AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

117TACD2022

Between

THE APPELLANT

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against a Notice of Amended Assessment for 2017 which was raised by the Revenue Commissioners (hereinafter "the Respondent") on 23rd May 2019.
2. The amount of tax at issue is €25,169.89.

Background

3. As part of his employment the Appellant had the use of a company car between 1998 and 2017. In or around 2016 / 2017 the Appellant's employer changed ownership and the Appellant was informed that he was losing the use of his company car and that he would receive an adjustment payment as compensation for same. The Appellant's salary remained unchanged. As a result the Appellant received a once off payment of €45,833.33 gross from his employer in December 2017. The once-off payment was treated as fully taxable by his employer.
4. The Appellant decided to file a Form 11 income tax return for 2017 and this was filed on 26th November 2018 on which the once-off payment was treated as tax free and showing a balance of tax overpaid by the Appellant for 2017 of €22,674.89.

5. By way of letter dated 25th November 2018 the Appellant's Tax Agent set out, inter alia, that the once-off payment received by the Appellant in 2017 was in commutation of the provision of a company car. It further set out that as the once-off payment was being made late in 2017 there had not been sufficient time to seek prior clearance from the Respondent to pay the amount as a gross payment.

6. The letter from the Appellant's Tax Agent raised a query as to the handling of the lump sum in the Appellant's Form 11 which was returned to the Respondent setting out that Income Tax, USC and PRSI were deducted from the once-off payment and sought a refund of same. The letter stated that the entire amount of the once-off payment was tax free and requested a refund of Pay Related Social Insurance (hereinafter "PRSI") charged against the once off payment. On foot of the said request the Respondent issued a Notice of Amended Assessment for 2017 on 23rd May 2019 which showed a balance of tax payable by the Appellant for 2017 of €2,495.20.

7. The Appellant filed a Notice of Appeal on 30th May 2019 with the Commission. The grounds of appeal contained therein are as follows:

    7.1 "The Notice of Amended Assessment dated 23rd May 2019 is not in accordance with the Income Tax return filed for the year ended 21 December 2017;

    7.2 In December 2017 the Appellant received a lump sum of €45,833.33 in commutation of the provision of a company car. This amount does not fall within section 112(1) of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997");

    7.3 The amount of €45,833.33 falls within section 123 of the TCA 1997;

    7.4 As a consequence of ground 7.3 above, the Appellant is entitled to relief under Schedule 3 of the TCA 1997;

    7.5 As a consequence of ground 7.4 above, the relief under Schedule 3 extends to Income Tax, Universal Social Charge (hereinafter "USC") and PRSI;

    7.6 As a consequence of the refund sought a surcharge under section 1084 of the TCA 1997 should not apply."

8. An oral hearing of the within appeal was heard on 25th November 2021. The Commissioner appreciated the extensive preparation by both parties and the bundle of documents and authorities submitted.

Legislation and Guidelines

9. The legislation relevant to this appeal is as follows:

Section 112 of the TCA 1997 Basis of assessment, persons chargeable and extent of charge:

(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 assessable 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 purposes of subsection (1):

(i)if in the year concerned the office or employment has never been held, the 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.

(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 by 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 a notification has issued under section 984(1).

Section 123 of the TCA 1997 General tax treatment of payments on retirement or removal from office or employment:

(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, civil partner, 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.

(5)In the case of the death of any person who if he or she had not died would have been chargeable to tax in respect of any such payment, the tax which would have been so chargeable shall be assessed and charged on his or her executors or administrators, and shall be a debt due from and payable out of his or her estate.

(6)Where any payment chargeable to tax under this section is made to any person in any year of assessment, it shall be the duty of the person by whom that payment is made to deliver particulars of the payment in writing to the inspector not later than 14 days after the end of that year.

Section 480 of the TCA 1997 Relief for certain sums chargeable under Schedule E:

(1)(a) In this section—

"director" and "proprietary director" have the same meanings respectively as in section 472;

"employee", in relation to a body corporate, includes any person taking part in the management of the affairs of the body corporate who is not a director, and includes a person who is to be or has been an employee;

"part-time director", in relation to a body corporate, means a director who is not required to devote substantially the whole of his or her time to the service of the body corporate;

"proprietary employee", in relation to a company, means an employee who is the beneficial owner of, or able, either directly or through the medium of other companies or by any other indirect means, to control, more than 15 per cent of the ordinary share capital of the company.

