



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

51TACD2026

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (from here on referred to as the “Commission”) as an appeal against the imposition of Chargeable Excess Tax (from here on referred to as “CET”) on the total pension benefit amount of the occupational pension to which the Appellant became entitled in 2024.
2. The amount of tax under appeal is €208,797.00.

Background

3. The Appellant is a taxpayer who, in 2024, retired from his employment of in excess of 40 years with [REDACTED] (from here on referred to as the “Employer”), which is a public sector company.
4. During the Appellant’s employment, he was a member of the [REDACTED] Pension Scheme (from here on referred to as the “Scheme”) which was a defined benefit, public sector occupational pension scheme.
5. The Appellant’s membership of the Scheme meant that, on retirement after 40 years of contributions to the Scheme, he was entitled to a lump sum of 120/80ths of his final pensionable salary along with an annual pension of 40/80ths of his final pensionable salary.
6. On his retirement, the Appellant’s final pensionable salary was €191,034 which resulted in an entitlement to a lump sum of €286,551 and an annual pension of €95,517. It is agreed between the parties that the total pension benefit amount of the Appellant’s pension was €2,565,268.
7. On his retirement, the Employer / Scheme applied the provisions of the Taxes Consolidation Act 1997 (from here on referred to as the “TCA 1997”) relating to CET and the Standard Fund Threshold (from here on referred to as “SFT”) as contained in sections 787O, 787P, 787Q, 787R and 787S of the TCA 1997 to the Appellant’s pension. This resulted in the amount of the Appellant’s pension benefit in excess of €2,000,000 being subjected to income tax at the higher rate of income tax of 40% in the amount of €208,797.00.
8. The Appellant submitted a Notice of Appeal to the Commission on 13 December 2024 contesting the application of CET to the amount of his pension benefit in excess of €2,000,000 on the basis that the requirement for him to pay CET has led to a reduction in his annual pension income which, the Appellant claims, is as a result of the unfair and

inequitable application of the tax code to his pension and the double taxation of his pension income.

9. On 13 January 2025, the Respondent submitted a Notice of Objection to the acceptance of this appeal pursuant to the provisions of section 949L of the TCA 1997 objecting to the acceptance of this appeal. It is the Respondent's position that this is not a valid appeal for the following reasons:
 - 9.1. The Appellant has not identified an erroneous application of the legislative provisions relating to CET by the Employer / Scheme;
 - 9.2. The Appellant has not identified any instruction given by the Respondent to the Employer / Scheme which is inconsistent with the legislative provisions relating to CET;
 - 9.3. The grounds of appeal identified by the Appellant relate to matters which are outside of the Commissioner's jurisdiction.
10. Following correspondence from the parties relating to the Notice of Objection, the Commissioner scheduled a Case Management Conference (from here on referred to as a "CMC") pursuant to the provisions of section 949T of the TCA 1997. The purpose of the CMC was:
 - 10.1. to review the conduct of the proceedings and the actions that have been taken or that remain to be taken,
 - 10.2. to clarify any matters raised by the parties or by the Appeal Commissioner, and
 - 10.3. to enable the Commissioner to give all such directions as appear necessary or desirable for the purpose of securing the completion of the proceedings in an expeditious and fair manner.
11. The CMC took place on 1 September 2025. At the CMC, and having heard from both parties, the Commissioner informed the parties that she considered that she had received sufficient submissions, both written and oral, to allow her to determine the appeal pursuant to the provisions of section 949T(2) of the TCA 1997 subject to the consent of both parties.
12. The Commissioner allowed the parties time to consider whether they consented to the Commissioner determining the appeal pursuant to section 949T(2) of the TCA 1997. On 1 September 2025, the Respondent indicated by email that it was consenting to this

course of action. In addition, on 1 September 2025, the Appellant indicated by email that he was also consenting to this course of action.

13. This appeal is therefore determined pursuant to the provisions of section 949T of the TCA 1997.

Legislation and Guidelines

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

Section 787O of the TCA 1997 (as in force from 1 January 2023 to 31 December 2024) entitled “Interpretation and general (Chapter 2C)”:

(1) In this Chapter and Schedule 23B, unless the context otherwise requires—

“accrued pension amount”, in relation to a benefit crystallisation event of the kind referred to in paragraph 2(a)(i) of Schedule 23B in respect of a relevant pension arrangement that is a defined benefit arrangement, means the part (if any), determined in accordance with subsection (2A), of the amount represented by P in the formula in paragraph 3(aa) of that Schedule that had accrued to the individual under the arrangement on the specified date;

“administrator”, in relation to a relevant pension arrangement, means the person or persons having the management of the arrangement, and includes—

(a) an administrator, within the meaning of section 770(1),

(b) a person mentioned in section 784, lawfully carrying on the business of granting annuities on human life, including the person mentioned in section 784(4A)(ii),

(c) a PRSA administrator, within the meaning of section 787A(1),

(d) an administrator of a relevant pension arrangement of a kind described in paragraphs (e) and (f) of the definition of relevant pension arrangement, as may be specified by regulations under section 787U,

(e) a PEPP provider within the meaning of Chapter 2D;

“amount crystallised by a benefit crystallisation event” shall be construed in accordance with paragraph 3 of Schedule 23B and a reference to “amount of the current event” shall be construed as the amount crystallised by the benefit crystallisation event which is that event;

“amount of uncrystallised pension rights on the specified date”, in relation to an individual, shall be determined in accordance with paragraph 1 of Schedule 23B;

“annual amount of a pension” means the amount of pension payable to the individual in the period of 12 months beginning with the day on which the individual becomes entitled to the pension and on the assumption that there is no increase in the pension throughout that period;

“applied”, in relation to a transfer amount, means the application of the transfer amount in accordance with—

(a) subsection (5), (6), (8) or (9) of section 12 of the Family Law Act 1995,

(b) subsection (5), (6), (8) or (9) of section 17 of the Family Law (Divorce) Act 1996, or

(c) subsection (1), (3), (5) or (6) of section 123 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

as the case may be;

“approved retirement fund” has the meaning assigned to it by section 784A;

“approved minimum retirement fund” has the meaning assigned to it by section 784C;

“benefit crystallisation event” and the time when such an event occurs shall be construed in accordance with paragraph 2 of Schedule 23B;

“calculation A”, in relation to the annual amount of a pension, means a calculation that increases that annual amount at an annual percentage rate of 5 per cent for the whole of the period beginning with the month in which the individual became entitled to the pension and ending with the month in which the individual becomes entitled to payment of the pension at an increased annual amount;

“calculation B”, in relation to the annual amount of a pension, means a calculation that increases that annual amount by 2 per cent plus the movement in the All Items Consumer Price Index Number compiled by the Central Statistics Office starting in the month in which the individual first became

entitled to the pension and ending in the month when the individual becomes entitled to payment of the pension at an increased annual amount;

“chargeable excess” shall be construed in accordance with section 787Q(4);

“current event” means a benefit crystallisation event occurring on or after the specified date;

“date of the current event” means the date on which—

(a) the individual acquires an actual entitlement to the payment of a benefit in respect of the current event under the relevant pension arrangement, whether or not the benefit is paid on, or commences to be paid on, that date,

(b) the annuity or, as the case may be, the pension would otherwise become payable under a relevant pension arrangement where the individual exercises an option in accordance with section 772(3A), 784(2A), 787H(1) or, as the case may be section 787AB,

(ba) the annuity would otherwise become payable under a PRSA of a kind referred to in paragraph (c) of the definition of “relevant pension arrangement” where an individual does not elect to exercise an option in accordance with section 787H(1) and instead retains the assets available in the PRSA at that date, in that PRSA or any other PRSA,

(bb) the annuity would otherwise become payable under a PEPP of a kind referred to in paragraph (g) of the definition of “relevant pension arrangement” where an individual does not elect to exercise an option in accordance with section 787AB(1) and instead retains the assets available in the PEPP at that date, in that PEPP or any other PEPP,

(c) a payment or transfer is made to an overseas arrangement by direction of the individual under the provisions of the Occupational Pension Schemes and Personal Retirement Savings Accounts (Overseas Transfer Payments) Regulations 2003 (S.I. No. 716 of 2003), or

(d) the individual, having become entitled to a pension under a relevant pension arrangement on or after the specified date, becomes entitled to the payment of that pension at an increased annual amount which

exceeds by more than the permitted margin the annual amount at which it was payable on the date the individual became entitled to it;

“designated benefit”, “retirement benefit” and “transfer amount” have the meaning assigned to them, respectively, in—

(a) section 12 of the Family Law Act 1995,

(b) section 17 of the Family Law (Divorce) Act 1996, or

(c) section 121 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

as the case may be;

“defined benefit arrangement” means a relevant pension arrangement other than a defined contribution arrangement;

“defined contribution arrangement” means a relevant pension arrangement that provides benefits calculated by reference to an amount available for the provision of benefits to or in respect of the member, whether the amount so available is determined solely by reference to the contributions paid into the arrangement by or on behalf of the member and the investment return earned on those contributions or otherwise, and includes a relevant pension arrangement of the kind described in paragraphs (b) and (c) of the definition of “relevant pension arrangement”;

“excepted circumstances” means circumstances such that the increase in the annual amount of pension in payment to the individual is directly related to an increase in the rate of remuneration of all persons or of a class of persons employed in the sector in which the individual was employed and in respect of which employment the individual is entitled to the pension under the relevant pension arrangement;

“fund administrator” means a qualifying fund manager of an approved retirement fund or an approved minimum retirement fund or the PRSA administrator of a vested PRSA (within the meaning of section 790D(1)) or vested PEPP provider (within the meaning of Chapter 2D), as the case may be, (in this definition referred to as the ‘fund’) the beneficial owner of which is a non-member and the assets of which consist, in whole or in part, of—

(a) assets transferred to the fund by virtue of the exercise by the non-member of a relevant option in relation to the transfer arrangement (in this definition referred to as the ‘first-mentioned transfer’), or

(b) assets transferred to the fund which were previously held in another fund or funds the assets of which originated, in whole or in part, from the first mentioned transfer;

“market value” shall be construed in accordance with section 548;

“maximum tax-relieved pension fund”, in relation to an individual, means the overall limit on the amount that may be crystallised by a benefit crystallisation event or, where there is more than one such event, the aggregate of all of such amounts on or after 7 December 2005 without giving rise to a chargeable excess;

“member”, in relation to a relevant pension arrangement, means any individual who, having been admitted to membership under the rules of the arrangement, remains entitled to any benefit under the arrangement and includes an employee within the meaning of section 770(1), the individual referred to in section 784, a PRSA contributor within the meaning of Chapter 2A, a contributor within the meaning of Chapter 2D, a participant within the meaning of Chapter 2E and a relevant migrant member within the meaning of section 787M(1);

“non-member”, in relation to a relevant pension arrangement, means an individual (other than a dependent member of the family within the meaning of section 2 of the Family Law Act 1995 and section 2 of the Family Law (Divorce) Act 1996) in whose favour a pension adjustment order in respect of the retirement benefit of a member of the arrangement has been made;

“overseas arrangement” means an arrangement for the provision of retirement benefits established outside the State;

“participant” has the same meaning as it has in Chapter 2E;

“pension adjustment order” means an order made in accordance with—

(a) section 12(2) of the Family Law Act 1995,

(b) section 17(2) of the Family Law (Divorce) Act 1996, or

(c) section 121(2) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

as the case may be, or any variation of such an order made by an order under—

(i) section 18(2) of the Family Law Act 1995,

(ii) section 22(2) of the Family Law (Divorce) Act 1996, or

(iii) section 131(3) of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010,

as the case may be, the operation of which has not been suspended (or if suspended, or further suspended, has been revived) or discharged by an order made under any of the relevant provisions referred to in subparagraph (i), (ii) or (iii);

