



95TACD2022

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 PAYE / USC End of Year Statements (hereinafter “P21 Balancing Statements”) issued by the Revenue Commissioners (hereinafter the “Respondent”).
2. The oral hearing of the appeal was heard on 24th May 2022.

Background

3. ██████████ (hereinafter the “Appellant”) is a married man with four children three of whom have attended third level education during the tax years the subject of the within appeal.
4. The within appeal relates to the disallowance of relief for tuition fees claimed by the Appellant for the years 2014 – 2019.

5. The history of the Respondent's interaction with the Appellant is extensive and for completeness is set out at paragraphs 6 to 18 below.
6. The Appellant's Personal Public Service Number (hereinafter "PPSN") is [REDACTED]. The Appellant's wife at all material times had her own PPSN which is [REDACTED]. The Appellant married his wife in 1995 and registered with the Respondent as a married person in 2003. At that time pursuant to section 1017 of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and in the absence of an election otherwise, the Appellant and his wife were deemed to be jointly assessed and the Appellant was deemed to be the assessable person in respect of the income of both spouses.
7. In addition to this the Appellant's wife retained a single person's Employee Tax Credit and standard rate band under her own PPSN. The Appellant's wife remained in employment between 2004 and 2015 and during these tax years utilised the Employee Tax Credit and standard rate band which had been applied to her PPSN as a single person.
8. On 16th April 2018, prompted by a submission for an electronic return by the Appellant, the Respondent issued P21 Balancing Statements to the Appellant's wife for the years 2004, 2005, 2006 and from 2008 to 2017 inclusive. The said P21 Balancing Statements were joint assessments for the Appellant and his wife as a married couple and assessed the Appellant's wife as being the assessable person. The P21 Balancing Statements removed the Single Person's Employee Tax Credit and standard rate band which the Appellant's wife had received under her PPSN and notified the Appellant's wife of underpayments. The following underpayments totalling €6,393.80 were reflected in the P21 Balancing Statements issued by the Respondent to the Appellant's wife on 16th April 2018:

Tax Year	Underpayment Amount €
2004	942.84
2005	280.40
2006	324.50

2008	690.48
2009	626.87
2010	375.27
2011	453.39
2012	637.35
2013	750.75
2014	712.95
2015	559.00
2016	0.00
2017	0.00

9. On the same date, 16th April 2018, the Respondent issued a P21 Balancing Statement to the Appellant for the tax year 2015 which contained an underpayment of €599 reflecting the P21 Balancing Statement which had been issued to the Appellant's wife.
10. The Respondent subsequently undertook a compliance intervention on the Appellant's tax affairs in October 2019. The compliance intervention related to claims for relief for tuition fees for the years 2015, 2016, 2017 and 2018 and for medical insurance relief. The Appellant satisfied the Respondent that the medical insurance relief which he had claimed were in order through the submission of supporting documentation. The Appellant did not satisfy the Respondent in relation to the claims for relief for tuition fees for the years 2015, 2016, 2017 and 2018 and these claims were disallowed.

11. As a result of the disallowance for the claims for relief for tuition fees the Respondent issued the following P21 Balancing Statements to the Appellant on 25th November 2020 which reflected the disallowance of the claims for relief for tuition fees:

Tax Year	Underpayment Amount €
2015	1,359.00
2018	2,291.00

12. On 13th April 2021 the Respondent wrote to the Appellant indicating the following methods had been applied for the collection of the underpayments reflected in the P21 Balancing Statements issued:

Year	Assessment Date	Outcome	Coded			Total
			2019	2020	2021	
2004	17/04/2018	942.84 (Coded to 2020, 2021)		471.42	471.42	942.84
2005	16/04/2018	280.40 (Will not be collected)				
2006	16/04/2018	324.50 (Will not be collected)				
2008	17/04/2018	690.48 (Coded to 2020, 2021)		345.24	345.24	690.48
2009	17/04/2018	626.87 (Coded to 2020, 2021)		313.43	313.44	626.87
2010	17/04/2018	375.27 (Coded to 2020, 2021)		209.86	165.41	375.27
2011	17/04/2018	453.39 (Coded to 2021)			453.39	453.39
2012	16/04/2018	637.35 (Coded to 2019)	637.35			-
2013	16/04/2018	750.75 (Coded to 2019)	750.75			-
2014	16/04/2018	712.95 (Coded to 2019, 2020)	611.90	101.05		-
2015	16/04/2018	559.00 (Coded to 2020)		559.00		559.00
2016	16/04/2018	0.00 (Balanced)				-
2017	16/04/2018	0.00 (Balanced)				-
2018	26/11/2019	91.00 (Will not be collected)				-
Total			2,000.00	2,000.00	1,748.90	

13. On 12th April 2022, approximately 6 weeks before the date of the oral hearing of the within appeal, the Respondent wrote to the Appellant as follows:

“Dear [REDACTED],

I have reviewed your case for the issues outside of my tuition fee enquiry and issued amended capital's P 21 balancing statements for your spouse as the assessable person, for 2015 to 2017.