(b) For the purposes of the definitions of "proprietary director" and "proprietary employee", ordinary share capital which is owned or controlled as referred to in those definitions by a person, being a spouse, a civil partner, a minor child or a minor child of the civil partner, of a director or employee, or by a trustee of a trust for the benefit of a person or persons, being or including any such person or such director or employee, shall be deemed to be owned or controlled by such director or employee and not by any other person.

(2)(a) Subject to paragraph (b), this section shall apply to any payment which is chargeable to tax under Schedule E and made to the holder of an office or employment to compensate for—

(i)a reduction or a possible reduction of future remuneration arising from a reorganisation of the business of the employer under whom the office or employment is held or a change in the working procedures, working methods, duties or rates of remuneration of such office or employment, or

(ii)a change in the place where the duties of the office or employment are performed.

(b) This section shall not apply to—

(i)a payment to which section 123 applies, or

(ii)a payment to—

(I) a proprietary director,

(II) a part-time director,

(III) a proprietary employee, or

(IV) a person who is a part-time employee by reason of not being required to devote substantially the whole of his or her time to the service of his or her employer.

(3)Where an individual has received a payment to which this section applies, the individual shall be entitled, on making a claim in that behalf and on proof of the relevant facts to the satisfaction of the inspector, to have the total amount of income tax payable by the individual for the year of assessment for which the payment is chargeable reduced to the total of the following amounts—

(a) the amount of income tax which would have been payable by him or her for that year if he or she had not received the payment, and

(b) income tax on the whole of the payment at the rate ascertained in the manner specified in subsection (4).

(4)There shall be ascertained the additional income tax, over and above the amount referred to in subsection (3)(a), which would have been payable by the holder of the office or employment if his or her total income for the year of assessment referred to in subsection (3) had included one-third only of the payment, and the rate of income tax for the purposes of subsection (3)(b) shall then be ascertained by dividing the

additional income tax computed in accordance with this subsection by an amount equal to one-third of the payment.

(5)(a) Relief from tax under this section shall in all cases be given by means of repayment.

(b) A claimant shall not be entitled to relief under this section 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.

Submissions

Appellant's Submissions

10. In support of his claim the Appellant submits the following:

10.1 The once-off payment is not within the general charge to Schedule E under section 112 of the TCA 1997 and is instead within section 123(1) of the TCA 1997;

10.2 The Appellant is entitled to relief under Section 201(5) TCA 1997 – which provides:

> "(5)(a) 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."

10.3 The Appellant is entitled to relief under Schedule 3 TCA 1997 PART 2 Paragraph 6 - Relief by reduction of sums chargeable – which provides:

> "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."

10.4 The Appellant submits that he is entitled to a refund of the USC and PRSI deducted from the payment. The Appellant sought to rely on English case law in the House of Lords, *Mairs v Haughey* HL 1993 66 TC 233 and secondly the case of *Revenue and Customs Commissioners v Tottenham Hotspur Ltd* [2017]

BTC 535 [2017] UKUT 0453 (TCC). The Appellant also pointed to the Revenue Notes for Guidance on Section 112 TCA 1997, the Revenue Notes for Guidance on Section 123 TCA 1997 and the Revenue Tax and Duty Manual Part 05 05 19, page 5.

Respondent's Submissions

11. The Respondent submits that the once-off payment received by the Appellant in 2017 is within the general charge to Schedule E under section 112 of the TCA 1997 and that relief is available to the Appellant under section 480 of the TCA 1997.

12. In support of this submission the Respondent submits that the following statutory framework applies:

    12.1 Income is charged under four Schedules, C, D, E and F. Schedule E is the heading under which employment income is charged. Section 112 of the TCA 1997 provides the Basis of Assessment, persons chargeable and the extent of the charge.

    12.2 Section 112(1) of the TCA 1997 states that income tax is charged on all salaries, fees, wages, perquisites and other profits derived by a person from their employment. The Respondent submits that because the once-off payment was made in respect of the loss of a company car, this represents emoluments arising from the Appellant's employment and is therefore chargeable under Schedule E under section 112 of the TCA 1997.

