment in respect of which income tax is chargeable under section 123 is a reference to so much of that payment as is chargeable to tax after deduction of the relief applicable to that payment under section 201(5).

3. Any reference in this Schedule to the amount of income tax to which a person is or would be chargeable is a reference to the amount of income tax to which the person is or would be chargeable either by assessment or by deduction.

4. Relief shall be allowed in accordance with this Schedule in respect of income tax chargeable by virtue of section 123 where a claim is duly made in accordance with section 201.

5. A claimant shall not be entitled to relief under this Schedule in respect of any income the tax on which he or she is entitled to

charge against any other person, or to deduct, retain or satisfy out of any payment which he or she is liable to make to any other person.

PART 2

Relief by reduction of sums chargeable

6. *In computing the charge to tax in respect of a payment chargeable to income tax under section 123, a sum equal to the amount (if any) by which the standard capital superannuation benefit for the office or employment in respect of which the payment is made exceeds the basic exemption shall be deducted from the payment.*

7. *Where income tax is chargeable under section 123 in respect of 2 or more payments to which paragraph 6 applies, being payments made to or in respect of the same person in respect of the same office or employment or in respect of different offices or employments held under the same employer or under associated employers, then—*

(a) paragraph 6 shall apply as if those payments were a single payment of an amount equal to their aggregate amount and, where they are made in respect of different offices or employments, as if the standard capital superannuation benefit were an amount equal to the sum of the standard capital superannuation benefits for those offices or employments, and

(b) where the payments are treated as income of different years of assessment, the relief to be granted under paragraph 6 in respect of a payment chargeable for any year of assessment shall be the amount by which the relief computed in accordance with subparagraph (a) in respect of that payment and any payments chargeable for previous years of assessment exceeds the relief in respect of those payments chargeable for previous years of assessment,

and, where the standard capital superannuation benefit for an office or employment in respect of which 2 or more of the payments are made is not the same in relation to each of those payments, it shall be treated for the purposes of this paragraph as equal to the higher or highest of those benefits.

8. *In computing the charge to tax in respect of a payment chargeable to income tax under section 123 in the case of a claimant, if the claimant has not previously made a claim under section 201 and the relevant capital sum (if any) in relation to the office or employment in respect of which the payment is made does not exceed €10,000, subsection (5) of section 201 and paragraph 6 shall apply to that payment as if each reference in that subsection and in that paragraph to the basic exemption were a reference to the basic exemption increased by the amount by which €10,000 exceeds that relevant capital sum.*

9. [Not relevant to payments made on or after the date of the passing of the Finance act 2013]

10. *Paragraph 9 ceases to have effect for payments made on or after the date of the passing of the Finance Act 2013.*

PART 3

Relief by reduction of tax

10. *In the case of any payment in respect of which income tax is chargeable under section 123, relief shall be allowed by means of deduction from the tax chargeable by virtue of that section of an amount equal to the amount determined by the formula—*

$$A - (P \times T / I)$$

where—

A *is the amount of income tax which apart from this paragraph would be chargeable in respect of the total income of the holder or past holder of the office or employment for the year of assessment of which the*

payment is treated as income after deducting from that amount of tax the amount of tax which would be so chargeable if the payment had not been made,

P *is the amount of that payment after deducting any relief applicable to that payment under the preceding provisions of this Schedule,*

T *is the aggregate of the amounts of income tax chargeable in respect of the total income of the holder or past holder of the office or employment for the 3 years of assessment preceding the year of assessment of which the payment is treated as income before taking account of any relief provided by section 826, and*

I *is the aggregate of the taxable incomes of the holder or past holder of the office or employment for the 3 years of assessment preceding the year of assessment of which the payment is treated as income.*

11. *Where income tax is chargeable under section 123 in respect of 2 or more payments to or in respect of the same person in respect of the same office or employment and is so chargeable for the same year of assessment, those payments shall be treated for the purposes of paragraph 10 as a single payment of an amount equal to their aggregate amount.*

12. *Where income tax is chargeable under section 123 in respect of 2 or more payments to or in respect of the same person in respect of different offices or employments and is so chargeable for the same year of assessment, paragraphs 10 and 11 shall apply as if those payments were made in respect of the same office or employment.*

13 *(a) Notwithstanding section 201, paragraph 10 shall cease to apply to any payment of €200,000 or more which is made on or after 1 January 2013 and which is chargeable to income tax under section 123.*

(b) Paragraphs 11 and 12 shall apply for the purposes of this paragraph.

