



**114TACD2022**

Between/



**Appellant**

-and-

Revenue Commissioners

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) of a decision of the Revenue Commissioners (“the Respondent”) to compute the Appellant’s charge to income tax on a lump sum constituting her entitlement to a supplementary pension for the years 2008 – 2018 by reference to the tax year in which it was received, namely 2018.
2. The Appellant delivered her Notice of Appeal on 24 February 2021 and a hearing occurred on 13 April 2022 with the Appellant representing herself. The Commissioner had the benefit of both written and oral argument made by both parties.

**Background**

3. The Appellant was a longstanding member of the Civil Service until 2008, when she retired from her employment with the  on the grounds of ill-health.
4. Shortly after her retirement the Appellant received a lump sum amount and an occupational pension of €2,296.89.00. On 20 October 2008 the Appellant was informed by the Pensions Section of the Department of Finance that as she had not reached the age of 65 and become entitled to an old age pension, she might be entitled to

supplementary pension in addition to her occupational pension. The correspondence advised the Appellant that in order to establish her entitlement she needed to provide the Department of Finance with a social welfare benefit statement. This advice was repeated in correspondence she received from the Pension Administration Section of Financial Shared Services on 15 December 2008. The Commissioner notes that this correspondence asked that she send her benefit statement to it rather than the Department of Finance. The Appellant gave evidence that she supplied the relevant information to the Pensions Section of the Department of Finance on or about July 2009.

5. The Appellant received her supplementary pension in a lump sum in 2018. The amount due to her for each year was calculated to be €3,360.78 and sum in arrears was €35,864.74.
6. It was not clear from the evidence why it took over nine years for the Appellant to receive her supplementary pension. The Appellant stated that she had pursued the matter by telephone with the [REDACTED] on numerous occasions between 2009 and 2011. She said that her recurrence of severe illness [REDACTED] prevented her from raising the matter between 2011 and 2016. From 2016 onward she renewed her efforts to secure her supplementary pension entitlements, telephoning the Pensions Section of the Department of Finance on at least six occasions in 2016 and 2017 and writing on four. While the Appellant ultimately received her arrears, she gave evidence that the absence of her supplementary pension to which she believed she was entitled for the greater part of a decade was the source of much stress and anxiety. This exacerbated considerable hardship that she suffered arising from her illness [REDACTED].
7. Whatever the reason for the lapse in time between the Appellant's retirement and the payment to her of the arrears, one of its consequences was that it increased the tax charged by the Respondent on her supplementary pension. This is because the Respondent determined that in computing the Appellant's income tax liability for the year 2018 it had, under the relevant legislation, to include the entirety of the €35,864.74 in pension arrears received that year. This resulted in a liability of €9,100.25. Had the pension been paid annually in smaller amounts, the Appellant would have had only a very minor charge to income tax. Moreover, for reasons that are explained hereunder, had the amount in arrears been paid in a lump sum prior to 1 January 2018, it would have been treated as if it had been paid annually and would have had no adverse impact on the Appellant's liability.

## Legislation and Guidelines

8. Section 112 of Taxes Consolidation Act 1997 (“the TCA 1997”), entitled “*Basis of assessment, persons chargeable and extent of charge*”. Subsection (1) and (2) therein provide:-

*“(1) 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.*

*(2) (a) in this section, “emoluments” means anything accessible to income tax under Schedule E.*

*(b) Where apart from this subsection emoluments from an office or employment would be for a year of assessment in which a person does not hold the office or employment, the following provisions shall apply for the purpose of subsection (1):*

*(i) if in the year concerned the office or employment has never been held, emoluments shall be treated as emoluments for the first year of assessment in which the office or employment is held, and*

*(ii) if in the year concerned the office or employment is no longer held, the emoluments shall be treated as emoluments for the last year of assessment in which the office or employment was held.*

9. Section 77 of the Finance Act 2017 amended section 112 of the TCA 1997 by inserting the following additional subsections:-

*(3) Notwithstanding subsection (1) and subject to subsections (4) and (6), the income tax under Schedule E to be charged for the year of assessment 2018 and subsequent years of assessment in respect of emoluments to which Chapter 4 of Part 42 applies or is applied shall be computed on the amount of the emoluments paid to the person in the year of assessment.*

*(4) Where emoluments chargeable under Schedule E arise in the year of assessment 2017, and those emoluments are also chargeable to income tax in accordance with subsection (3) for the year of assessment 2018 or a subsequent year of assessment, the amount of the emoluments chargeable to income tax for the year of assessment 2017 shall, on a claim being made by the person so chargeable, be reduced to the amount of emoluments that would have been charged to income tax had subsection (3) applied for that year of assessment.*

(5) *Where a person dies and emoluments are due to be paid to that deceased person, the payment of such emoluments shall be deemed to have been made to the deceased person immediately prior to death.*

(6) (a) *In this subsection, “proprietary director” has the same meaning as it has in section 472.*

(b) *Subsection (3) shall not apply to –*

*(i) emoluments paid directly or indirectly to a body corporate (or by any person who is connected (within the meaning of section 10) with the body corporate) to a proprietary director of the body corporate, or*

*(ii) emoluments in respect of which notification has issued under section 984(1).”*

10. There is no dispute that prior to the addition on 1 January 2018 of subsections (3) – (6) to section 112 of the TCA 1997, the Respondent treated arrears of income, including pension arrears of the kind paid to the Appellant, as being chargeable for the tax year in which the income was earned. In the Appellant’s case this would have meant that lump sum would have been spread out and charged for the years 2008 – 2018.

