



AC Ref: 18TACD2017

BETWEEN

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the application of the standard rate of tax in accordance with Taxes Consolidation Act 1997, section 15 to an increase in the old age (contributory) pension paid to the Appellant's spouse for the years ended 31st December 2012 and 2013 and the entitlement to the employee tax credit pursuant to Taxes Consolidation Act 1997, section 472.

Background

2. The Appellant, having satisfied the assortment of conditions prescribed by the Social Welfare Consolidation Act 2005, became entitled to the old age (contributory) pension amounting to €11,975 (the Principal Pension) per annum. The Appellant also qualified for an increase to that pension in the sum of €10,728 (the Increased Pension) per annum as he had a "*qualified adult*" defined by section 2 of that Act to include, *inter alia*, a spouse who was "*wholly or mainly maintained....*" by the Appellant.
3. The Principal Pension was paid to the Appellant and the Increased Pension, pursuant to statute, was paid directly to the Appellant's spouse for the years under appeal.
4. By letter dated 23rd August 2013, the Respondent refused to apply the standard rate band to the Increased Pension and also denied the entitlement to the employee tax credit on the grounds that the emoluments did not arise to the Appellant's spouse.
5. The Appellant appealed that determination.



Legislation

Social Welfare Consolidation Act 2005

6. Section 2 of Social Welfare Consolidation Act 2005 (the Principal Act) is the definition section in which a “qualified adult”, subject to sections 134, 187 and 297, means in relation to a person—

(a) a spouse who is wholly or mainly maintained by that person but does not include—

- (i) a spouse in employment (other than employment specified in paragraph 4 or 5 of Part 2 of Schedule 1), or*
- (ii) a spouse who is self-employed, or*
- (iii) a spouse who is entitled to or is in receipt of any benefit, pension, assistance or allowance (other than supplementary welfare allowance) under Part 2 or 3, or*
- (iv) a spouse who, by virtue of section 68 (1) or 147 (2), is or would be disqualified for receiving unemployment benefit payable under Chapter 12 of Part 2 or unemployment assistance payable under Chapter 2 of Part 3 in his or her own right apart from a spouse who qualifies as a qualified adult by virtue of regulations made under paragraph (c), or*
- (v) a spouse who is entitled to or is in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66, in respect of a non-craft full-time course approved by An Foras Áiseanna Saothair under the Industrial Training Act 1967, or*
- (vi) a spouse who is entitled to or in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66, in respect of participation in a scheme administered by the Minister for Education and Science and known as the Vocational Training Opportunities Scheme, or*
- (vii) a spouse who is entitled to or in receipt of an allowance the rate of which is related to the rates of unemployment assistance payable under section 142 or unemployment benefit payable under section 65 or 66, in respect of participation in a scheme administered by the Minister and known as—*

- 1. Back to Education Allowance, or*
- 2. Back to Work Allowance, or*
- 3. Back to Work Enterprise Allowance, or*
- 4. Part-Time Job Incentive,*

7. As such, the financial means of the “qualified adult” are relevant in determining the entitlement to the Increased Pension.

8. The entitlement to the Principal Pension is in accordance with section 108(1) of the Principal Act which provides:



“Subject to this Act, a person shall be entitled to old age (contributory) pension where he or she has attained pensionable age and satisfies the contribution conditions in section 109.”

9. The rules setting out that entitlement is governed by section 109(1) of the Principal Act and states:

The contribution conditions for old age (contributory) pension are—

- (a) subject to subsection (3), that the claimant has entered into insurance before attaining the age of 56 years,*
- (b) that the claimant has qualifying contributions in respect of not less than 156 contribution weeks since his or her entry into insurance, and*
- (c) that the claimant has a yearly average or, in the case of a person who attains pensionable age on or after 6 April 1992, an alternative yearly average of not less than 48.*

10. Provision is made for an increase in the old age (contributory) pension where the “beneficiary” wholly or mainly maintains a “qualified adult”. Section 112(1) of the Principal Act sets out the entitlement to the increase and states:

“Subject to this Part, the weekly rate of old age (contributory) pension shall be increased by the amount set out in column (3) of Part 1 of Schedule 2 for any period during which the beneficiary has a qualified adult, subject to the restriction that a beneficiary shall not be entitled for the same period to an increase of pension under this subsection in respect of more than one person.”

