AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

20TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Table of Contents

Introduction 3
Background 3
Legislation and Guidelines 6
Evidence and Submissions 10
  Appellant's evidence and submissions 10
  Respondent's submissions 11
Material Facts 12
Analysis 14
  The burden of proof 15
  Substantive matter 16
  Statutory interpretation 17
  Section 123 TCA 1997 18
  Redundancy Payments Act 1967 19
  The EU Regulation 20
  Section 192A TCA 1997 21
Conclusion 22
Determination 22
Notification 22
Appeal 23

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought on behalf of [redacted] ("the Appellant") in relation to a Statement of Liability for the year 2020, issued by the Revenue Commissioners ("the Respondent"), following an income tax return being filed by the Appellant. The amount of tax in dispute in this appeal is in the amount of €36,845.

2. The issue in this appeal is whether a payment made to the Appellant by his employer on [redacted] in the amount of €112,795.93 ("the Payment"), is taxable income.

3. On 28 April 2025, the Appellant duly appealed to the Commission by submitting a Notice of Appeal and accompanying documentation. On 4 June 2025, in accordance with section 949Q TCA 1997, the Appellant submitted a Statement of Case which built on the Appellant's Notice of Appeal and on 17 June 2025, the Respondent submitted its Statement of Case. On 11 July 2025, in accordance with section 949S TCA 1997, the Appellant submitted his Outline of Arguments and prehearing documentation and on 6 August 2025, the Respondent submitted its Outline of Arguments and prehearing documentation. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

4. On 14 October 2025, a remote hearing of the Appellant's appeal took place. At the remote hearing of the appeal the Appellant represented himself and the Respondent was represented by its case officer.

Background

5. From [redacted], the Appellant was employed as [redacted]

6. In [redacted] ("the relevant period"), the Appellant's employment with the company was terminated [redacted]. [redacted] the Appellant received a payment from the company as follows:

Gross Pay	€142,642.51
Pay for income tax	€118,533.90

Pay for USC	€7,404.63
Pay for PRSI	€0.00
Income Tax Paid	€46,550.22
USC Paid	€331.63
Employee PRSI Paid	€0.00

7. During the relevant period, the Appellant was resident in [redacted] and paid social insurance in [redacted] Furthermore, the Appellant was taxed in [redacted], and the Appellant was taxed in Ireland on [redacted] undertaken as part of his employment with the company.

8. Prior to the termination of the Appellant's employment, the Appellant's employment was exempt from Employer PRSI and Employee PRSI as a result of an A1 Portable Document from an EU Member State. An A1 Certificate is a document that confirms the country where a person pays their social insurance.

9. On [redacted]

10. On [redacted].

11. On [redacted] the Appellant issued correspondence to the Respondent wherein the Appellant confirmed that the specified amounts of salaries outlined in [redacted]

12. On [redacted], the Appellant contacted the Respondent in relation to the Payment and the Appellant requested that his gross pay for 2020 be reduced by the amount of the Payment.

13. On [redacted] the Respondent replied to the Appellant and requested that the Appellant complete a PAYE Income Tax Return for 2020, and that the Appellant provide any relevant supporting documentation of income earned in [redacted]

14. On 7 November 2024, the Appellant filed his 2020 PAYE income tax return online via the Respondent's MyAccount. Furthermore, on the same date the Appellant wrote to the Respondent to state that the Payment should be exempt from income tax in 2020 and requested that the Respondent amend its records accordingly. The Appellant provided a copy of the payslip relating to the Payment, which included the following amounts and references: €19,340.00 "Ex Gratia" and €112,795.93 "Ex Gratia Taxable". In addition, the Appellant provided [redacted]

15. On 14 November 2024, the Respondent replied to the Appellant and sought specific details of the Payment and requested correspondence from the company detailing the number of [redacted] by the Appellant for 2020.

16. On 19 November 2024, the Appellant replied to the Respondent with the requested information [redacted] in 2020.

17. On 21 November 2024, the Respondent wrote to the Appellant and requested that he provide the following information:

    • A letter from the company which confirmed the Appellant had made a repayment to them relating to severance pay, including a confirmed amount of the repayment and date the repayment was made.

    • [redacted] statement of liability including the original untranslated statement from [redacted]

    • The original [redacted] in relation to severance pay in respect of the company.

