



79TACD2022

Between

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**Appellant**

and

The 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”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) in relation to P21 Assessments to income tax issued by the Revenue Commissioners (“the Respondent”), for the years 2019 and 2020, on 30 November 2021 and 6 December 2021.
2. The Appellant and his spouse are jointly assessed for the purposes of income tax. The Appellant received pension payments amounting to €57,084.27 and €58,007.88 for the years 2019 and 2020 and he has been assessed to income tax on same.
3. The Appellant is dissatisfied with the manner in which he was assessed in relation to his contributory pension, in respect of which he received an increase for his spouse as a Qualifying Adult (Increase for a Qualifying Adult (“IQA”).
4. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

## Background

5. The Appellant is appealing against a decision of the Respondent in relation to the treatment of an IQA allowance that he receives in respect of his contributory pension. He submits that *“the allowance is paid directly to his spouse and she has full and sole discretion over how it is expended”*. The Appellant argues that *“whoever actually receives the money should pay the Tax on it. To expect someone else, who received none of that money, to pay the tax on it is unbelievable and very unfair”*.
6. The Respondent submits that the Appellant believed that that the IQA portion should be treated as the income of his spouse, *“with a corresponding entitlement to additional tax credits and an extended rate band”*. The Respondent states that the IQA allowance is deemed to be the Appellant’s income for tax purposes, pursuant to section 126(2B) of the TCA 1997.
7. On 30 November 2021 and 6 December 2021, the Appellant received P21 Balancing Statements for the years 2019 and 2020, indicating underpayments of income tax in the amounts of €3,660.36 and €3,810.69 respectively.
8. On 16 December 2021, the Appellant duly appealed the P21 Assessments to the Commission.

## Legislation and Guidelines

9. The legislation relevant to this appeal is as follows:
10. Section 2(2) of the Social Welfare Act 2005, Interpretation, provides:-

*(2) 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 –*

.....
11. Section 112(1) of the Social Welfare Act 2005, Increases (including increases for qualified adult and qualified children), provides:-

*(1) Subject to this Part, the weekly rate of old age (contributory) pension State pension (contributory) 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.*

12. Section 126(2) of the Taxes Consolidation Act 1997, Tax treatment of certain benefits payable under Social Welfare Act, provides:-

*(a) This section shall apply to the following benefits payable under the Acts-*

- (i) widow's (contributory) pension,*
- (ii) orphan's (contributory) pension*
- (iii) retirement pension, and*
- (iv) old age (contributory) pension.*

*(b) Payment of benefits to which this subsection applies shall be deemed to be emoluments to which Chapter 4 of Part 42 applies.*

10. Section 126(2B) of the TCA 1997, Tax treatment of certain benefits payable under Social Welfare Acts, provides:

*(1) In this section, "the Acts" means the Social Welfare (Consolidation) Act, 1993 , and any subsequent enactment together with which that Act may be cited*

*(2) This subsection shall apply to the following benefits payable under the Acts...*

.....

*(2B) 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.....*

## **Submissions**

### *Appellant*

13. In the Appellant's Notice of Appeal he states that *"Revenue's position is that I am deemed to be the beneficiary of the Pension, plus the Increase for a Qualified Adult. They are clearly wrong in that stance. I am the beneficiary of the Pension only and my Wife is the beneficiary of the Qualified Adult Increase. Surely, the beneficiary has to be the person who actually receives the money and not somebody else? Regardless of what way the Government tricks around with the wording of the Acts, it cannot change that fact, which should override everything else."*

14. The Appellant submits that the IQA allowance is paid directly to his spouse and “*she has full and sole discretion over how it is expended*”. He states that “*I believe that whoever actually receives the money should pay the Tax on it. To expect someone else, who received none of that money, to pay the tax on it is unbelievable and very unfair... If she was assessed to tax, it would be at the Standard Rate, instead of me being charged at the Marginal Rate on all of it. She should also be entitled to use her Employee Tax Credit against it as it is her income....If I were to pay her tax along with my own out of what I receive, it would equate to a tax rate of approximately 62% out of my Old Age Pension.*”

