AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

107TACD2023

Between:

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This appeal comes before the Tax Appeals Commission (hereinafter the "Commission") against a decision of the Revenue Commissioners (hereinafter the "Respondent") on 16 December 2022 to refuse relief to the Appellant under the Special Assignee Relief Programme (hereinafter "SARP") provided for under section 825C of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997").

Background

2. Mr [redacted] (hereinafter the "Appellant") moved to Ireland from the United Kingdom on 14 February 2022 to take up employment by way of a transfer within his existing employers structure.

3. On 18 October 2022 the Appellant's employer in Ireland completed and submitted a Form SARP 1A to the Respondent. The Form SARP 1A is entitled "*Certification by employer under Section 825C of the Taxes Consolidation Act 1997. Relief under the Special Assignee Relief Programme (SARP)*".

4. Part A of the Form SARP 1A is entitled "*Information to be completed by employer*" and requires the employer to set out the following information:

    1. Name of relevant employee;
    2. Address of relevant employee;
    3. Personal Public Service Number of relevant employee;
    4. Name and address of the relevant employer where the relevant employee was a full time employee prior to his or her arrival in the State;
    5. Whether the relevant employee was a full time employee of the relevant employer for a minimum of 6 months prior to arrival in the State;
    6. Whether the relevant employee performed duties of employments for the relevant employer at 4 above outside the State for a minimum period of 6 months prior to arrival in the State;
    7. (a) Name and address of the company for whom the relevant employee performs duties of employment in the State;
    7. (b) Whether the relevant employee has registered the employment with the Respondent;
    8. (a) The date on which the relevant employee first arrived in the State to perform duties of employment in the State;
    8. (b) The date the relevant employee first performed duties of employment in the State;
    8. (c) Whether the employee

        - will be tax resident for the year of arrival or

        - is electing to be treated as tax resident for the year of arrival;

    9. The expected duration that the relevant employee will perform duties of employment in the State;
    10. Whether the relevant income is €75,000 or more per annum (or the annualised equivalent).

5. The information relevant to this appeal which was certified by the Appellant's employer in the Form SARP 1A was that the Appellant had first arrived in the State to perform duties of employment in the State on 14 February 2022. In addition the Form SARP 1A certified that the Appellant had first performed duties of employment within the State on 14 February 2022.

6. On 25 October 2022 the Respondent replied to the Appellant's employer refusing the application for SARP relief on the basis that the application did not satisfy the requirement set out in section 825C(2a)(e) of the TCA1997 which requires that in order for a person to be treated as a relevant employee the individual's relevant employer or associated company must certify within 90 days of the employee's arrival into the State to perform the duties of his or her employment, that the individual complied with conditions referred to in section 825C(2a)(a) – (c) of the TCA1997.

7. The Respondent set out that as the application to claim SARP relief was not submitted within 90 days of arrival in the State it was not possible for the Appellant to claim SARP relief.

8. On 6 December 2022 the Appellant wrote to the Respondent requesting that his application be considered at a higher level within the Respondent stating that there was nothing clearly outlined on the Respondent's website or in the SARP application which states that it needs to be applied for within a certain timeframe.

9. On 8 December 2022 the Respondent wrote to the Appellant outlining the provisions of section 825C of the TCA1997 and stating that the SARP team had raised a number of queries with circumstances similar to that of the Appellant with the Respondent's Legislative Service Branch and had received confirmation that a refusal of SARP relief in circumstances similar to the Appellant's is correct.

10. On 8 December 2022 the Appellant replied to the Respondent and requested a full review of his application.

11. On 16 October 2022 an Assistant Principal within the Respondent wrote to the Appellant confirming that he had reviewed the Appellant's application and stated that as the application was submitted outside of the 90 day legislative timeframe, his application did not meet the legislative qualifying conditions set out in section 825C of the TCA1997 to qualify for SARP relief. In particular the Respondent stated that the application had been submitted outside of the 90 day legislative timeframe.

12. The Appellant appealed the Respondent's decision refusing him SARP relief to the Commission by way of a Notice of Appeal submitted to the Commission on 28 December 2022.