18. On 22 November 2024, the Appellant confirmed to the Respondent that he had not made any repayment to the company and thus, was unable to provide a letter from the company in relation to that matter.

19. On 18 February 2025, the Respondent wrote to the Appellant and stated that the Payment constituted an "Ex-Gratia" payment which was taxable in accordance with section 123 TCA 1997.

20. On 28 April 2025, the Appellant duly appealed to the Commission, the decision of the Respondent.

Legislation and Guidelines

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

22. Section 123 TCA 1997, General tax treatment of payments on retirement or removal from office or employment, provides *inter alia* that:

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

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

23. Section 201 TCA 1997, Exemptions and reliefs in respect of tax under section 123, provides *inter alia* that:

(2) (a) Income tax shall not be charged by virtue of section 123 in respect of the following payments:

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

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

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

(ii) any sum chargeable to tax under section 127;

(iii) a benefit provided pursuant to any retirement benefits scheme where, under section 777, the employee (within the meaning of that section) was chargeable to tax in respect of sums paid, or treated as paid, with a view to the provision of the benefit;

(iv) a benefit paid in pursuance of any scheme or fund described in section 778(1).

(b) Where paragraph (a)(i) applies to any payment, or any part of a payment -

(i) the exemptions from income tax provided by virtue of any other provision of this section (other than subsection (1A)) and Schedule 3, or

(ii) any deduction in computing the charge to income tax under paragraph 6 of Schedule 3,

shall not apply to the excess of any such payment.

(c) (i) Notwithstanding subparagraph (i) of paragraph (a) the amount of €200,000 referred to in that subparagraph shall be reduced by an amount equal to the aggregate amount of all payments, exempted from income tax by virtue of that subparagraph, which were paid before or at the same time as the making of the payment to which that subparagraph refers.

(ii) Where two or more payments to which subparagraph (i) of paragraph (a) applies are made to or in respect of the same person in respect of the same office or employment, or in respect of different offices or employments, for the purposes of that subparagraph this subparagraph shall apply as if those payments were a single payment of the aggregate amount of all such payments, and the provisions of subparagraph (i) of paragraph (a) shall apply to that single payment accordingly.

24. Section 192A TCA 1997, Exemption in respect of certain payments under employment law, provides *inter alia* that:

(1) In this section -

"relevant Act" means an enactment which contains provisions for the protection of employees' rights and entitlements or for the obligations of employers towards their employees;

"relevant authority" means any of the following -

(a) a rights commissioner,

(b) the Director of the Equality Tribunal,

(ba) an adjudication officer of the Workplace Relations Commission,

(bb) the Workplace Relations Commission,

(bc) the District Court,

(c) the Employment Appeals Tribunal,

(d) the Labour Court,

(e) the Circuit Court, or

(f) the High Court.

(2) Subject to subsections (3) and (5), this section applies to a payment under a relevant Act, to an employee or former employee by his or her employer or former employer, as the case may be, which is made, on or after 4 February 2004, in accordance with a recommendation, decision or a determination by a relevant authority in accordance with the provisions of that Act.

(3) A payment made in accordance with a settlement arrived at under a mediation process provided for in a relevant Act shall be treated as if it had been made in accordance with a recommendation, decision or determination under that Act of a relevant authority.

(4) (a) Subject to subsection (5) and without prejudice to any of the terms or conditions of an agreement referred to in this subsection, this section shall apply to a payment

(i) made, on or after 4 February 2004, under an agreement evidenced in writing, being an agreement between persons who are not connected with each other (within the meaning of section 10), in settlement of a claim which -

(I) had it been made to a relevant authority, would have been a bona fide claim made under the provisions of a relevant Act,

(II) is evidenced in writing, and

(III) had the claim not been settled by the agreement, is likely to have been the subject of a recommendation, decision or determination under that Act by a relevant authority that a payment be made to the person making the claim,

(ii) the amount of which does not exceed the maximum payment which, in accordance with a decision or determination by a relevant authority (other than the Circuit Court or the High Court) under the relevant Act, could have been made under that Act in relation to the claim, had the claim not been settled by agreement, and

(iii) where -

(I) copies of the agreement and the statement of claim are kept and retained by the employer, by or on behalf of whom the payment was made, for a period of six years from the day on which the payment was made, and

(II) the employer has made copies of the agreement and the statement of claim available to an officer of the Revenue Commissioners where the officer has requested the employer to make those copies available to him or her.

