



56TACD2022

BETWEEN/

[REDACTED]

Appellant

V

REVENUE COMMISSIONERS

Respondents

DETERMINATION

Introduction and background

1. This is an appeal against a determination of the Respondents dated 4 November, 2019, refusing the Appellant an exemption pursuant to section 200 of the Taxes Consolidations Act 1997, as amended. ('TCA 1997') in relation to a foreign pension.
2. The Appellant's position was that he met the conditions of the exemption and that he was entitled to avail of the exemption in accordance with section 200 TCA 1997.
3. The reasons for refusal, are as set out in the Respondents' determination of 4 November, 2019, which provides;

Dear [REDACTED]

I refer to previous correspondence regarding your query as to whether the provisions of Section 200 of the Taxes Consolidation Act 1997 apply to the



pension that you receive from [REDACTED] A determination has been made that Section 200 does not apply to your pension and that your pension is taxable in Ireland.

Section 200(2)(a) TCA 1997 provides that any pension, benefit or allowances which

- is given in respect of past services in an office or employment (or payable under the law of a foreign country where the pension arises) which corresponds to the Social Welfare Consolidation Act 2005, Chapters 15 (Contributory - Old Age Pension), Chapter 18 (Contributory - Widows Pension) or Chapter 19 (Contributory Orphans Pension) of Part II or Chapters 4 (Non-Contributory Old Age Pension) or Chapter 6 (Non-Contributory Widows Pension) of Part III and*

Under Section 200(2)(b) TCA 1997

- is received by a person who is resident in the foreign country and is not resident elsewhere and **corresponds to income tax in the State** can be disregarded for income tax purposes.*

The requirement under section 200(2)(b) is not met in your case. [REDACTED] does not have a chargeable and payable tax which corresponds to Income Tax in this State. Income taxes are not imposed on individuals in [REDACTED] and instead a [REDACTED] Tax is levied on all employers along with self-employed persons who separately are required to pay [REDACTED] Taxes themselves. This stands in contrast to Income Tax in the State because it is the individual who is chargeable to Income Tax. The Revenue Legislative Service has concluded that as [REDACTED] does not have a chargeable and payable tax on pension income, it is in direct contrast to Ireland and therefore the tax in [REDACTED] does not correspond with Irish Income Tax as required.'

- 4. As regards the fourth paragraph of the Respondents' determination, the Appellant highlighted the fact that in paraphrasing the legislation, the fourth paragraph required clarification because it reads as though there is a requirement that the*



pension correspond to income tax in the State. Clearly, this is not the legislative requirement and the point is duly noted.

5. The Appellant worked for [REDACTED] a large [REDACTED] company, for approximately twenty years. During his time with [REDACTED] the Appellant worked mostly for the international company, [REDACTED] Limited [REDACTED] a company incorporated and located in [REDACTED] He worked in Ireland for eight years and overseas for twelve years. The Appellant's history of employment and related details were not in dispute. The Appellant aged [REDACTED] is Irish tax resident and is now retired.
6. The Appellant received a monthly pension from [REDACTED] which he included in his income tax return annually (and on which he paid Irish income tax).
7. In September 2018, the Appellant entered into correspondence with the Respondents asserting an entitlement to claim the exemption pursuant to section 200 TCA 1997. The Respondents formally refused the exemption on 4 November, 2019, and the Appellant duly appealed.

8. Legislation

Section 200 TCA 1997 - Certain foreign pensions

(1) In this section, "tax", in relation to any country, means a tax which is chargeable and payable under the law of that country and which corresponds to income tax in the State.

(2) This section shall apply to any pension, benefit or allowance which –

(a) is given in respect of past services in an office or employment or is payable under the provisions of the law of the country in which it arises which correspond to the provisions of [Chapter 15, 18 or 19 of Part 2 of, or Chapter 4 or 6 of Part 3 of, the Social Welfare Consolidation Act 2005,] or any subsequent Act together with which that Act may be cited, and



(b) if it were received by a person who, for the purposes of tax of the country in which it arises, is resident in that country and is not resident elsewhere, would not be regarded as income for those purposes.

[(2A) Notwithstanding subsection (2), this section shall not apply to a pension to which subparagraph (b) of paragraph 1 of Article 18 (Pensions, Social Security, Annuities, Alimony and Child Support) of the Convention between the Government of Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains signed at Dublin on the 28th day of July, 1997 applies.]¹

(3) In section 18(2), the reference in paragraph (f) of Case III to income arising from possessions outside the State shall be deemed not to include a reference to any pension, benefit or allowance to which this section applies.

