



Between

98TACD2023

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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”) against the refusal by the revenue commissioners (“the Respondent”) to grant relief under the Special Assignee Relief Programme (“SARP”) to the Appellant, in accordance with the provisions of section 825C TCA 1997.
2. The relief under SARP was refused by the Respondent on the grounds that the Form SARP 1A was not submitted to the Respondent within 90 days of the Appellant’s arrival in the State and consequently, the Appellant failed to meet the qualifying condition pursuant to Section 825C (2A)(e) TCA 1997.
3. The appeal proceeded by way of a remote hearing on 28 March 2023. The Appellant was present at the hearing of the appeal and the Respondent was represented by ██████████  
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## **Background**

4. On 13 February 2022, the Appellant arrived in Ireland and commenced employment. He had travelled to the State on an internal transfer with his employer ██████████ (“the Company”).
5. On 18 February 2022, the Appellant applied for a PPS Number (“personal public service (PPS) number” (“PPSN”)) on the Respondent’s portal. On 4 May 2022, the Appellant received his PPSN.
6. On 12 May 2022, the Appellant emailed the Respondent seeking an appointment to obtain a public services card (“PSC”) A PSC authenticates identity to assist with accessing a range of public services. On 17 May 2022, the Appellant was informed that the earliest appointment for a PSC card would be in August 2022.
7. On 2 June 2022, the Appellant again corresponded in relation to a PSC. On 17 June 2022, the Appellant walked into PSC Centre ██████████ and waited six hours to obtain a PSC card interview. On 24 June 2022, the Appellant received his PSC.
8. On 24 June 2022, the Appellant submitted his Form SARP 1A on the “My Enquiries” section on the Respondent’s portal.
9. On 27 June 2022, the Respondent issued correspondence to the Appellant to state that *“as the application for SARP was not submitted to Revenue within 90 days of arrival in the State, you do not now qualify for SARP relief as you have failed to meet the qualifying condition set out in Section 825C 2A(e). I understand the impact the loss of this relief will have on you and I empathise, however, Revenue are bound by the legislation and cannot make any concessionary measures in this case”*.
10. On 28 June 2022, the Appellant wrote to the Respondent to explain that he could not submit his Form SARP 1A within 90 days, as both his PPSN and PSC took a considerable amount of time to issue, despite the application for same being made in early course. On 30 June 2022, the Appellant wrote again to the Respondent to state that his employer had notified the Respondent of the Form SARP 1A.
11. On 25 August 2022, the Respondent issued formal correspondence refusing the Appellant SARP relief. Consequently, on 20 October 2022, the Appellant duly appealed to the Commission.

## **Legislation and Guidelines**

12. The legislation relevant to this appeal is as follows:-

13. Section 825C(2A)(e) TCA 1997, Special relief assignee programme, *inter alia* provides:-

(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).*

## **Submissions**

### *Appellant*

14. The Appellant gave evidence in respect of his appeal and the Commissioner sets out hereunder a summary of the evidence given:-

- (i) He stated that he is employed by the Company and arrived in Ireland on 13 February 2022 to take up employment via an internal transfer in the Company due to his skill set. He said that he has worked in [REDACTED] previously. He testified that on his arrival, the Human Resources (“HR”) department furnished him with a number of forms to complete including the Form SARP 1A. He gave evidence that he completed same and returned the forms to his employer, who certified the forms.
- (ii) He confirmed that he attempted to upload the certified Form SARP 1A to the Respondent’s “My Enquiries” portal, but was told that he needed a PPSN. He stated that he applied for same on 18 February 2022 but did not receive the PPSN until 4 May 2022. He said that unfortunately, receiving the PPSN did not suffice and that did not gain access to the “My Enquiries” portal. He said that he was then informed that he would need a PSC and applied for same on 12 May. It appears the PSC was required to provide identification and access to My Enquiries. He mentioned that he was told that it would be August 2022 until he was assigned an interview for same so he presented at the [REDACTED] office on 24 June 2022 and waited 6 hours for an interview. He received his PSC and on the same date, as he now had the PSC, uploaded the form on the MyEnquiries portal.
- (iii) He said that he arrived into a work environment where a large number of employees were working from home, including HR and that he did not have the benefit of asking his colleagues what he should do with the form. In addition, he stated that his Employer had not filed a Form SARP 1A previously and was also unsure of the process.
- (iv) He said that he looked up the legislation and could see the timeline. He stated that in hindsight, he should have spoken to someone or gained advice on the filing of the form, as the relief is important. He mentioned that the timeline was extended to 6 months for submission of the form during the Covid-19 pandemic and is now asking for clemency with his own situation. He said that he could not see the logic of an employer filling the form in the 90 day period, without a PPSN, for a form to sit on a desk until a PPSN is assigned to an employee. He said it would make much more sense for an employee to furnish the form and in fact his employer stated that it was not their role to become involved in employees tax affairs.