11. Prior to the enactment of the Social Welfare and Pensions Act, 2007, the Department of Social and Family Affairs made arrangements with the “qualified adult” to pay the Increased Pension directly to that person. However, such an arrangement was statutorily formalised by section 14 of that Act by the insertion of the following subsections after section 112(1) of the Principal Act:

“(1A) The amount of the increase of pension referred to in subsection (1), in respect of any claim for State pension (contributory) made after 24 September 2007, shall be paid—

- (a) directly to the qualified adult concerned, or*
- (b) to such other person as may be nominated by the qualified adult for the purpose of receiving the increase of pension referred to in subsection (1) on behalf of the qualified adult.*

(1B) Where a beneficiary ceases to be entitled to State pension (contributory) the payment to a qualified adult of the increase of pension referred to in subsection (1) shall also cease.”





Taxes Consolidation Act 1997

12. Taxes Consolidation Act 1997 (TCA), section 15 prescribes in tabular format, the rates at which income tax is charged and the bands of income to which the rates are applied.

13. Subsection 2 sets out the graduated charge to income tax and provides:

“Where a person who is charged to income tax for any year of assessment is an individual other than an individual acting in a fiduciary or representative capacity), such individual shall, notwithstanding anything in the Income Tax Acts but subject to section 16(2), be charged to tax on such individual’s taxable income –

(a) in a case in which such individual is assessed to tax otherwise than in accordance with section 1017 or 1031C and is not an individual referred to in paragraph (b), at the rates specified in Part 1 of the Table to this section, or

(b) in a case in which the individual is assessed to tax otherwise than in accordance with section 1017 or 1031C and is entitled to a reduction of tax provided for in section 462, at the rates specified in Part 2 of the Table to this section, or

(c) subject to subsections (3) and (5), in a case in which such individual is assessed to tax in accordance with section 1017 or 1031C, at the rates specified in Part 3 of the Table to this section,

and the rates in each Part of that Table shall be known respectively by the description specified in column (3) in each such Part opposite the mention of the rate or rates, as the case may be, in column (2) of that Part.”

14. As such Part 1 of the Table below sets out the rates applicable to single persons, widowed persons without children and married persons/civil partners assessed to tax as single persons. Part 2 sets out the rates applicable to those who qualify for the single person child carer credit and Part 3 sets out the rates applicable to married persons and civil partners assessed to tax on their own and their spouses’/civil partners’ combined incomes.



Part 1		
Part of Taxable Income	Rate of tax	Description of Rate
(1)	(2)	(3)
The first €32,800	20 per cent	the standard rate
The remainder	41 per cent	the higher rate
Part 2		
Part of Taxable Income	Rate of tax	Description of Rate
(1)	(2)	(3)
The first €36,800	20 per cent	the standard rate
The remainder	41 per cent	the higher rate
Part 3		
Part of Taxable Income	Rate of tax	Description of Rate
(1)	(2)	(3)
The first €41,800	20 per cent	the standard rate
The remainder	41 per cent	the higher rate



15. Subsection 3 sets out the joint assessment procedure where both parties are in receipt of income as follows:

Subject to subsections (4) and (5) –

(a) where an individual is charged to tax for a year of assessment in accordance with section 1017 or 1031C,

(b) and both the individual and his or her spouse or civil partner are each in receipt of income in respect of which the individual is chargeable to tax in accordance with that section, the part of his or her taxable income chargeable to tax at the standard rate specified in column (1) of Part 3 of the Table to this section shall be increased by an amount which is the lesser of –

(i) €23,800, and

(ii) the specified income of the individual or the specified income of the individual's spouse or civil partner, whichever is the lesser.

16. TCA, section 126 governs the tax treatment of certain benefits payable under the Social Welfare Acts. Subsection 2 provides:

(a) This subsection shall apply to the following benefits payable under the Acts –

- (i) widow's (contributory) pension,*
- (ii) orphan's (contributory) allowance,*
- (iii) retirement pension, and*
- (iv) old age (contributory) pension.*

(b) Payments of benefits to which this subsection applies shall be deemed to be emoluments to which Chapter 4 of Part 42 applies.