From my review I can see that the caseworking done in 2018, was not in line with Revenue case working practice. When your Revenue record was updated with your spouse is correct PPSN the caseworker should not have issued balancing statements issued back 14 years, general practice is for balancing statements to issue for prior four years.

The liability created for 2004 to 2014 was collected through your tax credits, I have removed the balances and I have offset the tax collected the liabilities showing for your spouse, [REDACTED], in the periods 2015 to 2017.

This leaves the current liabilities on withdrawal of your claim for Tuition Fees 2015 to 2018 following my intervention as:

[REDACTED]

€1,569.10 in 2017 which is being collected through your tax credits over four years between 2023 to 2026

[REDACTED]

€2,291 in 2018 which is being collected through your tax credits over four years between 2023 to 2026.

If you have any of the documents that I requested during my intervention can you, please submit them for my review.

If you have any queries please let me know.

The Revenue Statement of Case for your appeal will be submitted shortly and a copy will be forwarded to you at the same time it is sent to the Tax Appeal Commission. You are also required to submit yours Statement of Case to the Tax Appeal Commission and send me a copy.

Yours faithfully'

14. In early April 2022 the Respondent issued the following Amended P21 Balancing Statements to the Appellant:

Tax Year	Result
2015	€0.00
2016	€0.00
2017	€1,569.10 underpayment
2018	€2,291.00 underpayment

15. The Respondent submitted a spreadsheet to the Commissioner at the oral hearing of this appeal which reflected the contents of the P21 Balancing Statements issued in early April 2022 and the contents of the letter of 12th April 2022. The said spreadsheet is attached hereto at Appendix 1.
16. The Appellant has accepted the contents of the correspondence of 12th April 2022 from the Respondent which set out that the P21 Balancing Statements which it had issued to the Appellant's wife for the years 2004 to 2014 should not have been issued and that the underpayments which were reflected therein should not have been collected.
17. In addition the Appellant has accepted that his wife did retain an additional Employee Tax Credit and standard rate band between 2003 and 2018 to which she was not entitled. The Appellant has further accepted that the underpayment of €599 for 2015 reflected in the P21 Balancing Statements issued on 16th April 2018 was correct and that the amount of €599 was due and owing by the Appellant on 16th April 2018.
18. As a result of the Respondent's letter of 12th April 2022, the Amended P21 Balancing Statements issued by the Respondent in early April 2022 and the Appellant's acceptance of these, this is an appeal relating only to the disallowance of the claims for relief for tuition fees made by the Appellant for the years 2014 to 2019.
19. By correspondence dated 25th November 2020 the Respondent set out their position in relation to the relief claimed by the Appellant for tuition fees totalling €76,224 for the years 2014, 2015, 2016, 2017 and 2018 as follows:

- i. **2014:** The Appellant claimed €9,000.00 for [REDACTED] for studies in the UK. As these fees were paid by way of a loan from Student Finance in the UK no relief was allowed for these tuition fees;
- ii. **2014:** The Appellant claimed €2,750.00 for [REDACTED] for fees paid to [REDACTED]. These fees were accepted by the Respondent as they were accompanied by a receipt from AIB;
- iii. **2015:** The Appellant claimed €11,000 for [REDACTED] for studies in the UK. As these fees were paid by way of a loan from Student Finance in the UK no relief was allowed for these tuition fees;
- iv. **2015:** The Appellant claimed relief for tuition fees paid for [REDACTED] and submitted a receipt from [REDACTED] which showed a student contribution of €0.00 and a Student Levy of €224.00 paid. The receipt from [REDACTED] also showed that the fees for 2015/2016 were paid by the Higher Education Authority for [REDACTED] for fees paid to [REDACTED]. As a result no claim for relief for tuition fees was allowed;
- v. **2016:** The Appellant claimed €15,000 for [REDACTED] for studies in the UK. As these fees were paid by way of a loan from Student Finance in the UK no relief was allowed for these tuition fees;
- vi. **2016:** The Appellant claimed €7,000 for [REDACTED]. As no proof of payment from the Appellant or his wife was submitted no relief was allowed;
- vii. **2017:** The Appellant claimed for the following payments to [REDACTED] [REDACTED] for [REDACTED] for studies in the UK and the Respondent indicated that if the fees were paid by way of a loan from Student Finance in the UK no relief could be allowed for these tuition fees:

10 th February 2017	GBP£3,000
3 rd April 2017	GBP£1,000

2 nd May 2017	GBP£666
1 st June 2017	GBP£2,000
30 th June 2017	GBP£1,200
2 nd August 2017	GBP 1,466

- viii. **2018:** The Appellant claimed for €11,000 for ██████████ for studies in the UK and the Respondent indicated that if the fees were paid by way of a loan from Student Finance in the UK no relief could be allowed for these tuition fees;
- ix. **2018:** The Appellant claimed for €6,000 for ██████████ and the Respondent indicated that if the fees were paid by way of Student Finance in the UK no relief could be allowed for these tuition fees;
- x. **2018:** The Appellant claimed for €6,000 for ██████████ and the Respondent indicated that if the fees were paid by way of Student Finance in the UK no relief could be allowed for these tuition fees.

20. The oral hearing took place remotely before the Commissioner on 24th May 2022. The Appellant appeared at the oral hearing and was not represented. The Respondent was represented by appeals officers. The Commissioner heard evidence and submissions on behalf of the Appellant and heard submissions on behalf of the Respondent.

Legislation and Guidelines

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

Section 473A of the TCA1997:

“(1) In this section—

“academic year”, in relation to an approved course, means a year of study commencing on a date not earlier than the 1st day of August in a year of assessment;

“appropriate percentage”, in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year;

“approved college”, in relation to a year of assessment, means—

- (a) a college or institution of higher education in the State which—
 - (i) provides courses to which a scheme or schemes of grants approved by the Minister under the Student Support Act 2011, applies, or*
 - (ii) operates in accordance with a code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister, and which the Minister approves for the purposes of this section;**
- (b) any university or similar institution of higher education in a Member State of the European Union (other than the State) which—
 - (i) is maintained or assisted by recurrent grants from public funds of that or any other Member State of the European Union (including the State), or*
 - (ii) is a duly accredited university or institution of higher education in the Member State in which it is situated;**
- (c) a college or institution in another Member State of the European Union providing distance education in the State, which—
 - (i) provides courses to which a scheme or schemes of grants approved by the Minister under the Student Support Act 2011, applies, or*
 - (ii) operates in accordance with a code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister, and which the Minister approves for the purposes of this section;**
- (d) any university or similar institution of higher education in any country, other than the State or a Member State of the European Union which—
 - (i) is maintained or assisted by recurrent grants from public funds of that country, or*
 - (ii) is a duly accredited university or institution of higher education in the country in which it is situated;**

“approved course” means—

- (a) a full-time or part-time undergraduate course of study provided by a college to which paragraph (a), (b) or (c) of the definition of “approved college” relates which—
 - (i) is of at least 2 academic years’ duration, and**

(ii) in the case of a course provided by a college to which paragraph (a)(ii) or (c)(ii) of the definition of “approved college” relates, the Minister, having regard to a code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister in relation to the quality of education to be offered on such approved course, approves of for the purposes of this section;

(b) a postgraduate course of study leading to a postgraduate award, based on a thesis or on the results of an examination or both, in an approved college—

(i) of not less than one academic year, but not more than 4 academic years, in duration,

(ii) that requires an individual, undertaking the course, to have been conferred with a degree or an equivalent qualification, and

(iii) that, in the case of a course provided by a college to which paragraph (a)(ii) of the definition of “approved college” relates, the Minister, having regard to any code of standards which from time to time may, with the consent of the Minister for Finance, be laid down by the Minister in relation to the quality of education to be offered on such approved course, approves for the purposes of this section;

“the Minister” means the Minister for Education and Science;

“qualifying fees”, in relation to an approved course and an academic year, means the amount of fees chargeable in respect of tuition to be provided in relation to that course in that year which, with the consent of the Minister for Finance, the Minister approves of for the purposes of this section.

(2) Subject to this section, where an individual for a year of assessment proves that he or she has, made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course commencing in that year of assessment, the income tax to be charged on the individual for that year of assessment, other than in accordance with section 16(2), shall be reduced by an amount which is the lesser of—

(a) the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and

(b) the amount which reduces that income tax to nil.

