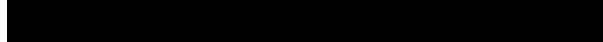
AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

51TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") 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] [redacted] (A Bankrupt) by the Official Assignee ("the Appellant") against a decision of the Revenue Commissioners ("the Respondent") dated [redacted], refusing a claim by the Appellant for repayment of income tax for the years [redacted] and [redacted] ("the relevant years"), in the amounts of [redacted] and [redacted] respectively.

2. On 18 November 2022, the Appellant duly appealed to the Commission by submitting a Notice of Appeal in relation to the decision of the Respondent for the relevant years. On 1 February 2024, in accordance with section 949Q TCA 1997, the Appellant and Respondent filed their respective Statements of Case. On 8 April 2024, the Appellant filed an Outline of Arguments and on 17 May 2024, the Respondent filed an Outline of Arguments, in accordance with section 949S TCA 1997. On 29 July 2024, the parties filed a Statement of Agreed Facts. The Commissioner has considered all of the documentation submitted by the parties in this appeal, as set out in the various agreed bundles of documentation filed on behalf of the parties and which are listed at Appendix 2 to this Determination.

3. The appeal hearing took place on 12 November 2024. The Appellant was represented by senior counsel and the Respondent was represented by senior counsel. There were no witnesses called to give evidence in this appeal and the appeal proceeded on the basis of legal submissions only.

4. At the hearing of the appeal, it was confirmed that the Respondent was prepared to allow the repayment claimed by the Appellant with respect to annuity payments made between January and April [redacted], inclusive. Therefore, the remaining issue to be determined in this appeal was whether section 15(1) TCA 1997 and the standard rate of tax set out therein, applied to the distributions from the Approved Retirement Fund ("the ARF") for the relevant years or whether, as contended for by the Respondent, section 784A(3) TCA 1997 operated to deem the distributions from the ARF, as being payable to "the person beneficially entitled to the assets", thereby displacing the application of section 15 TCA 1997.

Background

5. [redacted] ("the date of adjudication"), [redacted] ("the Bankrupt") was declared bankrupt by the High Court. On the date of adjudication, the Appellant was by

operation of law vested with the Estate and the assets of the Bankrupt vested in the Appellant, for the benefit of the creditors. Since the date of adjudication, the Appellant has managed the affairs of the Estate, including filing tax returns.

6. The Bankrupt had an ARF with a value of [redacted], at the date acquired and an annuity which [redacted] purchased for the value of [redacted], in [redacted] ("the annuity"). Prior to the date of adjudication, the Bankrupt had triggered [redacted] pension, such that [redacted] was receiving periodic annuity payments from the annuity and distributions from the ARF.

7. On the date of adjudication, the Estate, which included the annuity and the ARF, vested in the Appellant for the benefit of the creditors. [redacted], the Bankrupt was discharged from bankruptcy. [redacted]

8. [redacted], the Appellant has filed Form 1 Income Tax returns for each year with respect to the Estate and included on the returns details of the annuity payments and distributions from the ARF. The payments received by the Appellant have been subject to deductions for PAYE and USC at the marginal rate of tax, in accordance with the collection mechanism provided for under the TCA, in relation to the annuity and ARF distributions.

9. The Appellant made a claim for a repayment of income tax on the basis that section 15 TCA 1997 applied to charge the Appellant to income tax, in respect of the annuity and ARF distributions, at the standard rate.

10. The Appellant made claims for repayments of income tax in respect of the Estate, from the Respondent, for the years [redacted] inclusive. In [redacted] the Respondent processed repayments for the years [redacted] and in [redacted], a repayment for the year [redacted] issued automatically to the Appellant without review.

11. [redacted], the Respondent, made repayments to the Appellant for the years [redacted], on a without prejudice basis, meaning that entitlement to the repayments had not been established and on the basis that the Respondent reserved the right to make enquiries at a later date.

12. In respect of the claims for repayment of income tax for the relevant years, the claims arise in circumstances where the assets in the ARF were realised during those years. Consequently, the ARF is no longer in existence and there arises no claims for repayment of income tax for the years subsequent to the relevant years.

13. By way of letter dated 21 October 2022, following discussions and correspondence that ensued over a period of time with the agent of the Appellant, the Respondent formally refused the Appellant's claim for repayment of income tax for the relevant years.

Legislation and Guidelines

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

15. Section 12 TCA 1997, the charge to income tax, *inter alia* provides that:-

Income tax shall, subject to the Income Tax Acts, be charged in respect of all property, profits or gains respectively described or comprised in the Schedules contained in the sections enumerated below—

Schedule C — Section 17;

Schedule D — Section 18;

Schedule E — Section 19;

Schedule F — Section 20;

and in accordance with the provisions of the Income Tax Acts applicable to those Schedules.