17. Section 12 Finance (No. 2) Act 2013 amended TCA, section 126 by the insertion of subsection 2B, the effect of which was to treat the payment of the Increased Pension as if it arises to and is payable to the beneficiary (the Principal Recipient) with effect from 1 January 2014. That subsection provides:

(a) "Notwithstanding the provisions of section 112(1), where an increase in the amount of a pension to which section 112, 113, 117 or 157, as the case may be, of the Social Welfare Consolidation Act 2005 applies is paid in respect of a qualified adult (within the meaning of the Acts), that increase shall be treated for all the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary referred to in those sections of that Act."

18. TCA, section 1017 provides for the joint assessment of the husband in respect of the total income of both spouses. In such circumstances, the total income of the wife is treated as the total income of the husband. Subsection 1 provides:



“Where in the case of a husband and wife an election under section 1018 to be assessed to tax in accordance with this section has effect for a year of assessment –

- (a) the husband shall be assessed and charged to income tax, not only in respect of his total income (if any) for that year, but also in respect of his wife’s total income (if any) for any part of that year of assessment during which she is living with him, and for this purpose and for the purposes of the Income Tax Acts that last-mentioned income shall be deemed to be his income,*
- (b) the question whether there is any income of the wife chargeable to tax for any year of assessment and, if so, what is to be taken to be the amount of that income for tax purposes shall not be affected by this section, and*
- (c) any tax to be assessed in respect of any income which under this section is deemed to be income of a woman’s husband shall, instead of being assessed on her, or on her trustees, guardian or committee, or on her executors or administrators, be assessable on him or, in the appropriate cases, on his executors or administrators.”*

19. Provision is made under TCA, section 1018 to enable married couples to elect to be jointly assessed under section 1017 and states:

“A husband and his wife, where the wife is living with the husband, may at any time during a year of assessment, by notice in writing given to the inspector, jointly elect to be assessed to income tax for that year of assessment in accordance with section 1017 and, where such election is made, the income of the husband and the income of the wife shall be assessed to tax for that year in accordance with that section.

20. The employee tax credit applies to individuals in receipt of certain emoluments chargeable to tax and is governed by TCA, section 472(4) and applies:

Where, for any year of assessment, a claimant proves that his or her total income for the year consists in whole or in part of emoluments (including, in a case where the claimant is a married person assessed to tax in accordance with section 1017, or a civil partner assessed to tax in accordance with section 1031C, any emoluments of the claimant’s spouse or civil partner deemed to be income of the claimant by that section for the purposes referred to in that section) the claimant shall be entitled to a tax credit (to be known as the “employee tax credit”) of—

- (a) where the emoluments (but not including, in the case where the claimant is a [married person or a civil partner so assessed, the emoluments, if any, of the claimant’s spouse or civil partner) arise to the claimant, the lesser of an amount equal to the appropriate percentage of the emoluments and €1,650, and*
- (b) where, in a case where the claimant is a married person or a civil partner so assessed, the emoluments arise to the claimant’s spouse or civil partner, the lesser of an amount*



equal to the appropriate percentage of the emoluments and €1,650.