(3) In the case of an individual who is a married person assessed to tax for the year of assessment in accordance with section 1017, or a civil partner assessed to tax for the year of assessment in accordance with section 1031C, any payment in respect of qualifying fees made by the individual's spouse or civil partner shall, except where section 1023 or 1031H applies, be deemed to have been made by the individual.

(4) For the purposes of this section, a payment in respect of qualifying fees shall be regarded as not having been made in so far as any sum in respect of, or by reference to, such fees—

(a) has been or is to be received, directly or indirectly, by the individual or, as the case may be, the person by whom the course is being, or was, undertaken, from any source whatever by means of grant, scholarship or otherwise, or

(b) is refunded or partly refunded by an approved college.

(4A) In any claim or claims for relief under this section made by an individual in respect of qualifying fees—

(a) where the qualifying fees, or part of the qualifying fees, the subject of the claim or claims concerned relate to a full-time course or full-time courses—

(i) for the year of assessment 2013 there shall be disregarded the first €2,500 or the full amount of those fees, whichever is the lesser,

(ii) for the year of assessment 2014 there shall be disregarded the first €2,750 or the full amount of those fees, whichever is the lesser, and

(iii) for the year of assessment 2015 and each subsequent year of assessment there shall be disregarded the first €3,000 or the full amount of those fees, whichever is the lesser,

(b) where all the qualifying fees the subject of the claim or claims concerned relate only to a part-time course or part-time courses—

(i) for the year of assessment 2013 there shall be disregarded the first €1,250 or the full amount of those fees, whichever is the lesser,

(ii) for the year of assessment 2014 there shall be disregarded the first €1,375 or the full amount of those fees, whichever is the lesser, and

(iii) for the year of assessment 2015 and each subsequent year of assessment there shall be disregarded the first €1,500 or the full amount of those fees, whichever is the lesser.

(5) (a) Where the Minister is satisfied that an approved college, within the meaning of paragraph (a)(ii) or (c)(ii) of the definition of "approved college", or an

approved course in that college, no longer meets the appropriate code of standards laid down, the Minister may by notice in writing given to the approved college withdraw, with effect from the year of assessment following the year of assessment in which the notice is given, the approval of that college or course, as the case may be, for the purposes of this section.

(b)Where the Minister withdraws the approval of any college or course for the purposes of this section, notice of its withdrawal shall be published as soon as may be in Iris Oifigiúil.

- (6) *Any claim for relief under this section made by an individual in respect of fees paid to an approved college shall be accompanied by a statement in writing made by the approved college concerned stating each of the following, namely—*
- (a)that the college is an approved college for the purposes of this section,*
 - (b)the details of the course undertaken*
 - (c)the duration of the course, and*
 - (d)the amount of the fees paid in respect of the course.*
- (7) *Where for the purposes of this section any question arises as to whether—*
- (a)a college is an approved college, or*
 - (b)a course of study is an approved course, the Revenue Commissioners may consult with the Minister.*
- (8) *On or before 1 July in each year of assessment, the Minister shall furnish the Revenue Commissioners with full details of—*
- (a)all colleges and courses in respect of which approval has been granted and not withdrawn for the purposes of this section, and*
 - (b)the amount of the qualifying fees in respect of each such course for the academic year commencing in that year of assessment.*
- (9) *Where relief is given under this section to any individual in respect of a payment of qualifying fees, relief shall not be given under any other provision of the Income Tax Acts to that individual in respect of that payment.*
- (10) *Where any fees that are the subject of a claim for relief under this section are refunded or partly refunded by an approved college, it shall be the duty of the*

individual by whom the claim is made to notify the Revenue Commissioners within 21 days of receipt of such refund that the refund has been received.”

Submissions

Appellant's Submissions

22. The Commissioner heard evidence and submissions from the Appellant.

23. In support of his claims for reliefs for tuition fees paid for his three children the Appellant submitted the following documentation:

██████████

24. In relation to ██████████ the Appellant submitted a statement from ██████████ dated 14th November 2019 which set out the various transactions on ██████████ ██████████ account for the years 2014 to 2018 inclusive.

██████████

25. In relation to ██████████ the Appellant submitted a statement from ██████████ dated 4th February 2020 which set out the various transactions on ██████████ account for the years 2015 to 2019 inclusive.

██████████

26. In relation to ██████████ the Appellant submitted a statement from ██████████ ██████████ which set out the various transactions on ██████████ account for the years 2014 to 2018 inclusive.