16. Section 15 TCA 1997, Rate of charge, *inter alia* provides that:-

(1) Subject to subsection (2), income tax shall be charged for each year of assessment at the rate of tax specified in the Table to this section as the standard rate.

(2) 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 –

……………………..

17. Section 16 TCA 1997, Income tax charged by deduction, *inter alia* provides that:

(2) Where a person is required to be assessed and charged with tax in respect of any property, profits or gains out of which such person makes any payment in respect of any annual interest, annuity or other annual sum, or any royalty or other sum in respect of the user of a patent, such person shall, in respect of so much of the property, profits or gains as is equal to that payment and may be deducted in computing such person's total income, be charged at the standard rate only.

18. Section 18 TCA 1997, Schedule D, provides *inter alia* that:

(1) The Schedule referred to as Schedule D is as follows:

Schedule D

1. Tax under this Schedule shall be charged in respect of –

(a) the annual profits or gains arising or accruing to -….

(i) any person residing in the State from any kind of property whatever, whether situate in the State or elsewhere,

(ii) any person residing in the State from any trade, profession, or employment, whether carried on in the State or elsewhere,

(iii) any person, whether a citizen of Ireland or not, although not resident in the State, from any property whatever in the State, or from any trade, profession or employment exercised in the State, and

(iv) any person, whether a citizen of Ireland or not, although not resident in the State, from the sale of any goods, wares or merchandise manufactured or partly manufactured by such person in the State, and

(b) all interest of money, annuities and other annual profits or gains not charged under Schedule C or Schedule E, and not specially exempted from tax,

in each case for every one euro of the annual amount of the profits or gains.

19. Section 19 TCA 1997, Schedule E, provides *inter alia* that:

(1) The Schedule referred to as Schedule E is as follows:

SCHEDULE E

1. In this Schedule, "*annuity*" *and* "*pension*" *include respectively an annuity which is paid voluntarily or is capable of being discontinued and a pension which is so paid or is so capable.*

2. Tax under this Schedule shall be charged in respect of every public office or employment of profit, and in respect of every annuity, pension or stipend payable out of the public revenue of the State, other than annuities charged under Schedule C, for every one euro of the annual amount thereof.

3. Tax under this Schedule shall also be charged in respect of any office, employment or pension the profits or gains arising or accruing from which would be chargeable to tax under Schedule D but for paragraph 2 of that Schedule.

4. Paragraphs 1 to 3 are without prejudice to any other provision of the Income Tax Acts directing tax to be charged under this Schedule, and tax so directed to be charged shall be charged accordingly.

5. Subsection (2) and sections 114, 115 and 925 shall apply in relation to the tax to be charged under this Schedule.

20. Section 112 of the Taxes Consolidation Act 1997, Basis of assessment, persons chargeable and extent of charge, *inter alia* provides:-

    (1) Income tax under Schedule E shall be charged for each year of assessment on every person having or exercising an office or employment of profit mentioned in that Schedule, or to whom any annuity, pension or stipend chargeable under that Schedule is payable, in respect of all salaries, fees, wages, perquisites or profits whatever therefrom, and shall be computed on the amount of all such salaries, fees, wages, perquisites or profits whatever therefrom for the year of assessment.

    (2) In this section, "emoluments" means anything assessable to income tax under Schedule E.

21. Section 983 TCA 1997, Interpretation (Chapter 4), states *inter alia* that:

    "emoluments" means anything assessable to income tax under Schedule E, and references to payments of emoluments include references to payments on account of emoluments.

22. Section 959A TCA 1997, Interpretation, *inter alia* provides that:

    "*chargeable person" means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person to whom subsection (1) of section 959B relates.*

    ……………………………..

23. Section 959B TCA 1997, Supplemental information provisions, *inter alia* provides that:

    (1) For the purposes of the meaning assigned to 'chargeable person' in section 959A, it does not include a person—

    (a) whose only source or sources of income for a tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies, but for this purpose a person who, in addition to such source or sources of income, has another source or other sources of income shall be deemed for the tax year to be a person whose only source or sources of income for the tax year is or are sources the income from which consists of emoluments to which Chapter 4 of Part 42 applies if the income from that other source or those other sources, which does not exceed €5,000 in total -

    ………………………………..

24. Section 784A TCA 1997, Approved Retirement Fund, provides *inter alia* that:-

(1) (a) In this section-

"approved retirement fund" means a fund which is managed by a qualifying fund manager and which complies with the conditions of section 784B;

(b) For the purposes of this Chapter, references to an approved retirement fund shall be construed as a reference to assets in an approved retirement fund which are managed for an individual by a qualifying fund manager and which are beneficially owned by the individual.

…………………..