    12.3 Section 480 of the TCA 1997 provides relief for certain sums chargeable under Schedule E. This section provides a measure of relief from income tax in respect of certain lump sum payments which are chargeable to tax under Schedule E. These are payments which are paid to employees to compensate them for a reduction or possible reduction in future remuneration arising from a reorganisation of a business or change in work procedures, work methods or a change of place where the duties of the office or employment are performed. The Respondent submits that the payment received by the Appellant was in respect of the loss of a company car. Therefore, the Respondent submits, the Appellant is entitled to relief under section 480 of the TCA 1997.

13. The Respondent submits that relief under section 480 of the TCA 1997 is given by reducing the total amount of tax payable for the year of assessment to an amount equalling the total of:

13.1 the amount of income tax which would be payable if they had not received the payment and

13.2 an amount equal to tax on the whole of the payment computed at a special rate. The special rate is determined by ascertaining the additional tax payable if 1/3 of the payment where included in their total income for the relevant year and then dividing this additional income tax figure by a sum equal to 1/3 of the whole payment.

14. The Respondent submits that the following is the correct calculation of relief available to the Appellant pursuant to section 480 of the TCA 1997:

	€	€	€
Salary	247,580.09	247,580.09	247,580.09
Compensation full amount	45,833.33		
Compensation 1/3	0	15,277.78	
	293,413.42	**262,857.87**	**247,580.09**
42,800 taxed at 20%	8,560.00	8,560.00	8,560.00
Balance taxed at 40%	100,245.37	88,023.15	81,912.04
	108,805.37 (x)	**96,583.15**	**90,472.04**
Credits			
Personal	3,300.00	3,300.00	3,300.00
Carers	1,100.00	1,100.00	1,100.00
Health Expenses	764.00	764.00	764.00
PAYE	1,650.00	1,650.00	1,650.00
Medical Insurance	600.00	600.00	600.00
Total Credits	**7,414.00**	**7,414.00**	**7,414.00**

Tax Payable	**101,391.37**	**89,169.15**	**83,058.04**

15. The Respondent submits that the additional tax due by including 1/3 of the once-off payment is €6,111.11 (€89,169.15 – €83,058.04). The special rate referred to in section 480 of the TCA 1997 is ascertained by taking the additional tax figure of €6,111.11 and multiplying it by 100 and dividing it by 15,277.78 (being 1/3 of the once-off payment) giving a rate of 39.99% (€6,111.11 x 100 /€15,277.78).

16. The Respondent submits that applying the relief available under section 480 of the TCA 1997 the Appellant tax for 2017 amounts to an additional €1.58 in relief to the Appellant which is calculated as follows:

Tax on once-off payment 45,833.33 @ special rate of 39.99%	€18,328.75
Tax on income excluding once-off payment	€83,058.04
Total tax due (y)	€101,386.79

Difference between tax due not when applying section 480 of the TCA 1997 and applying section 480 of the TCA 1997: (x) – (y) = 101,391.37 – 101,386.79 = €4.58. (The Commissioner notes that this figure is incorrectly stated as being €1.58 in the Respondent's submissions.)

Material Facts

17. The following material facts are at issue in this Appeal:

    17.1 The Appellant received a once-off payment of €45,833.33 in 2017 relating to the loss of use of a company car;

    17.2 The Appellant's employment was not ended or terminated in 2017.

18. There is no dispute between the parties as to the material facts and therefore all of the material facts set out above are accepted by the Commissioner.

Analysis

19. The appropriate starting point for the analysis of the issues is to confirm 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 para. 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".

20. The question which arises in this appeal is whether the once-off payment of €45,833.33 in respect of the loss of use of a company car which the Appellant received in December 2017 falls within section 123(1) of the TCA 1997 as claimed by the Appellant or whether the once-off payment falls within the general charge to Schedule E which is contained in section 112 of the TCA 1997 as claimed by the Respondent.

21. Section 123(1) of the TCA 1997 provides:

> *(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.*

22. The Appellant submits that the specific wording to consider in this section is "or any change in its functions or emoluments".

23. The Commissioner has considered whether section 123 of the TCA 1997 can be applied to the once-off payment received by the Appellant in 2017. The Appellant's tax agent confirmed to the Respondent on 5th April 2019 that Appellant's employment was not terminated during 2017 and no evidence has been submitted to the Commission which establishes that the Appellant's employment was terminated during 2017.