“PEPP assets” has the same meaning as in Chapter 2D;

“PEPP provider” has the same meaning as in Chapter 2D;

“permitted margin” means the amount by which the annual amount of the pension would be greater if it had been increased by whichever of calculation A and calculation B gives the greater amount;

“personal fund threshold”, in relation to an individual for a year of assessment, means—

(a) (i) where the individual is an individual to whom the Revenue Commissioners have issued a certificate or, as the case may be, a revised certificate in accordance with section 787P as that section applied at any time before the date of the passing of the Finance (No. 2) Act 2013 (in this Chapter referred to as the “earlier certificate”), the amount stated in the earlier certificate as being the individual’s personal fund threshold, and

(ii) in any other case, for the year of assessment 2014, the lesser of—

(I) €2,300,000, and

(II) (A) where no benefit crystallisation event in relation to the individual has occurred on or after 7 December 2005 and the

individual has uncrystallised pension rights on the specified date, the amount of the uncrystallised pension rights on the specified date in relation to the individual, where the amount of those rights on that date exceed the standard fund threshold, or

(B)where one or more than one benefit crystallisation event in relation to the individual has occurred on or after 7 December 2005 and the individual has uncrystallised pension rights on the specified date, the aggregate of the amounts crystallised by those benefit crystallisation events and the amount of the uncrystallised pension rights on the specified date in relation to the individual, where the aggregate amount of those crystallised and uncrystallised rights exceed the standard fund threshold, and

(b)for a year of assessment (in this paragraph referred to as the “relevant year”) after the year of assessment 2014, an amount equivalent to the amount determined by the formula—

A × B

where—

A is the personal fund threshold for the year of assessment immediately preceding the relevant year, and

B is—

(i)the earnings adjustment factor which may be designated in writing by the Minister for Finance in December of the year of assessment preceding the relevant year, a note of which shall be published as soon as practicable in the Iris Iris Oifigiúil, or

(ii)where no earnings adjustment factor is designated by the Minister for Finance, 1;

“previously used amount”, in relation to the standard fund threshold or, as the case may be, the personal fund threshold shall be construed in accordance with paragraph 5 of Schedule 23B;

“PPS Number”, in relation to an individual, means the individual’s Personal Public Service Number within the meaning of section 262 of the Social Welfare Consolidation Act 2005;

“quarterly estimate for average weekly earnings” means the quarterly estimate for average weekly earnings contained in the Earnings, Hours and Employment Costs Survey published by the Central Statistics Office, from information obtained pursuant to the Job Vacancy Survey and the Labour Costs Survey conducted by that Office pursuant to orders made under section 25 of the Statistics Act 1993, or any equivalent survey conducted and published from time to time by that Office pursuant to orders so made;

“relevant member”, in relation to a relevant pension arrangement, means—

(a) a member of a relevant pension arrangement in respect of whose retirement benefit under the arrangement a pension adjustment order has been made in favour of a non-member, or

(b) a member of a relevant pension arrangement to which a sum representing that member’s accrued rights under the relevant pension arrangement referred to in paragraph (a) has been transferred, or subsequently transferred;

“relevant option”, in relation to a non-member and a transfer arrangement, means the option referred to in section 772(3A), 784(2A), 787H(1) or 787AB(1), as the case may be, to the extent that those options refer to a transfer to an approved retirement fund, or where the transfer arrangement is a PRSA, the option to retain the assets of the transfer arrangement in that arrangement (or any other similar arrangement);

“relevant pension arrangement” means—

(a) a retirement benefits scheme, within the meaning of section 771, for the time being approved by the Revenue Commissioners for the purposes of Chapter 1,

(b) an annuity contract or a trust scheme or part of a trust scheme for the time being approved by the Revenue Commissioners under section 784,

(c) a PRSA contract, within the meaning of section 787A, in respect of a PRSA product, within the meaning of that section,

(d) a qualifying overseas pension plan within the meaning of Chapter 2B,

(e) a public service pension scheme within the meaning of section 1 of the Public Service Superannuation (Miscellaneous Provisions) Act 2004,

(f) a statutory scheme, within the meaning of section 770(1), other than a public service pension scheme referred to in paragraph (e),

(g) a PEPP contract, within the meaning of Chapter 2D, in respect of a PEPP, within the meaning of that Chapter, or

(h) the automatic enrolment retirement savings system means the system established, maintained and controlled by the Authority (within the meaning of Chapter 2E) under that Act of 2024;

“relevant valuation factor” has the meaning assigned to it by subsection (2);

“specified date” means 1 January 2014;

“standard fund threshold”, in relation to an individual for a year of assessment, means—

(a) for each of the years of assessment 2014, €2,000,000, and

(b) for a year of assessment (in this paragraph referred to as the ‘relevant year’) after the year of assessment 2014, an amount equivalent to the amount determined by the formula -

A x B

where -

A is the standard fund threshold for the year of assessment immediately preceding the relevant year, and

B is -

(i) the earnings adjustment factor which may be designated in writing by the Minister for Finance in December of the year of assessment preceding the relevant year, a note of which shall be published as soon as practicable in the Iris Oifigiúil, or

(ii) where no earnings adjustment factor is designated by the Minister for Finance, 1;

“subsequent administrator” means the administrator of the transfer arrangement under which the non-member remains entitled to a retirement benefit under the arrangement or in respect of which the non-member’s retirement benefit under the arrangement has crystallised;

“transfer arrangement” means a relevant pension arrangement—

(a) to which a transfer amount has been applied to provide a retirement benefit for or in respect of a non-member and includes the relevant pension arrangement of the relevant member where a retirement benefit for or in respect of the non-member is provided under that arrangement of the same actuarial value as the transfer amount, or

(b) to which a sum representing the non-member’s accrued rights under an arrangement referred to in paragraph (a) has been transferred, or subsequently transferred;

“uncrystallised pension rights”, in relation to an individual on any date, means pension rights in respect of which the individual was not entitled to the payment of benefits in relation to those rights on that date;

“vested RAC” means a relevant pension arrangement of a kind referred to in paragraph (b) of the definition of that term in this subsection in respect of which—

(a) payment of the annuity to the individual entitled to the annuity under the contract has not commenced, or

(b) a transfer has not been made under section 784(2A),

on or before the date on which the individual attains the age of 75 years.

(2)(a) Subject to paragraph (b), for the purposes of this Chapter and Schedule 23B, the relevant valuation factor in relation to a relevant pension arrangement that is a defined benefit arrangement (in this subsection referred to as the “pension arrangement”) is—

(i) on the specified date, 20, and

(ii) after the specified date, where at the date of the current event relating to the pension arrangement the individual has attained

the age included in an entry in column (1) of the Table to Schedule 23B, the figure in column (2) of that Table opposite that entry (in this Chapter and Schedule 23B referred to as the “relevant age-related factor”).

(b) Where the administrator of a pension arrangement has, with the prior agreement of the Revenue Commissioners, used (before the specified date) a valuation factor (in this paragraph referred to as the “first-mentioned factor”) greater than the relevant valuation factor referred to in paragraph (a)(i) then, in such a case, for the purposes of this Chapter and Schedule 23B, the relevant valuation factor in relation to the pension arrangement is—

(i) on the specified date, the first-mentioned factor, and

(ii) after the specified date, the greater of the first-mentioned factor and the relevant age-related factor and the reference to the meaning of ‘A’ in the formula in paragraph 3(a) of Schedule 23B shall be construed accordingly.

(2A) For the purposes of this Chapter and Schedule 23B—

(a) where the individual has made a PFT notification (within the meaning of section 787P), the accrued pension amount shall be the annual amount of pension included in the statement from the administrator referred to in subsection (2)(a) of section 787P, and

(b) in any other case, the accrued pension amount shall be an amount equivalent to the annual amount of pension which would be represented by AP in the formula in paragraph 1(2)(b) of Schedule 23B, if the individual’s uncrystallised pension rights under the arrangement on the specified date were being calculated.

(3) For the purposes of this Chapter, where more than one benefit crystallisation event occurs in relation to an individual on the same day, the individual shall decide the order in which they are to be deemed to occur.

(4) Schedule 23B shall apply for the purposes of supplementing this Chapter and shall be construed as one with this Chapter.

(5) For the purposes of this Chapter and Schedule 23B, where, on or after 7 December 2005, an individual is a relevant member of a relevant pension

arrangement (in this subsection referred to as the ‘arrangement’) then, notwithstanding the pension adjustment order, the administrator of the arrangement shall, in calculating—

(a) the relevant member’s pension rights (within the meaning of section 787P(2)(a)(i)) in respect of the arrangement for the purposes of the statement certifying those rights (referred to in that section), and

(b) the amount crystallised by a benefit crystallisation event occurring on or after 7 December 2005 in relation to the relevant member under the arrangement, include in those calculations—

(i) the designated benefit payable pursuant to the order, or

(ii) where the transfer amount has been applied, the designated benefit that would otherwise have been payable pursuant to the order if the transfer amount had not been so applied,

as if the pension adjustment order had not been made, and where the administrator is the administrator of a relevant pension arrangement to which a sum representing the relevant member’s accrued rights under the relevant pension arrangement in respect of which the pension adjustment order has been made, has been transferred, or subsequently transferred, in whole or in part, the calculations referred to in paragraphs (a) and (b) shall reflect the sum that would otherwise have been transferred, or subsequently transferred, if no pension adjustment order had been made.

(6) Where an individual of a kind referred to in the definition of ‘vested RAC’ attains the age of 75 years prior to the date of passing of the Finance Act 2016, the relevant pension arrangement is deemed to become a vested RAC on the date of passing of that Act.”

Section 787P of the TCA 1997 entitled “Maximum tax-relieved pension fund”:

(1) An individual’s maximum tax-relieved pension fund shall not exceed—

(a) the standard fund threshold, or

(b) the personal fund threshold, where—

(i) the conditions set out in subsection (2) are met and the Revenue Commissioners have issued a certificate in accordance with subsection (7) or a revised certificate in accordance with subsection (8), or

(ii) the Revenue Commissioners have issued an earlier certificate.

(2) The conditions referred to in subsection (1)(b)(i) are—

(a) that the individual requests and obtains from the administrator of each relevant pension arrangement of which he or she is a member a statement—

(i) certifying the amount of the crystallised or, as the case may be, uncrystallised pension rights in respect of the arrangement on the specified date, in relation to the individual (in this subsection referred to as the “individual’s pension rights”), calculated in accordance with the provisions of this Chapter and Schedule 23B,

(ii) where the arrangement is a defined benefit arrangement, certifying the annual amount of pension represented by AP in the formula in paragraph 1(2)(b) of Schedule 23B included in the calculation of the individual’s pension rights, and

(iii) where the arrangement is an arrangement of a kind described in paragraph (a) of the definition of “relevant pension arrangement” in section 787O(1), specifying the Revenue Approval Reference Number (in this subsection referred to as the “reference number”) of the arrangement,

and

(b) that the individual notifies the Revenue Commissioners, by such electronic means (within the meaning of section 917EA) as are required by the Commissioners, within the period of 12 months from the date the electronic means are made available by the Commissioners, or before the first benefit crystallisation event occurs after the specified date, whichever is the earlier, that he or she has a personal fund threshold and provides the following information (in this section referred to as the “PFT notification”)—

(i) his or her full name, address, telephone number and PPS Number,

(ii) the following particulars of each relevant pension arrangement in respect of which the personal fund threshold arises:

(I)the name, address and telephone number of the administrator;

(II)the name and reference number of the arrangement;

(III)whether the arrangement is a defined benefit or defined contribution arrangement;

(IV)(A)the amount of the individual's pension rights in respect of the arrangement as certified by the administrator for the purposes of paragraph (a), and

(B)where the arrangement is a defined benefit arrangement, the annual amount of pension referred to in subsection (2)(a)(ii) as certified by the administrator for the purposes of paragraph (a);

and

(V)such other information and particulars as the Revenue Commissioners may reasonably require for the purposes of this Chapter and Schedule 23B.