*Respondent*

15. Mr. █████ gave evidence on behalf of the Respondent and the Commissioner sets out hereunder a summary of the evidence given:-

- (i) The relief under SARP was refused as Form SARP 1A was received outside of the 90 day period prescribed by section 825C (2A)(e) TCA 1997.
- (ii) He has spoken with the Respondent's legal department on other cases in relation to concessions, but was advised that no concessions can be given in respect of the timeline of 90 days.
- (iii) While the timeline was increased to 150 days during the COVID-19 pandemic that was not the case at the time of the Appellant's application.
- (iv) He mentioned that 99% of forms are submitted by employers or agents and it is unusual that an employee would submit a Form SARP 1A. He said that a form can be submitted without a PPSN but will not be processed until a PPSN is provided.
- (v) He said that he understood that the Appellant's Form SARP 1A was dated 28 February 2022, but that the 90 days in the legislative provisions means that it ***should land on the desk of the Respondent***, rather than being certified within 90 days.

**Material Facts**

16. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

- (i) On 13 February 2022, the Appellant arrived in this jurisdiction.
- (ii) The Appellant relocated to this jurisdiction to work following an internal transfer within the Company.
- (iii) On 18 February 2022, the Appellant applied for a PPSN and on 4 May 2022, the Appellant was issued a PPSN.
- (iv) On 28 February 2022, the Company, the Appellant's employer certified the Appellant's Form SARP 1A.
- (v) The Appellant could not submit the SARP 1A form on My Enquiries as he required a PSC.

- (vi) On 12 May 2022, the Appellant applied for a PSC. On 24 June 2022, the Appellant was issued a PSC.
- (vii) As soon as the Appellant received his PSC, which granted access to “My Enquiries” on the same day, 24 June 2022, the Appellant submitted his Form SARP 1A on the “My Enquiries” section on the Respondent’s portal.
- (viii) The Appellant as a matter of fact satisfied the criteria of working for a “relevant employer” and working in a “relevant employment” under section 825C(1) of the TCA 1997.
- (ix) The Appellant as a matter of fact satisfied the criteria of being a “relevant employee” within section 825(2A)(a) to (d) of the TCA 1997.

### **Analysis**

17. 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 paragraph 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”.*

18. The Appellant’s appeal relates to the refusal by the Respondent to grant relief to the Appellant under the SARP in accordance with section 825C TCA 1997. The Respondent denied the relief on the basis that the application was received by the Respondent “*outside the 90 day legislative time limit stated...to enable the Appellant to qualify as a “relevant employee” for SARP relief*”. Therefore, the Commissioner must interpret provisions of section 825C (2A)(e) TCA 1997. The only matter in dispute is whether the Appellant qualifies under section 825C (2A)(e) TCA 1997. There is no dispute that he qualifies as a matter of fact under the other criteria, as found above.