#### *Respondent*

15. The Respondent submits that it is relying on the provisions of section 126(2B) of the TCA 1997 and a previous decision of the Commission in 71TACD2021.
16. Further the Respondent submits that “*....it is incumbent upon [the Appellant] to demonstrate that Revenue has erred in the way he was taxed with regard to the QAD portion of his pension. Respectfully, the Respondent would argue that the assertion that Revenue is ‘clearly wrong’ does not meet that burden in a matter where the wording of the legislation is quite clear.....*”
17. In addition, the Respondent submits that the Appellant’s claim that “*the government has tricked around with the wording of the Acts*” implies a dissatisfaction with the legislation as opposed to the Respondent’s interpretation of the legislation.

#### **Material Facts**

18. The Appellant is a person in receipt of a contributory state pension.
19. The Appellant received an increase in his contributory pension for his spouse as a Qualifying Adult.

#### **Analysis**

20. 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”.*

21. The Appellant is a person entitled to a contributory pension pursuant to section 108 of the Social Welfare Consolidation Act 2005 (“the 2005 Act”), having made the contributions and satisfied the conditions set forth in section 109 of the 2005 Act. The Appellant has claimed and been granted that pension for the years under appeal. The amount of the pension has been increased pursuant to section 112(1) of the 2005 Act, due to the Appellant’s spouse being a “Qualified Adult” within the meaning of the 2005 Act.
22. The Appellant is dissatisfied with the manner in which the Respondent has treated the IQA portion of his contributory pension. In addition, the Appellant argues that the Respondent’s treatment of the IQA for tax purposes and the applicable legislation is fundamentally unfair.
23. The Commissioner notes the Appellant’s arguments in relation to unfairness. However, the scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.
24. The Appellant does not dispute that he is in receipt of a contributory pension in accordance with section 126 of the TCA 1997 nor that an increase to that pension is paid in respect of his wife as a qualified adult within the meaning of the 2005 Act. However, he maintains that the Respondent was wrong to deem him as the beneficiary of the pension plus the IQA. He states that he is the beneficiary of the pension only and his wife is the recipient of the increase and thus should be taxed accordingly.
25. In response to the Appellant’s arguments, the Respondent submits that section 126 of the TCA 1997, sets out the tax treatment of various payments made under the Social Welfare Acts, including payments which, subject to certain conditions, can attract an increase in

respect of a qualified adult. The contributory state pension paid by the Department of Social Protection is a taxable source of income pursuant to the legislation. The Respondent submits that any increase in that pension in respect of a qualified adult is for tax purposes deemed to be the Appellant's income for the years under appeal. In support of this submission, the Respondent relies on the provisions of section 126(2B) of the TCA 1997.

26. The Commissioner has considered section 126(2B) of the TCA 1997 and the submissions in this appeal. The Commissioner is satisfied that section 126(2B) of the TCA 1997 is clear and unambiguous. The Commissioner finds that the Respondent did not err in the manner in which the IQA income was treated by deeming it to be the Appellant's income for the years under appeal. The Commissioner has had regard to the wording of the section and the use of the word "shall" namely "*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*". The Commissioner is satisfied that this indicates an absence of discretion on the Respondent's part in the application of the provision and that the wording of the provision does not provide for extenuating circumstances in which this deeming provision might be altered.
27. Accordingly, the Commissioner is satisfied that, pursuant to section 126(2B) of the TCA 1997, the Respondent was correct to deem the increased pension to be the Appellant's income for the years under appeal.

### **Determination**

28. As such and 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 tax is not payable. There is no discretion as regards the application of section 126(2B) of the TCA 1997 and the Respondent was correct in its approach to the IQA income for the years under appeal.
29. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether his legal rights were correctly applied.
30. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason 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.

A handwritten signature in black ink, appearing to read 'Claire Millrine', with a stylized, cursive script.

Claire Millrine  
Appeal Commissioner  
16 May 2022