



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 a Notice of Amended Assessment which was raised by the Revenue Commissioners (hereinafter the “Respondent”) on 2 November 2018 in relation to the tax year 2017
2. The total amount of tax at issue is €3,049.
3. This determination has, on the request of the Appellant and with the agreement of both Parties hereto, been made without an oral hearing pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”).

Background

4. ██████████ (hereinafter the “Appellant”) is in receipt of the State Pension (Contributory) from the Department of Employment Affairs and Social Protection (hereinafter the “DEASP”) and is jointly assessed to tax with his wife. For the tax year

2017 the Appellant submitted a Form 11 return to the Respondent containing two entries for income from the DEASP, one figure (€12,539) representing the Appellant's State Pension (Contributory) and the other figure (€11,234) representing the amount paid by the DEASP in respect of the Appellant's wife as an increase for a qualified adult.

5. The Respondent treated the Appellant as the beneficiary of both amounts received from the DEASP and the Appellant was assessed in the total amount pursuant to section 126(2B) of the TCA1997 as amended by section 12 of the Finance (No. 2) Act 2013 which had effect from 1st January 2014.
6. As a result of the Respondent treating the Appellant as the beneficiary of both amounts received from the DEASP, the increase in the standard rate band provided for in section 15(3) of the TCA1997 and of the Employee Tax Credit provided for in section 472 of the TCA1997 were not available in respect of the Appellant's wife.
7. The Appellant has appealed the decision of the Respondent to treat him as being the beneficiary of both amounts received from the DEASP.

Legislation and Guidelines

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

Section 15 of the TCA1997:

Section 15 of the TCA1997 prescribes in tabular format, the rates at which income tax is charged and the bands of income to which the rates are applied.

Section 15(2) of the TCA1997 sets out the graduated charge to income tax and the tax bands applicable where a husband and wife are treated as jointly assessed in accordance with section 1017 of the TCA1997.

Section 15(3) of the TCA1997:

“Subject to subsections (4) and (5)—

(a) where an individual is charged to tax for a year of assessment in accordance with section 1017 or 1031C, and

(b) both the individual and his or her spouse or civil partner are each in receipt of income in respect of which the individual is chargeable to tax in accordance with that section,

the part of his or her taxable income chargeable to tax at the standard rate specified in column (1) of Part 3 of the Table to this section shall be increased by an amount which is the lesser of—

(i) €26,300, and (this amount varies from time to time, comment added)

(ii) the specified income of the individual or the specified income of the individual's spouse or civil partner, whichever is the lesser."

Section 126(2B) of the TCA1997:

"Notwithstanding the provisions of section 112(1), where an increase in the amount of a pension to which section 112, 113, 117 or 157, as the case may be, of the Social Welfare Consolidation Act 2005 applies is paid in respect of a qualified adult (within the meaning of the Acts), that increase shall be treated for all the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary referred to in those sections of that Act."

Section 472(4) of the TCA1997:

"Where, for any year of assessment, a claimant proves that his or her total income for the year consists in whole or in part of emoluments (including, in a case where the claimant is a married person assessed to tax in accordance with section 1017, or a civil partner assessed to tax in accordance with section 1031C, any emoluments of the claimant's spouse or civil partner deemed to be income of the claimant by that section for the purposes referred to in that section) the claimant shall be entitled to a tax credit (to be known as "the employee tax credit") of –

(a) Where the emoluments (but not including, in the case where the claimant is a married person or a civil partner so assessed, the emoluments, if any, of the claimant's spouse or civil partner) arise to the claimant, the lesser of an amount equal to the appropriate percentage of the emoluments and €1,650, and

(b) Where, in a case where the claimant is a married person or a civil partner so assessed, the emoluments arise to the claimant's spouse or civil partner, the lesser of an amount equal to the appropriate percentage of the emoluments and €1,650."

Section 2(1) of the Social Welfare Consolidation Act 2005 (hereinafter the "SWCA2005"):

“ ...

‘beneficiary’ means a person entitled to any benefit, assistance, child benefit or family income supplement as the case may be;

...”