(3)A statement referred to in subsection (2)(a) shall—

(a)be kept and retained by—

(i)the administrator, for the period of 6 years after the date of the benefit crystallisation event arising under the relevant pension arrangement or, where there is more than one such event, the date of the latest event, and

(ii)the individual, for the period of 6 years after the date of the last benefit crystallisation event arising in respect of the relevant pension arrangement or arrangements included in the PFT notification,

and

(b)on being so required by notice given to the administrator or, as the case may be, the individual in writing by an officer of the Revenue Commissioners, be made available to the officer within the time specified in the notice.

(4)Where a PFT notification is required to be made before the electronic means referred to in subsection (2)(b) are made available the notification shall be made in a manner approved by the Revenue Commissioners.

(5) A PFT notification made by electronic means shall be deemed to include a declaration to the effect that the notification is correct and complete.

(6) The administrator of each relevant pension arrangement of which an individual is a member shall comply with a request from the individual to provide a statement referred to in subsection (2)(a).

(7) Subject to subsection (8), the Revenue Commissioners, on receipt of a PFT notification, shall within 30 days of receipt, or such longer period as they may require for the purposes of this subsection, issue a certificate to the individual stating the amount of the personal fund threshold.

(8) The Revenue Commissioners may at any time withdraw a certificate issued in accordance with subsection (7) (in this subsection referred to as the “first-mentioned certificate”) and, where appropriate, issue a revised certificate if, following the issue of the first-mentioned certificate, the Commissioners are satisfied that—

(a) the information included in the PFT notification is incorrect, or

(b) the individual is not entitled to a certificate.”

Section 787Q of the TCA 1997 (as in force from 1 January 2023 onwards) entitled “Chargeable excess”:

“(1) Income tax shall be charged in accordance with section 787R where, on or after 7 December 2005, a benefit crystallisation event occurs (in this section referred to as the “current event”) in relation to an individual who is a member of a relevant pension arrangement and either of the conditions in subsection (2) are met.

(2) The conditions referred to in subsection (1) are—

(a) that all or any part of the individual’s standard fund threshold or, as the case may be, personal fund threshold is available at the date of the current event but the amount of that event exceeds the amount of the standard fund threshold or personal fund threshold which is available at that date, or

(b) that none of the individual’s standard fund threshold or personal fund threshold, as the case may be, is available at the date of the current event.

(3) For the purposes of subsection (2), the amount of an individual’s standard fund threshold or, as the case may be, personal fund threshold that is available at the date of the current event shall be determined in accordance with paragraph 4 of Schedule 23B.

(4) Subject to subsection (5), where either of the conditions in subsection (2) are met, the amount of the current event or, as the case may be, the amount by which the amount of that event exceeds the amount of the standard fund threshold or personal fund threshold that is available at that date in relation to the individual, shall be known as the “chargeable excess”.

(5) Where the amount of tax arising on a chargeable excess in accordance with section 787R is paid by the administrator of a relevant pension arrangement in whole or in part, then so much of the tax that is paid by the administrator shall itself be treated as forming part of the chargeable excess unless the individual’s rights under the relevant pension arrangement are reduced so as to fully reflect the amount of tax so paid or the administrator is reimbursed by the individual in respect of any tax so paid.

(5A) (a) Notwithstanding section 59B of the Pensions Act 1990, where, in accordance with section 787S(3), a non-member’s appropriate share (within the meaning of section 787R(2A)(b)) of tax arising on a chargeable excess is paid by the subsequent administrator, in whole or in part, and the non-member was in receipt of a pension benefit payable from the transfer arrangement at the date the subsequent administrator received the certificate referred to in section 787R(3B), then so much of the tax that is paid by the subsequent administrator shall itself be treated as forming part of the non-member’s appropriate share unless the non-member’s pension benefit payable under the transfer arrangement is reduced so as to fully reflect the amount of tax so paid or the subsequent administrator is reimbursed by the non-member in respect of any tax so paid.

(b) Where, in accordance with section 787S(3), a subsequent administrator or a fund administrator (in this paragraph referred to as the ‘administrator’) is liable to pay the amount of a non-member’s appropriate share (within the meaning of section 787R(2A)(b)) of tax arising on a chargeable excess, or a part of that amount, the administrator shall, for the purposes of payment of the tax, be entitled to dispose of or appropriate such assets of—

(i) the transfer arrangement as represent the non-member’s accrued rights under that arrangement, or

(ii) the approved retirement fund, approved minimum retirement fund (or where the non-member has an approved retirement fund and an approved minimum retirement fund, of both funds), a vested PRSA (or vested PRSAs, where the non-member has more than one vested

PRSA) or a vested PEPP (or vested PEPPs, where the non-member has more than one vested PEPP), as the case may be, (in this subsection referred to as the 'fund'),

as are required to meet the amount of the tax so payable and the non-member shall allow such disposal or appropriation.

(c)Where in pursuance of this subsection and section 787S(3) a subsequent administrator reduces a non-member's pension benefit or disposes of or appropriates an asset of the transfer arrangement, or a fund administrator disposes of or appropriates an asset of the fund, then no action shall lie against the subsequent administrator or the fund administrator in any court by reason of such reduction, disposal or appropriation.

(6)Where the administrator of a relevant pension arrangement, of a kind described in paragraphs (e) and (f) of the definition of relevant pension arrangement in section 787O(1), pays an amount of tax arising on a chargeable excess in accordance with section 787S(3), then—

(a)the amount of tax so paid shall be a debt due to the administrator from the individual, and

(b)the administrator shall be reimbursed by the individual for the tax so paid in accordance with subsection (7).

(6A)Where the provisions of section 787R(2A) apply in relation to a relevant pension arrangement referred to in subsection (6), then—

(a)where no transfer amount has been applied, or

(b)where a transfer amount has been applied to provide a retirement benefit for or in respect of the non-member under the arrangement of the same actuarial value as the transfer amount,

the provisions of subsections (6), (7), (8) and (9) shall apply, as if the references in those subsections to—

(i)the individual were a reference to the relevant member or the non-member, as the case may be, and

(ii)the rules of the scheme were a reference to the rules of the scheme having regard to the provisions of the pension adjustment order.

(7) An administrator referred to in subsection (6) shall be reimbursed for the payment of tax arising on a chargeable excess in the following manner—

(a) where the amount of tax paid is 20 per cent or a lesser percentage of the amount of the lump sum payable to the individual under the rules of the relevant pension arrangement reduced by the amount of tax charged under subsection (3)(a)(i) or (3)(b)(i)(I) of section 790AA on an excess lump sum (within the meaning of subsection (1)(e) of that section), if any, in respect of that lump sum (in this subsection referred to as the “net lump sum”)—

(i) by appropriating that percentage of the net lump sum,

(ii) by payment by the individual of an amount to the administrator that is equal to the amount of tax paid,

(iii) by a combination of subparagraphs (i) and (ii) such that the aggregate of the percentage of the net lump sum appropriated and the amount paid, or by the individual to the administrator is equal to the amount of tax paid,

(iv) by the individual exercising the option referred to in subsection (8),

(b) where the amount of tax paid is greater than 20 per cent of the net lump sum, by the individual exercising the option referred to in subsection (8), or—

(i) (I) by appropriating not less than 20 per cent of the net lump sum, or such higher percentage as the administrator and the individual may agree,

(II) by payment by the individual of an amount to the administrator that is not less than 20 per cent of the net lump sum, or such higher amount as the administrator and the individual may agree, or

(III) by a combination of clauses (I) and (II) such that the aggregate of the percentage of the net lump sum appropriated and the amount paid by the individual to the administrator is not less than 20 per cent of the net lump sum,

and

(ii) (I) by reducing the gross annual amount of pension payable to the individual under the rules of the relevant pension

arrangement (in this subsection referred to as the “pension reduction”), for a period agreed between the individual and the administrator that does not exceed 20 years from the date of first payment of the pension (in this subsection referred to as the “agreed period”), such that the pension reduction over the agreed period is sufficient to reimburse the administrator for that portion of the tax paid as was not reimbursed under subparagraph (i), if any, (in this subsection referred to as the “balance”),

(II) by payment by the individual of an amount equal to the balance to the administrator within the period of 3 months from the date of the benefit crystallisation event that gave rise to the chargeable excess, or

(III) by a combination of a pension reduction over an agreed period as provided for in clause (I) and payment of an amount by the individual as provided for in clause (II) where the aggregate of the amount of the reduction in the pension over the agreed period and the amount payable by the individual equals the balance,

(8) The option referred to in paragraphs (a)(iv) and (b) of subsection (7) is the option to have the gross annual amount of pension payable to the individual under the rules of the relevant pension arrangement reduced for a period that does not exceed 20 years from the date of first payment of the pension, such that the reduction in the pension over the period is sufficient to reimburse the administrator for the tax paid.

(9) A payment by an individual to an administrator referred to in subparagraphs (ii) and (iii) of paragraph (a) of subsection (7) and in clauses (II) and (III) of paragraph (b)(i) of that subsection (in this subsection referred to as the “first-mentioned payment”) shall be made before the administrator pays the amount of the net lump sum or, as the case may be, such amount of the net lump sum as has not been appropriated to reimburse the administrator for the payment of tax arising on the chargeable excess and the administrator may withhold payment of that amount until such time as the first-mentioned payment is made by the individual.”

Section 787R of the TCA 1997 (as in force from 1 January 2023 onwards) entitled “Liability to tax and rate of tax on chargeable excess”:

“(1) Without prejudice to any other provisions of the Tax Acts including, in particular, any other provision of those Acts relating to a charge to tax—

(a) the whole of the amount of a chargeable excess calculated in accordance with section 787Q, without any relief or reduction specified in the Table to section 458 or any other deduction from that amount, shall be chargeable to income tax under Case IV of Schedule D at the higher rate for the tax year (within the meaning of section 787TA(1)) in which the benefit crystallisation event giving rise to the chargeable excess occurs, and

(b) section 188 shall not apply as regards income tax so charged.

(2) Subject to subsection (2A)(d), the persons liable for income tax charged under subsection (1) shall be the administrator of the relevant pension arrangement under which the benefit crystallisation event arises and the individual in relation to whom the benefit crystallisation event occurs and their liability shall be joint and several.

(2A) (a) Where an individual is a relevant member of a relevant pension arrangement, income tax charged under subsection (1) (in this subsection referred to as the ‘tax’) in respect of a chargeable excess arising on a benefit crystallisation event in respect of the relevant member under that arrangement shall be apportioned by the administrator between the relevant member and the non-member (in this subsection referred to as the ‘relevant parties’) in accordance with paragraph (b), and the persons liable for the tax so apportioned and the extent of their liability shall be the persons referred to in paragraph (d) and the liabilities referred to therein.

(b) Subject to the assumption in paragraph (c), the tax referred to in paragraph (a) shall be apportioned between the relevant parties such that each party’s share of the tax (in this Chapter referred to as the ‘appropriate share’) shall not exceed such part of the tax as would bear to that tax the same proportion as each party’s share of the retirement benefit (arising under the benefit crystallisation event giving rise to the tax) bears to that retirement benefit, having regard to the designated benefit payable to the non-member pursuant to the pension adjustment order.

