



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

244TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) in relation to a determination by the Revenue Commissioners (“the Respondent”) regarding a payment made to him by his former employer [REDACTED] (“the Employer”), in respect of which the Appellant paid income tax in the amount of €18,510.80 and Universal Social Charge in the amount of €925.54.
2. The appeal proceeded by way of a hearing on 20 May 2025. The Appellant was represented by Junior Counsel and the Respondent was represented by Junior Counsel.

Background

3. Tax legislation exempts certain payments from income tax where they are made by an employer to an employee on account of their disability. In this appeal, the Appellant claimed that he was entitled to an exemption from income tax on this basis.
4. The Appellant was employed [REDACTED]. Around 2010 or 2011, he became ill and took periods of sick leave. In 2015, he went on unpaid sick leave. In 2019, he took a [REDACTED] claim against the Employer (“the Claim”). In 2023, the Appellant and the Employer reached agreement on a termination payment.
5. On 31 July 2023, the Appellant (acting through his solicitor) requested the Respondent to provide a finding that the proposed termination payment was exempt from income tax under section 201(2)(a) of the Taxes Consolidation Act 1997 (“TCA 1997”). There followed correspondence between the Appellant and the Respondent.
6. On 24 November 2023, the Respondent determined that the proposed termination payment did not qualify for an exemption from income tax under section 201(2)(a) of the TCA 1997, on the ground that the facts and documentation provided indicated that the motivation for the termination payment was the agreed withdrawal of the Claim.
7. On 15 December 2023, the solicitors for the Employer wrote to the Respondent in connection with the termination payment (“the Employer’s Letter”). On 20 February 2024, the Appellant referred to the Employer’s Letter and asked the Respondent to reconsider the Appellant’s application.
8. On 17 April 2024, the Respondent wrote to the Appellant to confirm its determination that the proposed termination payment did not qualify for exemption from income tax under section 201(2)(a) of the TCA 1997, on the ground that the payment did not specifically relate to the termination of employment arising on the inability of an employee to carry

out his functions due to injury or disability and the facts and documentation underlined that a significant motivation for the payment was the agreed withdrawal of the Claim.

9. The Appellant and the Employer signed the termination agreement [REDACTED] [REDACTED] 2024 ("the Agreement"). On 1 May 2024, the Employer paid the Appellant a termination payment in the amount of €130,000 ("the Payment"), in respect of which the Appellant paid income tax in the amount of €18,510.80 and Universal Social Charge in the amount of €925.54.
10. On 12 July 2024, the Appellant submitted a Notice of Appeal to the Commission and enclosed supporting documentation. On 2 October 2024, the Respondent submitted a Statement of Case and on 4 October 2024, the Appellant submitted a Statement of Case. On 6 December 2024, the Appellant and the Respondent submitted pre-hearing documentation. On 9 May 2025, the Appellant submitted additional documents and on 14 May 2025, the Respondent submitted an additional document. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation

11. The legislation relevant to this appeal is as follows:

12. Section 123 of the TCA 1997 provides (among other things) that:

"(1) This section shall apply to any payment (not otherwise chargeable to income tax) which is made, whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been so made.

(2) Subject to section 201, income tax shall be charged under Schedule E in respect of any payment to which this section applies made to the holder or past holder of any office or employment, or to his or her executors or administrators, whether made by the person under whom he or she holds or held the office or employment or by any other person."

13. Section 201(2)(a) of the TCA 1997 provides (among other things) that:

"Income tax shall not be charged by virtue of section 123 in respect of the following payments:

(i) an amount not exceeding €200,000 of any payment made -

(I) in connection with the termination of the holding of an office or employment by the death of the holder, or

(II) on account of injury to or disability of the holder of an office or employment;”

14. Section 201(2A) of the TCA 1997 provides that:

“Where a payment, or any part of a payment, is not chargeable to tax under section 123 by virtue of subsection (2)(a), the person by whom the payment was made shall deliver to the inspector, not later than 46 days after the end of the year of assessment in which the payment was made, the following particulars -

(a) the name and address of the person to whom the payment was made,

(b) the personal public service number (within the meaning of section 262 of the Social Welfare Consolidation Act 2005) of the person who received the payment,

(c) the amount of the payment, and

(d) the basis on which the payment, or part of the payment, is not chargeable to tax under section 123, indicating, in the case of a payment made on account of injury or disability, the extent of the injury or disability, as the case may be.”