27. In addition the Appellant submitted bank statements, credit card statements and credit union statements which set out the following transactions:

- | | | | |
|------|--------------------------------|------------|-----------|
| i. | 6 th May 2014 | ██████████ | €800.00 |
| ii. | 23 rd December 2014 | Withdrawal | €300.00 |
| iii. | 27 ^h November 2015 | Withdrawal | €600.00 |
| iv. | 18 ^h February 2016 | Withdrawal | €1,400.00 |
| v. | 26 ^h April 2016 | Withdrawal | €200.00 |
| vi. | 27 ^h May 2016 | Withdrawal | €1,100.00 |

vii.	27 ^h October 2016	Withdrawal	€410.00
viii.	24 ^h August 2017	██████████	€500.00
ix.	25 ^h August 2017	██████████	€350.00
x.	30 ^h August 2017	██████████	€700.00
xi.	4 th September 2017	Withdrawal	€1,750.00
xii.	11 ^h September 2017	Withdrawal	€600.00
xiii.	18 ^h January 2018	██████████	€550.00
xiv.	18 ^h January 2018	██████████	€1,400.00
xv.	13 ^h February 2018	██████████	€2,000.00
xvi.	4 th April 2018	██████████	€2,750.00
xvii.	9 th April 2018	██████████	€750.00
xviii.	15 ^h June 2018	██████████	€200.00
xix.	15 ^h June 2018	Withdrawal	€1,500.00
xx.	27 ^h July 2018	██████████	€1,200.00
xxi.	5 th October 2018	██████████	€600.00
xxii.	11 ^h October 2018	Withdrawal	€1,500.00
xxiii.	27 ^h October 2018	Withdrawal	€2,000.00
xxiv.	28 ^h December 2018	Withdrawal	€412.00
xxv.	8 th January 2019	██████████	€1,156.50
xxvi.	16 ^h January 2019	██████████	€768.00
xxvii.	22 nd March 2019	██████████	€50.00
xxviii.	22 nd March 2019	██████████	€120.00
xxix.	22 nd March 2019	██████████	€400.00

28. The above transactions reflect a total of €26,066.50 for the following amounts in the following years:

- i. 2014 €1,100.00

ii. 2015	€ 600.00
iii. 2016	€3,110.00
iv. 2017	€3,900.00
v. 2018	€14,862.00
vi. 2019	€2,494.50

29. The Appellant submitted that he thinks that he has been unfairly targeted by the Respondent and that he has received advice that submission of receipts from third level institutions confirming the payment of fees is sufficient. He submitted that he should not have to prove the origin of the funds for the payment of the fees. In support of this the Appellant submitted the Respondent's Guide IT 31 Tax Relief for Tuition Fees paid in respect of Third Level Education version 15.05. In particular the Appellant relied on the following section at page 2 of this document which states:

“Who can claim?”

An individual can claim tax relief on fees paid for Third Level courses in respect of any person as long as he or she has paid the qualifying fees. Qualifying fees means tuition fees (including the Student Contribution, post 2011), but not examination fees, registration fees or administration fees, in respect of an approved course at an approved college.”

Respondent's Submissions

30. At the outset the Respondent confirmed to the Commissioner that no interest or penalties had been applied to the P21 Balancing Statements which had issued to the Appellant and his wife on 16th April 2018.

31. The Respondent also confirmed to the Commissioner that all of the amounts which had previously been collected from the Appellant as set out at paragraph 12 above for the years 2004 to 2014 inclusive had been cancelled and credited to the Appellant. These amounts had then been offset against the claims for relief for tuition fees by the Appellant for the years which had been disallowed for the years 2015 to 2018.

32. The Respondent was given an opportunity by the Commissioner to apologise to the Appellant in relation to the P21 Balancing Statements which had issued for the years 2004

to 2014 and the Respondent did apologise to the Appellant for same. The Commissioner appreciates and acknowledges this.

33. The Respondent submitted that every year a certain amount of people are chosen for compliance intervention and with any compliance intervention in relation to relief for tuition fees they seek proof of receipts from the relevant third level institution and also proof of origin of the payments.

34. The Respondent submitted that section 473A(2) of the TCA1997 provides that:

(2) Subject to this section, where an individual for a year of assessment proves that he or she has, made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course commencing in that year of assessment, the income tax to be charged on the individual for that year of assessment, other than in accordance with section 16(2), shall be reduced by an amount which is the lesser of—

(a) the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and

(b) the amount which reduces that income tax to nil.”