(c) The assumption referred to in paragraph (b) is that, where a transfer amount has been applied to provide a retirement benefit for or in respect of the non-

member, each party's share of the retirement benefit arising under the benefit crystallisation event giving rise to the tax shall be determined as follows:

(i) in the case of the non-member—

(I) where the relevant pension arrangement referred to in paragraph (a) is a defined benefit arrangement and is the arrangement in respect of which the pension adjustment order has been made, it shall be the designated benefit on which the transfer amount was calculated, and

(II) in any other case, it shall be the transfer amount,

and

(ii) in the case of the relevant member, it shall be an amount equivalent to the amount determined by the formula—

A — B

where—

A is the retirement benefit arising under the benefit crystallisation event giving rise to the tax, and

B is the non-member's share determined in accordance with clause (I) or (II), as the case may be, of subparagraph (i).

(d) The persons liable for the tax apportioned in accordance with paragraph (b) and the extent of their liability shall be—

(i) the administrator and the relevant member in respect of the relevant member's appropriate share, and

(ii) (I) where no transfer amount has been applied to provide a retirement benefit for or in respect of the non-member (and notwithstanding the provisions of the pension adjustment order), the administrator and the non-member in respect of the non-member's appropriate share, or

(II) where a transfer amount has been applied to provide a retirement benefit for or in respect of the non-member and—

(A) the non-member's retirement benefit under the transfer arrangement has not crystallised at the date the

subsequent administrator receives the certificate referred to in subsection (3B) or where the administrator and the subsequent administrator are the same person (in this section referred to as the 'alternative circumstance') at the date of the benefit crystallisation event giving rise to the chargeable excess (in this section referred to as the 'alternative date'), the subsequent administrator and the non-member in respect of the non-member's appropriate share, or

(B)the non-member's retirement benefit under the transfer arrangement has crystallised at the date the subsequent administrator receives the certificate referred to in subsection (3B) or where the alternative circumstance arises at the alternative date and the non-member is in receipt of a pension payable from the transfer arrangement, the subsequent administrator and the non-member in respect of the non-member's appropriate share, or

(C)the non-member's retirement benefit under the transfer arrangement has crystallised at the date the subsequent administrator receives the certificate referred to in subsection (3B) or where the alternative circumstance arises at the alternative date and the non-member has exercised a relevant option under the transfer arrangement, the fund administrator and the non-member in respect of the non-member's appropriate share,

or

(III)in any other case, the non-member in respect of his or her appropriate share,

and the liability of the persons referred to in subparagraph (i) and in clauses (I) and (II) of subparagraph (ii) shall be joint and several.

(e) Notwithstanding paragraph (d)(ii)(II), the liability of a subsequent administrator or a fund administrator shall not exceed the lesser of the non-member's appropriate share and—

(i) in the case of a subsequent administrator, the amount or value of the assets in the transfer arrangement (in this subparagraph referred to as the 'first-mentioned arrangement') representing the non-member's accrued rights under the arrangement at the time those rights are transferred to another relevant pension arrangement or at the time the non-member's retirement benefit under the first-mentioned arrangement crystallise, as the case may be, or

(ii) in the case of a fund administrator, the amount or value of the assets in the approved retirement fund, approved minimum retirement fund (or the aggregate of those amounts or values where the non-member has an approved retirement fund and an approved minimum retirement fund) or vested PRSA (or the aggregate of those amounts or values where the non-member has more than one vested PRSA), as the case may be, at the date the fund administrator receives the certificate or copy certificate referred to in subsection (3C).

(3) A person referred to in subsection (2) or paragraph (d) of subsection (2A) shall be liable for any income tax charged in accordance with subsection (1) or, as the case may be, for the appropriate share of that tax, whether or not that person, or any other person who is liable to the charge, is resident or ordinarily resident in the State.

(3A) The references in subsections (2), (2A)(d) and (3) to income tax charged under subsection (1) or to the appropriate share of that tax, shall be deemed to be references to the amount of income tax so charged or to the appropriate share of that tax, as the case may be, reduced, as appropriate, in accordance with section 787RA.

(3B) Where the provisions of subsection (2A) apply and a transfer amount has been applied, the administrator (other than where the alternative circumstance referred to in subsection (2A)(d)(ii)(II)(A) arises) shall establish the identity of the subsequent administrator and, within 21 days from the end of the month in which the benefit crystallisation event giving rise to the chargeable excess occurs, provide to the subsequent administrator a certificate stating—

(a) the name, address and telephone number of the administrator,

(b) details of the transfer arrangement, where known,

(c) details of the relevant pension arrangement under which the benefit crystallisation event giving rise to the chargeable excess occurred,

(d) the nature of the benefit crystallisation event referred to in paragraph (c) and the date on which it occurred,

(e) the full name, last known address and, where known, the PPS Number of the non-member,

(f) the amount of, and the basis of calculation of, the non-member's appropriate share, and

(g) such other information and particulars as the Revenue Commissioners may reasonably require for the purposes of this Chapter.

(3C) (a) Where—

(i) the provisions of subsection (2A) apply and a transfer amount has been applied, and

(ii) at the date the subsequent administrator receives the certificate referred to in subsection (3B) the non-member's retirement benefit under the transfer arrangement has crystallised and the non-member has exercised a relevant option under the transfer arrangement,

then, where the subsequent administrator and the fund administrator are not the same person, the subsequent administrator shall establish the identity of the fund administrator and, within 21 days from receipt of the certificate, forward a copy of the certificate (in this section referred to as the 'copy certificate') to the fund administrator.

(b) Where—

(i) the provisions of subsection (2A) apply and a transfer amount has been applied,

(ii) at the date of the benefit crystallisation event giving rise to the chargeable excess tax (in this paragraph referred to as the 'event') the non-member's retirement benefit under the transfer arrangement has crystallised and the non-member has exercised a relevant option under the transfer arrangement, and

(iii) the alternative circumstance referred to in subsection (2A)(d)(ii)(II)(A) arises,

then, where the administrator and the fund administrator are not the same person, the administrator shall establish the identity of the fund administrator and, within 21 days from the end of the month in which the event occurs, provide to the fund administrator the certificate referred to in subsection (3B).

(3D)An administrator, subsequent administrator or fund administrator, as the case may be, shall within 21 days from—

(a)in the case of an administrator (including an administrator who is either or both the subsequent administrator and the fund administrator), the end of the month in which the benefit crystallisation event giving rise to the chargeable excess tax occurs, or

(b)in the case of a subsequent administrator or fund administrator, the date of receipt of a certificate or copy certificate, as the case may be,

inform the non-member by way of a notification in writing of the non-member's liability for the non-member's appropriate share of the chargeable excess tax and, where at the time the notification is due to be made the administrator or the subsequent administrator, as the case may be, is aware that the non-member is the person solely liable for the non-member's appropriate share, inform the non-member as part of the notification of that fact and of the fact that the tax is due and payable by the non-member to the Collector-General in accordance with section 787S(3) within 3 months of the date of the notification.

(3E)Where a notification referred to in subsection (3D) is sent to a non-member in circumstances where the non-member is solely liable for the non-member's appropriate share of the chargeable excess tax, a copy of the notice shall be sent by the administrator or the subsequent administrator, as the case may be, to the Revenue Commissioners at the same time.

(4)Where a benefit crystallisation event is due to occur (in this subsection referred to as the "future event") in relation to an individual under a relevant pension arrangement, the administrator of that arrangement may request the individual to make, before the date of the future event, a declaration in writing to the administrator, in such form as may be prescribed or authorised by the Revenue Commissioners for that purpose, which contains—

(a)the individual's full name, address and PPS Number,

(b) in respect of each benefit crystallisation event that has occurred in relation to the individual on or after 7 December 2005—

(i) the date on which that event occurred, and

(ii) the amount crystallised by that event,

(c) in respect of a benefit crystallisation event or benefit crystallisation events that is or are due to occur from the date of the declaration made by the individual under this subsection up to and including the date of the future event—

(i) the expected date of each such event, and

(ii) the estimated amount to be crystallised by each such event,

(d) where relevant, the amount of the individual's personal fund threshold together with a copy of the certificate issued by the Revenue Commissioners under section 787P(7) or, as the case may be, a copy of the revised certificate issued by the Commissioners under section 787P(8) (or, where relevant, a copy of the earlier certificate),

(e) where the administrator of the arrangement is an administrator of a kind referred to in paragraph (d) of the definition of "administrator" in section 787O(1) and where relevant, details of the amount of unpaid tax required to be paid by the administrator and remitted to the Collector-General under subsections (18) and (19) of section 787TA, and

(f) such other information as the Revenue Commissioners may reasonably require for the purposes of this Chapter.

(5) Where an individual has been requested to provide a declaration in writing to the administrator of a relevant pension arrangement in accordance with subsection (4) and fails to provide that declaration, the administrator may—

(a) where the benefit crystallisation event is an event of a kind described at subparagraph (a) or (d) of paragraph 2 of Schedule 23B, withhold the payment of any benefit or, as the case may be, any increased annual amount of pension,

(b) where the benefit crystallisation event is an event of a kind described at subparagraph (b), (ba) or (c) of paragraph 2 of Schedule 23B, refuse to transfer an amount to the individual, or to any of the funds referred to in the said subparagraph (b), refuse to make assets of the PRSA referred to in the said

subparagraph (ba) available to the PRSA contributor or, as the case may be, refuse to make a payment or transfer referred to in the said subparagraph (c), and

(c) where the benefit crystallisation event is an event of a kind described at subparagraph (bd) or (be) of paragraph 2 of Schedule 23B, refuse to transfer an amount to the individual or refuse to make assets of the PEPP referred to in the said subparagraph (bd) available to the PEPP contributor,

until such time as a declaration in writing containing the information specified in paragraphs (a) to (f) of subsection (4) is provided to the administrator, in such form as may be prescribed or authorised by the Revenue Commissioners for the purposes of that subsection.

(5A) (a) *In this subsection—*

“relevant administrator” means—

(i) in the case of a vested PRSA of a kind referred to in paragraph (c) of the definition of ‘vested PRSA’ in section 790D(1), the administrator of that vested PRSA,

(ii) in the case of a vested RAC within the meaning of section 787O(1), the person with whom the individual (referred to in the definition of ‘vested RAC’ in that section) made the annuity contract, and

(iii) in the case of a vested PEPP of a kind referred to in paragraph (v) of the definition of “vested PEPP” in section 790D(1), the PEPP provider of that vested PEPP;

“relevant person” means—

(i) in the case of a vested PRSA of a kind referred to in paragraph (c) of the definition of ‘vested PRSA’ in section 790D(1), a PRSA contributor of a kind referred to in that paragraph,

(ii) in the case of a vested RAC within the meaning of section 787O(1), an individual of a kind referred to in the definition of ‘vested RAC’ in that section, and

(iii) in the case of a vested PEPP of a kind referred to in paragraph (x) of the definition of “vested PEPP” in section 790D(1), a PEPP contributor of a kind referred to in that paragraph;

“date of the benefit crystallisation event” means, as the case may be, the date the relevant person attains the age of 75 years or, where the relevant person attains that age prior to the date of passing of the Finance Act 2016, the date of passing of that Act.

(b)Notwithstanding subsection (4), where a benefit crystallisation event of a kind referred to in subparagraph (bb) or (bc), as the case may be, of paragraph 2 of Schedule 23B occurs in relation to a relevant person, the relevant person shall, within the period of 30 days from the date of the benefit crystallisation event, provide a declaration containing the details referred to in subsection (4) to the relevant administrator.