Section 2(2) of the SWCA2005:

“In this Act “qualified adult”, subject to sections 134 , 187 and 297 , means in relation to a person—

(a) a spouse who is wholly or mainly maintained by that person but does not include—

(i) a spouse in employment (other than employment specified in paragraph 4 or 5 of Part 2 of Schedule 1), or

(ii) a spouse who is self-employed, or

(iii) a spouse who is entitled to or is in receipt of any benefit, pension, assistance or allowance (other than supplementary welfare allowance) under Part 2 or 3, or

(iv) a spouse who, by virtue of section 68 (1) or 147 (2), is or would be disqualified for receiving unemployment benefit payable under Chapter 12 of Part 2 or unemployment assistance payable under Chapter 2 of Part 3 in his or her own right with the exception of a spouse who qualifies as a qualified adult by virtue of regulations made under paragraph (c), or

(v) a spouse who is entitled to or is in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66 , in respect of a non-craft full-time course approved by An Foras Aiseanna Saothair under the Industrial Training Act 1967 , or

(vi) a spouse who is entitled to or in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66 , in respect of participation in a scheme administered by the Minister for Education and Science and known as the Vocational Training Opportunities Scheme, or

(vii) a spouse who is entitled to or in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under

*section 142 or unemployment benefit payable under section 65 or 66 ,
in respect of participation in a scheme administered by the Minister and
known as—*

- (I) Back to Education Allowance, or*
- (II) Back to Work Allowance, or*
- (III) Back to Work Enterprise Allowance, or*
- (IV) Part-Time Job Incentive,*

or

*(b) a person over the age of 16 years being wholly or mainly maintained by that
person and having the care of one or more than one qualified child who
normally resides with that person where that person is—*

- (i) a single person,*
- (ii) a widow,*
- (iii) a widower, or*
- (iv) a married person who is not living with and is neither wholly or
mainly maintaining, nor being wholly or mainly maintained by, the
married person's spouse,*

or

*(c) any person whom the Minister may by regulations specify to be a qualified
adult for the purposes of this Act.”*

Section 39 of the SWCA2005:

*“(1) Benefits under this Part shall be of the following descriptions and are so described
in this Act—*

...

(h) old age (contributory) pension,

...”

Section 112(1) and (1A) of the SWC2005:

*“(1) Subject to this Part, the weekly rate of old age (contributory) pension shall be
increased by the amount set out in column (3) of Part 1 of Schedule 2 for any period
during which the beneficiary has a qualified adult, subject to the restriction that a*

beneficiary shall not be entitled for the same period to an increase of pension under this subsection in respect of more than one person.

(1A) The amount of the increase of pension referred to in subsection (1), in respect of any claim for State pension (contributory) made after 24 September 2007, shall be paid—

(a) directly to the qualified adult concerned, or

(b) to such other person as may be nominated by the qualified adult for the purpose of receiving the increase of pension referred to in subsection (1) on behalf of the qualified adult.

(1B) Where a beneficiary ceases to be entitled to State pension (contributory) the payment to a qualified adult of the increase of pension referred to in subsection (1) shall also cease.”

Submissions

Appellant's Submissions

9. The Appellant takes issue with the manner in which the Respondent treated the increase in the State Pension (Contributory) which was paid on foot of his wife being a qualified adult. In particular he takes issue with the Respondent treating him as the beneficiary of the increase paid on foot of his wife being a qualified adult. It is the Appellant's position that the increase paid was his wife's income and therefore that the increase in the standard rate band provided for in section 15(3) of the TCA1997 and of the Employee Tax Credit provided for in section 472 of the TCA1997 should have been available to him.
10. The Appellant submitted that the increase in the State Pension is treated as income of the “beneficiary” and that “beneficiary” is defined in section 2 of the SWCA2005 as meaning “a person entitled to any benefit, assistance, child benefit or family income supplement as the case may be...”
11. The Appellant submitted that section 112(1A) of the SWCA200 states that the increase in the State Pension shall be paid “directly to the qualified adult concerned” or “to any such person as may be nominated by the qualified adult”.
12. The Appellant submitted that in the within appeal the Appellant is the nominated person and the beneficiary is the Appellant's wife on the basis that she is entitled to the benefit, that being the increase for a qualified adult.