Submissions

Appellant

21. On behalf of the Appellant it was contended that:

- (a) the Appellant's spouse was in receipt of emoluments and as a consequence her income should be assessed to tax at the standard rate band as opposed to having the Increased Pension treated as part of the Appellant's income and taxed at the marginal rate of tax;
- (b) the Appellant's spouse was entitled to the employee tax credit as she was beneficially entitled to the Increased Pension in her own right;
- (c) the effect of the Social Welfare and Pensions Act 2007 mandating the payment of the Increased Pension to the Appellant's spouse represents the official statutory endorsement of her beneficially entitlement to that income;
- (d) the Increased Pension was the property of the Appellant's spouse for which she had full discretion as to how expend such monies;
- (e) on the death of the Appellant, the spouse would be entitled to a widow's contributory pension therefore preserving continuance of her income entitlement;
- (f) unlike in *O Siocháin (Inspector of Taxes) —v- Neenan* [1999] 1 IR 533:
 - i. certain prescribed criteria and means testing had to be satisfied before the entitlement to the Increased Pension arose, and
 - ii. when the widow died, the children had no entitlement to the pension. However, and notwithstanding the contributory old age pension would cease, in the event of the Appellant's death, the spouse would qualify for the widow's contributory pension;
- (g) the amendment to the TCA, section 126 by Finance (No.2) Act 2013, section 12, provides that the Increased Pension is to be treated as that of the Appellant with effect from 1 January 2014. Therefore prior to 2014, the Increased Pension could only be taxed as income arising to the spouse, and
- (h) for the purposes of pension legislation specifically the Approved Minimum Retirement Fund, the Revenue Commissioners state that income of married persons should be treated separately.

22. Furthermore, in a press release announcing the introduction of the change in social welfare laws and the statutory change requiring the payment of the Increased Pension directly to the "qualified adult" the then Minister for Social and Family Affairs, Martin Cullen issued the following statement:

"Most qualified adults are women and this initiative will be of significant benefit to them. This measure, in conjunction with special increases in QAA rates in January this year, and commitments for further increases over the next few years, will ensure that spouses and





partners of social welfare pensioners will receive a significant direct payment equivalent to the State Pension (non-contributory).

This is an important improvement in the social welfare code that will benefit mainly women and enhance their income. It will, of course, remain open to any qualified adult to continue to receive their QAA payment through the payment made out to the main claimant".

23. As such, it was submitted on behalf of the Appellant, that there was Ministerial endorsement bestowing the beneficial entitlement to the Increased Pension directly to the "qualified adult".

Respondent

24. Counsel for the Respondent made the following submissions:

- (a) the Appellant was the beneficiary and the effect of the change in Social Welfare and Pensions Act 2007 which amended section 112 of the Principal Act was to appropriate part of the Appellant's income to the spouse;
- (b) the effect of such a legislative change did not affect the character of such income as the Appellant was the beneficiary of such income to the extent that the payment derived from the increase in his pension;
- (c) the Oireachtas left in place the existing wording entitling the Appellant to the increase in the pension without creating a new pension entitlement;
- (d) the change in the law to treat the payment to be that of the Appellant should be considered to be neutral in light of the settled law.
- (e) when the Appellant dies, the entitlement to the increased pension also ceases notwithstanding that the Appellant's spouse may qualify for the contributory widow's pension but that pension constitutes a different pension.

25. While both parties made reference to the Supreme Court decision in *O'Siocháin (supra)*, Counsel for the Respondent submitted that that decision provided the necessary direction to determine that the Increased Pension was the beneficial property of the Appellant. In that case, the respondent, a widow with five children, received a social welfare widow's (contributory) pension in her own right and an increase in that pension in respect of her five children. The respondent was assessed to tax on the full amount of the pension including the increase in respect of the children. The assessment was appealed to the Appeal Commissioners and the matter proceeded by way of case stated to the High Court and ultimately to the Supreme Court.

26. In allowing the appeal, the Supreme Court determined that section 92(1) of Social Welfare (Consolidation) Act 1981 expressly provided that it was the widow who was entitled to the full amount of the pension. In support of his submission, Counsel for the Respondent relied on the following extract from that judgment where at page 544 Murphy J., with Denham and Keane JJ. concurring, said:



“Notwithstanding the views of the Appeal Commissioner and the judgment of the learned Judge of the High Court I am fully satisfied that it is the respondent who was entitled to the full amount of the payment totalling £6,482. Section 92(1) expressly provides that it is the widow who is “entitled” to the Widow’s Pension. It is that same pension which is “increased” by reference to all or any of the contingencies identified in s 95. No children’s benefit is identified in subsection 1 of that section nor is a prescribed relatives benefit referred to in subsection 2. Subsections 1 and 2 of s 95 describe particular circumstances which clearly impose financial burdens on the pensioner and subsection 3 recognises the special needs of a pensioner living alone and of pensionable age. It seems to me to be clear beyond debate that the scheme of the legislation was to “increase” – and that is the word used – the pension of the widow to meet those particular circumstances. No doubt a widow or any other parent would be expected to make provision for his or her children and the Oireachtas in enacting the 1981 Act was satisfied to rely on the moral obligations which that relationship imposes. The legislation contains no words of trust in favour of all or any of the children nor is there any specific indication that any part of the increase should be applied for their benefit. In my view the increases to the basic pension which may be made s 95 of the 1981 Act – and in this case made by reference to the number of qualified children residing with the widow – are no more than that: increases in the pension to which the pensioner is herself entitled.”