(5) This section shall not apply to so much of a payment under a relevant Act or an agreement referred to in subsection (4) as is -

(a) a payment, however described, in respect of remuneration including arrears of remuneration, or

(b) a payment referred to in section 123(1) or 480(2)(a).

(5A) This section shall not apply to payments made pursuant to an order under section 2B of the Employment Permits Act 2003.

(6) Payments to which this section applies shall be exempt from income tax and shall not be reckoned in computing total income for the purposes of the Income Tax.

25. Section 7(1)(b) of the Redundancy Payments Act 1967 ("RPA 1967"), General right to redundancy payment, provides that:

(1) An employee, if he is dismissed by his employer by reason of redundancy or is laid off or kept on short-time for the minimum period, shall, subject to this Act, be entitled to the payment of moneys which shall be known (and are in this Act referred to) as redundancy payment provided—

(a) he has been employed for the requisite period, and

*(b) he was an employed contributor in employment which was insurable for all benefits under the Social Welfare Acts, 1952 to 1966, immediately before the date of the termination of his employment, or had ceased to be ordinarily employed in employment which was so insurable in the period of four year***s** *ending on that date.*

Evidence and Submissions

Appellant's evidence and submissions

26. The Commissioner sets out hereunder a summary of the evidence and submissions made by the Appellant at the hearing of the appeal, and as set out in his Notice of Appeal and Statement of Case:-

    26.1. The Appellant gave evidence that he was a [redacted].

    26.2. The Appellant confirmed that his last day of employment with the company was [redacted], [redacted] T[redacted]. Therefore, he said, he was never reinstated in his employment, [redacted]

    26.3. [redacted] he received his last payment from his employment with the company. The Appellant gave evidence that at the time, he was resident [redacted]. The Appellant also confirmed that he was taxed [redacted]

    26.4. The Appellant gave evidence that on [redacted] he received from the company a payslip and part of the payment included in his payslip was declared as "Ex-Gratia" and another part was described as "Ex Gratia taxable". The Appellant stated that he filed his income tax returns in Ireland for 2020 and was taxed on the Payment. The Appellant testified that it was his view that the Payment was a redundancy or a severance payment, and as such should not be taxed or should be exempt from income tax in Ireland. The Appellant made reference to the Redundancy Payments Act 1967.

    26.5. The Appellant confirmed that it was correct that he was not making PRSI payments as he was exempt from same in Ireland, due to the fact that he was taxed [redacted] The Appellant stated that despite not making PRSI payments on his income in Ireland, he should be treated equally, as a result of EU Regulation 883/2004 on the coordination of social security systems ("the EU Regulation"). This he said, was because he had no choice but to pay social insurance [redacted] and not in Ireland. Therefore, he should be entitled to the benefit of the Irish taxation rules in respect of the Payment, no matter what jurisdiction in which he paid social insurance.

26.6. The Appellant submitted that on 17 April 2020, the [redacted]

26.7. The Appellant gave evidence that he understood that under the RPA 1967 the requirement was to pay PRSI in Ireland to be eligible for taxation relief. However, he was relying on the EU Regulation, and his right to equal treatment and non-discrimination. He submitted that that whilst he paid his social insurance contributions akin to PRSI in [redacted], he should be treated as if he had paid them in Ireland, because he did not have a choice where he paid the contributions.

26.8. The Appellant stated that he accepted that the meaning of “Ex Gratia payments”, was goodwill payments. However, the Payment was not a goodwill payment and “goodwill payments” were never made by the company. The company was forced by the [redacted] to make the payments and “Ex Gratia” was not a word that was used in discussions with his employer, other than what appeared in the payslip. He said it was a mandatory payment not a goodwill payment.

26.9. There was no cross examination of the Appellant by the Respondent’s case officer.

Respondent’s submissions

27. The Commissioner sets out hereunder a summary of the submissions made by the Respondent at the hearing of the appeal and as set out in its Statement of Case and Outline of Arguments:-

27.1. The Respondent confirmed that the tax at issue in this appeal is the amount of €36,845. The Respondent referred to section 203 TCA 1997 and section 7(1)(b) RPA 1967 and submitted that an individual is entitled to a redundancy payment provided that they were *"An employed contributor in employment which was insurable for all benefits under the Social Welfare Acts*."