19. In relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the judgment of Kennedy CJ in *Revenue Commissioners v Doorley* [1933] I.R. 750 at page 765 wherein he held that:

*"The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms...for no person is to be subject to taxation unless brought within the letter of the taxing statute, that is...as interpreted with the assistance of the ordinary canons of interpretation applicable to the Acts of Parliament."*

20. In addition, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in 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 ("Perrigo") at paragraph 74:

*"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. 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”.*

21. The Commissioner is satisfied that the approach to be taken in relation to the interpretation of section 825C (2A)(e) TCA 1997 is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning. The Commissioner notes that the Appellant is being provided with a relief or exemption from tax. Hence, is reminded of principles set out in paragraph 74, subparagraph (a) to (g), as referred to above in *Perrigo*.

22. With the aforementioned approach in mind the Commissioner has considered section 825C (2A)(e) TCA 1997. The Commissioner is satisfied that the words of the statutory provision are plain and their meaning is self-evident. The section provides for a “relevant employee” who must meet a number of conditions *inter alia* that the employer makes a certification within 90 days of an employee’s arrival in the State. The operative words of the section state that “*in respect of whom the relevant employer or associated company*



*certifies.... within 90 days from the employee's arrival in the State*". Of note, is the use of the word "certifies".

23. The Commissioner notes that the wording in section 825C (2A)(e) TCA 1997 is very particular in the use of the comma. Again, the literal interpretation means that the Commissioner must have regard to the use of grammatical devices such as the comma and they are interpreted given their usual function. The Commissioner notes that the use of the two commas in the requisite section in dispute (section 825C (2A)(e)) come after the word "certifies" and after the word "require". The usual meaning and construction of the comma in this sentence means that the word certifies is linked with the within 90 days. The use of the two commas in relation to the expression "in such form as the Revenue Commissioners may require" signifies to the reader that that expression is separate from the verb certifies and the timeframe for certification. There is no other possible meaning which makes sense. The sentence could be read without the expression in the commas namely "in respect of whom the relevant employer or associated company certifies within 90 days from the employee's arrival". The expression after the first comma namely "in such form as the Revenue Commissioners may require" confirms to the reader the type of form that the employer is required to use to certify the employee's arrival within the 90 days. There can be no other logical reading which complies with the guidance given and summarised in *Perrigo*.
24. The Commissioner will now in accordance with the guidance of statutory interpretation as summarised in *Perrigo* go through the various steps. The Commissioner must give their words their ordinary, basic and natural meaning and that should prevail. Then, even with this approach, the statutory provision must be seen in context and the context is critical, both immediate and proximate, certainly within the TCA 1997 as a whole, but in some circumstances perhaps even further than that. The Commissioner does not consider that the words in the engaged section 825(2A)(e) TCA 1997 are imprecise or ambiguous and so there is no requirement to proceed to a purposive approach. But whatever approach is taken, as confirmed in *Perrigo*, the Commissioner must give each word and phrase used in the statute a meaning, as it is presumed that the Oireachtas did not intend to use words or phrases without meaning. Again, the Commissioner must also have regard to the guidance on exemptions and again must be interpreted within the letter of the statute with the assistance of the ordinary canons for the interpretation of statutes.

**The ordinary, basic and natural meaning of “certify” – application of the principle in paragraph 74, subparagraph (a) and (d) in *Perrigo***