## **Submissions**

### *Appellant*

11. The Appellant submitted that it was unjust that the entirety of her supplementary pension was charged for the year of receipt, namely 2018, with the consequence that she had a liability of €9,100.25. The fault, she contended, lay with the Department of Finance for failing to administer her claim in a timely fashion. Had it paid her even before the end of 2017 she would not have suffered adverse tax consequences. The Appellant highlighted the hardship that the absence of the payments and the reduction in the final amount received by her after tax had caused to her. As a result of the unfairness of the circumstances, she argued that the Commissioner should exercise a level of discretion and reduce the amount of tax owed to reflect what would have been the charge had it been paid prior to the end of 2017.

### *Respondent*

12. The Respondent expressed sympathy for the Appellant’s position, but submitted that the meaning of the legislation following its amendment by section 77 of the Finance Act 2017 was clear. Where arrears are received, the arrears are to be charged for the year of receipt and not for the year in which they were earned. In the Appellant’s case this was 2018.

13. The Respondent pointed to section 112(4) of the TCA 1997 on the grounds that it was open to the Appellant under that provision to elect for the part of the arrears attributable to the year 2017 to be charged for that year. Availing of this option would result in a modest reduction in the tax owed. It did not indicate what this precise reduction would be. The Appellant expressed her wish that the part of the arrears attributable to 2017 be charged for that year.

#### **Material Facts**

14. The facts material to the determination of this appeal are as follows:-

- the Appellant was a longstanding member of the Civil Service who retired on or about April 2008 on the grounds of ill-health;
- upon retirement the Appellant received an occupational pension and a lump sum gratuity. The Appellant was notified by the pensions section of the Department of Finance and subsequently by Financial Shared Services that she may be entitled to a supplementary pension as she had not reached the age of 65. The Appellant was informed that she should submit a social welfare benefit statement to establish her entitlement in this regard;
- in accordance with these instructions, the Appellant submitted a social welfare benefit statement to the pensions section of the Department of Finance on or about July 2009;
- between 2009 and 2011 the Appellant phoned the pensions section of the Department of Finance for the purpose of advancing her claim for a supplementary pension. The Appellant received replies in writing to these calls. The Commissioner has not had sight of these replies;
- the Appellant did not contact the pensions section of the Department of Finance between 2011 and 2016 on account of her suffering from serious illness [REDACTED]. She received no contact in return;
- in May 2016 the Appellant resumed contact with the pensions section of the Department of Finance, phoning and writing on numerous occasions between then and June 2018. The Appellant received responses by phone but it was not clear from the evidence when and how often;
- on 10 July 2018 the Appellant received correspondence from the National Shared Services Office informing her that she was to be paid her supplementary pension;

- thereafter in 2018 the Appellant received the arrears of supplementary pension amounting to €35,864.74 as a part of a lump sum payment;

### **Analysis**

15. In all appeals before the Commission a Commissioner's function is limited to interpreting relevant tax legislation and applying it to the facts of the case. A Commissioner is not empowered to depart from the meaning of legislation where questions of equity or fairness arise (on this see *The State (Whelan) v Smidic*, [1938] 1 I.R. 626, *Menolly Homes Ltd v The Appeal Commissioners* [2010] IEHC 49, *State (Calcul International Ltd.) v The Appeal Commissioners*, III ITR 577 and *Lee v The Revenue Commissioners* [2021] IECA 18).
16. Section 112 of the TCA 1997, as amended by the Finance Act 2017, is clear in its meaning. Subsection (3) therein provides that income tax to be charged under Schedule E for the year 2018 must be computed on the basis of the amount of income received by a taxpayer in that year. While there is what could be described as a 'transitional' provision that allows a taxpayer to elect to have income received in 2018 but earned in 2017 charged in respect of the latter year, no provision is made regarding income earned in the years preceding 2017. Such an omission indicates that in enacting section 77 of the Finance Act 2017, the Oireachtas intended that income received in 2018 but earned before 2017 must be part of the computation of a taxpayer's charge to tax for the year 2018. As the Appellant's income in the form of the supplementary pension arrears was not paid to her until 2018, the Commissioner is compelled to find that, in accordance with the legislation, all of it with the exception of that amount arising in respect of 2017 must be part of the Appellant's charge to income tax for the year 2018.
17. During the hearing the Appellant indicated she wished to elect to have the portion of her income attributable to 2017 charged for that year in accordance with the terms of section 112(4) of the TCA 1997. The Respondent indicated that it would consider the claim as having been made for the purpose of establishing the Appellant's right to the repayment of a small sum. However, for the purposes of certainty, the Commissioner finds that the Appellant is entitled to have the amount of tax charged reduced by the appropriate amount given her election.

### **Determination**

18. This is a most unfortunate case and the Appellant is worthy of sympathy. The evidence of the Appellant underlined that since her retirement she suffered significant hardship and was not in a position to pursue her claim from 2011 – 2016 due to [REDACTED] illness. The Commissioner is unaware of the cause of the delay in providing the Appellant with her

supplementary pension entitlements and therefore cannot comment on its cause. Nevertheless, the Commissioner notes that it is regrettable that the Appellant did not receive her occupational pension entitlements at an earlier date and at least before the end of 2017, which would have had the effect of reducing her tax burden. The Commissioner notes that the Appellant was already in reduced circumstances due to having to avail of early retirement on ill-health grounds. The Commission would hope that all State bodies review procedures so that such significant delays are ameliorated, hence assisting individuals, in particular those in reduced circumstances.

19. The Commissioner finds that the arrears of supplementary pension paid to the Appellant in 2018 and attributable to all years except 2017 must be charged for the tax year 2018.
20. The Commissioner finds however that the income from her supplementary pension arising from 2017 should be charged for that year. The Appellant's charge to income tax for 2017 and 2018 should be adjusted accordingly.
21. This appeal is determined under section 949AK of the TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Conor O'Higgins  
Appeal Commissioner  
17 June 2022