Submissions

9. The parties agreed that the Appellant's pension arose in [REDACTED] and was a pension in respect of a past employment within the meaning of section 200(2)(a) TCA 1997. The parties also agreed that there would have been no charge to tax in [REDACTED] had the Appellant been resident and in receipt of the pension in [REDACTED]
10. However the parties disagreed on the matter of whether the 'tax' referred to in section 200(2)(b) was 'a tax which is chargeable and payable under the law of that country and which corresponds to income tax in the State' in accordance with section 200(1) TCA 1997. The Respondents contended that the tax did not correspond while the Appellant contended that there were similarities and that the tax did adequately correspond.

Analysis

11. Pursuant to the provisions of section 200 TCA 1997, certain foreign pensions are exempt from income tax if they arise in relation to past services in a foreign office or employment and if the pension would have been exempt from tax in the foreign jurisdiction had it been received by a person resident in that foreign jurisdiction in circumstances where the foreign tax corresponds to income tax in the State.



12. It is not disputed that the Appellant's pension arises in [REDACTED] and the parties agreed that the Appellant's pension is a pension in respect of a past employment within the meaning of section 200(2)(a) TCA 1997.

13. Sub-section 200(2)(b) requires as a condition of the exemption, that the pension would have been exempt from tax in the foreign jurisdiction had it been received by a person resident in that foreign jurisdiction. In this regard both the Appellant and the Respondents agreed that there would have been no charge to tax in [REDACTED] had the Appellant been resident and in receipt of the pension in [REDACTED]

14. Section 200(2) provides: *This section shall apply to any pension, benefit or allowance which –*

(a) is given in respect of past services in an office or employment....., and

(b) if it were received by a person who, for the purposes of tax of the country in which it arises, is resident in that country and is not resident elsewhere, would not be regarded as income for those purposes.

15. Section 200(1) TCA 1997 provides; *(1) In this section, "tax", in relation to any country, means a tax which is chargeable and payable under the law of that country and **which corresponds to income tax in the State.*** [emphasis added]

16. The Appellant submitted that [REDACTED] Tax, pursuant to the [REDACTED] Tax Act [REDACTED] under the law of [REDACTED] corresponded to Irish income tax. [REDACTED] tax in [REDACTED] is levied on all employers, employees and self-employed persons pursuant to the [REDACTED] Tax Act [REDACTED]

17. Section [REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

18. Section 3 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. For a pension to qualify for the exemption contained in section 200 TCA 1997, the pension must be one which *'would not be regarded as income'* under the law of the foreign jurisdiction, had the taxpayer been resident there. In this regard both the Appellant and the Respondents agreed that there would have been no charge to tax



in [REDACTED] had the Appellant been resident and in receipt of the pension in [REDACTED]. This is evident from the terms of the [REDACTED] Tax Act [REDACTED] as ‘remuneration’ is defined in section [REDACTED] of the Act as including *inter alia*; wages, salary, commission, bonuses, termination payments and benefits in kind. [REDACTED]
[REDACTED]. Thus, it is clear from the [REDACTED] Act that the Appellant’s pension is not regarded as income for the purposes of [REDACTED] tax under the law of [REDACTED].

20. The next question is whether [REDACTED] Tax corresponds to Irish income tax within the meaning of section 200(1) TCA 1997.
21. In the recent Supreme Court case of *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, the principles governing statutory interpretation were comprehensively reviewed. Leading the judgment of the Court, O’Donnell J. stated at paragraph 39: *‘It is worth emphasising that the starting point of any exercise in statutory interpretation is, and must be, the language of the particular statute rather than any pre-determined theory of statutory interpretation.’*
22. The Court at paragraph 53 of the judgment quoted and approved the judgment of McKechnie J. in the Supreme Court case of *Dunnes Stores v the Revenue Commissioners* [2019] IESC 50 including *inter alia*, the following paragraphs:

‘63. As has been said time and time again, the focus of all interpretive exercises is to find out what the legislature meant: or as it is put, what is the will of Parliament. If the words used are plain and their meaning self-evident, then save for compelling reasons to be found within the instrument as a whole, the ordinary, basic and natural meaning of those words should prevail. “The words themselves alone do in such cases best declare the intention of the law maker” (Craies on Statutory Interpretation (7th Ed.) Sweet & Maxwell, 1971 at pg. 71). In conducting this approach “...it is natural to inquire what is the subject matter with respect to which they are used and the object in view” Direct United States Cable Company v. Anglo – American Telegraph Company [1877] 2 App. Cas 394. Such will inform the meaning of the words, phrases or provisions in question. McCann Limited v. O’Culachain (Inspector of Taxes) [1986] 1 I.R. 196, per



McCarthy J. at 201. Therefore, even with this approach, context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that.