35. The Respondent additionally submitted that section 473A(4) of the TCA1997 provides that:

“(4) For the purposes of this section, a payment in respect of qualifying fees shall be regarded as not having been made in so far as any sum in respect of, or by reference to, such fees—

(a) has been or is to be received, directly or indirectly, by the individual or, as the case may be, the person by whom the course is being, or was, undertaken, from any source whatever by means of grant, scholarship or otherwise, or

(b) is refunded or partly refunded by an approved college.”

36. The Respondent further submitted that section 473A(4A) of the TCA1997 provides that:

“(4A) In any claim or claims for relief under this section made by an individual in respect of qualifying fees—

(a) where the qualifying fees, or part of the qualifying fees, the subject of the claim or claims concerned relate to a full-time course or full-time courses—

(i) for the year of assessment 2013 there shall be disregarded the first €2,500 or the full amount of those fees, whichever is the lesser,

(ii) for the year of assessment 2014 there shall be disregarded the first €2,750 or the full amount of those fees, whichever is the lesser, and

(iii) for the year of assessment 2015 and each subsequent year of assessment there shall be disregarded the first €3,000 or the full amount of those fees, whichever is the lesser,

...

37. The submitted that as they had been unable to match the amounts claimed by the Appellant with the payments made from the Appellant's various bank accounts the relief for tuition fees claimed by the Appellant had been disallowed.

38. The Respondent indicated that they had been, and continue to be, open to the Appellant proving the payments of tuition fees as claimed.

Material Facts

39. The following material facts are at issue in the within appeal:

- i. The Appellant paid tuition fees in respect of his children 2014, 2015, 2016, 2017, 2018 and 2019

40. The Appellant submitted that he was the only person that would have paid the tuition fees for his children and that therefore the fact that fees were listed as being paid in statements from the various third level institutions should be enough for him to qualify for relief for tuition fees paid.

41. Section 473A(2) of the TCA1997 provides that:

“(2) Subject to this section, where an individual for a year of assessment proves that he or she has, made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course commencing in that

year of assessment, the income tax to be charged on the individual for that year of assessment, other than in accordance with section 16(2), shall be reduced by an amount which is the lesser of—

(a) the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and

(b) the amount which reduces that income tax to nil.”

42. 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”.

43. 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 473A(2) 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, a taxpayer claiming relief for tuition fees must prove that they made a payment in respect of tuition fees and not simply that tuition fees were paid.

The Appellant paid tuition fees in respect of his children in 2014:

44. In relation to 2014 the Appellant has submitted bank / credit card / credit union account statements which evidence payments and / or withdrawals and / or transfers to his children in the amount of €1,100. The uncontested evidence which the Appellant has given to the Commissioner is that these transactions were for the purpose of the payment of tuition fees. On the balance of probabilities the Commissioner accepts that these payments were made for the purpose of the payment of tuition fees.
45. In addition the Appellant submitted a receipt stamped at Allied Irish Bank, [REDACTED] on 24th October 2014 for payment of €2,974.00 to [REDACTED] and signed as being paid in by the Appellant. The Commissioner notes from the receipt submitted by the Appellant that €224 of that amount was in respect of registration fees for [REDACTED] and €2,750 was in respect of tuition fees. This amount has already been accepted by the Respondent in their correspondence of 25th November 2020 to the Appellant.
46. The Appellant has not submitted any documentary evidence that he paid €9,000 in respect of fees for [REDACTED] in 2014.
47. As a result of the above the Commissioner finds as a material fact that the Appellant made payments of €3,850 in tuition fees in respect of his children in 2014.

The Appellant paid tuition fees in respect of his children in 2015:

48. In relation to 2015 the Appellant has submitted bank / credit card / credit union statements which evidence payments and / or withdrawals and / or transfers to his children in the amount of €600. The uncontested evidence which the Appellant has given to the Commissioner is that these transactions were for the purpose of the payment of tuition fees. On the balance of probabilities the Commissioner accepts that these payments were made for the purpose of the payment of tuition fees.
49. The Appellant has not submitted any evidence, documentary or otherwise that he made any other payments in respect of tuition fees in 2015.
50. As a result of the above the Commissioner finds as a material fact that the Appellant made payments of €600 in tuition fees in respect of his children in 2015.