25. The Commissioner has checked the meaning of certify in different dictionary definitions to establish its ordinary meaning. It is a word known to the public and hence has an ordinary and plain meaning. It means to say in a formal or official way, usually in the form of an official document, that something is true or correct. Another definition states that it means to attest or confirm in a formal statement. A member of the public would be able to provide that definition if stopped in the street. They would know the definition of a medical practitioner certifying someone is incapacitated by reason of mental health (previously known as insanity). They would know the expression that a doctor certifies death. The public would be able to inform any request that the doctor would attest on an official form that the deceased is dead. That would be the “certification”. The public would know that is different from the registration of death.
26. The public would know the expression someone has certified that a product is fit for purpose. The expression “to certify” indicates the expression on a formal document (usually by a signature) that something is factually correct. The Commissioner must therefore in this appeal, and with regard to this statutory provision give the words their ordinary, basic and natural meaning. In this regard, the ordinary meaning is that the employer certifies (i.e. signs in an official capacity) within 90 days the employee’s arrival in the State to perform the duties and that the individual complies with all the other statutory provisions set out in subparagraphs (a), (b) and (c). The employer has stated on a form that those conditions have been met and that factual information is true. Hence, it is certifying that information. The form provided by Revenue is the mechanism only of how they certify. The 90 days relates to the certification time limit as set out in the statutory provision. There is no other way that the sentence can be read to give it its ordinary, basic and natural meaning. There is no reference to the Revenue Commissioners receiving the form in 90 days. There is no reference to submitting or delivering the form within 90 days. The expression is certifies within 90 days. The words “receive”, “submit” or even “deliver” do not appear in section 825C (2A)(e) TCA 1997. It is not for the Commissioner or indeed the Respondent to provide wording not contained in a statutory provision. To do so would frustrate the ordinary, basic and natural meaning of the words and sentence and go against the judicial guidance in case law.
27. The Respondent argues that the Appellant has not satisfied the condition under section 825C (2A)(e) TCA 1997 and therefore cannot be afforded the relief sought as it did not receive the form until **21 June 2022**. The Respondent agreed when it was put to them by the Commissioner that its interpretation of the legislation is that the Respondent must

receive the Form SARP 1A within 90 days of the arrival in the State. Consequently, as the Respondent was not in receipt of the Form SARP 1A until 21 June 2022, the Respondent determined that the Appellant cannot avail of the relief. Moreover, the Respondent's witness gave evidence that it is not entitled to apply its discretion, in order to allow an application for relief under section 825C TCA 1997.

28. The Respondent's witness gave evidence that the statutory provision was adhered to when the form "landed on his desk". But that is not within the statutory provision and it is important that the Commissioner does not read in to any statutory provision. That is against the literal approach and all the guidance from case law as summarised in *Perrigo*. The Commissioner must, in accordance with that judicial guidance, assume that the Oireachtas did not intend to use a surplusage or to use words or phrases without meaning. The Commissioner must assume that the word "certify" was specifically chosen by the Oireachtas and if they intended to include the word "receive", "submit" or "deliver" to the Respondent that would have been included.
29. The evidence of the Appellant was that he arrived in the jurisdiction on 13 February 2022 and commenced employment. The Commissioner has reviewed the Form SARP 1A submitted with this appeal and it is plain to see that the Appellant's employer certified the form on 28 February 2022, a date within the 90 day period afforded under the legislative provisions.
30. The Respondent's witness agreed with the Commissioner when asked that the Respondent interprets the legislation as "the form landing on its desk within 90 days". This is not correct. The legislation does not state that the employer (or employee) shall deliver or submit the Form SARP 1A to the Respondent within 90 days, or that the Respondent must receive the certificated form within 90 days. The legislation states "certifies" within 90 days, plain and basic. If the Oireachtas had required the certification to be received by the Respondent within a certain timeframe it would have specified that it must be returned or received by the Respondent. It did not do so.
31. Of notable importance, the Commissioner observes the wording in section 825(C)(10) TCA 1997 which provides that "*On or before 23 February following each tax year, a relevant employer or associated company shall deliver to the Revenue Commissioners an annual return, in such form as the Revenue Commissioners may require, setting out-*". The language in subsection (10) is precise in terms of the use of the date by the legislature, namely 23 February and of significance in this appeal, the subsection uses the words "shall deliver", the very words absent from subsection (2A)(e). Subsection (2A)(e) refers only to certification, not delivery. Moreover, subsection (10) is in similar grammatical form to

subsection (2A)(e,) in that the use of commas is made to delineate the words “*in such form as the Revenue Commissioners may require*”. The Commissioner considers that it must be presumed that punctuation such as a comma, is used intentionally by the legislative drafters and the nuances a comma introduces to a sentence is important.

32. It is for that reason that the Commissioner finds that the Respondent was incorrect to refuse the relief sought by the Appellant. Accordingly, the Appellant should be afforded the SARP relief sought. The Appellant’s employer certified on the form provided by the Respondent within the requisite 90 days of the Appellant’s arrival to the State and confirmed and certified on the required form that he also complied with the other criteria. This is in accordance with the legislative requirements as provided for in section 825C (2A)(e) TCA 1997.

