



131TACD2022

Between:



Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against amended PAYE/USC End of Year Statement P21 (hereinafter a “Balancing Statement”) for the tax year 2016 issued by the Revenue Commissioners (hereinafter the “Respondent”) on 04 April 2017 and on 03 November 2017 to the Appellant.
2. The total amount of tax at issue is €580.97.

Background

3. The Appellant is jointly assessed to tax with his wife and their joint income for 2016 came from a number of different sources as follows:

	Appellant	Spouse
Private pension/investment	€10,059.00	
Work pension	€51,618.00	
Work / fees / pension		€1,463.16
Work / fees / pension		€6,981.52
State pension	€12,083.90	€6,329.80
UK Dividends	€ 145.00	€ 145.00

4. On 4 April 2017 the Respondent issued a Balancing Statement for the tax year 2016 to the Appellant which noted that the Appellant's wife's income for 2016 was not subject to USC and that the Appellant's USC situation for 2016 was as follows:

- i. Income Chargeable to USC €61,647.06
- ii. Total amount of USC deducted € 2,110.65
- iii. USC results Underpayment € 573.00

5. Subsequent to the Balancing Statement of 04 April 2017 being issued the Appellant and his wife returned additional income to the Respondent of €145.00 each in the form of dividends. The Respondent therefore issued an amended Balancing Statement on 03 November 2017 to the Appellant which again noted that the Appellant's wife's income for 2016 was not subject to USC and that the Appellant's USC situation for 2016 was as follows:

- i. Income Chargeable to USC €61,792.06
- ii. Total amount of USC deducted € 2,110.65
- iii. USC results Underpayment € 580.97

6. The Appellant takes issue with the Amended Balancing Statements which the Respondent issued and in particular with the amount of USC charge contained therein and has appealed same.

7. The oral hearing of this appeal was scheduled for 14 July 2022. The Appellant did not attend at the oral hearing and subsequent to the time of the oral hearing the Commission

received written notification from the Appellant that he was unable to attend the oral hearing for medical reasons. The Appellant requested that his appeal be reviewed on information previously presented. The Respondent has not objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”).

Legislation and Guidelines

8. The legislation relevant to the within appeal is as follows:

Section 531AN of the TCA1997 (as enacted in 2016):

“(1) For each tax year an individual shall be charged to universal social charge on his or her aggregate income for the tax year—

(a) at the rate specified in column (2) of Part 1 of the Table to this section corresponding to the part of aggregate income specified in column (1) of Part 1 of that Table where the individual is—

(i) aged under 70 years, or

(ii) aged 70 years or over at any time during the tax year and has aggregate income that exceeds €60,000,

or

(b) at the rate specified in column (2) of Part 2 of the Table to this section corresponding to the part of aggregate income specified in column (1) of Part 2 of that Table where the individual is aged 70 years or over at any time during the tax year and has aggregate income that does not exceed €60,000.

...

TABLE
PART 1

<i>Part of Aggregate Income (1)</i>	<i>Rate of Universal Social Charge (2)</i>
<i>The first €12,012</i>	<i>1.0 per cent</i>
<i>The next €6,656</i>	<i>3.0 per cent</i>

<i>The next €51,376</i>	<i>5.5 percent</i>
<i>The remainder</i>	<i>8.0 per cent</i>

PART 2

<i>Part of Aggregate Income</i> (1)	<i>Rate of Universal Social Charge</i> (2)
<i>The first €12,012</i>	<i>0.5 per cent</i>
<i>The remainder</i>	<i>2.0 per cent</i>

”

Submissions

Appellant's Submissions

9. The Appellant submitted the following to the Commission by way of correspondence on 7 February 2018:

“1. My appeal dated 17/5/17 was lodged at that time to comply with the time limit. ■
 ■ letter 20/5/17 [“the letter”] was received by me on 20/5/17. It enclosed the USC Frequently Asked Questions booklet [“the booklet ”] which I have perused.

2. the letter combines both my employment pensions and my DSP [OAP] pension to arrive at the amount which was used to calculate my USC liability. It did not set out precisely how legally this was computed.

The booklet at par. 1.4 states that “All Dept of Social Protection payments” are exempt from USC.

At par. 2.2 it states “... income for USC purposes is determined after excluding any Dept of Social Protection or similar type income ”

At par 2.9 it states “Dept of Social Protection pensions are not subject to the USC.”

At par 2.32 it describes State Pension as “Not chargeable to USC”

I now refer to ■ letter 3/3/17 Amended Tax Credit Cert. - 2017 which on p1 ref. the USC refers to “total income (excluding Dept of Social Protection payments)”

On p2 it states "Tax Credits Reduced By" and then refers to "State Pension Contributory.....3,227.58" This sum is subtracted from my Gross Tax Credits..5,440 to arrive at Net Tax Credits2,212.42. If USC was payable it would amount to a double count.