27. It was submitted on behalf of the Respondent that the amount of the old age (contributory) pension was increased by virtue of Section 112 (1) of the Principal Act with reference to a “qualified adult”. The plain meaning of that provision was that the pension payable to the Appellant was increased and therefore constituted one pension. Such a meaning was confirmed by the reasoning of the Supreme Court in *O’Siocháin* which dealt with a directly comparable provision.
28. It was therefore the Respondent’s submission that as the same legislation was considered by the Supreme Court in *O’Siocháin*, a determination should be made that the Appellant was beneficially entitled to the Increased Pension and as a consequence the assessments should stand.

Analysis

29. It is agreed between the parties that the Appellant qualified for the Increased Pension for the years 2012 and 2013 as he wholly maintained his spouse, the “qualified adult”, during those years. As a consequence, it is necessary to establish the identity of the beneficial owner of the Increased Pension for purposes of applying the appropriate tax provisions, including if applicable, the standard rate band of taxation and the entitlement to the employee tax credit.
30. As in *O’Siocháin*, it is agreed between the parties, “that the burden [of taxation] - irrespective of the person on whom the assessment might be made – is on the person ... beneficially entitled to the increased amounts.”
31. The relevant provision, namely the amendment made by the Social Welfare and Pensions Act 2007 to section 112 of the Principal Act which inserted subsection (1A), reads as follows:



“The amount of the increase of pension referred to in subsection (1), in respect of any claim for State pension (contributory) made after 24 September 2007, shall be paid—

(a) directly to the qualified adult concerned, or

(b) to such other person as may be nominated by the qualified adult for the purpose of receiving the increase of pension referred to in subsection (1) on behalf of the qualified adult.”

32. The Appellant asserts that the obligation, pursuant to the said amendment, to make the payment of the Increased Pension directly to the Appellant’s spouse is statutory recognition of her beneficial entitlement to such income, whereas the Respondent maintains the consequence of the 2007 amendment requires an appropriation of the same income and that the beneficial interest in such income vests in the Appellant.

33. It should be noted that the statement made by Minister Cullen introducing the change to the social welfare payments cannot influence statutory interpretation, a matter which was recently confirmed in *Padraig Higgins v The Irish Aviation Authority* [2016] IECA 322 at paragraph 35, where Hogan J. made the following observation:

“The Court must, of course, focus on the words actually used by the Oireachtas to convey its intentions and not seek to construe legislation by reference to the subjective beliefs and understandings of the legislators: see Crilly v. T.J. Farrington Ltd. [2001] IESC 60, [2001] 3 I.R. 267.”

34. During the course of submissions both parties referred to *O’Siocháin*. The Appellant argued that that case should be distinguished whereas Counsel for the Respondent submitted that it had direct application and the reasoning and determination should be applied.

35. There is no doubt that there are similarities between *O’Siocháin* and this appeal to the extent that in both cases there was an increase in the primary pension. However, where this case differs is that in *O’Siocháin*, the increase in pension was paid directly to the widow with no statutory obligation to expend such monies on the welfare on her children. Rather, as observed by Murphy J at page 544, that:

“a widow or any other parent would be expected to make provision for his or her children and the Oireachtas was satisfied in enacting the Act of 1981 to rely on the moral obligations which that relationship imposes.”

36. However, in the matter under appeal, it would appear that the Oireachtas was not satisfied to rely on the moral obligation of the Principal Recipient but rather created a statutory entitlement vesting beneficial ownership of the Increased Pension in the “qualified adult”.