**Context of the Legislation – application of the principle in paragraph 74, subparagraph (b) in *Perrigo***

33. The Commissioner has also considered the context of the words in the TCA 1997 and as provided for in the judicial guidance, further than that, namely what was the relief introduced to achieve. This is in accordance with the well settled principles of statutory interpretation as enunciated in paragraph 74, subparagraph (b) *Perrigo*.
34. The Finance Act 2012 introduced section 825C TCA 1997 and the section provides income tax relief for certain individuals to work in the State. The Commissioner has considered the Oireachtas debates in relation to the introduction of said relief and is satisfied that the aim or intention of the relief is to reduce the cost to employers of assigning skilled individuals in their companies from abroad to take up positions in the Irish-based operations of their employer or an associated company, thereby facilitating the creation of jobs and the development and expansion of businesses in Ireland. Thus, the Commissioner is satisfied that the interpretation the Respondent contends for namely that Form SARF 1A would “land on its desk” within 90 days, is not in keeping with that intention.
35. It is pertinent to note that the Respondent’s witness agreed with the Commissioner when asked that the Respondent interprets the legislation as “*the form landing on its desk within 90 days*”. It is the Commissioner’s view, that there are significant difficulties with the Respondent’s argument. The legislation does not state that the employer (or employee) shall “submit”, “return” or “deliver” to the Respondent within 90 days, the legislation states “certifies” within 90 days. There are no references in section 825C TCA 1997 to a mandatory requirement on the employer to submit or deliver to the Respondent, Form SARF 1A within 90 days of the employee’s arrival in the State. To do so would negate the purpose of the statutory provision which was to reduce the cost to employers by attracting

skills from abroad. It is impossible to comply with the interpretation of the Respondent to receive the form as an applicant needs a PPSN and needs a PSC to gain access to the Respondent's computer. In addition, any applicant would also need to have the correct form (with the administrative notes which confirmed a PPSN was not required to submit the form) and would need to know that it could be submitted by post.

**The Practical Forms and Information Available - application of the principle in paragraph 74, subparagraph (g) in *Perrigo***

36. For the sake of completeness and taking further account of the judicial guidance, the Commissioner has considered the principle that an exemption from 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. The Commissioner has no doubt that the provisions of section 825C TCA 1997 affording exemption to tax are clear and self-evident. Nevertheless, the Commissioner observes that the Respondent's literature and associated forms are not. The Commissioner has had regard to the Respondent's Tax and Duty Manual Part 34-00-10, at page 4 and 10 which *inter alia* states

*"Where conditions for the relief are satisfied, an employer must file a Form SARP 1A for each employee availing of SARP relief. The form must be submitted to Revenue within 90 days (previously 30 days) of the employee's arrival in the State to perform the duties of his or her employment in the State. An employee who claims SARP is deemed to be a chargeable person for income tax purposes and must file an annual income tax return.*

.....

*With effect from 1 January 2023, a new arrival must obtain a PPSN within 90 days of arrival in the State, this being the deadline for the submission of the employer certification. If the employee does not have a PPSN upon travelling to the State, the employee should be referred to the Department of Social Protection (DSP) to obtain one"*

37. There are no references in section 825C TCA 1997 to a mandatory requirement on the employer to submit to the Respondent Form SARP 1A within 90 days of the employee's arrival in the State. It appears the Respondent has taken its own interpretation of the statutory provisions and added in words such as "file" the form. That is not within the statutory provision.

38. In addition, whilst section 18 Finance Act 2022 provides for additional requirements that must be satisfied from 1 January 2023, namely that a new arrival must obtain a PPSN within 90 days of arrival in the State, this being the deadline for the submission of the employer certification, there was no such requirement on the Appellant in 2022.