13. The Appellant submitted that section 126(2B) of the TCA1997 (as inserted by section 12 of the Finance (No. 2) Act 2013) states that any increase arising under section 112 of the SWCA2005 “*shall be treated for all the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary referred to in [Section 112]...*” (emphasis added).
14. The Appellant submits that there are arguably two beneficiaries referred in section 112 of the SWCA2005 and that the Appellant, as beneficiary, is referred to in section 112(1) of the SWCA2005 and his wife, as beneficiary, is referred to in section 112(1A)(b) of the SWCA2005 as she is deemed to be a beneficiary by virtue of section 2 of the SWCA2005.
15. The Appellant submitted that if his wife, as beneficiary, is referred to in section 112 of the SWCA2005 at all, that is enough to deem the income to be her income pursuant to section 125 of the TCA1997 because she is “*the beneficiary referred to in those section of that Act*”.
16. The Appellant argues that when section 126(2B) was inserted into the TCA1997 the legislation should have been narrower in scope by specifying which beneficiary the Respondent was referring to if it was intended to refer to one of the beneficiaries. The Appellant submits that as this provision restricts relief it should be construed narrowly and that the increase for a qualified adult paid should be classified as being the income of the Appellant’s wife.

Respondent’s Submissions

17. The Respondent submitted that section 112(1) of the SWCA2005 provides that the weekly rate of the State Pension (Contributory) shall be increased for any period during which the beneficiary has a qualified adult.
18. The Respondent further submitted that section 126(2B) of the TCA1997, which was inserted to the TCA1997 by section 2 of the Finance (No. 2) Act 2013 which has effect from 1st January 2014, provides that where an increase in the amount of State Pension (Contributory) in respect of a qualified adult is paid pursuant to section 112(1) of the SWCA2005 such increase shall be treated for the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary.

Material Facts

19. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:
 - i. The Appellant was a person in receipt of the State Pension (Contributory) pursuant to section 112 of the SWCA2005 for 2017;

- ii. An increase in the Appellant's State Pension (Contributory) was paid in respect of the Appellant's wife as a qualified adult was paid pursuant to section 112(1) of the SWCA2005.

Analysis

20. 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."

21. The Commissioner has considered the submissions made by the Parties along with the law in relation to the tax treatment of increases in the State Pension (Contributory) which are paid on foot of a spouse being a qualified adult.

22. It is not in dispute that the Appellant was a beneficiary of the State Pension (Contributory) as defined by section 2 of the SWCA2005. It is also not in dispute that the increase in the amount of the State Pension (Contributory), which was paid as a result of the Appellant's wife being a qualified adult, was paid pursuant to section 112(1) of the SWCA2005.

23. The Appellant argues that his wife was the beneficiary of the increase for a qualified adult paid.

24. Section 2(1) of the SWCA2005 defines a beneficiary as meaning "*a person entitled to any benefit, assistance, child benefit or family income supplement as the case may be*".

25. Section 2(2) of the SWCA2005 defines a qualified adult as:

"In this Act "qualified adult", subject to sections 134, 187 and 297, means in relation to a person—

(a) a spouse who is wholly or mainly maintained by that person but does not include—

(i) a spouse in employment (other than employment specified in paragraph 4 or 5 of Part 2 of Schedule 1), or

(ii) a spouse who is self-employed, or

(iii) a spouse who is entitled to or is in receipt of any benefit, pension, assistance or allowance (other than supplementary welfare allowance) under Part 2 or 3, or

(iv) a spouse who, by virtue of section 68 (1) or 147 (2), is or would be disqualified for receiving unemployment benefit payable under Chapter 12 of Part 2 or unemployment assistance payable under Chapter 2 of Part 3 in his or her own right with the exception of a spouse who qualifies as a qualified adult by virtue of regulations made under paragraph (c), or

(v) a spouse who is entitled to or is in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66 , in respect of a non-craft full-time course approved by An Foras Aiseanna Saothair under the Industrial Training Act 1967 , or

(vi) a spouse who is entitled to or in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66 , in respect of participation in a scheme administered by the Minister for Education and Science and known as the Vocational Training Opportunities Scheme, or

(vii) a spouse who is entitled to or in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66 , in respect of participation in a scheme administered by the Minister and known as—