The Appellant paid tuition fees in respect of his children in 2016:

51. In relation to 2016 the Appellant has submitted bank / credit card / credit union statements which evidence payments and / or withdrawals and / or transfers to his children in the amount of €3,110. The uncontested evidence which the Appellant has given to the Commissioner is that these transactions were for the purpose of the payment of tuition fees. On the balance of probabilities the Commissioner accepts that these payments were made for the purpose of the payment of tuition fees.
52. In addition the Appellant submitted a receipt stamped at Allied Irish Bank, [REDACTED] on 26th October 2016 for payment of €1,000.00 and signed as being paid in by the Appellant. The Commissioner notes that in the statement of 14th November 2019 from [REDACTED] submitted by the Appellant a refund of €776 was authorised in respect of the payment received. The statement also sets out that the balance of €224 which was paid was in respect of registration fees for [REDACTED] and not tuition fees.
53. The Appellant has not submitted any evidence, documentary or otherwise that he made any other payments in respect of tuition fees in 2016.
54. As a result of the above the Commissioner finds as a material fact that the Appellant made payments of €3,110 in tuition fees in respect of his children in 2016.

The Appellant paid tuition fees in respect of his children in 2017

55. In relation to 2017 the Appellant has submitted bank / credit card / credit union statements which evidence payments and / or withdrawals and / or transfers to his children in the amount of €3,900. The uncontested evidence which the Appellant has given to the Commissioner is that these transactions were for the purpose of the payment of tuition fees. On the balance of probabilities the Commissioner accepts that these payments were made for the purpose of the payment of tuition fees.
56. The Appellant has not submitted any evidence, documentary or otherwise that he made any other payments in respect of tuition fees in 2017.
57. As a result of the above the Commissioner finds as a material fact that the Appellant made payments of €3,900 in tuition fees in respect of his children in 2017.

The Appellant paid tuition fees in respect of his children in 2018:

58. In relation to 2018 the Appellant has submitted bank / credit card / credit union statements which evidence payments and / or withdrawals and / or transfers to his children in the amount of €14,862. The uncontested evidence which the Appellant has given to the Commissioner is that these transactions were for the purpose of the payment of tuition fees. On the balance of probabilities the Commissioner accepts that these payments were made for the purpose of the payment of tuition fees to include payments for his child who was attending [REDACTED].

59. The Appellant has not submitted any evidence, documentary or otherwise that he made any other payments in respect of tuition fees in 2018.

60. As a result of the above the Commissioner finds as a material fact that the Appellant made payments of €14,862 in tuition fees in respect of his children in 2018.

The Appellant paid tuition fees in respect of his children in 2019:

61. In relation to 2019 the Appellant has submitted financial account statements which evidence payments and / or withdrawals and / or transfers to his children in the amount of €2,494.50. The uncontested evidence which the Appellant has given to the Commissioner is that these transactions were for the purpose of the payment of tuition fees. On the balance of probabilities the Commissioner accepts that these payments were made for the purpose of the payment of tuition fees.

62. The Appellant has not submitted any evidence, documentary or otherwise that he made any other payments in respect of tuition fees in 2019.

63. As a result of the above the Commissioner finds as a material fact that the Appellant made payments of €2,494.50 in tuition fees in respect of his children in 2019.

64. The Commissioner therefore finds as a material fact that the Appellant made the following payments for tuition fees in the following years:

- i. 2014 €3,850.00
- ii. 2015 € 600.00
- iii. 2016 €3,110.00
- iv. 2017 €3,900.00

v. 2018 €14,862.00

vi. 2019 €2,494.50

65. The Commissioner does not consider that the Appellant has been unfairly targeted by the Respondent. Although the Appellant may feel that the enquiries which the Respondent made in relation to this appeal were very detailed and onerous, the Respondent was carrying out its duty under a compliance intervention and was correct in seeking the information in relation to the tuition fees paid by the Appellant. The Commissioner does however note that the Respondent should have changed its position in relation to the Appellant and his wife's tax credits for the tax years 2004 – 2014 in a more timely manner. The Respondent waited until some 6 weeks prior to the hearing of this appeal to change its position on this aspect of the Appellant's tax affairs and this no doubt placed additional and unnecessary stress on the Appellant. The Commissioner however notes that the Respondent has apologised to the Appellant for this.

Analysis

66. 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.”

67. The Commissioner has considered the submissions made on behalf of both Parties along with the evidence adduced in the appeal.