Evidence

Appellant’s Solicitor

15. The Appellant’s Solicitor (“the Witness”) stated that he advised the Appellant to take the Claim against the Employer, [REDACTED]

[REDACTED]. The Witness testified that the Claim was a means “to bring the Employer to the table”; they knew that it was only stateable and the Employer was resolved to fight it. The Witness relayed that in May 2023, the Appellant and the Employer held without prejudice discussions. The Witness stated that the Employer’s legal team described the Claim as frivolous, vexatious and an abuse of process. They made clear that a payment of compensation would not be entertained. The Witness stated that the Employer’s legal team did recognise that the Appellant had a disability and said they would entertain terminating his employment, with a precondition that he discontinue the Claim.

16. The Witness stated that in 2023 the amount of €130,000 was agreed to be paid to the Appellant for the termination of his employment because he could no longer fulfil the role. He said that the advice given was that the Appellant should be eligible for the tax

exemption. On 31 July 2023 they applied for the tax exemption and the legal teams agreed to leave the matter until clarity could be obtained. The Witness stated that the Employer made a motion to have the Claim struck out, which ran with the [REDACTED] Claim and was repeatedly adjourned while clarity on the tax exemption was obtained. He said that the Court and the Appellant's lender ran out of patience, so the Appellant had to go ahead and "let the tax be suffered".

17. The Witness relayed that [REDACTED] 2024, the Appellant applied to withdraw the Claim, on the basis that the Employer would not seek costs and would pay towards the Appellant's costs. The Appellant signed the Agreement [REDACTED] 2024 and the Employer signed it [REDACTED] 2024. The Witness stated that he was not surprised to see a standard termination agreement which was adapted to the Appellant. He could not understand how the Respondent would disregard the Employer's Letter. The Witness said that the Employer's Letter made clear that no part of the Payment was in connection with, or the settlement of, the Claim, which was a "dead duck" as far as the Employer was concerned. When the Witness was asked what he understood the Payment to comprise, he replied that he understood it to be a lump sum which was being paid to the Appellant on account of the Appellant's disability.
18. In cross-examination, the Witness agreed that there was no breakdown of the amount of €130,000. He agreed that he could not give evidence on what the Employer or the Employer's solicitor had in their mind when writing the Employer's Letter. The Witness stated that the Employer's Letter arose in dealing with the Payment and they had already received instructions from the Appellant to withdraw the Claim. It was put to the Witness that the Employer did not treat the Payment as if the exemption applied and did not report it to the Respondent. In reply, the Witness stated that the Employer did not report the Payment because of the Respondent's letter of 24 November 2023. The Witness relayed that the Employer said that if the Appellant got a direction from the Respondent to deal with the Payment that way, the Employer would do that. The Witness stated that the Employer said the Appellant could deal with it as a tax matter between himself and the Respondent, which is what followed. He said the tax advice was that a payment made on account of disability was entirely exempt from tax. When pressed on whether the Appellant would have withdrawn the Claim if there was no payment of €130,000, the Witness replied that it would have been for the Appellant, but Counsel advised the Claim was doomed to fail if it proceeded to hearing, so the tactical benefit would have been lost. The Witness said he thought the Claim would have been withdrawn one way or another.

Appellant

19. The Appellant testified that on his last day at work, [REDACTED] he was called to a meeting. He relayed that the Employer informed him that he would have to go sick for a year without pay. The Appellant stated that they suggested redeployment, which meant to him that there was no future [REDACTED]. He said he told the Employer that he would consider redeployment, but it never happened. The Appellant said that when he asked the Employer what they wanted him to do, the Employer told him to drive home and that is what he did. The Appellant said that was his last day [REDACTED] and he heard nothing from the Employer for seven years. When asked about his understanding of the Agreement and the Payment, the Appellant replied that he did not think the Employer personally injured him but they certainly made the decision over his mental health, that he was not suitable to work anymore. The Appellant testified that he understood he would be entitled to some type of compensation so when the Agreement was eventually signed, his idea was that the Employer was telling him that he was no longer mentally fit to work in their company and they wanted him to leave. There was no cross-examination of the Appellant.