13. The oral hearing of this appeal took place on 31 May 2023.

Legislation and Guidelines

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

Section 825C(2A) of the TCA1997

"*(1) In this section—*

"relevant employer" means a company that is incorporated, and tax resident, in a country or jurisdiction with the government of which arrangements are for the time being in force by virtue of subsection (1) or (1B) of section 826

"relevant employment", in relation to a relevant employee, means an employment held by the relevant employee with a relevant employer;

…

(2A) In this section, in the case of an individual who arrives in the State in any of the tax years 2015 to 2022, 'relevant employee' means an individual –

(a) who for the whole of the 6 months immediately before his or her arrival in the State was a full time employee of a relevant employer and exercised the duties of his or her employment for that relevant employer outside the State,

(b) who arrives in the State at the request of his or her relevant employer to –

(i) perform in the State duties of his or her employment for that employer, or

(ii) to take up employment in the State with an associated company and to perform duties in the State for that company,

(c) who performs the duties referred to in paragraph (b) for a minimum period of 12 consecutive months from the date he or she first performs those duties in the State,

(d) who was not resident in the State for the 5 tax years immediately preceding the tax year in which he or she first arrives in the State for the purposes of performing the duties referred to in paragraph (b), and

(e) in respect of whom the relevant employer or associated company certifies, in such form as the Revenue Commissioners may require, within 90 days from the employee's arrival in the State to perform the duties referred to in paragraph (b), that the individual complies with the conditions set out in paragraphs (a), (b) and (c).”

Section 825C(3)(a) of the TCA1997

“*Subject to paragraph (b), where, for a tax year, a relevant employee—*

(i)is resident in the State for tax purposes and is not resident elsewhere,

(ii)performs the duties referred to in subsection (2)(a)(ii), (2A)(b) or (2AA)(b), and

(iii)has relevant income from his or her relevant employer or from the associated company, the annualised equivalent of which is—

(I)subject to clause (II), not less than €75,000, or

(II)in the case of a relevant employee who arrives in the State in any of the tax years 2023 to 2025, not less than €100,000,

and makes a claim in that behalf, then that relevant employee shall be entitled to have an amount of income, profits or gains from his or her employment with a relevant employer or from his or her employment with an associated company equal to the specified amount deducted from the income, profits or gains to be assessed on that relevant employee for that tax year.”

Submissions

Appellant’s Submissions

15. The Ground of Appeal set out by the Appellant in his Notice of Appeal is as follows:

“*I* [redacted] *have applied for SARP relief with Revenue Ireland as I have moved from the United Kingdom to Ireland with my Company* [redacted].

The SARP scheme was the attraction to work in Ireland as it was seen as a great incentive for me to move to Ireland having the reduced income tax until 2025 and furthermore offer my skill set to Ireland.

The application was made through Payroll at [redacted] *and was refused by Revenue Ireland as it was seen as been over 90 days, I contested this with Revenue Ireland and today they have confirmed that the matter is closed and that I should appeal to the Appeal Commissions.*

Revenue Ireland said that the 90 details is clearly stated on their website, however I disagree as it is not outlined clearly and is worded in such a way that it is not clearly identified on the website or indeed any of their documentation.

The tax system in Ireland is very costly and I would have not have moved from the UK without the scheme being in place as this is ultimately the attraction for individuals looking to work in Ireland and for Ireland as a country to obtain and retain skill."

16. The Appellant submitted the following as part of his Statement of Case to the Commission:

"*I moved from the UK to Ireland with my employment which was a very difficult decision as it involved me and my family, where the decision was not taken on a whim and involved in-depth decisions with my employer and family.*

There was an added benefit as I was led to believe that the Irish Government had in place SARP which entitles tax relief to workers moving from another country, which encouragers workers to move to live and work in Ireland as the tax relief is an added source of encouragement and attraction to live in Ireland, however it is not a reduced tax rate for life but certainly for a period of time and gives workers and their families the needed support to set up in a new country.

I applied for the SARP directly to the Irish revenue and was refused the benefit as I was informed that I was too late applying for the SARP discount and should have applied pretty much the day I arrived in Ireland.

I had moved lock stock and barrel from another country which was a massive and traumatic event, very stressful and Irish revenue are telling me I should have applied the day I arrived to the country!

I really don't find this very supportive or indeed an attractive incentive to attract workers to this portrayed beautiful island of Ireland.

I feel that I was totally dismissed by a government department who think they are above the law and the rest of Ireland and in my opinion have failed the Ireland and the island of Ireland.

I certainly would not recommend anyone moving to Ireland as there isn't the tax relief attraction that is offered in other countries in Europe.

I am feeling totally let down by the Irish tax authorities and I am totally stressed and this has impacted on the move to Ireland and is impacting on my work daily.

The SARP guidance states that tax relief can be claimed with in the first tax year a resident is in state - this is what I did, however my claim was refused abruptly by the Irish Revenue without respect or compassion and a total disrespectful approach to customers with no customer service or empathy shown.