39. Further, the Commissioner considered page 16 of the Respondent's Tax and Duty Manual Part 34-00-10 which under the heading "Employer Certification and Reporting" states

*"For employees arriving in the State in any of the tax years 2015 to 2025, certification is required to be made by the employer on Form SARP 1A, for each employee availing of SARP relief, within 90 days (previously 30 days) of the employee's arrival in the State.....*

*Failure to submit a Form SARP 1A within the 90-day time limit will result in the refusal of SARP relief, as this is a specific legislative requirement (i.e. a condition to be satisfied in order for the individual to be regarded as a "relevant employee"). There is an expectation on Revenue's part that employers should be in a position to submit a fully completed Form SARP1A within this timeframe*

*....." [Emphasis added]*

40. The evidence of the Appellant is that he arrived in the State on 13 February 2022 and commenced employment. The Commissioner has reviewed the Form SARP 1A submitted with this appeal and it is plain to see that on 28 February 2022, the Appellant's employer certified Part B of the Form SARP 1A, a date within the 90 day period afforded under the legislative provisions.

41. The Respondent argues that the Appellant has not satisfied the provisions in section 825C (2A)(e) TCA 1997 and therefore, cannot be afforded the relief sought, as it did not receive the Appellant's Form SARP 1A until 21 June 2022.

42. The Commissioner has considered the Form SARP 1A which was completed by the Appellant, in addition to the 2022 and 2023 Form SARP 1A and guidance produced by the Respondent, which is available publically on the Respondent's webpage.

43. Separately, the Commissioner observes that there exists a SARP Employer Return for the period 1 January 2022 to 31 December 2022 which is provided on the Respondent's webpage through a link which sits next to the link to the Form SARP 1A. The Form is for an employer who is required to prepare and deliver a return, for the period 1 January 2022 to 31 December 2022, in respect of all employees who availed of SARP [Emphasis added]. The Form states that it should be returned to the Respondent on or before 23 February

2023. The Commissioner observes that the guidance on both the preparation and delivery time limits in relation to this form are specific.

44. Additionally, the Commissioner understands that any SARP relief claimed is disclosed by a taxpayer in the Income Tax Return and Self-Assessment Form 11.<sup>1</sup> Thus, it is not clear to the Commissioner why a time limit of 90 days for the **receipt** of a Form SARP 1A would be imposed, when any relief is dealt with at the end of the tax year by both the taxpayer and employer, rather than a requirement that a Form SARP 1A is certified within 90 days. Applying a 90 day return requirement is not consistent with the wording of the legislation and the intention of the legislature and the practical application of the tax returns by the employer and employee. In addition, it was permissible to send in the form within 90 days even if it was not complete and had no PPSN. The Respondent confirmed that it would sit on its desk and not be actioned. So, that negates any interpretation that the 90 day time limit is critical in terms of receipt of a form.

45. Returning to the Form SARP 1A which was completed by the Appellant, the Commissioner notes the wording at the top of page 1 which states

*“The completed form should be returned through MyEnquiries or to the National SARP Unit, 9/15 Upper O’Connell St., Dublin 1, D01 YT32 within 90 days of the relevant employee’s arrival in the State to perform duties of employment in the State”.*

[Emphasis added]

46. Further, the Commissioner notes that on page 3 of the Form SARP 1A for 2022, under the heading “SARP relief explanatory notes”, it states

*“Relevant employee - s825C(2A) TCA 97*

*(e) in respect of whom the relevant employer or associated company of the relevant employer certifies the information contained in Form SARP 1A.* [Emphasis added]

47. The Commissioner notes that the wording per the Appellant’s completed Form SARP 1A is not in accordance with the wording of the statutory provision. Of note, there is no reference to 90 days at page 3 of the completed Form SARP 1A.