14. Notwithstanding section 201, paragraph 10 shall cease to apply to any payment which is made on or after 1 January 2014 which is chargeable to income tax under section 123.

D. Submissions of the Appellant

23. The Appellant, in his Notice of Appeal, his written submissions and his oral submissions made at the hearing, submits that when he was made redundant by [redacted] in 2005, he signed a request to retain his right to a tax-free lump sum on retirement from his [redacted] pension. He states, correctly, that calculation of the tax payable on his [redacted] redundancy package took account of this election. The Appellant states that he believed that he was retaining the right to the value of the benefits receivable under the [redacted] pension scheme regardless of where the value was located and, as the pension provider for both the [redacted] and [redacted] pension schemes was the same, he believed that it was best to keep all of the monies in the one fund with the one provider. I fully accept his evidence in this regard.

24. The Appellant contends that, because the [redacted] lump sum and the [redacted] lump sum were held as separate values within the [redacted] fund, and because the pension provider was always able to provide the PVLS for each of the pension lump sum amounts, this shows that both lump sums were always treated as separate pension amounts.

25. The Appellant submits that at no time did his pension provider fully advise him of the effect or potential consequences of transferring his [redacted] pension into the [redacted] pension, and he submits that legislation should have been provided to prevent the pension provider from ignoring his 2005 request to retain the right to a tax-free lump sum from his [redacted] pension on retirement.

26. The Appellant contends that the inclusion of the [redacted] lump sum in the calculation of the PVLS attributable to his [redacted] pension and the subsequent use

of this in the calculation of the SCSB amounts to a double taxation on the [redacted] lump sum. He submits that he is effectively being charged twice to retain his right the exactly the same tax-free lump sum, and submits that this approach cannot be lawful or correct.

27. The Appellant therefore contends that the Respondent should either refund the tax paid in 2017 associated with the PVLS of the [redacted] lump sum at that time or, alternatively, refund the tax paid in 2005 associated with the PVLS of the [redacted] lump sum at that time.

E. Submissions of the Respondent

28. The Respondent argues that a member of an occupational pension scheme who leaves employment remains as a "deferred member" of that pension scheme unless the member elects to effect a transfer out of his accrued pension benefits into a new scheme. It submitted that the Appellant in the instant appeal effected just such a transfer out of the [redacted] pension scheme and transferred into the [redacted] pension scheme.

29. The Respondent further submits that a consequence of the transfer out of the Appellant's benefits under the [redacted] pension scheme to the [redacted] pension scheme was that the Appellant's pension benefits now derive entirely from the [redacted] pension scheme.

30. The Respondent argues that, in simple terms, where a transfer of pension benefits is effected, the actuarial value of the pension benefits under the transferor scheme (in this case the [redacted] scheme) is transferred by the trustees of the transferor scheme to the transferee scheme (in this case the [redacted] scheme) and is applied by the trustees to the transferee scheme. It is the Respondent's position that once this transfer was made by the Appellant, there was from the date of the transfer a single pension scheme in respect of an office.

31. The Respondent further argues that pension benefits (including the option to commute part of the pension to a tax-free lump sum) are calculated in accordance with the rules of the transferee scheme, and that the exemption from tax on a termination payment is reduced by the value of the pension lump sum that the individual has a right to receive. It is the Respondent's position that this applies equally to an employee who, having effected a transfer in, subsequently receives a termination payment.

32. Insofar as the Appellant contends that the inclusion of the sum of €2,056 (being the net present value of that part of the tax-free lump sum payable on retirement attributable to pension benefits transferred in from the [redacted] pension scheme) in the calculation of his tax liability on foot of the redundancy package received from [redacted] amounts to double taxation, the Respondent submits that this fails to take account of the fact that, as a matter of fact and pensions law, the Appellant will on retirement become entitled to a single lump sum under the [redacted] pension scheme only.

33. Having made submissions on the approach which I should take to the interpretation of the relevant legislation, the Respondent then addressed the specific legislation and pointed out that section 123 of TCA 1997 charges to tax payments made to an individual on termination of their employment. Section 123(4) requires the amount of any termination payment that is taxable under the section to be treated as emoluments of the holder, or past holder, of the office or employment assessable to income tax under Schedule E, subject to the exemptions provided for in section 201 of, and Schedule 3 to, TCA 1997.

34. The Respondent submits that the basic exemption (namely €10,160 plus €765 per complete year of actual service) is the minimum amount which an individual will receive tax-free, which minimum amount may be increased either by the increase to basic exemption or to the amount of the SCSB.