24. The principles of statutory interpretation and construction are relevant in considering this issue, the starting point of which is generally accepted as being the judgment of Kennedy CJ in *Doorley v Revenue Commissioners* [1933] IR 750 (hereinafter "Doorley") at page 765 who 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."

25. In *Kiernan v Revenue Commissioners* [1981] IR 117 (hereinafter "Kiernan") the Supreme Court held that there are three basic rules of interpretation:

> "*First, if the statutory provision is one directed to the public at large, rather than to a particular class who may be expected to use the word or expression in question in either a narrowed or an extended connotation, or as a term of art, then, in the absence of internal evidence suggesting the contrary, the word or expression should be given its ordinary or colloquial meaning... Secondly, 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… Thirdly, when the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use.*"

26. The Supreme Court in *McGrath v McDermott* [1988] IR 258 (hereinafter "McGrath") set out the principles of statutory interpretation as they apply to tax cases as follows:

> "*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 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*."

27. More recently in *Gaffney v The Revenue Commissioners* [2013] IEHC 651 (hereinafter "Gaffney") the High Court stated that the Revenue Commissioners agreed that the principles applicable to the construction of tax statutes are those set out in *Doorley* and in *Kiernan*.

28. The Supreme Court in *O'Flynn Construction Limited v The Revenue Commissioners* [2011] IESC 47 (hereinafter "O'Flynn") considered the decision in *McGrath* as follows:

"*The ratio decideendi* [sic] *of that decision was merely that it was not open to the Court by a process of development of the common law to develop a doctrine of fiscal nullity which would for example remove from a tax payer relief which was otherwise applicable on a strict reading of the enactment*."

29. The Commissioner is also cognisant of the recent decision of McDonald J. in *Perrigo Pharma International Activity Company v McNamara & Ors* [2020] IEHC 152 ("Perrigo") wherein he reviewed the most up to date jurisprudence and helpfully summarised the fundamental principles of statutory interpretation 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 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"*.

30. The Commission has considered these legal cases and precedents in considering the interpretation of legislation in this appeal. As such, the heading of section 123 of the TCA 1997 states that this section relates to "*General tax treatment of payments on retirement or removal from office or employment"*. The Commissioner is strictly confined to ascertaining the true meaning of section 123 of the TCA 1997 as set out in the case of *McGrath* and as confirmed by the High Court in *Perrigo*. The Commissioner finds that, giving the wording its ordinary meaning, the heading of section 123 of the TCA 1997 must mean that the provisions contained therein can apply only to payments received by a taxpayer on retirement or on removal from office or employment.

31. The once-off payment received by the Appellant in 2017 was made in respect of the loss of the use of a company car. The Appellant's Tax Agent confirmed to the Respondent on 5th April 2019 that the Appellant's employment was not terminated in 2017 and no submissions have been made to the Commission to the effect that the Appellant retired or was removed from his office or employment in 2017.

32. As a result of the above the Commissioner finds that the provisions of section 123 of the TCA 1997 do not apply to the once-off payment received by the Appellant in December 2017.

33. In the circumstances, the Commissioner finds that it is not necessary to have recourse to section 5 of the Interpretation Act 2005 which deals with construing ambiguous or obscure provisions.

34. Section 112(1) of the TCA 1997 provides that:

> "*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.*"

35. The Commissioner has considered whether the once-off payment received by the Appellant comes under the provisions of section 112(1) of the TCA 1997 and finds that it does. The once-off payment was made to the Appellant in relation to the loss of the use of a company car. The Appellant has not made any submissions to the Commissioner as to whether the company car was leased / owned by his employer (which would have attracted Benefit-in-Kind tax for the Appellant) or whether the Appellant leased the car in his name and received payments from his employer for same (which would have been regarded as a perquisite pursuant to section 121 of the TCA 1997 and would therefore have been taxable). Regardless of which situation persisted the use of a company car by the Appellant was taxable under section 121(1) of the TCA 1997.