Submissions

Appellant's Submissions

20. The Commissioner will now summarise the submissions made by the Appellant, both in the documentation submitted in support of his appeal and at the hearing, as follows:
- 20.1. The Respondent should have directed the Employer that the Appellant was exempt from income tax under section 201(2)(a) of the TCA 1997.
- 20.2. The Appellant was employed [REDACTED] on a yearly salary of around [REDACTED], when he became ill around 2010 or 2011. By November 2015, he had exhausted his sick leave entitlements but was unfit to resume duties. The Employer directed the Appellant to take unpaid sick leave. The Appellant's condition deteriorated [REDACTED]. In 2023, the Appellant reached an agreement with his Employer to terminate his contract. The Claim induced the Employer to properly address the Appellant's long-term absence from work due to disability. As a matter of commercial prudence, the Employer included a clause in the Agreement which is contained in almost all such agreements, to compel the Appellant to refund the Payment if he brought a new claim against the Employer.

Both the Appellant and the Employer accepted that the Appellant had a disability which rendered him unable to continue work.

- 20.3. The Appellant's disability was accepted as an objective fact. In November 2015, he was asked to go home on the basis that he was unfit for work. The Employer's medical examiner had raised concerns about the Appellant's fitness for work in a letter of 29 September 2015. The best evidence of the reasons for the Payment was the Employer's Letter. The Payment was made wholly on account of the Appellant's disability, with no breakdown. There was no obligation on the Employer to make any payment to the Appellant. They did it to reflect the circumstances in which they met the Appellant. The Employer had a defence to the Claim and had taken steps to strike it out. It was normal for termination agreements seeking to bring finality to the employer/employee relationship to include terms restricting rights. The motivation of the Payment was to deal with an employee on long-term sick leave. The circumstances of the Appellant's case were similar to those in *O'Shea v Mulqueen* [1995] 1 IR 504, where there was no obligation on the employer to pay an *ex gratia*¹ payment and the employee benefited from the exemption. The reporting obligation under section 201(2A) of the TCA 1997 would have been engaged if the Respondent had confirmed that the Appellant was entitled to the exemption but the parties were operating without certainty. The Employer had consistently determined that from 2015 onwards, the Appellant's disability made him unfit for his role.

Respondent's Submissions

21. The Commissioner will now summarise the submissions made by the Respondent, both in the documentation and at the hearing, as follows:

- 21.1. A claim for exemption must clearly fall within the express terms of the exemption, applying *Revenue Commissioners v. Doorley* [1933] I.R. 750. The Payment must have been made on account of the disability and not for another reason. There are no words in section 201(2)(a) of the TCA 1997 to suggest that a payment can be made on account of other reasons. The payment has to be made specifically on account of the disability, see *Cahill v Harding* [1990] 4 ITR 233 1990. The correct test is found in *Horner v Hasted* [1995] STC 766: the payment is to be subjectively on account of the disability.

¹ A Latin term for "as a favour and not from obligation".

- 21.2. No evidence was offered to show that the Payment was made to the Appellant on account of his disability. The Agreement did not record that the Appellant's employment was terminated due to a disability or that the Payment was made on account of his disability. It stated that the Payment was contingent on withdrawing the Claim. The Appellant's solicitor confirmed by letter of 21 August 2023 that the termination was happening at that point "as a direct result of" the Claim.
- 21.3. The High Court judgment of *Siddiqui v Revenue Commissioners* [2024] IEHC 195 ("*Siddiqui*") is instructive: the substance of a payment and not the label given to it must be considered. In this case, the best evidence was the Agreement. Why the payment was made and what they agreed is in the Agreement, which contains an entire agreement clause. No direct evidence was given by the Employer on why they made the Payment, which goes to the weight which can be attached to the Employer's Letter. There was a dispute regarding the calculation of Standard Capital Superannuation Benefit ("SCSB") and the Employer's Letter must be viewed in that context. Questions arise as to the reliability of the Employer's Letter as an accurate statement of intention as it does not address, for example, why the Employer did not claim the exemption as statutorily required, and the conditionality of the Agreement regarding the withdrawal of the Claim.
- 21.4. There was no breakdown of the Payment and the Appellant claimed an exemption for all of the Payment, whereas the Payment was made for a number of purposes.