35. The Respondent further submits that the basic exemption may be increased by a maximum of €10,000 where:-

(a) no claim for relief (other than the basic exemption) has been made in respect of the previous lump sum payment within the previous 10 years- and,

(b) no tax-free lump sum has been received, or is receivable, under an approved superannuation scheme relating to the office or employment. If a tax-free lump sum received or receivable, which is currently valued at less than €10,000, has been received or is receivable from the pension scheme, the increased exemption will be the basic exemption plus €10,000 less the present value of the tax-free lump sum. The present value of a tax-free lump sum is an actuarial calculation.

36. The Respondent notes that its guidance notes on the statutory provision which allows for the increase in basic exemption, namely Schedule 3, paragraph 8 of TCA 1997, twice use the phrase "*the value of tax-free lump sums*", and places some emphasis on the use of the plural in that phrase.

37. The Respondent further emphasises that its guidance on the definition of the term "*relevant capital sum in relation to the employment*" contained in Schedule 3, paragraph 1 also makes reference to "*… the value… of any lump sum… plus the value of lump sums… which are receivable and lump sums… which… may be received at some future date*."

38. The Respondent further submits that the basic exemption, or the increased exemption, may be substituted by the SCSB if this results in a higher tax-free amount for the employee. It points out that the formula for calculating the SCSB contained in Schedule 3, paragraph 1 also involves deducting from the resultant amount the relevant capital sum in relation to the office or employment.

39. In summary, the Respondent submits that the Appellant, on his redundancy from [redacted], chose not to waive his right to a tax-free pension lump sum from the [redacted] pension scheme. Furthermore, on taking up employment with [redacted], the Appellant transferred his pension benefits from the [redacted] pension scheme to the [redacted] pension scheme.

40. It submits that, as a matter of law, in calculating that part of the redundancy payment made by [redacted], it is necessary to take into account the present value of any pension lump sum that the Appellant has a right to receive on retirement.

41. It further submits that, on the transfer from the [redacted] pension scheme to the [redacted] pension scheme, the Appellant ceased to have any right or entitlement under the [redacted] pension scheme and his pension (including any right to commute part thereof into a lump sum) was provided solely by, and subject to the rules of, the [redacted] pension scheme. It further submits that, on redundancy from [redacted], in default of a waiver of the Appellant's right to a tax-free lump sum on retirement, the present value of that lump sum was properly taken into account in computing that part of the redundancy payment that was exempt from income tax, and that there was nothing incongruous about such tax treatment.

42. The Respondent submits that, essentially, the law reflects the fact that a person is entitled to take payment tax-free on redundancy and will in all cases be entitled to the basic exemption. Where, however, a person has and does not waive a right to a future payment tax-free by way of commutation of pension on retirement, that future right is taken into account to reduce the amount of the increase on the basic exemption to which the person might be entitled.

43. Finally, the Respondent submits that the fact that the Appellant may not have been aware in 2006, when he transferred in to the [redacted] pension scheme, that the value of the benefits transferred in from the [redacted] pension scheme would be relevant to the calculation of the tax-exempt portion of any redundancy payment he might in future receive from [redacted] does not affect the proper tax treatment of the redundancy payments.

F. Analysis and findings

44. As stated above, the material findings of fact I have reached on the evidence before me are those detailed in paragraphs 8 to 17 inclusive *supra*.

45. It is well-established that in appeals to the Tax Appeals Commission, the onus of proof lies with the Appellant (see, *e.g.*, ***Menolly Homes Ltd –v- Appeal Commissioners*** **[2010] IEHC 49** at para. 20).

46. I accept as correct the submission by the Respondent that, because this appeal concerns the Appellant's right to an exemption from tax, the correct approach is that enunciated by Kennedy CJ in ***Doorley –v- Revenue Commissioners* [1933] IR 750** at page 765, where he stated:-

> *"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that 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, excepts 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 applicable."*

47. As the SCSB available to the Appellant on his being made redundant in 2017 was greater in value than the increased benefit to which he would otherwise have been entitled, the legislative provision in relation to the calculation of the relief which the Appellant claims is contained in Schedule 3, paragraph 6 of TCA 1997 which states as follows:-

> *In computing the charge to tax in respect of a payment chargeable to income tax under section 123, a sum equal to the amount (if any) by which the standard capital superannuation benefit for the office or employment in respect of which the payment is made exceeds the basic exemption shall be deducted from the payment.*

48. The formula for calculating the SCSB to which the Appellant was entitled is that set forth in Schedule 3, paragraph 1 and that provides, *inter alia*, that *"… an amount equal to the relevant capital sum in relation to the office or*

employment shall be deducted from the product determined in accordance with clause (b)".