The Revenue stated that I didn't need a PPSN to make the claim for SARP, however the SARP documentation states the following:

Employee must also hold a PPSN, and the employer must also confirm that it has complied with its obligations under Regulation 17(2) of the Income Tax (Employments) Regulations 2018"

17. At the outset of the oral hearing the Appellant agreed that he had arrived in the State on 14 February 2022 to take up duties of employment with his employer. He further agreed that he had first performed duties of employment on 14 February 2022.

18. In addition, the Appellant agreed that his employer had completed certification pursuant to section 825C of the TCA1997 by completing the Form SARP 1A on 18 October 2022.

19. The Appellant stated at the oral hearing that the attraction of his move from the United Kingdom to Ireland was the relief which is available under the SARP scheme. He stated that moving from the United Kingdom was a "massive" move which involved a lot of arrangements including securing rented accommodation for him and his family. He stated that the move was stressful and that completing the necessary registrations in Ireland took time and was stressful.

20. He stated that 18 October 2022 was the first opportunity for the application for SARP relief to be submitted. He stated that at the time of making the application there was nothing

that he could see on the respondent's website which set out a deadline for making the application.

21. He stated that he does not consider that a 90 day deadline is fair, sufficient or reasonably justified. In addition, he stated that a 90 day deadline does not support the attraction of SARP.

Respondent's Submissions

22. The Respondent submitted that the SARP scheme is a high value, lucrative relief which when first introduced by the Finance Act 2012 did not contain any time limit. The Respondent stated that this changed in the Finance Act 2014 when was introduced to section 825C(2A)(e) of the TCA1997 which contained a 30 time limit. A further change was then introduced by the Finance Act 2018 which extended the time limit contained in section 825C(2A)(e) of the TCA1997 to 90 days. The Respondent submitted that a 90 day time limit contained in section 825C(2A)(e) of the TCA1997 has applied since that time save and with the exception of 2020 during the COVID-19 pandemic when the time limit was extended to 180 days. The Respondent submitted that the 180 day time limit expired at the end of 2020 and the 90 day time limit has applied to SARP applications since then.

23. The Respondent submitted that because the Appellant arrived in the State on 14 February 2022 to take up duties of employment with his employer and because the Appellant had first performed duties of employment on 14 February 2022 his application for SARP made on 18 October 2022 was outside of the 90 day time limit contained in section 825C(2A)(e) of the TCA1997. As a result, the Respondent submitted, that it was prevented from granting SARP relief to the Appellant.

Material Facts

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

    i. The Appellant arrived in the State on 14 February 2022 to take up duties of employment with his employer;

    ii. The Appellant had first performed duties of employment on 14 February 2022;

    iii. The Appellant's employer completed Form SARP 1A entitled "*Certification by employer under Section 825C of the Taxes Consolidation Act 1997. Relief under the Special Assignee Relief Programme (SARP)*" on 18 October 2022;

iv. The application for SARP relief for the Appellant was submitted to the Respondent on 18 October 2022.

25. The following material fact is at issue in this appeal:

i. The Appellant is a "relevant employee" within the meaning of section 825C of the TCA1997.

26. The Commissioner has considered all of the submissions made both written and oral along with the relevant legislation in considering whether the Appellant is a "relevant employee" within the meaning of section 825C of the TCA1997

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. These principles have been confirmed in the more recent decision of the Supreme Court in its decision in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43.

29. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words contained in section 825C(2A)(e) of the TCA1997 of the TCA1997 are plain and their meaning is self-evident.

30. Section 825C(2A)(e) states as follows:

> "*In this section, in the case of an individual who arrives in the State in any of the tax years 2015 to 2022, 'relevant employee' means an individual –*
>
> *…*
>
> *(e) in respect of whom the relevant employer or associated company certifies, in such form as the Revenue Commissioners may require, within 90 days from the employee's arrival in the State to perform the duties referred to in paragraph (b), that the individual complies with the conditions set out in paragraphs (a), (b) and (c).*

31. The Commissioner considers that this wording means that in order for an employee to be a "relevant employee" for the purposes of qualifying for SARP relief, a relevant employer or associated company must certify that the employee complies with the conditions set out in section 825C(2A)(a) – (c) within 90 days from the employee's arrival in the State to perform his or her employment for that employer or to take up employment within the State with an associated company and to perform duties in the State for that company.