68. The Commissioner has found as a material fact that the Appellant made the following payments for tuition fees in the following years:

i. 2014 €3,850.00

ii. 2015 € 600.00

iii. 2016 €3,110.00

iv. 2017 €3,900.00

v. 2018 €14,862.00

vi. 2019 €2,494.50

69. Section 473A(4A) of the TCA1997 provides the following:

“In any claim or claims for relief under this section made by an individual in respect of qualifying fees—

(a) where the qualifying fees, or part of the qualifying fees, the subject of the claim or claims concerned relate to a full-time course or full-time courses—

(i) for the year of assessment 2013 there shall be disregarded the first €2,500 or the full amount of those fees, whichever is the lesser,

(ii) for the year of assessment 2014 there shall be disregarded the first €2,750 or the full amount of those fees, whichever is the lesser, and

(iii) for the year of assessment 2015 and each subsequent year of assessment there shall be disregarded the first €3,000 or the full amount of those fees, whichever is the lesser,”

70. Having found that the Appellant made the payments for tuition fees as set out above the Commissioner must now consider the effect of section 473(4A) of the TCA1997 on these payments. The provisions of section 47A(4A) of the TCA mean that the tuition fee payments made by the Appellant must be treated as follows:

i. 2014 the first €2,750 of tuition fees paid must be disregarded

ii. 2015 the first €3,000 of tuition fees paid must be disregarded

71. Therefore the Commissioner finds that the Appellant is entitled to relief on the following amounts paid for tuition fees for his children in the following years:

i. 2014 €1,100 (being €3,850 minus €2,750)

ii. 2015 €0.00 (being €600 minus €3,000)

iii. 2016 €110.00 (being €3,110 minus €3,000)

iv. 2017 €900.00 (being €3,900 minus €3,000)

v. 2018 €11,862 (being €14,862 minus €3,000)

vi. 2019 €0.00 (being €2,494.50 minus €3,000)

Determination

72. For the reasons set out above, the Commissioner determines that the Appellant has succeeded in his appeal he is entitled to relief for payment of tuition fees as follows:

- i. 2014 €1,100 (being €3,850 minus €2,750)
- ii. 2015 €0.00 (being €600 minus €3,000)
- iii. 2016 €110.00 (being €3,110 minus €3,000)
- iv. 2017 €900.00 (being €3,900 minus €3,000)
- v. 2018 €11,862 (being €14,862 minus €3,000)
- vi. 2019 €0.00 (being €2,494.50 minus €3,000)

73. The Commissioner therefore determines that the P21 Balancing Statements for 2014, 2015, 2016, 2017, 2018 and 2019 be varied to reflect the findings reached in this determination.

74. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter 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
03rd June 2022

APPENDIX 1

2004 Liability

942.84 471.42 Collected 2020
883.29

471.42 Collected 2021
59.55

After Amendment
942.84

942.84 Offset to 2015

2004

Refunds previously received

Liability due after amended PPSN

Total Liability due after amended PPSN

2008 Liability

690.48 345.24 Collected 2020
1548.49

345.24 Collected 2021

416.16 Offset to 2015
960.51

274.32 Offset to 2016

2008

Refunds previously received

102.5

1650.99

Refund due after amended PPSN

690.48

2009 Liability

313.45 Collected 2020

626.87 313.44 Collected 2021
239.32

626.87 Offset to 2016
626.87

2009

Refunds previously received

Liability due after amended PPSN 387.55

Total Liability due after amended PPSN

2010

2010 Liability 209.86 Collected 2020 Refunds previously
received 630.49

375.27 165.41 Collected 2021

630.49

375.27 Offset to 2016 Refund due after amended PPSN
255.22

375.27

2011 Liability 453.39 Collected 2021 2011

453.39 Refunds previously received 894.71

453.39 Offset to 2016 894.71

Refund due after amended PPSN 441.32

453.39

2012 Liability 637.35 Collected 2019 2012

637.35 Refunds previously received 648.97

470.15 Offset to 2016

167.20 Offset to 2017 648.97

Refund due after amended PPSN 11.62

637.35

2013 Liability 750.75 Collected 2019 2013

750.75 Refunds previously received 1260
 118.54
 750.75 Offset to 2017 1378.54
 Refund due after amended PPSN 627.79
 750.75

2014 Liability

2014
 712.95 611.90 Collected 2019 Refunds previously received
 1438.40
 101.05 Collected 2020 Liability due after amended PPSN
 712.18
 726.22
 712.95 Offset to 2017 Refund due after amended PPSN
 13.27
 712.95

2019 2020 2021
 637.35 471.42 471.42
 750.75 345.24 345.24
 611.90 313.43 313.44
 209.86 165.41
 101.05 453.39

Total
 2000 1441.00 1748.90 5189.90
 2004 942.84
 2008 690.48
 2009 626.87

2010 375.27

2011 453.39

2012 637.35

2013 712.95

2014 750.75

5189.90 Total