36. The Commissioner has considered the submissions made by the Appellant in respect of the English cases of *Mairs v Haughey* HL 1993 TC 263 ("Mairs) and *Revenue and Customs Commissioners v Tottenham Hotspur Ltd* [2017] BTC 535. Those English cases have limited, if any, application to the appeal in hand. They relate to legislation in the United Kingdom, which does not apply in this jurisdiction. In addition, the circumstances in those cases were different to the present appeal. In the case of *Mairs* 2361 employees were made redundant and offered new employment with a new company. The employees were offered new employment on certain conditions such as the termination of their enhanced redundancy scheme. The employer in this case offered that the "*redundant employee would also receive statutory redundancy entitlement".* The case of *Mairs* is a very unusual case and involved the Harland and Woolf workforce and saving the shipyard from peril in 1988/1989. The case took until 1993 to reach the House of Lords. The shipyard was subsequently closed down

despite many attempts to save it over the various decades. In 1993, in the case of *Mairs,* MacDermott LJ distinguished the payments made to the workforce, (they were not subject to income tax) on the basis that these payments were not "arising" from the office or employment. MacDermott LJ pointed out in *Mairs* that the test to be applied in the United Kingdom with respect to income tax is that it must arise "from" the office or employment. He pointed out that the meaning of "from" office of employment could adequately be conveyed by saying that the payment is assessable if it has been paid to the employee in return for acting as or being an employee. In the case of *Mairs*, MacDermott LJ found that the payment was not provided as a reward or inducement for the employee to remain or become an employee. It was for something else – namely to terminate a certain scheme so that the shipyard could be privatised. It was an essential step in freeing the shipyard for privatisation. Hence, House of Lords found that it did not relate to being "from" the office or employment.

37. The Commissioner has also considered the case submitted by the Appellant namely *Revenue and Customs Commissioners v Tottenham Hotspur Ltd* [2017] BTC 535. This case was held in the English Upper Tribunal. It involved two football players who were prevailed upon to agree a transfer to another club in relation to the early termination of their contract. Again, it is different to the present appeal in that it involved a termination payment for the ending of a contract. This appeal does not relate to the termination of a contract. Hence, the application of any legal findings are limited. The Upper Tribunal notes that they were dealing with a highly regulated relationship and the express clause in a contract of employment in relation to termination payments. This case related to the entire contract of employment being abrogated in exchange for a termination payment. It is not analogous to the current appeal in relation to the payment for the loss of a company car and the continued employment of the Appellant.

38. The Commissioner has also considered the case submitted by the Respondent namely *Bird (HM Inspector of Taxes) v Martland, Bird (H. M Inspector of Taxes) v Allen* [1982] BTC 259 ("Bird"). This case involved a company taken over by a company in which those who had a company car were given a lump sum in lieu of the continuance of this benefit (perquisite). The judges considered the UK legislation section 183(1) of the Income and Corporation Taxes Act 1970 which stated that the expression "emoluments", which is charged under the relevant Schedule, "shall include all salaries, fees, wages, perquisites and profits whatsoever". The Court found that the payment in the sum of £2,110 (for the removal of the benefit of the car) was as a perquisite of their employment in substitution for (or recompense for) the deprivation

of the perquisite (the car) which they had previously enjoyed. Hence, the Court found that the sum was fully taxable.

39. The case of *Bird* in the English courts is very similar to the present appeal. The taxpayers received a lump sum for the loss of their company car. The UK legislative provision that applied namely section 183(1) of the Income and Corporation Taxes Act 1970 was framed in similar terms to section 112 TCA 1997. The expression "emoluments" and the tax treatment were similarly worded to in both sections. In the UK emoluments include "*all salaries, fees, wages, perquisites and profits whatsoever*." Section 112 TCA 1997 refers to *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.*

40. The Commissioner finds, that the payment was not in respect of a termination payment or redundancy payment but was in substitution (or recompense) for the deprivation of the perquisite (benefit) which the Appellant had previously enjoyed. Hence, it is taxable.

41. The burden of proof lies with the Appellant. As confirmed above, *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, finds that the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

> *"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*

42. The Appellant has not discharged the burden of proof to satisfy the Commissioner that the once-off payment received by him in December 2017 falls under the provisions of section 123 of the TCA 1997.

Determination

43. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the once-off payment received by him in December 2017 falls under the provisions of section 123 of the TCA 1997.

44. It is understandable that the Appellant will be disappointed with the outcome of his appeal. The Appellant was correct to check to see whether his legal rights were correctly applied. The Commissioner thanks the parties for their exemplary presentation at the hearing and exemplary preparation for the hearing, which assisted the Commission.

45. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AK thereof. 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.

Marie-Claire Maney
Chairperson
Appeal Commissioner
30th June 2022