Material Facts

22. In this appeal, the following facts were uncontested, which the Commissioner accepts as material facts:
- 22.1. The Appellant had a disability.
- 22.2. The Appellant worked for the Employer [REDACTED].
- 22.3. The Appellant became ill around 2010 or 2011 and took periods of sick leave.
- 22.4. The Appellant commenced unpaid sick leave on 25 November 2015.
- 22.5. The Appellant took a [REDACTED] claim against his employer on [REDACTED].
- 22.6. The Appellant's employer made a termination payment to the Appellant.
- 22.7. The Appellant paid income tax and Universal Social Charge in the amount of €19,436.34 in respect of the termination payment.

23. Having read the documentation submitted and having listened to the oral evidence and submissions at the hearing, the Commissioner has also found the following to be material facts:

23.1. In 2015, the Employer's occupational physician wrote that he had concerns about the Appellant's fitness for work.

23.2. The Employer defended the Claim on the basis that the Claim was bound to fail.

23.3. The Commissioner was not presented with evidence of any other obligation on the Employer to make a payment to the Appellant.

23.4. The Payment was made on account of the Appellant's disability.

Analysis

24. At the outset, the Commissioner wishes to clarify the scope of this appeal. The Appellant's Notice of Appeal specified three grounds of appeal. However, at the hearing, it transpired that the Appellant relied on one ground of appeal, relating to section 201(2)(a) of the TCA 1997. Counsel for the Respondent informed the Commissioner that SCSB had been claimed on the Payment and Counsel for the Appellant confirmed that the Appellant sought for section 201(2)(a) of the TCA 1997 to apply to the Payment instead of SCSB, so that all of the Payment would be exempt from income tax. Accordingly, this determination considers the ground of appeal relating to section 201(2)(a) of the TCA 1997 only.

Burden of Proof

25. This appeal relates to the Appellant's claim for an exemption from income tax. In an appeal before the Commission, the burden of proof rests on the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J stated at paragraph 22 that:

"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".

26. The Court of Appeal recently confirmed this position in *JSS & Ors v A Tax Appeal Commissioner* [2025] IECA 96, in which McDonald J stated at paragraph 34 that:

"the taxpayer bears the burden of demonstrating that a tax assessment is wrong."

27. Additionally, in *Hanrahan v The Revenue Commissioners* [2024] IECA 113, the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only, stating:

“Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake...In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;...Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner’s correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation”.

Statutory Interpretation

28. This appeal involves consideration of the applicability of section 201(2)(a) of the TCA 1997 to the facts of the Appellant’s case. The Commissioner therefore considers it appropriate to set out well-settled principles of statutory interpretation.
29. The Commissioner adopts the summary of the relevant principles to be applied to statutory interpretation as set out by McDonald J in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 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 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”.”

30. The Commissioner is also mindful of the decision in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 and that the approach to be taken to statutory interpretation must include consideration of the overall context and purpose of the legislative scheme. The Commissioner recalls the finding of Murray J, in which he stated that:

“108 It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose- it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular Dunnes Stores and Bookfinders – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed ...

115 ...the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring about. The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members' objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.

116...the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole.”

Section 201(2)(a) TCA 1997

31. Turning then to the legislation, section 123 of the TCA 1997 provides that termination payments are chargeable to income tax. Section 201(2)(a) of the TCA 1997 provides that payments which would otherwise be chargeable to income tax under section 123 are exempt from income tax in certain circumstances, including where a payment is made on account of a disability.
32. In this appeal, the Appellant contended that the Payment was made to him on account of his disability and was therefore exempt from income tax under section 201(2)(a) of the

TCA 1997. There was no dispute that the Appellant had a disability, and the Commissioner has found this to be a material fact. It follows that the question arising in this appeal is whether the Payment was made “on account of” the Appellant’s disability.