(I) Back to Education Allowance, or

(II) Back to Work Allowance, or

(III) Back to Work Enterprise Allowance, or

(IV) Part-Time Job Incentive,

or

(b) a person over the age of 16 years being wholly or mainly maintained by that person and having the care of one or more than one qualified child who normally resides with that person where that person is—

(i) a single person,

(ii) a widow,

(iii) a widower, or

(iv) a married person who is not living with and is neither wholly or mainly maintaining, nor being wholly or mainly maintained by, the married person's spouse,

or

(c) any person whom the Minister may by regulations specify to be a qualified adult for the purposes of this Act.”

26. Section 112 of the SWCA2005 states:

“(1) Subject to this Part, the weekly rate of old age (contributory) pension shall be increased by the amount set out in column (3) of Part 1 of Schedule 2 for any period during which the beneficiary has a qualified adult, subject to the restriction that a beneficiary shall not be entitled for the same period to an increase of pension under this subsection in respect of more than one person.

(1A) The amount of the increase of pension referred to in subsection (1), in respect of any claim for State pension (contributory) made after 24 September 2007, shall be paid—

(a) directly to the qualified adult concerned, or

(b) to such other person as may be nominated by the qualified adult for the purpose of receiving the increase of pension referred to in subsection (1) on behalf of the qualified adult.

27. 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”.

28. 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 sections 2 and 112 of the SWCA2005 are plain and their meaning is self-evident. Section 2(1) of the SWCA2005 provides that a beneficiary is a person entitled to any benefit, assistance, child benefit or family income supplement as the case may be. Section 2(2) of the SWCA provides that, for the purposes of the within appeal, a qualified adult is a spouse who meets certain defined criteria as set out. Section 112 of the SWCA provides that where a beneficiary has a qualified adult then an increase in the State Pension (Contributory) will be paid.
29. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of that section means that the Appellant was the beneficiary of the State Pension (Contributory) in that he was entitled to that payment. The Commissioner further finds that Appellant’s wife was a qualified adult pursuant to section 2(2) of the SWCA2005 in that she was the spouse of the beneficiary that is to say the Appellant. The Commissioner finds that the increase in the State Pension (Contributory) was paid, pursuant to section 112 of the SWCA2005, on foot of the Appellant’s wife being a qualified adult and was not paid on foot of the Appellant’s wife being a beneficiary.
30. Section 126 of the TCA1997 sets out the tax treatment of various payments under the Social Welfare Acts. Section 126(2B) of the TCA1997, as inserted by section 12 of the Finance Act (No. 2) 2013, applies to payments of the State Pension (Contributory) for the tax years 2014 and for all subsequent tax years.
31. The wording of section 126(2B) of the TCA1997 sets out a mandatory provision whereby the Respondent, and in turn the Commissioner, must treat payments made by the DEASP in respect of an increase in the amount of a State Pension (Contributory) paid pursuant to section 112 of the SWCA2005 for all of the purposes of the Income Tax Acts as if such payment arises to and is payable to the beneficiary of the State Pension (Contributory) pursuant to section 112 of the SWCA2005. In particular the Commissioner notes that the

use of the word "*shall*" therein. This indicates an absence of discretion in the application of the provision by the Respondent, and in turn by the Commissioner, and imposes a mandatory obligation to treat the increase paid as being income of the beneficiary and not of the qualified adult.

32. Section 126(2B) of the TCA1997 does not provide for extenuating circumstances whereby, an increase in the amount of a State Pension (Contributory) which is paid as a result of a spouse being a qualified adult may be treated otherwise than as set out in that section.

33. The Commissioner finds that the said increase for a qualified adult paid on foot of the Appellant's wife being a qualified adult was paid pursuant to section 112 of the SWCA2005 and that the Respondent was correct in treating it as if it arose to and was payable to the Appellant as beneficiary pursuant to section 126(2B) of the TCA1997.

Determination

34. 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 relevant tax was not payable.

35. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Commissioner commends the Appellant and the Respondent for the manner in which this appeal was conducted. The Appellant was correct to check to see whether his legal rights and those of his wife were correctly applied.

36. 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
15 September 2022