32. The Commissioner has considered the meaning of the word "certify". The Cambridge English Dictionary defines the word "certify" as meaning "*to say in a formal or official way, usually in the form of an official document, that something is true or correct*". The Commissioner considers that in the context of section 825C(2A)(e) of the TCA1997 the meaning of the word certify is plain and self-evident and means that a relevant employer or associated company must complete and sign the Form SARP 1A, that being the form which the Respondent requires to be completed.

33. The Commissioner has already found as material facts that:

    i. The Appellant arrived in the State on 14 February 2022 to take up duties of employment with his employer;
    ii. The Appellant had first performed duties of employment on 14 February 2022;
    iii. The Appellant's employer completed Form SARP 1A entitled "Certification by employer under Section 825C of the Taxes Consolidation Act 1997. Relief under the Special Assignee Relief Programme (SARP)" on 18 October 2022;
    iv. The application for SARP relief for the Appellant was submitted to the Respondent on 18 October 2022.

34. Applying the legislation to the already accepted Material Facts, the Commissioner finds that the Appellant did not become a "relevant employee" for the purposes of the SARP scheme as certification by the relevant employer was not made within 90 days from the

Appellant's arrival in the State to perform his or her employment for that employer or to take up employment within the State with an associated company and to perform duties in the State for that company. That is to say that the certification in the Form SARP 1A should have been completed by the Appellant's employer before 15 May 2022. This did not occur.

35. Therefore this material fact is not accepted. The Commissioner therefore finds as a material fact that the Appellant is not a "relevant employee" within the meaning of section 825C of the TCA1997.

36. For the avoidance of doubt the Commissioner accepts the following as material facts in this appeal:

    i. The Appellant arrived in the State on 14 February 2022 to take up duties of employment with his employer;

    ii. The Appellant had first performed duties of employment on 14 February 2022;

    iii. The Appellant's employer completed Form SARP 1A entitled "Certification by employer under Section 825C of the Taxes Consolidation Act 1997. Relief under the Special Assignee Relief Programme (SARP)" on 18 October 2022;

    iv. The application for SARP relief for the Appellant was submitted to the Respondent on 18 October 2022;

    v. The Appellant is not a "relevant employee" within the meaning of section 825C of the TCA1997.

Analysis

37. 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, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

> *"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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable."*

38. The question which arises for the Commissioner to consider in this appeal is whether the Respondent was correct in its decision to refuse to grant SARP relief to the Appellant on the basis that the certification by the Appellant's employer in the form of the completion of

a Form SARP 1A was completed outside of the 90 time limit contained in section 825C(2A)(e) of the TCA1997.

39. Section 825C(3)(a) of the TCA1997 sets out that:

> "*… where, for a tax year, a relevant employee—*
>
> *(i)is resident in the State for tax purposes and is not resident elsewhere,*
>
> *(ii)performs the duties referred to in subsection (2)(a)(ii), (2A)(b) or (2AA)(b), and*
>
> *(iii)has relevant income from his or her relevant employer or from the associated company, the annualised equivalent of which is—*
>
> *(I)subject to clause (II), not less than €75,000, or*
>
> *(II)in the case of a relevant employee who arrives in the State in any of the tax years 2023 to 2025, not less than €100,000,*
>
> *and makes a claim in that behalf, then that relevant employee shall be entitled to have an amount of income, profits or gains from his or her employment with a relevant employer or from his or her employment with an associated company equal to the specified amount deducted from the income, profits or gains to be assessed on that relevant employee for that tax year.*"

40. Applying the principles of statutory interpretation as set affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words contained in section 825C(3)(a) of the TCA1997 are plain and their meaning is self-evident. The Commissioner finds that the words mean that a "relevant employee" is entitled to avail of SARP relief where they meet the criteria set out in section 825(3)(a)(i) – (iii) and where they make a claim for SARP relief.

41. The Commissioner has already found as a material fact that the Appellant is not a "relevant employee". As a result, the Appellant is not entitled to the SARP relief as contained in section 825C(3)(a) of the TCA1997.

Determination

42. For the reasons set out above, the Commissioner determines that the Appellant in this appeal has not succeeded in showing that he was entitled to SARP relief and has not succeeded in showing that the Respondent's decision to refuse him SARP relief was incorrect.

43. It is understandable that the Appellant will be disappointed with the outcome of his appeal. This is an unfortunate situation for the Appellant. The Appellant was correct to check to see whether his legal rights were correctly applied.

44. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949AL 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 42 days of receipt in accordance with the provisions set out in the TCA1997.

Clare O'Driscoll
Appeal Commissioner
6 June 2023