(c)Where a relevant person fails to comply with paragraph (b), section 787Q shall apply to the benefit crystallisation event referred to in that paragraph as if the condition referred to in subsection (2)(b) of that section is met.

(6)An administrator of a relevant pension arrangement shall—

(a)keep and retain for a period of 6 years, and

(b)on being so required by notice given to the administrator in writing by an officer of the Revenue Commissioners, make available to the officer within the time specified in the notice,

a declaration, or declarations, of the kind mentioned in subsections (4), (5) and (5A).

(6A) (a)A subsequent administrator or a fund administrator, as the case may be, shall keep and retain a certificate referred to in subsection (3B) or a copy certificate referred to in subsection (3C), as appropriate, and

(b)an administrator, subsequent administrator and fund administrator shall keep and retain a copy of a notification referred to in subsection (3D),

for a period of 6 years following—

(i)in the case of an administrator, the date of the benefit crystallisation event giving rise to the chargeable excess tax or, where a transfer amount has been applied and the administrator and the subsequent administrator are the same person, the later of that date and the date of crystallisation of the non-member’s retirement benefit under the transfer arrangement,

(ii) in the case of a subsequent administrator in any other circumstance, the later of the date of crystallisation of the non-member's retirement benefit under the transfer arrangement and the date of receipt of the certificate, or

(iii) in the case of a fund administrator, where the administrator and the fund administrator are the same person, the date of the benefit crystallisation event giving rise to the chargeable excess tax, and in any other circumstance, the date of receipt of the certificate or copy certificate, as the case may be,

and on being so required by a notice given to the administrator in writing by an officer of the Revenue Commissioners make available to the officer within the time specified in the notice such certificates, copy certificates or notifications specified therein."

Section 787RA of the TCA 1997 entitled "Credit for tax paid on excess lump sum":

"(1) Where, on or after 1 January 2011, a benefit crystallisation event that gives rise to a chargeable excess in accordance with section 787Q occurs in relation to an individual in respect of a relevant pension arrangement (including, where the provisions of section 787R(2A) apply, an individual who is a relevant member of a relevant pension arrangement), then, in so far as income tax has been charged under subsection (3)(a)(i) or (3)(b)(i)(I) of section 790AA on an excess lump sum (within the meaning of subsection (1)(e) of that section) in respect of a lump sum paid, on or after that date, to the individual—

(a) by the administrator of that relevant pension arrangement (in this section referred to as the "first-mentioned administrator"), whether under that relevant pension arrangement, or under any other relevant pension arrangement administered by the first-mentioned administrator, or

(b) where the condition in subsection (2) is met, by the administrator of another relevant pension arrangement,

the income tax on the chargeable excess or the relevant individual's appropriate share of that tax, as the case may be, charged in accordance with section 787R (in this section referred to as the "chargeable excess tax") shall be reduced by the aggregate of the amount of income tax charged under subsection (3)(a)(i) or (3)(b)(i)(I) of section 790AA on the excess lump sum and deducted by the first-mentioned administrator and the amount of such income

tax charged on the excess lump sum and deducted by the other administrator (in this section referred to as the “lump sum tax”).

(2) The condition referred to in subsection (1)(b) is that the first-mentioned administrator obtains from the other administrator a certificate stating—

(a) the name and address of the administrator,

(b) the individual’s full name, address and PPS Number,

(c) the relevant pension arrangement in respect of which the benefit crystallisation event giving rise to the excess lump sum arose,

(d) the date of payment of the lump sum in respect of which tax on the excess lump sum was deducted under section 790AA and the amount of the lump sum, and

(e) the amount of the lump sum tax in respect of the excess lump sum charged to tax in accordance with subsection (3)(a)(i) or (3)(b)(i)(I) of section 790AA and deducted by, and remitted to the Collector-General by the administrator in accordance with subsection (8) of that section.

(3) Subject to subsection (4), where the lump sum tax referred to in subsection (1) is greater than the chargeable excess tax or the appropriate share of that tax, as the case may be, referred to in that subsection, the amount by which the lump sum tax exceeds the chargeable excess tax or the appropriate share of that tax, as the case may be, may be carried forward and aggregated with the lump sum tax on a lump sum (if any) paid to the individual under the next benefit crystallisation event that occurs in relation to that individual (in this section referred to as the “tax balance”) and, so far as may be, used to reduce the amount of the chargeable excess tax or the appropriate share of that tax, as the case may be, arising on that benefit crystallisation event (in this section referred to as the “future chargeable excess tax”) and so on in respect of each successive benefit crystallisation event until the tax balance is fully used.

(4) Where a future chargeable excess tax referred to in subsection (3) is in respect of a benefit crystallisation event under a relevant pension arrangement which is not administered by the first-mentioned administrator and the tax balance has not been fully used, the administrator of that relevant pension arrangement shall obtain from the first-mentioned administrator a certificate stating—

(a) the name and address of the first-mentioned administrator,

(b)the individual’s full name, address and PPS Number, and

(c)the amount of the unused tax balance.

(5)Where an administrator receives a certificate referred to in subsection (4), the future chargeable excess tax may be reduced by the aggregate of the amount of the unused tax balance referred to in that certificate and the lump sum tax, if any, charged by that administrator in respect of the benefit crystallisation event giving rise to the future chargeable excess tax.

(6)Subsections (4) and (5) shall apply as appropriate, and with any necessary modifications, on each successive occasion on which a benefit crystallisation event occurs in relation to the individual where the administrator of that benefit crystallisation event and the administrator of the immediately preceding benefit crystallisation event are not the same person.

(7)Subsection (6) of section 787R shall, with any necessary modifications, apply to an administrator who obtains a certificate under subsection (2) or (4) as if the reference in that subsection (6) to a declaration, or declarations were a reference to a certificate, or certificates, to which subsection (2) or (4) applies.

(8)Any lump sum tax or tax balance referred to in this section—

(a)shall be used only once to reduce a chargeable excess tax or the appropriate share of that tax, as the case may be, and

(b)shall be used for no other purpose.

(9)Where the provisions of section 787R(2A) apply, this section shall, with any necessary modifications, apply to the non-member in respect of the non-member’s appropriate share of the chargeable excess tax.”

Section 787S of the TCA 1997 entitled “Payment of tax due on chargeable excess”:

“(1)The administrator of a relevant pension arrangement shall, within 3 months from the end of the month in which the benefit crystallisation event giving rise to the chargeable excess occurs, make a return to the Collector-General which shall contain—

(a)the name and address of the administrator,

(b)the name, address and PPS Number of the individual in relation to whom the benefit crystallisation event has occurred,

(c) details of the relevant pension arrangement under which the benefit crystallisation event giving rise to the chargeable excess has occurred,

(d) the amount of, and the basis of calculation of, the chargeable excess arising in respect of the benefit crystallisation event, and

(e) details of the tax which the administrator is required to account for in relation to the chargeable excess,

and where the administrator is the administrator of a relevant pension arrangement to which section 787R(2A) applies the return shall also contain—

(i) where no transfer amount has been applied—

(I) the name, address and PPS Number of the non-member, and

(II) instead of the details referred to in paragraph (e), details of the relevant member's and non-member's appropriate share of the tax which the administrator is required to account for in relation to the chargeable excess,

and

(ii) where a transfer amount has been applied—

(I) other than where the administrator, subsequent administrator and fund administrator are the same person, the name, address and telephone number of the subsequent administrator or fund administrator, as the case may be,

(II) the name, last known address and, where known, the PPS Number of the non-member, and

(III) instead of the details referred to in paragraph (e), the amount of, and the basis of calculation of—

(A) the relevant member's appropriate share of the tax that the administrator is required to account for, and

(B) the non-member's appropriate share of the tax that the subsequent administrator or fund administrator, as the case may be, is required to account for by way of a separate return under this section.

(1A) Where the provisions of section 787R(2A) apply and a transfer amount has been applied, then—

(a) where the transfer arrangement is the relevant pension arrangement of the relevant member, the subsequent administrator, within 3 months from—

(i) the end of the month in which the benefit crystallisation event giving rise to the chargeable excess tax occurs where, at the date of that event, the non-member is in receipt of a pension payable from the transfer arrangement,

(ii) the end of the month in which a sum representing the non-member's accrued rights under the transfer arrangement (in this paragraph referred to as the 'first-mentioned arrangement') is transferred (in whole or in part) to another relevant pension arrangement, or

(iii) the end of the month in which the non-member's retirement benefit under the first-mentioned arrangement crystallises,

or

(b) where the transfer arrangement is not the relevant pension arrangement of the relevant member and the subsequent administrator has received a certificate referred to in section 787R(3B), the subsequent administrator, within 3 months from—

(i) the end of the month in which the subsequent administrator receives the certificate where, at the date of receipt of the certificate, the non-member is in receipt of a pension payable from the transfer arrangement,

(ii) the end of the month in which a sum representing the non-member's accrued rights under the transfer arrangement (in this paragraph referred to as the 'first-mentioned arrangement') is transferred (in whole or in part) to another relevant pension arrangement, or

(iii) the end of the month in which the non-member's retirement benefit under the first-mentioned arrangement crystallises,

or

(c) where—

(i) the fund administrator has received a certificate or copy certificate referred to in section 787R(3C), the fund administrator within 3 months from the end of the month in which the certificate or copy certificate is received, or

(ii) the fund administrator and the administrator of the pension arrangement in respect of which the benefit crystallisation event giving rise to the chargeable excess tax arises, are the same person, the fund administrator within 3 months from the end of the month in which the benefit crystallisation event occurs,

as the case may be, shall—

(i) make a return to the Collector-General which shall contain—

(I) the name, address and telephone number of the subsequent or fund administrator, as the case may be,

(II) the name, address and PPS Number of the non-member,

(III) the name, address and telephone number of the administrator of the relevant pension arrangement from which the transfer amount arose,

(IV) the amount of, and the basis of calculation of, the non-member's appropriate share of the tax, and

(V) the amount of the non-member's appropriate share of the tax which the subsequent or fund administrator, as the case may be, is required to account for,

and

(ii) where the amount of the non-member's appropriate share of the tax which the subsequent or fund administrator is required to account for is less than the amount of that share, notify the non-member in writing at the time the return to the Collector-General is made of that fact and that the balance (being the difference between the amount of the appropriate share and the amount of that share to be accounted for by the subsequent or fund administrator) is due and payable by the non-member to

the Collector-General in accordance with this section within 3 months from the date of the notification.

(1B) Where a notification referred to in subsection (1A)(ii) is sent to a non-member, a copy of the notice shall be sent by the fund administrator or the subsequent administrator, as the case may be, to the Revenue Commissioners at the same time.

(1C) Where a non-member receives a notification referred to in subsection (1A)(ii) or a notification referred to in section 787R(3D) (in the circumstance referred to in section 787R(3E)), he or she shall within 3 months from the date of the notification make a return to the Collector-General which shall contain—

(a) the name, address and telephone number of the subsequent or fund administrator, as the case may be,

(b) the name, address and PPS Number of the non-member,

(c) the amount of the non-member's appropriate share of the tax,

(d) the amount of the non-member's appropriate share of the tax accounted for by the subsequent or fund administrator, as the case may be, and

(e) the amount of the non-member's appropriate share of the tax which the non-member is required to account for.

(3) The tax (including a relevant member's or non-member's appropriate share of that tax) which a person is required to account for, in whole or in part, in relation to a chargeable excess (in this section referred to as the "appropriate tax") and which is required to be included in a return shall be due at the time by which the return is due to be made and shall be paid by that person to the Collector-General. The appropriate tax so due shall be payable by that person without the making of an assessment; but appropriate tax that has become so due may be assessed on that person (whether or not it has been paid when the assessment is made) if that tax or any part of it is not paid on or before the due date.