27.2. The Respondent confirmed that its position is that the exemption to income tax outlined in the TCA 1997 applies only to those payments which are made on foot of an entitlement to redundancy under the RPA 1967. Consequently, the Payment made to the Appellant does not qualify as statutory redundancy under that legislation, and the exemption for statutory redundancy payments does not apply to the Payment.

27.3. The Respondent referred to the Appellant's payslip and stated that it appears that the company has afforded tax relief on the "Ex Gratia" payment of €19,340 and not included it as taxable income, but that the company has included as taxable income, what was described in the Appellant's payslip as "Ex Gratia taxable", in the amount of €112,795.93. The Respondent submitted that it accepted the first payment of €19,340 as not being subject to tax, as stated. However, it does not accept that the Payment in the amount of €112,795.93 was also not subject to tax.

27.4. The Respondent submitted that "Ex Gratia" refers to payments which are made as a result of goodwill by an employer to an employee for past services rendered, but that it is also a catch-all term to describe payments related to the termination of an employment.

27.5. The Respondent submitted that it has considered [redacted] but the basis for the taxation of the Payment is the TCA 1997, and there is nothing in the TCA 1997 which exempts from tax any payments that are not made under the RPA 1967.

Material Facts

28. Having read the documentation submitted and having heard the evidence and submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

28.1. From [redacted] the Appellant was employed [redacted] with the company.

28.2. The Appellant was an [redacted]

28.3. In [redacted] the Appellant's employment with the company was terminated by means of [redacted]

28.4. On [redacted], the Appellant received a payment from the company as follows:

Gross Pay	€142,642.51
Pay for income tax	€118,533.90
Pay for USC	€7,404.63
Pay for PRSI	€0.00
Income Tax Paid	€46,550.22
USC Paid	€331.63
Employee PRSI Paid	€0.00

28.5. The Payment at issue is in the amount of €112,795.93.

28.6. Prior to the termination of the Appellant's employment with the company, the Appellant was resident in [redacted] and paid social insurance in [redacted]

28.7. The Appellant was taxed in [redacted], and the Appellant was taxed in [redacted] undertaken as part of his employment with the company.

28.8. Prior to the termination of the Appellant's employment, the Appellant's employment was exempt from Employer PRSI and Employee PRSI as a result of an A1 Portable Document from an EU Member State.

28.9. On [redacted].

28.10. On [redacted].

28.11. On 4 June 2021, correspondence was forwarded to the Respondent in which the Appellant confirmed that the specified amounts of salaries [redacted]

28.12. On 7 November 2024, the Appellant filed his 2020 PAYE income tax return online via the Respondent's MyAccount. Furthermore, on the same date the Appellant wrote to the Respondent to state that the Payment should be exempt from income tax in 2020 and requested that the Respondent amend its record accordingly.

28.13. The Appellant provided a copy of a payslip relating to the Payment which included the amount of €19,340.00 relating to "Ex Gratia" and the amount of €112,795.93 relating to "Ex Gratia Taxable". [redacted]

28.14. On 22 November 2024, the Appellant confirmed to the Respondent that he had not made any repayment to the company.

28.15. On 18 February 2025, the Respondent wrote to the Appellant and stated that the Payment constituted an "Ex-Gratia" payment, which was taxable in accordance with section 123 TCA 1997.

Analysis

29. The Appellant's appeal relates to the question of whether a payment made to the Appellant on [redacted], by the company in the amount of €112,795.93, was taxable in accordance with section 123 TCA 1997. It is the Appellant's contention that the Payment was a payment made to him by the company, in circumstances where the [redacted]. Thus, he submitted, the Payment was a statutory redundancy payment, required to be paid by the company in accordance with [redacted] legislation and was not taxable. The Appellant argued that the Payment should be exempt from income tax, in accordance with section 203 TCA 1997.

30. The Respondent did not agree that the Payment, in the amount of €112,795.93, should be considered exempt from taxation, as the Appellant does not satisfy the requirements provided for in section 7(1)(b) RPA 1967. Moreover, the Respondent submitted that there is no legislative basis to remove the Payment, made to the Appellant by the company, from the charge to tax. The Respondent argued that the Payment does not fall within the provisions of section 203 TCA 1997 to exempt it from taxation.