33. In addition, the Appellant was clear that there was no breakdown in the Payment and that the whole Payment was contended to be exempt from income tax under section 201(2)(a) of the TCA 1997.
34. Consequently, the Commissioner must consider whether the Appellant has discharged the burden of proof to show that the Payment was made on account of the Appellant’s disability. The standard of proof in considering this matter is the civil standard of proof; that is to say, on the balance of probabilities.
35. The Commissioner is mindful that in *Revenue Commissioners v. Doorley* [1933] I.R. 750 (“*Doorley*”), the Supreme Court confirmed that any claim for an exemption from tax must fall within the express terms of the exemption. The Commissioner has therefore considered the meaning of the phrase “on account of” used in section 201(2)(a) of the TCA 1997, as well as the applicable case-law.
36. In considering the ordinary and natural meaning of the phrase “on account of”, the Commissioner has consulted the Oxford English Dictionary (“OED”) for assistance, which defines “on account of” as “because of”.
37. Both parties drew the Commissioner’s attention to Irish and English case-law in this appeal. The Commissioner is cognisant that while Irish case-law is binding, English case-law has persuasive but not binding status.
38. The Commissioner has considered the Irish High Court judgments of *Cahill v Harding* [1990] 4 ITR 233 1990 (“*Cahill*”) and *O’Shea v Mulqueen* [1995] 1 IR 504 (“*O’Shea*”). Having done so, the Commissioner is satisfied that they show that for the exemption to apply, it is not enough for a payment to be made to a person with a disability. The payment must be made “on account of” the person’s disability.
39. *Cahill* involved lump sum payments which had been made to five disabled employees after it was decided to close their employer’s assembly plant. The jobs of two of the employees were to go under the closedown, while the jobs of the remaining three employees were to continue. The Circuit Court judge had interpreted the predecessor provision to section 201(2)(a) of the TCA 1997 to mean that if a termination payment was paid to someone with a disability, it was exempt from tax. However, Carroll J held: “*But that is not what the section says. The termination payment has to be made “on account*

of” the disability and not merely to a disabled person.” Carroll J proceeded to find in relation to the two employees whose jobs were gone, “When the assembly plant closed these Respondents’ jobs were gone. After that, the payments were made in a redundancy situation and not because of disability”.

40. O’Shea concerned an employee whose doctor diagnosed him with job related stress and recommended that he retire immediately. The employee resigned and the employer subsequently made an *ex gratia* payment to him on his resignation on health grounds. The Inspector of Taxes argued that it was necessary to prove that the employer’s reason for the making the payment was consequent on the employee’s ill-health and not on his retirement, whether for ill-health or any other reason, and that in this case the trigger for the payment was the decision to retire. The employee argued that he suffered from stress and retired under medical recommendation, and the employer was under no obligation to pay him but did so because he retired for ill-health. Carroll J stated that she agreed with the employee’s submission and held: *“There is clear evidence to support the finding of fact by the Appeal Commissioner. He found that the payment was made because of early retirement due to ill-health. It is not a retirement package which happened to be paid to a person who was injured or disabled, as in Cahill v Harding [1990] 4 ITR 2233. The Company did not give the package to the respondent because of his retirement simpliciter. It was because he had to retire on health grounds that it was given. To my mind that falls squarely within s.115 subs. 1(a) of the Income Tax Act 1967”.*
41. Additionally, the Commissioner was pointed to the English High Court judgment of *Horner v Hasted* [1995] STC 766 (“*Horner*”), as well as the English Court of Appeal judgment of *Moorthy v Revenue and Customs Commissioners* [2018] EWCA Civ 847 (“*Moorthy*”). In *Horner*, the English High Court found that for the equivalent statutory provision to section 201(2)(a) to apply, *“there must be established as an objective fact a relevant disability and as a subjective fact that the disability is the motive for payment by the person making it”*. In *Moorthy*, the English Court of Appeal was concerned not with the question of whether a payment was made “on account” of injury, but rather whether “injury” encompassed “injury to feelings”, eventually finding that the payment was made on account of injury to his feelings in the context of an age discrimination claim against the employer. The Commissioner was also referred to a First-Tier Tribunal decision of *Howard-Ravenspine v HMRC* [2023] UKFTT 471, which held that if a taxpayer could establish that some element of payment fell within the disability exemption, then that element was exempt. The Commissioner recalls that in this appeal, the Appellant stated

that there was no breakdown of the Payment and submitted that the whole Payment was exempt.