It is clear from our records that my State pension is paid by the DSP.

Conclusion - it appears that the computation is in error as it includes my State Pension as part of my overall income for the purpose of charging USC.

3. For completeness - the letter also asserts that "... there is no provision for marginal relief in respect of USC". It does not quote any legal source or set out any legal argument for same. I have claimed same.

I therefore appeal on the basis of what is stated in my appeal notice and above in response to your email/letter and reserve the right to submit further grounds of appeal if appropriate."

10. The Appellant submitted the following to the Commission by way of correspondence on 12 April 2018:

"1. My appeal dated 17/5/17 was lodged at that time to comply with the time limit. [REDACTED] letter 20/5/17 ["the letter"] was received by me on 20/5/17. It enclosed the USC Frequently Asked Questions booklet ["the booklet"] which I have perused.

2. the letter combines both my employment pensions and my DSP [OAP] pension to arrive at the amount which was used to calculate my USC liability. It did not set out precisely how legally this was computed.

The booklet at par. 1.4 states that "All Dept of Social Protection payments" are exempt from USC.

At par. 2.2 it states "... income for USC purposes is determined after excluding any Dept of Social Protection or similar type income "

At par 2.9 it states "Dept of Social Protection pensions are not subject to the USC."

At par 2.32 it describes State Pension as "Not chargeable to USC"

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I therefore appeal on the basis of what is stated in my appeal notice and above in response to your email/letter and reserve the right to submit further grounds of appeal if appropriate."

11. The Appellant submits that the USC charged by the Respondent and set out in the Balancing Statement is incorrect

Respondent's Submissions

12. The Respondent submitted that section 531AN of the TCA1997 as amended by section 2 of the Finance Act 2015 sets out the rate of USC charge for the year 2016 and that the amount of USC contained in the disputed Balancing Statements is correct.

13. The Respondent submitted that, as the Appellant was aged over 70 years in 2016 and that his income for USC in 2016 was in excess of €60,000, section 531AN(1)(a)(ii) applied to the Appellant for the tax year 2016. Therefore the Respondent submits that the USC amount of USC contained in the disputed Balancing Statements is correct.

Material Facts

14. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:

- i. The Appellant's income for USC in 2016 was €61,792.06.

Analysis

15. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, 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."

16. The Commissioner has considered the submissions made on behalf of both Parties along with the relevant legislation and the material facts.

17. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter "*Perrigo*"), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

"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 Ltd v. The Revenue Commissioner [2020] IESC 60. 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”.

18. Section 531AN(1)(a)(ii) of the TCA1997 provides as follows:

“(1) For each tax year an individual shall be charged to universal social charge on his or her aggregate income for the tax year—

(a) at the rate specified in column (2) of Part 1 of the Table to this section corresponding to the part of aggregate income specified in column (1) of Part 1 of that Table where the individual is—

(ii) aged 70 years or over at any time during the tax year and has aggregate income that exceeds €60,000,.”

19. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words of the statutory provision contained in section 531AN(1)(a)(ii) of the TCA1997 are plain and their meaning is self-evident. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of that section means that an individual is charged to the rates of USC set out in Part 1 of the Table set out in that section.

20. Part 1 of the Table set out in section 531AN of the TCA1997 provides that for persons with incomes in excess of €60,000.00 for 2016 were as follows:

TABLE

PART 1

<i>Part of Aggregate Income (1)</i>	<i>Rate of Universal Social Charge (2)</i>
<i>The first €12,012</i>	<i>1.0 per cent</i>
<i>The next €6,656</i>	<i>3.0 per cent</i>
<i>The next €51,376</i>	<i>5.5 percent</i>
<i>The remainder</i>	<i>8.0 per cent</i>

21. Therefore the Appellant's liability to USC for 2016 is calculated as follows:

<i>Part of Aggregate Income</i> (1)	<i>Rate of Universal Social Charge</i> (2)	<i>Appellant's Universal social Charge liability</i>
<i>The first €12,012</i>	<i>1.0 per cent</i>	€ 120.12
<i>The next €6,656</i>	<i>3.0 per cent</i>	€ 199.68
<i>Balance of €43,124</i>	<i>5.5 percent</i>	€2,371.82
<i>Total amount USC</i>		€2,691.62

22. As €2,110.65 in USC had already been returned to the Respondent and underpayment of €580.97 by the Appellant arises for 2016.

23. The Commissioner notes that section 5331AM(1)(a)(I) of the TCA1997 provides that social welfare payments and similar type payments are exempt from USC.

24. Therefore the Balancing Statements issue by the Respondent on 04 April 2017 and 03 November 2017 were correct as to the Appellant's liability to USC.

Determination

25. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in his appeal. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

26. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949 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 TCA1997.



Clare O'Driscoll
Appeal Commissioner
25 July 2022

The Tax Appeals Commission has been requested 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