31. The Commissioner notes from the documentation submitted in this appeal, namely the Appellant's payslip dated [redacted] that in addition to the Appellant's salary the Appellant received two payments described by the company as "Ex Gratia"; firstly, the amount of €19,340 which was described in the Appellant's payslip as "Ex Gratia" and secondly, the amount of €112,795.93 which was described in the Appellant's payslip as "Ex Gratia Taxable". It is this latter payment that is at issue in this appeal.

The burden of proof

32. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example, in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated:

> *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable".*

33. The Commissioner also considers it useful herein, to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes,* wherein he states that:

> *"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute…"*

34. However, when an appeal relates to the interpretation of the law only, Donnelly J. and Butler J. clarified the approach to the burden of proof, in their joint judgment for the Court of Appeal in *Hanrahan v Revenue Commissioner* [2024] IECA 113. At paragraphs 97-98, the Court of Appeal held that:

> "*97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake…………….*
>
> *98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must*

apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation………."

Substantive matter

35. The Commissioner notes the evidence of the Appellant that he was employed as a [redacted] The result of the company's decision was that the Appellant was dismissed from his employment. Consequent to that dismissal, [redacted]

36. Furthermore, the Commissioner notes that the Appellant was never reinstated to his employment, [redacted]20.

37. The fact that the Payment was not returned to the company by the Appellant was accepted in this appeal and was not a matter in dispute between the parties. What was in dispute between the parties in this appeal was the application of section 123 TCA 1997 to the Payment.

38. The Commissioner notes the submission of the Respondent that the first "Ex Gratia" payment in the sum of €19,340 was not taxable and that the Respondent was satisfied that the appropriate exemptions had been applied to the Payment, that the Appellant received from the company on [redacted]. Furthermore, the Commissioner notes that the Respondent contended that the balance of any lump sum taxable under section 123 TCA 1997, which exceeds the available exemptions, was chargeable to tax as income in the year of assessment in which the termination of the employment occurred.

The Respondent submitted that it was the case that the second payment in the amount of €112,795.93 was taxable.

39. Nevertheless, it was argued by the Appellant that the Payment was not an "Ex Gratia" payment, but a payment that amounted to statutory redundancy. This he said, was due to the fact that the company [redacted] The Appellant argued that the payment should be exempt from income tax due to the RPA 1967 and despite him not making PRSI contributions in Ireland, the fact that he did so in [redacted] should be treated as if they were made in Ireland, having regard to the EU Regulation.

Statutory interpretation

40. Before proceeding to consider the requisite statutory provisions applicable in this appeal, the Commissioner considers it salutary to recall the principles governing the interpretation of legislation. The proper approach to statutory interpretation has recently been restated by the Supreme Court in *Heather Hill Management Company v An Bord Pleanála* [2022] IESC 43 ("*Heather Hill*"). Mr Justice Murray, writing for the Supreme Court, highlighted that the literal and purposive approaches to statutory interpretation are not hermetically sealed. The words of the section are the first port of call in its interpretation.

41. Also of particular assistance is the judgment of Mr. Justice McDonald in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 ("*Perrigo*") wherein at paragraph 74 of the judgment, McDonald J. summarised the relevant principles from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60 as follows:

> "*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd. v The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail….."

42. Additionally, this is an appeal whereby the Appellant seeks an exemption from taxation. Therefore, the principle set out in *Revenue Commissioners v Doorley* [1933] IR 750 ("*Doorley*"), that all such exemptions must be interpreted strictly, applies. In his decision, Kennedy C.J., at page 766, stated the following in relation to the interpretation of taxation statutes where they relate to exemptions from tax:

"*Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible*".

Section 123 TCA 1997

43. The starting point for the exercise of statutory interpretation must be the language of the Act itself. Section 123 TCA 1997 provides for the taxation under Schedule E of any payment which is made "*whether in pursuance of any legal obligation or not, either directly or indirectly in consideration or in consequence of, or otherwise in connection with, the termination of the holding of an office or employment or any change in its functions or emoluments, including any payment in commutation of annual or periodical payments (whether chargeable to tax or not) which would otherwise have been so made*."