42. Given the case-law outlined above, the Commissioner is satisfied that the correct and most prudent approach is to apply the Irish High Court judgments of *Cahill* and *O'Shea*, by asking what the Payment was made "on account of" or "because of". This is because those judgments are binding and also because, in the Commissioner's respectful view, their approach reflects the ordinary and natural meaning of the language used in section 201(2)(a) of the TCA 1997.
43. Finally, Counsel for the Respondent submitted that the Irish High Court judgment of *Siddiqui* was instructive. There, the High Court found that the Tax Appeal Commissioner should have considered the true substance of a payment made to an employee and not the label given to it, by undertaking an objective analysis of the background context. Having considered *Siddiqui*, the Commissioner notes that its finding was made in the context of interpreting a separate statutory provision, section 192A(4) of the TCA 1997, which is not at issue in this appeal. In any case, the Commissioner is satisfied that in asking what the Payment was made "on account of" or "because of", as in *Cahill* and *O'Shea*, the Commissioner will be examining the background and context to the Payment.

The Payment

44. At the hearing, Counsel for the Respondent accepted that the Appellant's disability may be part of the reason for the Payment but emphasised that the Appellant claimed an exemption for all the Payment whereas, he submitted, the Payment was made for a number of purposes.
45. On the one hand, the Appellant submitted that the best evidence of what the Payment was made on account of was the Employer's Letter. On the other hand, the Respondent submitted that the best evidence of what the Payment was made on account of was the Agreement.
46. In forming a view on whether the Payment was made on account of the Appellant's disability, the Commissioner considers it appropriate to have regard to the evidence as a whole. Accordingly, the Commissioner has considered not only the Employer's Letter and the Agreement, but also the oral evidence given, and the other documentation presented. In adopting this approach, the Commissioner is fortified by the fact that in both *Cahill* and *O'Shea*, the High Court considered the circumstances surrounding the payment made.

48. Turning now to the Employer's Letter, it states:

17

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

49. The Employer did not attend the hearing of this appeal to give direct evidence. In considering what evidentiary value to attach to the Employer's Letter, the Commissioner has had regard to the following factors. This was a letter which the solicitors for the Employer wrote to the Respondent to set out the background to the Payment. The Respondent submitted that the Employer's Letter must be viewed in the context of a disagreement about SCSB. Yet it is clear to the Commissioner from reading the

Employer's Letter that it was written after the Respondent's letter of 24 November 2023 determined that section 201(2)(a) of the TCA 1997 did not apply to the proposed payment, and makes a submission in support of the Appellant's application for an exemption under section 201(2)(a) by outlining the background to the Payment, with supporting documentation. The Commissioner considers that this is the appropriate context in which to view the Employer's Letter.

50. Furthermore, the Commissioner has had regard to the books of documents provided, which contain correspondence between the Appellant and the Employer, as well as Court documentation, in connection with the Claim. Having examined this documentation, the Commissioner is satisfied that it supports the position outlined in the Employer's Letter that the Employer defended the Claim on the basis that the Claim was bound to fail. The Commissioner has found this to be a material fact.
51. In addition, the Commissioner has noted the evidence given by the Witness. The Witness, who was the solicitor for the Appellant, gave his account of the events leading up to the Payment. The Commissioner considers that he was correct to agree with Counsel for the Respondent that he could not testify to what was in the Employer's mind in making the Payment. Instead, the Commissioner is satisfied that the Witness could speak to the events surrounding the Agreement and leading up to the Payment.
52. With the above in mind, the Commissioner finds there to be a consistency between the content of the Employer's Letter, the correspondence between the Appellant and the Employer which preceded the Agreement, and the testimony of the Witness. In light of the context of the Employer's Letter and its consistency with other correspondence and the testimony of the Witness, the Commissioner is satisfied to attach weight to the Employer's Letter.
53. Turning then to the Agreement, it states (among other things):

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

54. The Commissioner observes that the background recitals to the Agreement start by recording that the Appellant went on sick leave on 25 November 2015 and remained on such to date. They then state that the Appellant and the Employer have entered into the

Agreement to record the terms on which they agree to terminate the Appellant's employment by agreement. They finally record the fact of the Claim and that the Appellant is permitted to withdraw the Claim and the Employer makes no payment under the Agreement in relation to the Claim. The wording of these background recitals, of themselves, indicate to the Commissioner that the Appellant's sick leave was the background to terminating the Appellant's employment and that while he was allowed to withdraw the Claim, the Agreement was to make no payment in relation to the Claim.