48. Additionally, the Commissioner notes the 2022 Form SARP 1A<sup>2</sup> available on the Respondent’s website. Despite the Appellant applying for relief in 2022, this form is not

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<sup>1</sup> <https://www.revenue.ie/en/self-assessment-and-self-employment/documents/form11.pdf>

<sup>2</sup> <https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/documents/form-sarp-1a-2022.pdf>

consistent with the Form SARP 1A completed by the Appellant, forming the basis for his claim for relief. The Commissioner observes that the opening heading is largely consistent with the Form SARP 1A completed by the Appellant, such that it states that the completed form must be returned to the Respondent within 90 days of arrival in the State. However, the Commissioner does note that the Form SARP 1A completed by the Appellant uses the word “**should**” as opposed to “must” which is contained in the 2022 Form SARP 1A on the website, which implies a mandatory requirement. Moreover, the Commissioner observes the introduction of a section in the 2022 Form SARP 1A online, entitled “Administrative Notes”. There is no such section contained in the Form SARP 1A which was completed by the Appellant. At page 3 of the 2022 Form SARP 1A online it states

*“1. If the relevant employee does not currently have a PPSN, then this application may be submitted without this information to ensure compliance with the 90 day employer certification deadline.”*

49. The wording used on the **2023** Form SARP 1A<sup>3</sup> which is also to be found online is different to the 2022 Form SARP 1A, wherein at page 3 of the 2023 Form SARP 1A under the heading “SARP relief explanatory notes” it states

“.....

*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),....”*

50. Notably, unlike the 2022 Form SARP 1A, the 2023 Form SARP 1A does not contain a section entitled “Administrative notes”. Both the 2022 Form SARP 1A and the 2023 Form SARP 1A contain a section entitled “SARP relief explanatory notes.” In addition, the various SARP 1A that the Commissioner has studied do not all include the use of the commas in relation to the employer certifies and the 90 days. It is noted that it is only the 2023 version which has the legislation quoted correctly with the commas.

51. Having considered the Appellant’s completed Form SARP 1A, the Respondent’s 2022 Form SARP 1A and the 2023 Form SARP 1A in comparison, which are available online, in addition to the Respondent’s guidance documentation available to taxpayers, the following observations occur to the Commissioner. There is a lack of consistent information for members of the public completing a Form SARP 1A. The explanatory notes in the Appellant’s completed form and the 2022 Form SARP 1A available online, do not reflect

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<sup>3</sup> <https://www.revenue.ie/en/personal-tax-credits-reliefs-and-exemptions/documents/form-sarp-1a.pdf>



the language of the applicable legislative provisions, whereas it appears to the Commissioner that the Respondent has attempted to mirror the applicable legislative provisions, in the 2023 Form SARP 1A. Moreover, the guidance notes use differing language, such as “*certification is required to be made by an employer....within 90 days*” and “*Failure to submit a Form SARP 1A within the 90 day time-limit*”. This is unhelpful for an individual to understand, particularly an individual arriving into the State from another jurisdiction. The Commissioner notes that the legislation does not require submission or receipt by the Respondent of the form and it is imperative that administrative forms do not assume a statutory requirement and time limit not set out in legislation.

52. The Commissioner has considered the Appellant’s evidence, such that once his employer certified the Form SARP 1A he attempted to upload the Form SARP 1A to the Respondent’s MyEnquiries portal, but was prevented from doing so in the absence of a PPSN. The Appellant’s evidence was that he made every effort to obtain his PPSN in a timely manner and once obtained he again tried to submit his completed Form SARP 1A through MyEnquiries, but was told he required a PSC. Again, the evidence was that the Appellant made every effort to secure a PSC in a timely manner, including travelling to Dun Laoghaire, wherein he waited six hours for an appointment to obtain a PSC. He then proceeded to submit the completed Form SARP 1A using MyEnquiries. The Commissioner considered the evidence of the Appellant to be credible.
53. It is obvious to the Commissioner that it is near impossible to obtain a PPSN within the time prescribed by the Respondent herein and thus, the options available for complying with the Respondent’s interpretation of the timelines, in the absence of a PPSN, is to simply post the Form SARP 1A to the Respondent and allow the Form SARP 1A to sit idle for many months in the offices of the Respondent, until a PPSN is issued. There appears to be no process for submitting the Form SARP 1A through the use of the Respondent’s online secure portal, absent a PPSN and a PSC (which appears to be required to have a MyEnquiries/MyAccount for identification verification). It cannot be the case that the 90 days relates to receipt of the form by the Respondent, if the form can be sent incomplete due to lack of PPSN and then sits idle in the offices of the Respondent. This again confirms to the Commissioner that she has the correct interpretation of the legislation, namely the certification must be within 90 days, not the receipt of the Form SARP 1A.
54. It would negate the literal meaning of the statutory provision if the Commissioner read into the legislation the words submit or received. In addition, it would be unclear from the legislation as to whether the Form SARP1A had to be sent within the 90 days or received within 90 days and how would the applicant prove it had been received if he or she could