44. The Commissioner notes that section 123 TCA 1997 is subject to section 201 TCA 1997, which provides for a number of exemptions and reliefs in respect of the imposition of tax under section 123 TCA 1997, *inter alia* the cost of retraining an employee as part of a redundancy package, payment made on account of the death, injury to or disability of the holder of the office or employment which resulted in the termination of that office or employment.

45. However, having considered the plain and ordinary meaning of the words in section 201 TCA 1997, in context, and the evidence adduced in this appeal, the Commissioner is satisfied that the Payment, that the Appellant received from the company on [redacted], does not fall within any of the prescribed exemptions or reliefs pursuant to section 201 TCA 1997. In accordance with the guidance set out in *Doorley*, "*the tax must be brought within the letter of the taxing Act".* The Commissioner is satisfied that the facts in this appeal do not establish that the tax applicable to the Payment falls within section 201 TCA 1997, such that the Payment is capable of being exempt from taxation pursuant to section 123 TCA 1997.

Redundancy Payments Act 1967

46. It is the case that statutory redundancy payments are dealt with in accordance with the RPA 1967. Section 203 TCA 1997 provides that any lump sum payments made under section 19, 32 or 32A RPA 1967 "*shall be exempt from income tax under Schedule E*". Furthermore, "*lump sum*" has the same meaning as in the RPA 1967. The Commissioner will now proceed to consider the relevant sections of the RPA 1967.

47. Section 7(1)(b) of the Redundancy Payments Act 1967 provides for a general right to a redundancy payment and states that an employee, if dismissed by an employer by reason of redundancy, shall be entitled to the payment of moneys which shall be known as redundancy payment provided the employee was "*an employed contributor in employment which was insurable for all benefits*" under the Social Welfare Acts immediately before the date of termination. It was not in dispute in this appeal that prior to the termination of the Appellant's employment, the Appellant's employment was exempt from Employer PRSI and Employee PRSI, because the Appellant made corresponding contributions in his country of residence, namely [redacted] The Commissioner has already made reference to the fact that this was due to the A1 portable document. The fact of the Appellant's employment being exempt from Employer PRSI and Employee PRSI was a material fact found by the Commissioner.

48. In light of the circumstances of the Appellant, namely that the Appellant made corresponding PRSI contributions in his country of residence, the Commissioner is satisfied that the Appellant cannot satisfy the requirements in section 7(1)(b) RPA 1967. This, the Commissioner finds, was due to the fact that the Appellant was not, immediately before the date of termination, an employed contributor in employment which was insurable for all benefits under the Social Welfare Acts, in Ireland. Thus, the Commissioner is satisfied that this material fact, is detrimental to the Appellant being in a position to rely on the RPA 1967 as a means to exempt the Payment from tax.

49. However, the Commissioner notes the Appellant's argument that having made similar payments in [redacted], he should be treated as if he made the payments in Ireland. The Appellant relied on the EU Regulation to support his argument in that regard. The Commissioner will now proceed to consider the EU Regulation and its applicability to the Appellant's appeal.

The EU Regulation

50. The Commissioner has considered the EU Regulation submitted by the Appellant in support of his appeal, which deals with the coordination of social security systems. The Appellant relies on Article 4 of the EU Regulation which states that: "*Unless otherwise provided for by this Regulation, persons to whom this Regulation applies shall enjoy the same benefits and be subject to the same obligations under the legislation of any Member State as the nationals thereof.*"

51. However, the Commissioner considers that Article 3 of the EU Regulation is important and also instructive, as it provides for "matters covered". Article 3, paragraph 1 states that the EU Regulation shall apply to all legislation concerning the following branches of social security. Having regard to that statement, the Commissioner is satisfied that not all branches of social security are covered by the EU Regulation. The EU Regulation sets out the branches of social security covered, as follows: *"(a) sickness benefits; (b) maternity and equivalent paternity benefits; (c) invalidity benefits; (d) old age benefits; (e) survivors benefits; (f) benefits in respect of accidents at work and occupational diseases; (g) death grants; (h) unemployment benefits; (i) pre-retirement benefits; (j) family benefits*". Moreover, subsections (2) and (3) provide as follows: (2) "*Unless otherwise provided for in Annex XI, this Regulation shall apply to general and special social security schemes, whether contributory or non-contributory, and to schemes relating to the obligations of an employer or shipowner"*; (3) "*This Regulation shall also apply to the special non-contributory cash benefits covered by Article 70*."