49. As stated above, Schedule 3, paragraph 1 also provides that "*the relevant capital sum in relation to an office or employment*" includes "*… the amount equal to the value at the relevant date of any lump sum (not chargeable to income tax) which, on the exercise of an option or a right to commute, in whole or in part, a pension in favour of a lump sum, may be received in the future…"*

50. I am satisfied that the foregoing are the relevant statutory provisions which I am required to consider and apply in determining this appeal. I am further satisfied that the wording of same is clear and unambiguous.

51. I accept as correct the submission by the Respondent that when the Appellant elected to transfer in his [redacted] pension entitlements to the [redacted] pension scheme, he ceased to be a deferred member of the [redacted] pension scheme and became instead a member of the [redacted] pension scheme. I further accept as correct that thereafter any benefits received or receivable by the Appellant would, unless he ceased for some reason to be a member of the [redacted] pension scheme, be received or receivable from the [redacted] pension scheme alone.

52. In calculating the tax payable by the Appellant on the redundancy package which he received from [redacted], it is clear from the wording of Schedule 3, paragraph 1 that regard had to be had to the net present value of "*… any lump sum (not chargeable to income tax) which, on the exercise of … a right to commute … in part … a pension in favour of a lump sum, may be received in the future…*"

53. It is, in my view, of some significance that the foregoing wording makes reference to <u>any</u> tax-free lump sum receivable in exchange for the part-commutation of a pension; there is no exception or saving provision for cases where the employee may have previously had an entitlement to a tax-free lump sum taken into account in the calculation of their liability to tax on receipt of a redundancy payment or other payment on termination of employment.

54. I think it is fair to characterise the primary argument made by the Appellant as being that the absence of such an exception or saving provision means that he is effectively being subjected to a double taxation. At a minimum, he argues that the legislative provisions as they stand give rise to unfairness in his tax treatment and in the tax treatment of other taxpayers in his situation, and ought therefore to be amended.

55. While I understand the position of the Appellant in this regard, I do not accept that the legislative provisions give rise to double taxation. Rather, the legislative scheme requires a deduction to be made to reflect the present value of a tax-free lump sum when calculating the extent or value of the tax exemption to which a taxpayer is entitled on a termination of employment. The fact that a similar deduction may previously have been made on the occasion of a previous termination of employment does not alter the obligation to make the deduction. Put another way, I cannot accept the Appellant's argument that the fact that the quantum of a statutory tax exemption has been limited on two separate occasions by the same statutory provision means that he has been taxed twice on the same sum.

56. In summary, I am satisfied, and find as a matter of fact and law, that the Appellant's right to receive a tax-free lump sum on retirement in exchange for commuting part of his pension entitlement was receivable from the [redacted] pension scheme alone. The fact that a portion of that tax-free lump sum can be said to be attributable to the benefits which the Appellant transferred in from the [redacted] pension scheme, and could be separately valued as such by the pension scheme actuaries, does not alter the position in fact or in law.

57. I therefore find that it was correct in law to include a deduction of the entire amount of €9,631 as the present value of the tax-free lump sum when calculating the tax-exempt element of the redundancy payment received by the Appellant on his being made redundant on the [redacted] 2017.

58. It follows as a matter of course that I find that the decision of the Respondent communicated to the Appellant on the 12th of September 2018 was correct.

59. The argument made by the Appellant to the effect that the legislative scheme gives rise to unfairness or inequitable treatment and ought therefore to be amended, as well as his argument that some legislative provision ought to be enacted to ensure that taxpayers are fully advised of the potential tax consequences of an election not to waive the right to receive in future a tax-free lump sum, fall outside the jurisdiction of the Tax Appeals Commission. Accordingly, I refrain from any consideration of, or making any comment on, those arguments.

G. Conclusion

60. By reason of the matters aforesaid, I find that the Appellant has not discharged the burden of proof which lies upon him in this appeal.

61. I therefore refuse the Appellant's appeal in accordance with section 949AL(1) of TCA 1997 and determine that the decision of the Respondent made on the 12th of September 2018 stands.

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MARK O'MAHONY
APPEAL COMMISSIONER
28 January 2021