55. Additionally, the Commissioner notes that the Agreement contains clauses in full and final settlement of claims and under which the Appellant agrees to repay the Payment if he takes a further claim. However, the Commissioner does not accept that it follows from the inclusion of those clauses that the Payment was not made on account of the Appellant's disability. The Commissioner agrees with the Appellant's submission that such provisions are to be expected in a termination agreement which, by its nature, seeks to bring finality to the relationship between the employer and the employee. In the Commissioner's view, this applies equally to the condition of the Agreement that the Claim be withdrawn, and it does not follow that the Payment was made because of the withdrawal of the Claim.
56. The Commissioner recalls the testimony of the Witness that the purpose of the Claim was *"to bring the Employer to the table"*. The chronology of events indicates to the Commissioner that the Claim did eventually lead the Employer to address the Appellant's situation. The Respondent highlighted that a letter from the Appellant's solicitor dated 21 August 2023 stated that the termination was happening then *"as a direct result of"* the Claim. The Commissioner notes that in an email of 15 August 2023, the Respondent requested *"clarification as to why termination is happening now"*. By letter of 21 August 2023, the Appellant replied: *"The reason the termination is only happening now is as a direct result of [REDACTED]"* It therefore seems to the Commissioner that the query related to the timing of the Payment and that was the context in which the reply was given. Moreover, the Commissioner considers that in this case, there is a distinction to be drawn between the question of what led the Employer to terminate the Appellant's employment when it did, and the question of what the Payment was then made on account of.
57. The Commissioner has noted that the Employer did not report the Payment to the Respondent under section 201(2A) of the TCA 1997. Section 201(2A) provides that a reporting obligation arises no later than 46 days after the end of the year of assessment in which the exempt payment was made. When asked about the matter, the Witness referred to the Respondent's letter of 24 November 2023 and stated that the Employer

said the Appellant could deal with it as a tax matter between himself and the Respondent. Having read the correspondence between the Appellant and the Employer, the Commissioner finds that it supports the evidence of the Witness. In particular, the Commissioner notes an email from the solicitors for the Employer dated 15 March 2024 which states: *"We note that you had previously agreed that any Revenue issue was a matter for your client to pursue"*. Therefore, while the Commissioner considers that the Employer's failure to report the Payment may weigh against the Appellant's case, she finds that it can reasonably be explained by the fact that the Respondent had determined that proposed payment was not exempt under section 201(2)(a) and the Employer's approach that the matter was then for the Appellant to pursue with the Respondent.

58. Finally, the Commissioner notes the Appellant's submission that the Employer was not obliged to make any payment to the Appellant and that this submission was uncontested by the Respondent. More fundamentally, no evidence of any other obligation on the Employer to make a payment to the Appellant was presented, which the Commissioner has found to be a material fact.
59. Having considered the evidence overall, the Commissioner has concluded that on the balance of probabilities, the Payment was made on account of, or because of, the Appellant's disability. This was a case of an employee who was agreed to have a disability and to have been on long-term sick leave since 2015, and who eventually received a termination payment in 2024. The Commissioner has formed the view that on balance, the overall circumstances of this case indicate that while the Claim led the Employer to address the Appellant's situation, the material point is that the Employer did so by terminating the Appellant's employment because he was unfit to work due to his disability.

Conclusion

60. Consequently, having carefully considered the submissions made and the evidence before her, the Commissioner is satisfied that the evidence overall points towards the fact that on the balance of probabilities, the Payment was made on account of the Appellant's disability. The Commissioner has found this to be a material fact. Therefore, the Commissioner finds that the Respondent's determination that the Payment did not qualify for exemption from income tax under section 201(2)(a) of the TCA 1997 was incorrect.

Determination

61. For the reasons set out above, the Commissioner determines that the Appellant has succeeded in showing that the Payment was exempt from income tax under section

201(2)(a) of the TCA 1997, and the Respondent's determination that the Payment did not qualify for exemption shall be varied accordingly.

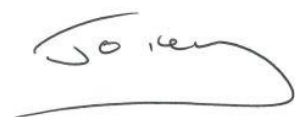
62. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) of the TCA 1997.

Notification

63. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ (5) and section 949AJ (6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

64. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Jo Kenny
Appeal Commissioner
3 December 2025