52. The Commissioner is satisfied that having regard to Article 3 of the EU Regulation, statutory redundancy payments are not branches of social security covered by the EU Regulation. The Commissioner observes from the plain and ordinary language of Article 3 that paragraphs 1(a) to (j) refer to certain "benefits" covered by the Regulation. The Commissioner is satisfied that the Appellant's circumstances do not fall into any category of "benefits" outlined in paragraph 3 of the EU Regulation. Moreover, paragraphs 2 and 3 do not apply to the Appellant's circumstances. Paragraph 2 relates to certain "schemes" and paragraph (3) relates to Article 70 which deals with "special non-contributory cash benefits". Thus, whilst the Appellant cites Article 4 as being applicable to his appeal, the

Commissioner is satisfied that Article 4 must be read in light of Article 3, the consequence of which is that the Commissioner is satisfied that the Appellant is not a person *"to whom this Regulation applies*".

Section 192A TCA 1997

53. Furthermore, the Commissioner has considered whether the payment might fall within the provisions of section 192A TCA 1997. Section 192A TCA 1997 provides for an exemption from income tax in respect of certain payments made as a result of an employee's rights and entitlements having been infringed. Subsection (2) provides that "*this section applies to a payment under a relevant Act, to an employee or former employee by his or her employer or former employer, as the case may be, which is made, on or after 4 February 2004, in accordance with a recommendation, decision or a determination by a relevant authority in accordance with the provisions of that Act*". Moreover, subsection (1) provides for certain definitions *inter alia* "*relevant Act*" which means "*an enactment which contains provisions for the protection of employees' rights and entitlements or for the obligations of employers towards their employees*" and "*relevant authority*" which means any of the following – "*(ba) an adjudication officer of the Workplace Relations Commission, (bb) the Workplace Relations Commission, (bc) the District Court, (d) the Labour Court,(e) the Circuit Court or (f) the High Court*".

54. The Commissioner is satisfied that the wording in section 192A TCA 1997 is unambiguous, such that the section applies only to payments made under the relevant act and by the relevant authorities cited in the preceding paragraph. The Commissioner is satisfied that the Payment made by the company to the Appellant was not a payment that can be described as a payment made in accordance with section 192A TCA 1997. Hence, this section has no applicability to the Appellant's circumstances in this appeal.

55. Having considered all of the requisite legislative provisions in this appeal, the Commissioner is not satisfied that the Appellant has shown on balance that the Respondent was incorrect to tax the Payment made to him by the company on [redacted], in the amount of €112,795.93. The Commissioner is not satisfied that the Appellant has shown on balance that the Payment should not be subjected to income tax.

56. In addition, the Commissioner has considered the EU Regulation that the Appellant relied on in support his appeal. Nevertheless, the Commissioner is satisfied that the EU Regulation has no application to the type of Payment made to the Appellant by the company, on [redacted]. Hence the Appellant's appeal fails.

Conclusion

57. In an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax, or a decision of the Respondent is incorrect. In addition, in relation to statutory interpretation, the starting point must be the language of the Act itself. The Commissioner is satisfied that the meaning of the relevant legislative sections in this appeal are plain and self-evident.

58. Having considered the totality of the submissions in this appeal, including the evidence of the Appellant and the documentation submitted in support of his appeal, the Commissioner is not satisfied that the Appellant has shown on balance that the Statement of Liability for the year 2020, issued by the Respondent, was incorrect.

59. Furthermore, the Commissioner is confined to considering whether the Respondent's refusal of the Appellant's claim was correct in law, and the Commissioner has no equitable jurisdiction or broader power to consider the wider circumstances surrounding the failure to submit the claim within the prescribed time limit. The Commissioner has no supervisory jurisdiction over the Respondent and does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent (See *Lee v the Revenue Commissioners* [2021] IECA 18).

Determination

60. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the Statement of Liability for 2020, issued by the Respondent, was incorrect. Therefore, the Statement of Liability for 2020 shall stand.

61. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.

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

Notification

63. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997.

This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

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

Claire Millrine
Appeal Commissioner
14 January 2026

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.