64. *Where however the meaning is not clear, but rather is imprecise or ambiguous, further rules of construction come into play. Those rules are numerous both as to their existence, their scope and their application. It can be very difficult to try and identify a common thread which can both coherently and intelligibly explain why, in any given case one particular rule rather than another has been applied, and why in a similar case the opposite has also occurred. Aside from this however, the aim, even when invoking secondary aids to interpretation, remains exactly the same as that with the more direct approach, which is, insofar as possible, to identify the will and intention of Parliament.*

65. *When recourse to the literal approach is not sufficient, it is clear that regard to a purposeful interpretation is permissible. There are many aspects to such method of construction: one of which is where two or more meanings are reasonably open, then that which best reflects the object and purpose of the enactment should prevail. It is presumed that such an interpretation is that intended by the lawmaker.'*

23. On the authority of *Bookfinders*, I am satisfied that the approach to be taken in relation to the expression '*which corresponds*' in section 200(1) TCA 1997, is the literal interpretative approach and that the word '*corresponds*' should be afforded its ordinary and natural meaning.

24. As regards the meaning of the expression '*which corresponds*' in section 200(1) TCA 1997, the UK Courts considered a broadly similar question in the case of *Yates (Inspector of Taxes) v CGA International Limited* [1991] STC 157. The question which arose in that case was whether a turnover tax levied under Venezuelan law could correspond to UK income tax or corporation tax in the context of double taxation. In short, the Court held that it could and it did. The relevant provision of the UK law was section 498 (I) of the UK Income and Corporation Taxes Act 1970 Act which provided:-



'...relief from income tax and corporation tax in respect of income shall be given in respect of tax payable under the law of any territory outside the United Kingdom by allowing the last-mentioned tax as a credit against income tax or corporation tax "

25. Also relevant was s.498(6) which provided as follows:-

*'...references to tax payable or paid under the law of a territory outside the United Kingdom include any references to taxes which are charged on income and **correspond** to income tax or corporation tax in the United Kingdom "*

[emphasis added]

26. In considering the meaning of the word 'correspond' in this context, the Court stated:

'Does the Venezuelan tax imposed under Article 54 of its tax code correspond to United Kingdom income tax or corporation tax? "Correspond" is defined in the shorter Oxford English Dictionary in various ways. The definition found therein that is most relevant to the use of the word in s 498(6) is, both Counsel agree, as follows: "to answer to, in character or function, to be similar to". So is the Article 54 tax similar to, or does it serve the same function as, United Kingdom income tax or corporation tax? To answer this question I must consider Article 54 in its Venezuelan legislative context. ...'

27. In this appeal the Appellant submitted that the expression 'which corresponds' in section 200(1) TCA 1997, should be interpreted as requiring a close similarity to, bearing a likeness to, or as resembling or being analogous to, Irish income tax. He submitted that one fundamental difference was required to be present (namely the condition that the pension not be regarded as income for the purposes of tax in [REDACTED] but that the existence of other differences would not preclude the [REDACTED] tax in [REDACTED] from being 'a tax which is chargeable and payable under the law of [REDACTED] and which corresponds to income tax in the State.'

28. When comparing two distinct tax regimes in two separate jurisdictions, it is a given that rules and provisions will not be the same and differences will be present. What section 200 requires on a comparative analysis, is not absolute equivalence in the tax



regimes compared, but similarity in character, form and/or function between the foreign tax and Irish income tax.

29. In *Yates*, Scott J. held that the Venezuelan tax under consideration in that case, did correspond to UK income tax or corporation tax in the context of double taxation. Having quoted article 54 of the Venezuelan tax code, Scott J. stated:-

“The purpose behind art 54 is, in my opinion reasonably apparent from the language and context of the article. The article is dealing with profits of taxpayers ‘not resident or not domiciled in Venezuela’; profits, that is to say, of foreign individuals or entities. There are obvious difficulties in obtaining full tax returns from foreign tax payers. The difficulty is dealt with in art 54 by simply providing for 10% of gross receipts to be deducted in order to produce the taxable income – the ‘net profits’ to use the expression employed in the article.’