(4) Where it appears to an officer of the Revenue Commissioners that there is any amount of appropriate tax in relation to a chargeable excess which ought to have been but has not been included in a return, or where the officer is dissatisfied with any return, then the officer may make an assessment on the person liable for the appropriate tax to the best of his or her judgement, and any amount of appropriate tax in relation to a chargeable excess due under an assessment made by virtue of this subsection shall

be treated for the purposes of interest on unpaid tax as having been payable at the time by which the return concerned was due to be made.

(5) Where any item—

(a) has been incorrectly included in a return as a chargeable excess, or

(b) has been included in a return as a chargeable excess in accordance with the application of paragraph (c) of subsection (5A) of section 787R in circumstances where, if a declaration referred to in paragraph (b) of that subsection had been provided to the relevant administrator (within the meaning of that subsection), no chargeable excess or a lesser chargeable excess would have arisen in respect of the benefit crystallisation event concerned,

then, on a case being made, an officer of the Revenue Commissioners may make such assessments, adjustments or set-offs as may in his or her judgement be required for securing that the resulting liabilities to tax, including interest on unpaid tax, whether of the administrator of a relevant pension arrangement or the individual or, where the provisions of section 787R(2A) apply, whether of the subsequent administrator, fund administrator, relevant member or non-member, as the case may be, are, so far as possible, the same as they would have been if the item had not been so included.

(6) (a) Any appropriate tax assessed on a person under this Chapter shall be due within one month after the issue of the notice of assessment (unless that tax is due earlier under subsection (1)) subject to—

(i) any appeal against the assessment, or

(ii) any application under section 787T,

but no such appeal or application, as the case may be, shall affect the date when any amount is due under subsection (1).

(7) (a) The provisions of the Income Tax Acts relating to—

(i) assessments to income tax, and

(ii) the collection and recovery of income tax,

shall, in so far as they are applicable, apply to the assessment, collection and recovery of appropriate tax.

(b) Any amount of appropriate tax payable in accordance with this Chapter without the making of an assessment shall carry interest at the rate of 0.0219 per cent for each day or part of a day from the date when the amount becomes due and payable until payment.

(c) Subsections (3) to (5) of section 1080 shall apply in relation to interest payable under paragraph (b) as they apply in relation to interest payable under section 1080.

(d) In its application to any appropriate tax charged by any assessment made in accordance with this section, section 1080 shall apply as if subsection (2)(b) of that section were deleted.

(7A) (a) Subject to paragraph (b), a person aggrieved by an assessment made on that person under this section may appeal the assessment to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of assessment.

(b) Where, in accordance with this section, a person is required to make a return and account for appropriate tax to the Collector- General, no appeal lies against an assessment until such time as the person makes the return and pays or has paid the amount of the appropriate tax payable on the basis of that return.

(8) Every return referred to in this section shall be in a form prescribed or authorised by the Revenue Commissioners and shall include a declaration to the effect that the return is correct and complete.”

Section 552 of the TCA 1997 as in force from 1 January 2014 onwards entitled “Acquisition, enhancement and disposal costs”:

(1) Subject to the Capital Gains Tax Acts, the sums allowable as a deduction from the consideration in the computation under this Chapter of the gain accruing to a person on the disposal of an asset shall be restricted to -

(a) the amount or value of the consideration in money or money's worth given by the person or on the person's behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to the person of the acquisition or, if the asset was not acquired by the person, any expenditure wholly and exclusively incurred by the person in providing the asset,

(b) the amount of any expenditure wholly and exclusively incurred on the asset by the person or on the person's behalf for the purpose of enhancing the value

of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by the person in establishing, preserving or defending the person's title to, or to a right over, the asset, and

(c) the incidental costs to the person of making the disposal.

(1A) (a) In this subsection 'rate of exchange' means a rate at which 2 currencies might reasonably be expected to be exchanged for each other by persons dealing at arm's length.

(b) For the purposes of subsection (1) where a sum allowable as a deduction was incurred in a currency other than the currency of the State, it shall be expressed in terms of the currency of the State by reference to the rate of exchange of the currency of the State for the other currency at the time that the sum was incurred.

(1B) (a) In this subsection-

'connected person' has the same meaning as in section 10;

'debt' means a debt or debts, in respect of borrowed money, whether incurred by the person making the disposal of an asset or by a connected person;

'group' and 'member of a group' have the same meanings, respectively, as in section 616.

(b) Where-

(i) the amount or value of the consideration referred to in subsection (1)(a), or

(ii) the amount of any expenditure referred to in subsection (1)(b),

was defrayed either directly or indirectly out of borrowed money, the debt in respect of which is released in whole or in part (whether before, on or after the disposal of the asset), that amount shall be reduced by the lesser of the amount of the debt which is released or the amount of the allowable loss which, but for this subsection, would arise.

(c) For the purposes of paragraph (b), the date on which the whole or part of a debt is released shall be determined on the same basis as the release of the whole or part of a specified debt is treated as having been effected in section 87B(4).

(d) Where a debt is released in whole or in part in a year of assessment after the year of assessment in which the disposal of the asset takes place (such that the release of the debt was not taken into account in the computation of a chargeable gain or allowable loss on the disposal of the asset) then for the purposes of the Capital Gains Tax Acts a chargeable gain, equal to the amount of the reduction that would have been made under paragraph (b) had the release been effected in the year of assessment in which the disposal of the asset took place, shall be deemed to accrue to the person who disposed of the asset on the date on which the debt is released but, where the disposal is to a connected person, any gain under this subsection shall be treated for the purposes of section 549(3) as if it accrued on the disposal of an asset to that connected person.

(e) A chargeable gain under paragraph (d) shall not be deemed to accrue where, had a gain accrued on the disposal of the asset, it would not have been a chargeable gain or it would have qualified for relief from capital gains tax.

(f) Where a debt released is in respect of money borrowed by a member of a group of companies from another member of the group, the amount or value of the consideration referred to in subsection (1)(a), or the amount of any expenditure referred to in subsection (1)(b), shall not be reduced by the amount of that debt which is released under paragraph (b) or a chargeable gain in respect of the release of that debt shall not be deemed to accrue under paragraph (d).

(2) For the purposes of the Capital Gains Tax Act as respects the person making the disposal, the incidental costs to the person of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by that person for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor, valuer, auctioneer, accountant, agent or legal advisor and costs of transfer or conveyance (including stamp duty), together with -

(a) in the case of the acquisition of an asset, costs of advertising to find a seller, and

(b) in the case of a disposal, costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation under this Chapter of the gain, including in

particular expenses reasonably incurred in ascertaining market value where required by the Capital Gains Tax Acts.

(3) (a) *Where -*

(i) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under subsection (1) in computing a gain accruing to the company on the disposal of the building, structure or works, or of any asset comprising the building, structure or works,

(ii) that expenditure was defrayed out of borrowed money,

(iii) the company charged to capital all or any part of the interest on that borrowed money referable to a period ending on or before the disposal, and

(iv) the company is chargeable to capital gains tax in respect of the gain, then, the sums so allowable under subsection (1) shall include the amount of that interest charged to capital except in so far as such interest has been taken into account for the purposes of relief under the Income Tax Acts, or could have been so taken into account but for an insufficiency of income or profits or gains.

(b) Subject to paragraph (a), no payment of interest shall be allowable as a deduction under this section.

(4) Without prejudice to section 554, there shall be excluded from the sums allowable as a deduction under this section any premium or other payment made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

(5) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which the person became absolutely entitled as legatee or as against the trustees of settled property -

(a) any expenditure within subsection (2) incurred by the person in relation to the transfer of the asset to the person by the personal representatives or trustees, and

(b) any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,

shall be allowable as a deduction under this section.”

Submissions

15. No witness evidence was adduced to the Commissioner by either party.

Appellant's Submissions

16. The following ground of appeal was submitted in the Appellant's Notice of Appeal:

“I retired from [REDACTED] on 24th March 2024 following 42 years of service.

[REDACTED] is a public sector company with the sole shareholders being the

During the entirety of my employment I was a member of the [REDACTED] Pension Scheme.

My personal contributions to the scheme amounted to 6.5% of salary for the entire period of my employment.

The Pension Scheme is a defined benefit scheme, and as a public sector scheme, is operated in accordance with Department of Finance / Revenue Model Rules.

In essence the scheme provides for a lump sum on retirement of 120/80ths and a pension of 40/80ths of pensionable salary.

My final pensionable salary amounted to €191,034 resulting in a lump sum of €286,551.

Applying the lump sum tax free cap of €200,000 the tax deducted from this lump sum amounted to €17,310 resulting in a net benefit paid to me of €269,241.

In addition Standard Fund Threshold rules were applied to my pension benefits as follows

<i>Implied value of fund</i>	<i>€2,565,268</i>
<i>Fund cap</i>	<i>€2,000,000</i>
<i>Taxable</i>	<i>€565,268</i>
<i>Tax @ 40%</i>	<i>€226,107</i>
<i>Less lump sum tax</i>	<i>€17,310</i>
<i>SFT Tax</i>	<i>€208,797</i>

The SFT Tax has been paid to Revenue and my annual pension has been reduced accordingly.

I wish to appeal against the application of SFT Tax in my case as it effectively amounts to double taxation of my pension which is fully subject to income tax.

The fund valuation is an implied valuation and does not represent a cash benefit paid to me which would be under my control. The fund remains within the [REDACTED] Pension Scheme and is not an asset available to me. In effect I have been taxed on an unrealised benefit and a benefit that may not be realised as it is not a personal asset which I can pass on in the event of my demise. In the event of my death the remaining benefit stays within the Pension Fund.

I submit that the only correct taxation that applies is the income tax arising on my pension as I receive it.”

17. Prior to the CMC, the Appellant submitted the following in response to a Notice of Objection to the acceptance of this appeal received from the Respondent:

“Thank you for your email dated 14th January 2025 enclosing correspondence from the respondent outlining the Revenue Commissioners objection to the acceptance of my appeal referenced above.

My appeal is founded under the fundamental principle that the tax code be applied on a fair and equitable basis and also the principle that the same income is not subjected to double taxation.

I have set out the basis of my pension benefits in previous correspondence.

The cash lump sum which I received on retirement was subjected to tax above the tax free allowable amount of €200,000. Clearly I have no objection to this.

My contention is that the application of the standard fund threshold rules to the overall implied valuation of my pension benefits amounts to double taxation.

In the first instance the implied valuation is taxed and then my actual cash pension benefits are taxed as they are drawn down.

As I stated I have no objection to the tax levied on the cash lump sum payment .

My objection is to the application of tax to the implied valuation as this is not a crystallised amount or benefit. The benefit can only be drawn down as my annual pension which is fully subjected to the PAYE system. There is no asset over which I have control and there is no asset which survives on my demise as the funds simply

stay within the pension fund for the benefit of all the members. The pension fund is operated in accordance with Department of Finance model rules.

I submit that the manner in which my pension benefits have been taxed is contrary to the fundamental principles that the tax code is applied fairly and equitably and that the same income is not subjected to double taxation.”

18. The Appellant also submitted the following in advance of the CMC:

“I retired from [the Employer] on 24th March 2024 following 42 years of service.

[The Employer] is a public sector company with the sole shareholders being the

[REDACTED].

During the entirety of my employment I was a member of the [Scheme]. My personal contributions to the scheme amounted to 6.5% of salary for the entire period of my employment.