37. *O’Siocháin* can further be distinguished with reference to the concluding observation of Murphy J. where he said at page 547 that:



“...the express provisions entitling the widow to the pension and the failure to draw any distinction between the entitlement to the pension and the increases thereon are coercive evidence of an intention that the beneficial entitlement to the entire of the social welfare payment should vest in the widow.”

38. It is clear that no such failure exists in this case. Notwithstanding the Increased Pension is directly associated with the old age (contributory) pension, the entitlement to such a payment vests in the “*qualified adult*” to the extent that the increase is paid directly to that person. There are no statutory conditions imposed on the “*qualified adult*” to account for such monies or how such funds should be expended. Such income is not held in trust for the Principal Recipient nor has the Principal Recipient any legal right to the Increased Pension.
39. While neither party referred to *E O’Coidealbhain (Inspector of Taxes) v Breda O’Carroll* [1989] IR 229, a review of that case provides further assistance in establishing a party’s beneficial entitlement to a social welfare pension where the statute provides for additional resources to be made available to prescribed relatives. In that case, the respondent’s husband was a member of the Garda Síochána up to the time of his death. He was survived by his widow and three sons.
40. On his death, the respondent was granted a widow’s contributory pension in accordance with Garda Síochána Pensions Order SI 199/1981 Articles 5 and 6. Pursuant to Article 5(d) of that Order, each child under the respondent’s care was granted a contributory pension. The children’s contributory pension was paid to the respondent in accordance with Article 8(1) of Garda Order. In holding in favour of the respondent, Lynch J. made the following determination at page 233:

“The children’s contributory pension is beneficial property of the children in respect of whom it is payable. When the children are young and living with their mother the children’s contributory pension will ordinarily and naturally be paid to the mother with the knowledge that a good mother will do all that she can for her children and no book-keeping or close accounting is envisaged. Nevertheless, even in that case “the pension is to be applied for the benefit of the children for whom it is granted” Article 8(1).

If the circumstances are not such that the children have the benefit of living with a good mother then the pension may be paid to the child itself if of sufficient age, Article 8(1), or to some other person “for the child”, Article 5(d) and 8(1), and that person must also apply the pension for the benefit of the children for whom it is granted. Article 8(1).

It is clear therefore that even when the children’s contributory pension is paid to a good mother with no expectation of book-keeping or close accounting she nevertheless has not beneficial interest or property of the children in respect of whom it is payable. The answer to the Appeal Commissioner’s question whether he was correct in holding that the sum representing the children’s contributory pension paid to the respondent under the Garda Order should not be assessed as the personal income of the respondent is therefore “yes”.

41. In distinguishing *O’Coidealbhain*, Murphy J. in *O’Siocháin*, made the following observations at page 546:



"In broad terms the Garda Síochána Pensions Order and the Social Welfare Act both achieved the purpose of making additional resources available in circumstances where there were increased needs. But this purpose was met by different procedures in the two schemes. The Garda Pensions Scheme provided what was described as a contributory pension for the children whereas the Social Welfare Scheme merely increased the widow's pension. Mr Justice Lynch was satisfied, and I believe he was entitled to be satisfied, on the terms used in the Garda pensions Scheme that the children's contributory pension though paid in most cases to the mother was the property of the children."