send it by post (as set out in the Respondent's notes). If it can be sent by post without a PPSN, then would the applicant have to prove it was received within the 90 days by registered post.

## **Conclusion**

55. The Commissioner is satisfied that the approach to be taken in relation to the interpretation of section 825C (2A)(e) TCA 1997 is a literal interpretative approach and that the wording in the statute must be given its plain, ordinary and natural meaning. In addition, context is critical.

56. The Commissioner does not consider that the words in the engaged section 825C (2A)(e) TCA 1997 are imprecise or ambiguous and as such, there was no requirement in this appeal to proceed to a purposive approach to the interpretation of section 825C (2A)(e) TCA 1997 and the application of the principle at paragraph 74, subparagraph (c) in *Perrigo*.

57. As stated above, the Commissioner has considered if submission or receipt of the Form SARP 1A is the effect of the statutory provision. But again, the Commissioner observes the use of a comma after the word "certifies" and again the use of a comma after the word "require". The Commissioner considers that it must be presumed that punctuation such as a comma, is used intentionally by the legislative drafters and as such, the nuances which punctuation introduce to a sentence are important when interpreting a legislative provision. The relevant sentence herein is as follows:- "*...employer certifies, in such form as the Revenue Commissioners may require, within 90 days from the employee's arrival*". This does not allow for an interpretation that the 90 days relates to the receipt, submission or delivery of the form. The 90 days, as stated above, relates to the certification.

58. Accordingly, it is the Commissioner's view that the natural and ordinary meaning of the words in section 825C (2A)(e) TCA 1997 is that the word "certifies", and the use of the commas in relation to certifies, relates to the 90 days from arrival into the State. In addition, taking into account its context, both immediate and proximate, is that the employer must certify Form SARP 1A (in any form required by the Respondent) within 90 days of arrival. Thus, the Commissioner is satisfied that the interpretation the Respondent contends for, namely that the Form SARP 1A would "*land on its desk*" within 90 days, is not correct. It is for that reason that the Commissioner finds that the Respondent was incorrect to refuse the relief sought by the Appellant.

59. In summary, the Commissioner is satisfied that based on the ordinary, basic and natural wording, "certifies" means complete a form in an official capacity. The 90 days relates to the arrival of the employee in the State and the certification. The use of the commas

confirms this interpretation. There is no wording relating to filing, submitting or receipt of any such form by the Respondent. In addition, the practical application of seeking the relief and the intention of the legislation and the context of same confirm that the relief was introduced to assist the economy and attract employees from abroad. It cannot be the case that it is impossible to apply for the relief unless one knows that the form can be submitted without a PPSN by paper format. That negates having a time limit. In addition, the computerisation of the form and the requirement for a PPSN and a PSC before one can upload the form, which all negate against the 90 days, again confirms that the legislature had common sense and hence, the 90 days relates to the certification that the employee met the criteria and not the near impossible uploading of a form on a computer system. This again confirms to the Commissioner that the correct interpretation is as described above.

60. Consequently, the Appellant has shown on balance that he satisfies the conditions applicable to be afforded the relief sought in accordance with the provisions of section 825C TCA 1997.

#### **Determination**

61. As such and for the reasons set out above, the Commissioner determines that the Appellant has satisfied the conditions provided for in section 825C TCA 1997 and is entitled to be granted relief under the SARP.

62. 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 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine  
Appeal Commissioner  
11 May 2023