The Pension Scheme is a defined benefit scheme, and as a public sector scheme, is operated in accordance with Department of Finance / Revenue Model Rules.

In essence the scheme provides for a lump sum on retirement of 120/80ths and a pension of 40/80ths of pensionable salary.

My final pensionable salary amounted to €191,034 resulting in a lump sum of €286,551 and an annual pension amounting to €95,517.

Applying the lump sum tax free cap of €200,000 the tax deducted from this lump sum amounted to €17,310 resulting in a net benefit paid to me of €269,241.

In addition Standard Fund Threshold rules were applied to my pension benefits as follows

<i>Implied value of fund</i>	<i>€2,565,268</i>
<i>Fund cap</i>	<i>€2,000,000</i>
<i>Taxable</i>	<i>€565,268</i>
<i>Tax @ 40%</i>	<i>€226,107</i>
<i>Less lump sum tax</i>	<i>€17,310</i>
<i>SFT Tax</i>	<i>€208,797</i>

The SFT Tax has been paid to Revenue and my annual pension has been reduced accordingly from €95,517 to €88,557.

I wish to appeal against the application of SFT Tax in my case as it effectively amounts to double taxation of my pension which is fully subject to income tax.

The fund valuation is an implied valuation and does not represent a cash benefit paid to me which would be under my control. The fund remains within the [REDACTED] Pension Scheme and is not an asset available to me. In effect I have been taxed on an unrealised benefit and a benefit that may not be realised as it is not a personal asset which I can pass on in the event of my demise. In the event of my death the remaining benefit stays within the Pension Fund.

I submit that the only correct taxation that applies is the income tax arising on my pension as I receive it.

The grounds for my appeal are based on the fundamental principle that the tax code be applied on a fair and equitable basis and also the principle that the same income is not subjected to double taxation.

The Commission on Taxation and Welfare has set out the Principle of Equity in the following terms

3.1 Equity

The principle of Equity, which builds on the canon of equality is that people should be taxed based on their ability to pay. There are typically two elements to equity:

- Horizontal equity: this concerns the idea that two persons of similar income should pay the same portion of that income in taxes.*
- Vertical equity: this is the idea that those with larger incomes should pay a greater proportion of their income in tax.*

My contention is that the application of the standard fund threshold rules to the overall implied valuation of my pension benefits amounts to double taxation and that an individual with a similar income to me is taxed in a manner more beneficial to him/her.

In the first instance the implied valuation of my pension benefit is taxed and then my actual cash pension benefits are taxed as they are received.

As I have previously outlined this is not a crystallised amount or benefit. The benefit is received in the form of a pension paid monthly and is fully subject to the PAYE system.

There is no asset over which I have control and there is no asset which survives on my demise as the funds simply stay within the pension fund for the benefit of all the members. The pension fund is operated in accordance with Department of Finance model rules.

To illustrate the inequitable application of the SFT on me I have attached a table, Appendix 1, setting out the impact on me compared to an individual with a similar income. This shows that an individual with a similar annual income to me pays €4,176 less in tax.

I again submit that the manner in which my pension benefits have been taxed is contrary to the fundamental principles that the tax code is applied fairly and equitably and that the same income is not subjected to double taxation.

In particular I refer to the fundamental principle that that two persons of similar income should pay the same portion of that income in taxes.

Replies to the specific questions raised by the Commissioner in preparation for this Case Management Conference are attached at Appendix 2.

I respectfully request the Appeal Commissioners to adjudicate on my appeal.

[Name redacted]

Appendix 1

INEQUITABLE IMPACT OF THE APPLICATION OF STANDARD FUND THRESHOLD TAX ON PENSION OF [REDACTED]					
			[REDACTED]		INDIVIDUAL SIMILAR INCOME
ANNUAL PENSION		95,517.22			95,517.22
DEDUCTION FOR SFT		6,960.00			
		88,557.22			95,517.22
SRCO		51,000.00			51,000.00
TAXABLE AT 40%		37,557.22			44,517.22
TAX AT 20%	51,000.00	10,200.00		51,000.00	10,200.00
TAX AT 40%	37,557.22	15,022.89		44,517.22	17,806.89
TAX		25,222.89			28,006.89
TAX CREDITS					
Personal and PAYE		3,750.00			3,750.00
PAYE		21,472.89			24,256.89
SFT		6,960.00			
TOTAL TAX		28,432.89			24,256.89
NET PAY		67,084.33			71,260.33
DIFFERENCE		4,176.00			

Appendix 2

Replies to specific questions raised by the Commissioner in preparation for this Case Management Conference

the date of the Appellant's retirement;

24th March 2024

the date of the payment of the retirement lump sum to the Appellant by his former employer;

28th March 2024

the date of the return made to the Respondent in relation to the Appellant's retirement lump sum;

4th April 2024 €17,310

12th June 2024 €191,487

23rd June 2024 €17,310

Total amount paid to revenue €226,107

the details of the return made to the Respondent in relation to the Appellant's retirement lump sum;

Implied value of fund €2,565,268

Fund cap €2,000,000

Taxable €565,268

Tax @ 40% €226,107

Less lump sum tax €17,310

SFT Tax €208,797

details of the precise decision and/or assessment of the Respondent which the Appellant is seeking to appeal and the date thereof;

I am not appealing the tax applied to my pension lump sum cash payment. I am appealing the application of the SFT tax to my annual pension income.

the date of the appeal;

I submitted an appeal to Revenue on 4th November 2024 and received their reply on 13th December 2024.

I then referred the matter to the Tax Appeals Commissioners on 13th December 2024.

whether this is a late appeal;

I do not believe so.

details of the precise error by the Respondent in its application of the relevant legislative provisions which the Appellant contends has been made.

My annual pension is simply an annual income which I submit should be subject to PAYE in the normal way. Applying the SFT to this is inequitable as an individual on similar income not subject to SFT is treated in a more beneficial manner. Applying SFT to my pension results in double taxation. I am being

taxed on an unrealised future benefit. There is no capital sum or asset over which I have any control and in the event of my demise there is no residual amount which I can bequeath as the funds are within the pension scheme for the benefit of the members.

The principle of Equity, which builds on the canon of equality is that people should be taxed based on their ability to pay. There are typically two elements to equity:

- *Horizontal equity: this concerns the idea that two persons of similar income should pay the same portion of that income in taxes.*
- *Vertical equity: this is the idea that those with larger incomes should pay a greater proportion of their income in tax.*

My contention is that the application of the standard fund threshold rules to the overall implied valuation of my pension benefits amounts to double taxation and that an individual with a similar income to me is taxed in a manner more beneficial to him/her.”

19. At the CMC the Appellant submitted that, as a result of the application of CET to the amount of the value of his pension in excess of the SFT limit of €2,000,000, the Scheme remitted €208,797 in CET directly to the Respondent on his behalf in 2024.
20. He stated that the payment of the amount of €208,797 by the Scheme has resulted in his annual pension amount being reduced by €6,960 from €95,517.22 to €88,557.22. The Appellant confirmed in his submissions that the reduction on his annual pension was to facilitate repayment by him of the €208,797 payment of CET which the Scheme made on his behalf to the Respondent in 2024.
21. The Appellant confirmed that the annual reduction of €6,960 to his annual pension will continue until such time as he has repaid the amount of €208,797 to the Scheme. He further confirmed that he had retained his pension lump sum amount of €286,551 to which he became entitled on his retirement.
22. The Appellant submitted that he is appealing the application of CET to the amount of the value of his pension in excess of the SFT limit of €2,000,000 on the basis that:
 - 22.1. it effectively amounts to double taxation of his annual pension which is also subject to income tax; and
 - 22.2. the valuation of his pension is an implied valuation and does not represent an asset which is available to him.

23. The Appellant stated that he does not contend that the Respondent has misapplied any specific section of legislation in this appeal. Instead, the Appellant contends that the application of CET to his pension means that the taxation of his annual pension income is not treated in the same, or equitable, manner as someone with the same annual income.

Respondent's Submissions

24. In its Notice of Objection to the acceptance of this appeal, the Respondent objected to the acceptance of this appeal on the basis that:
 - 24.1. The Appellant has not identified an erroneous application of the legislative provisions relating to CET by the Employer / Scheme;
 - 24.2. The Appellant has not identified any instruction given by the Respondent to the Employer / Scheme which is inconsistent with the legislative provisions relating to CET;
 - 24.3. The grounds of appeal identified by the Appellant relate to matters which are outside of the Commissioner's jurisdiction.
25. At the CMC, the Respondent repeated its objection to the acceptance of this appeal.
26. In addition, the Respondent submitted that the arrangement which the Appellant had come to with the Scheme did not arise as a result of any advice which the Respondent had given either to the Scheme or to the Appellant.

Material Facts

27. The material facts in this appeal are not contested and the Commissioner accepts the following as material facts:
 - 27.1. The Appellant is a taxpayer who, in 2024, retired from his public sector employment of in excess of 40 years;
 - 27.2. During the Appellant's employment, he was a member of the Scheme which was a defined benefit, public sector pension scheme.
 - 27.3. The Appellant's membership of the Scheme meant that, on retirement after 40 years of contributions to the Scheme, he was entitled to a lump sum of 120/80ths of his final pensionable salary along with an annual pension of 40/80ths of his final pensionable salary.

- 27.4. On his retirement, the Appellant's final pensionable salary was €191,034 which resulted in an entitlement to a lump sum of €286,551 and an annual pension of €95,517.
- 27.5. The total pension benefit amount of the Appellant's pension was €2,565,268.
- 27.6. On his retirement, the Employer / Scheme applied the provisions of the TCA 1997 relating to CET and the SFT as contained in sections 787O, 787P, 787Q, 787R and 787S of the TCA 1997 to the Appellant's pension. This resulted in the amount of the Appellant's pension benefit in excess of €2,000,000 being subjected to CET in the form of income tax in the form of CET at the higher rate of income tax of 40% in the amount of €208,797.00.
- 27.7. The Appellant entered into an agreement with the Scheme whereby it paid the CET in the form of income tax due of €208,797.00 directly to the Respondent on behalf of the Appellant in return for an annual repayment by the Appellant of €6,960. The repayment is effected by way of a reduction in the Appellant's annual pension of €6,960 from €95,517.22 to €88,557.22.
- 27.8. The Appellant submitted a Notice of Appeal to the Commission on 13 December 2024.
- 27.9. On 13 January 2025, the Respondent submitted a Notice of Objection to the acceptance of this appeal pursuant to the provisions of section 949L of the TCA 1997 objecting to the acceptance of this appeal. It is the Respondent's position that this is not a valid appeal for the following reasons:
- 27.9.1. The Appellant has not identified an erroneous application of the legislative provisions relating to CET by the Employer / Scheme;
- 27.9.2. The Appellant has not identified any instruction given by the Respondent to the Employer / Scheme which is inconsistent with the legislative provisions relating to CET;
- 27.9.3. The grounds of appeal identified by the Appellant relate to matters which are outside of the Commissioner's jurisdiction.

Analysis

28. Charleton J confirmed that the burden of proof rests on Appellants in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 when he stated 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."

Validity of this appeal

29. Given the Notice of Objection to the acceptance of this appeal, the Commissioner must first consider whether the appeal as submitted by the Appellant is valid, more particularly the Commissioner must consider whether this appeal relates to an appealable matter.

30. The Commissioner is a statutory body which was established by the Finance (Tax Appeals) Act 2015. The functions of Appeal Commissioners are set out in section 6 of the Finance (Tax Appeals) Act 2015 as follows:

"(1) The Commissioners may perform such functions as are assigned to them by this Act and by the Taxation Acts.