30. Scott J. continued:

“But it is not said that no tax expressed as a charge on a percentage of gross receipts can, for s.498 purposes, correspond to United Kingdom income tax or corporation tax. And it is not, in my judgment, practicable to exclude a particular tax on the ground that the percentage to be deducted was not high enough to represent the likely level of expenses incurred by the foreign taxpayer in earning its gross receipts. Moreover, there were no facts before the Special Commissioner to justify a conclusion either that the 10% percent deduction was unrealistic in relation to the majority of business activities falling to be taxed under Article 54 or that the 10% deduction was unrealistic in relation to the extra expense incurred by the company, over and above its normal establishment expenses, in executing the Maraven contract.

31. The Respondents in their determination dated 4 November, 2019, refusing the exemption stated that: *‘Income taxes are not imposed on individuals in [REDACTED] and instead a [REDACTED] Tax is levied on all employers along with self-employed persons who separately are required to pay [REDACTED] Taxes themselves. This stands in contrast to Income Tax in the State because it is the individual who is chargeable to Income Tax.*



32. It is incorrect to state that income taxes are not imposed on individuals pursuant to the [REDACTED] Tax Act as section [REDACTED] of the Act, as set out above, provides that [REDACTED] tax is 'charged' not only on employers and self-employed persons, but also on employees (section 3(c)) and on deemed employees (section 3(d)). Section [REDACTED](1)(c) of the [REDACTED] Tax Act provides:

[REDACTED]

33. Accordingly, I do not consider this a valid ground for refusing the exemption.

34. The final statement of the Respondents determination provides: *'The Revenue Legislative Service has concluded that as [REDACTED] does not have a chargeable and payable tax on pension income, it is in direct contrast to Ireland and therefore the tax in [REDACTED] does not correspond with Irish income Tax as required.'*

35. Section 200(2)(b) TCA 1997 requires as a condition of the exemption that the pension would have been exempt from tax in the foreign jurisdiction had it been received by a person resident in that foreign jurisdiction. Thus, for a pension to qualify for the exemption, the pension must be one which '*would not be regarded as income*' under the law of that foreign jurisdiction had the taxpayer been resident there. In this regard both the Appellant and the Respondents were in agreement that there would have been no charge to tax in [REDACTED] had the Appellant been resident and in receipt of the pension in [REDACTED]. It follows that this requirement, being an express statutory pre-condition of claiming the exemption, could never be a basis for refusal of the exemption and the Respondents' determination in this regard is incorrect.

36. On a consideration and comparison of [REDACTED] Tax in [REDACTED] with Irish income tax, it is clear that there are a number of significant similarities. On a fundamental level, tax is imposed on employee remuneration in [REDACTED] just as Irish income tax is imposed on income arising from employment per section 112 TCA 1997. [REDACTED] tax is also charged in respect of self-employed persons. Remuneration pursuant to the [REDACTED] Tax Act includes any benefits derived by the employee as a result of their



employment, whether in cash or in kind and thus [REDACTED] taxes benefits in kind (taxed under Irish income tax pursuant to section 118 TCA 1997). Remuneration per the [REDACTED] Act also includes payments on termination of employment (taxed in Ireland pursuant to section 123 TCA 1997). Furthermore, in relation to the remittance of tax, in Ireland, employers are obliged to remit employee taxes even if the tax is not deducted and in [REDACTED] employers are responsible for discharging [REDACTED] Tax, whether it is deducted or not.

37. [REDACTED] tax in [REDACTED] is a tax on income which charges employers, employees and self-employed persons to tax but which does not subject pensions to tax. For the reasons set out above, I am satisfied that there are significant similarities between [REDACTED] tax in [REDACTED] and income tax in Ireland under Schedule D cases I and II in (section 18 TCA 1997) and Schedule E (section 19 TCA 1997). In the circumstances, I determine that [REDACTED] Tax under the law of [REDACTED] comes within the meaning of "tax" in section 200(1) TCA 1997, being *'a tax which is chargeable and payable under the law of that country and which corresponds to income tax in the State.'*

Determination

38. For the reasons set out above, I determine that the Appellant is entitled to the exemption pursuant to the provisions of section 200 TCA 1997 and that the Respondents' determination of 4 November, 2019, be varied in a manner allowing the exemption.
39. This appeal is determined in accordance with section 949AL TCA 1997.



COMMISSIONER LORNA GALLAGHER

30th day of March 2022

This determination has not been appealed.