42. As such Murphy J, at the end of the summation of the judgement of Lynch J., concluded also on page 546 that *"Lynch J. had ample evidence of an intention to create a trust in favour of the children."*
43. Both *O'Siocháin* and *O'Coindealbhain*, determined that for the income to be considered to be that of a child it was necessary that such a person had a beneficial entitlement to such income. In *O'Siocháin*, no entitlement existed as the Oireachtas relied on the moral obligations of the mother to adequately provide for the financial support of her children. In *O'Coindealbhain* it was held that while the funds were paid to the mother or a prescribed individual, those funds were held in trust for the child.
44. Notwithstanding the source of the entitlement to the Increased Pension is derived from the Principal Recipient's old age (contributory) pension, the effect of the amendment to the Social Welfare and Pensions Act 2007 mandated that the payment be made directly to the *"qualified adult"* therefore entitling that person to the exclusive right to such income. There is no doubt that the old age (contributory) pension was increased however the effect of the legislative change in 2007 prescribed the entitlement to the Increased Pension to be enjoyed by the *"qualified adult"* with the full discretion in how it should be utilised or expended.
45. Prior to 2007, administrative actions were taken by the Department of Social and Family Affairs to pay the *"qualified adult"* the increased pension. In such circumstances, there can be no issue that while there was a moral obligation on the Principal Recipient to provide for the *"qualified adult"*, the Increased Pension, in accordance with the clarification of the law in *O'Siocháin*, vested in the Principal Recipient. As such the *"qualified adult"* had no beneficial entitlement to such income in that period but rather had to rely on the natural love and affection, discretion or indeed goodwill of the Principal Recipient to provide adequate financial support.
46. However, the Social Welfare and Pensions Act 2007 changed that discretionary aspect by making, in effect, a separate pension arrangement for the *"qualified adult"*. Such a legislative action created a legal and beneficial entitlement for the *"qualified adult"* to the Increased Pension.
47. As noted by Counsel for the Respondent, the significance of the amendment to Taxes Consolidation Act 1997 section 126 by Finance Act (N.2) Act 2013 by providing that the *"increase shall be treated for all the purposes of the Income Tax Acts as if it arises to and is payable to the beneficiary referred to in those sections of that Act"* should not influence the



current interpretation of the relevant provision. In confirming the settled law in this area, Clarke J. in *Revenue Commissioners v Droog* [2016] IESC 55 made the following observation at paragraph 5.1:

“However, the trial judge noted that this Court had, in Cronin (Inspector of Taxes) v Cork and County Property Company Limited [1986] IR 559, held that a subsequent amendment can at best be neutral in the context of the interpretation of the relevant legislation in its pre-amendment form and cannot be used to construe the statute as it was before the amendment in question.”

48. Notwithstanding the change in tax law and the neutral interpretation of subsequent legislative changes, it is clear that the 2013 amendment to TCA, section 126 recognises that the beneficial entitlement to the Increased Pension vests with the “*qualified adult*” but treats such income “*for all the purposes of the Income Tax Acts as if it arises to and is payable to the*” Principal Recipient.
49. As such, the 2007 legislative change replaced the moral obligation with a statutory obligation to pay the Increased Pension directly to the “*qualified adult*”, in this case, the spouse of the Appellant. It is therefore my determination that the Appellant’s spouse had the beneficial entitlement to such income for the years under appeal.

Standard Rate

50. The Appellant and his spouse are treated for tax purposes as jointly assessed pursuant to TCA, section 1017, the outcome of which is to assess the husband on his and his spouse’s total income. As the Appellant’s spouse has income, comprising the Increased Pension, the standard rate band in accordance with TCA, section 15 is required to be increased with reference to the amount of his spouse’s total income where that income does not exceed €23,800.

Employee Tax Credit

51. The increased Pension constitutes emoluments pursuant to TCA, section 126.
52. As such, TCA, section 472(4)(b) provides an entitlement to the employee tax credit where the emoluments “*arise to the claimant’s spouse*” in cases where an election has been made for joint assessment. Therefore, as the beneficial entitlement to the Increased Pension, constituting emoluments, arises to the Appellant’s spouse by virtue of her beneficial entitlement to such income, the Appellant is entitled to the employee tax credit with reference to that income.





Conclusion

53. The amendment to the Principal Act, section 112 by section 14 of the Social Welfare and Pensions Act 2007 mandating that the Increased Pension be paid directly to the “*qualified adult*” has the effect of bestowing the beneficial entitlement of such income to the “*qualified adult*”. As a consequence, the standard rate band should be increased with reference to that income and a corresponding entitlement to the employee tax credit should be applied to the tax arising on such income.
54. This appeal is hereby determined in accordance with TCA, section 949AK requiring that the assessments be reduced to reflect the increase in the standard rate band to be applied to the Increased Pension of the Appellant’s spouse with a corresponding entitlement to the employee tax credit.

APPEAL COMMISSIONER
4th September 2017

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 as amended.