(2) Without prejudice to the generality of subsection (1), the Commissioners shall perform the following functions in relation to the Taxation Acts -

- (a) deciding whether or not to accept an appeal,*
- (b) deciding whether to declare, under section 949N(3) (inserted by section 34) of the Act of 1997, that a refusal to accept an appeal is final,*
- (c) deciding on the appropriate procedure to be adopted in relation to an adjudication of an appeal,*
- (d) giving directions to the parties to an appeal,*
- (e) fixing dates, times and places for the hearing of appeals,*
- (f) hearing an appeal where the Commissioners have decided that a hearing is the appropriate method of adjudicating on the appeal,*
- (g) determining appeals,*
- (h) providing written determinations,*
- (i) publishing determinations,*

(j) *stating and signing cases stated for the opinion of the High Court, and*

...

(l) *doing all such other things as they consider conducive to the resolution of disputes between appellants and the Revenue Commissioners and the establishment of the correct liability to tax of appellants.”*

31. Section 949J of the TCA 1997 is entitled “*Valid appeal and references in this Part to acceptance of an appeal*” and subsection (1) thereof provides that:

“For the purposes of this Part, an appeal shall be valid if-

(a) It is made in relation to an appealable matter.

...”

32. Section 949A of the TCA 1997 defines an “*appealable matter*” as “*any matter in respect of which an appeal is authorised by the Acts*”. Therefore, in order for an appeal to be valid, it must be a matter in respect of which an appeal is authorised by the Tax Acts.

33. The Commissioner does not have a general or residual power to determine appeals which relate to matters where no appeal is authorised by the Tax Acts. This was confirmed by the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18, in which Murray J stated that:

“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation”.

34. It therefore follows from the above that for an appeal to be a valid appeal that may be accepted by the Commissioner, there must exist some provision in legislation conferring on a taxpayer the right to appeal a specific decision to the Commissioner.

35. The Commissioner has considered the Notice of Appeal submitted by the Appellant along with the written submission received from him and the oral submissions made by him at the CMC.

36. The Appellant has not identified a decision of the Respondent which had resulted in a misapplication of statute by the Respondent. Neither has the Appellant pointed to an assessment made by the Respondent which misapplies statute by the Respondent.
37. By his own submissions, the Appellant's appeal is based on a contention that the tax code has not been applied on a fair and equitable basis to his pension income by the Scheme and also on a contention that his pension income is being subjected to double taxation by the Scheme. The Appellant has, however, not identified any misapplication of statute by the Scheme.
38. On the basis that the Appellant has not identified a misapplication of statute, whether by the Respondent or by the Scheme, the Commissioner does not consider that this appeal relates to an appealable matter.

Substantive appeal

39. If the Commissioner is wrong in her finding that this appeal does not relate to an appealable matter, the Commissioner has considered the substantive appeal raised by the Appellant.
40. As previously stated, the burden of proof in tax appeals rests on the Appellant.
41. By his own admission, the Appellant has not identified a misapplication of the provisions of the TCA 1997 relating to CET and the SFT as contained in sections 787O, 787P, 787Q, 787R and 787S of the TCA 1997 to his pension whether by the Scheme or by the Respondent.
42. It is the Appellant's position in this appeal that the tax code has not been applied fairly and equitably to his pension and that he has been subjected to double taxation.
43. It is not in dispute between the parties, and the Commissioner has found as material facts that:
 - 43.1. The total pension benefit amount of the Appellant's pension was €2,565,268.
 - 43.2. On his retirement, the Employer / Scheme applied the provisions of the TCA 1997 relating to CET and the SFT as contained in sections 787O, 787P, 787Q, 787R and 787S of the TCA 1997 to the Appellant's pension.
 - 43.3. This resulted in the amount of the Appellant's pension benefit in excess of €2,000,000 being subjected to CET in the form of income tax at the higher rate of income tax of 40% in the amount of €208,797.00.

44. The basis of the Appellant's position is that, by virtue of the imposition of CET to the total pension benefit amount of his pension above €2,000,000, his annual pension income of €95,517 is being treated differently from an income tax perspective than the income of a third party of the same amount.

45. The Commissioner does not agree with the Appellant's position.

46. CET is a tax which is imposed on the total pension benefit amount of an individual's pension pursuant to the provisions of Chapter 2C of Part 30 of the TCA 1997 which is entitled "*Limit on Tax-Relieved Pension Funds*".

47. Section 787P of the TCA 1997 is entitled "*Maximum tax-relieved pension fund*" and provides that:

"(1)An individual's maximum tax-relieved pension fund shall not exceed -

(a)the standard fund threshold,

..."

48. The SFT for the year 2024, which is the year in which the Appellant became entitled to his pension, is defined in section 787O of the TCA 1997 as being €2,000,000.

49. Section 787Q of the TCA 1997 is entitled "*Chargeable Excess*" and provides:

"(1)Income tax shall be charged in accordance with section 787R where, on or after 7 December 2005, a benefit crystallisation event occurs (in this section referred to as the 'current event') in relation to an individual who is a member of a relevant pension arrangement and either of the conditions in subsection (2) are met.

(2)The conditions referred to in subsection (1) are -

(a)that all or any part of the individual's standard fund threshold or, as the case may be, personal fund threshold is available at the date of the current event but the amount of that event exceeds the amount of the standard fund threshold or personal fund threshold which is available at that date, or

(b)that none of the individual's standard fund threshold or personal fund threshold, as the case may be, is available at the date of the current event."

50. A benefit crystallisation event is defined in section 787O of the TCA 1997 as being defined in paragraph 2 of Schedule 23B of the TCA 1997 which provides:

“For the purposes of Chapter 2C, a benefit crystallisation event, in relation to an individual, under a relevant pension arrangement of which the individual is a member shall occur where -

(a)the individual becomes entitled under the relevant pension arrangement to any one or more of the following benefits -

(i)a pension,

(ii)an annuity,

(iii)a lump sum,

...”

51. It is not in dispute that:

51.1. a benefit crystallisation event occurred in relation to the Appellant’s pension in 2024, in that he became entitled to his pension in 2024; and

51.2. the personal fund threshold of the Appellant’s pension exceeded the applicable SFT amount in 2024. That is to say that, in 2024, the SFT amount was €2,000,000 and the personal fund threshold of the Appellant’s pension was €2,565,268.

52. As a result of the provisions of section 787Q of the TCA 1997, CET in the form of income tax falls to be charged on the amount of €565,268 which is the amount of the personal fund threshold of the Appellant’s pension above the SFT of €2,000,000.

53. Section 787R of the TCA 1997 is entitled “*Liability to tax and rate of tax on chargeable excess*” and provides that:

“(1)Without prejudice to any other provisions of the Tax Acts including, in particular, any other provision of those Acts relating to a charge to tax -

(a)the whole of the amount of a chargeable excess calculated in accordance with section 787Q, without any relief or reduction specified in the Table to section 458 or any other deduction from that amount, shall be chargeable to income tax under Case IV of Schedule D at the higher rate for the tax year (within the meaning of section 787TA(1)) in which the benefit crystallisation event giving rise to the chargeable excess occurs, and

(b)section 188 shall not apply as regards income tax so charged.”

54. As a result of the provisions of sections 787Q and 787R of the TCA 1997, CET in the form of income tax at the rate of 40% falls to be charged on the amount of €565,268

which is the amount of the personal fund threshold of the Appellant's pension above the SFT of €2,000,000.

55. The Appellant has submitted that he entered into an arrangement with the Scheme whereby the Scheme paid the requisite income tax (CET) of €208,797.00 which was due on the value of his pension benefit in excess of €2,000,000 directly to the Respondent on the Appellant's behalf. This allowed the Appellant to keep the entirety of his lump sum gratuity of €286,551
56. The Appellant informed the Commissioner that, as a result of the agreement for the Scheme to make the payment of €208,797 in CET in the form of income tax to the Respondent, he agreed that this amount would be repaid to the Scheme by way of the reduction of his annual pension income by €6,960. This, he submitted, resulted in his annual pension income being reduced from €95,517.22 to €88,557.22.
57. It is the Appellant's contention that the reduction of his annual pension amount from €95,517.22 to €88,557.22 has resulted in the tax code not being applied fairly and equitably to his annual pension income and that it has resulted in him being subjected to double taxation.
58. The Appellant has not provided the Commissioner with a copy of the agreement which he entered into with the Scheme whereby it paid the CET in the form of income tax amount of €208,797 directly to the Respondent on his behalf and whereby he agreed to repay that amount to the Scheme by way of an reduction of his annual pension by €6,960.00 from €95,517.22 to €88,557.22. The Appellant has however, provided copies of calculations which he received from his Scheme manager setting out his options to fund his tax liability (1) by way of payment from his lump sum entitlement without reduction of his annual pension payment or (2) by way of payment by the pension fund on his behalf with a resulting reduction of his annual pension payment.
59. Having considered all of the submissions received, both written and oral, the Commissioner is not satisfied that the Appellant has discharged the burden of proof to establish that the application of the provisions of the TCA 1997 relating to CET and the SFT as contained in sections 787O, 787P, 787Q, 787R and 787S of the TCA 1997 to his pension by either the Scheme or by the Respondent was incorrect.
60. The Commissioner finds, on the balance of probabilities, that the agreement which the Appellant entered into with the Scheme whereby it paid the income tax amount of €208,797.00 to the Respondent on the Appellant's behalf amounts to a loan agreement between the Appellant and the Scheme.

61. As a result, the Appellant entered into a loan agreement with the Scheme in the amount of €208,797.00 with a resulting obligation on him to make annual repayments of €6,960 to the Scheme.
62. The annual obligation on the Appellant to make annual repayments of €6,960 to the Scheme is being discharged by way of an agreement by the Appellant to permit the Scheme to reduce his annual pension by €6,960.00 from €95,517.22 to €88,557.22.
63. The Commissioner finds on the balance of probabilities that, had the Appellant himself paid the CET amount of €208,797.00 directly to the Respondent from his own resources, no loan agreement between the Appellant and the Scheme would have been necessary and the Appellant's annual pension income would have remained at €95,517.22.
64. The Commissioner also finds on the balance of probabilities that the reduction in the Appellant's annual pension income is as a result of his obligation to repay a debt of €208,797.00 which he owes to the Scheme.
65. In relation to the Appellant's claim that there has been unfair and inequitable application of the tax code and that there has been double taxation of his pension income, the Commissioner finds that the Appellant has not discharged the burden of proof to establish that this has occurred.
66. The Appellant is liable to CET in the same manner as all holders of pensions wherein the personal fund threshold of the pension exceeded the applicable SFT amount.
67. The Appellant entered into an agreement with the Scheme whereby he agreed that his liability to CET pursuant to the provisions of Chapter 2C of Part 30 of the TCA 1997 in the amount of €208,797 would be paid by the Scheme directly to the Respondent in return for a reduction in his annual pension income.
68. Income tax is then charged on the Appellant's reduced annual pension income in the normal course of liability to income tax under the relevant provisions of the TCA 1997.

Determination

69. The Commissioner determines that this is not a valid appeal and directs that this appeal be refused pursuant to the provisions of section 949N of the TCA 1997.
70. The Commissioner further determines that, if she is incorrect in her determination that this is not a valid appeal, the Appellant has not succeeded in discharging the burden of proof to establish that the application of the provisions of the TCA 1997 relating to CET

and the SFT as contained in sections 787O, 787P, 787Q, 787R and 787S of the TCA 1997 to his pension by either the Scheme or by the Respondent was incorrect.

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

Notification

72. 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

73. 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.



Clare O'Driscoll
Appeal Commissioner
13 March 2026