(d) Any reference in this section to a distribution in relation to an approved retirement fund shall be construed as including any payment or transfer of assets out of the fund, or any assignment of the fund or of assets out of the fund by any person, including a payment, transfer or assignment to the individual beneficially entitled to the assets, other than a payment, transfer or assignment to another approved retirement fund the beneficial owner of the assets in which is the individual who is beneficially entitled to the assets in the first-mentioned approved retirement fund, whether or not the payment, transfer or assignment is made to the said individual.

(e) For the purposes of this section, any distribution in relation to an approved retirement fund shall be deemed to have been made by the qualifying fund manager.

……………………………

(3) Subject to subsections (3A) and (4)—

(a) the amount or value of any distribution by a qualifying fund manager in respect of assets held in an approved retirement fund shall, notwithstanding anything in section 18 or 19, be treated as a payment to the person beneficially entitled to the assets in the fund of emoluments to which Schedule E applies and, accordingly, the provisions of Chapter 4 of Part 42 shall apply to any such distribution, and

(b) *the qualifying fund manager shall deduct tax from the distribution at the higher rate for the year of assessment in which the distribution is made unless the qualifying fund manager has received from the Revenue Commissioners a certificate of tax credits and standard rate cut-off point or a tax deduction card for that year in respect of the person referred to in paragraph (a).*

…………………………..

(7) (b) A qualifying fund manager shall be liable to pay to the Collector General income tax which the fund manager is required to deduct from any distribution by virtue of this Chapter and the individual beneficially entitled to assets held in an approved retirement fund, including the personal representatives of a deceased individual who was so entitled prior to that individual's death, shall allow such deduction; but where there are no funds or insufficient funds available out of which the qualifying fund manager may satisfy the tax required to be deducted, the amount of such tax for which there are insufficient funds available shall be a debt due to the qualifying fund manager from the individual beneficially entitled to the asset in the approved retirement fund or from the estate of the deceased individual, as the case may be.

25. Section 44 of the Bankruptcy Act 1988 ("the 1988 Act"), Vesting of property in the Official Assignee, provides *inter alia* that:

(1) Where a person is adjudicated bankrupt, then, subject to the provisions of this Act, all property belonging to that person shall on the date of adjudication vest in the Official Assignee for the benefit of the creditors of the bankrupt.

26. Section 784B TCA 1997, Conditions relating to an approved retirement fund, provides *inter alia* that:

(1) The conditions of this section are—

(a) an approved retirement fund shall be held by a qualifying fund manager in the name of the individual who is beneficially entitled to the assets in the fund,

……………………..

(c) *the individual referred to in paragraph (a) shall, on the opening of an approved retirement fund, make a declaration of the kind mentioned in paragraph (d) to the qualifying fund manager, and*

………………

27. Section 865 TCA 1997, Repayment of Tax, *inter alia* provides:-

(1) …………....

(b) For the purposes of subsection (3) –

(i) Where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –

(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and

(II) the repayment treated as claimed, if due -

(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or

(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time.

(ii) Where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of taxes due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person, and

(iii) ………….

………………………………

(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.

……………………………..

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made—

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made—

(i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003, within 4 years,

after the end of the chargeable period to which the claim relates.

(5) ……………………

(6) ………..................

(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.

Submissions

Appellant's submissions

28. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, both at the hearing of the appeal and in the documents submitted in support of this appeal:

28.1. Reference was made to the principles of statutory interpretation and to the decisions in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 ("*Dunnes Stores*"), *Bookfinders v The Revenue Commissioners* [2020] IESC 60

("*Bookfinders*"), *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 ("*Heather Hill*") and *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*").

28.2. Section 15 TCA 1997 applies to the Appellant's appeal. The clear words of section 15(1) TCA 1997 mandate that income tax is charged at the standard rate (20% at the relevant time). The Appellant is subject to the standard rate of charge. The basis for this is that the Appellant acts in a fiduciary or representative capacity with regard to the Estate of the Bankrupt, falling within the plain and ordinary meaning of the words in section 15(2) TCA 1997. Section 15(2) TCA 1997 takes persons other than an individual acting in a fiduciary or representative capacity out of the standard charge and imposes a graduated charge to income tax. The Appellant is a chargeable person.

28.3. The basis upon which the Appellant was in receipt of annuity and ARF distributions, was that they arose pursuant to his role in bankruptcy. Section 44 of the 1988 Act operates to vest the property in the Appellant for the benefit of the creditors. The QFM made the payments to the Appellant, in recognition that the Appellant was the person lawfully entitled to the distributions. The QFM does not make payment of the distributions in the gross amount. Rather, he is mandated to deduct tax in accordance with section 784A(3)(b) TCA 1997 at the higher rate of tax and remit that to the Collector General.

28.4. At the date of adjudication, the assets of the Bankrupt became vested in the Appellant. As a matter of law, the Bankrupt no longer had personal liability for the debts owed to the creditors and the creditors had no recourse to the Bankrupt. This was in accordance with the provisions of section 136 of the 1988 Act. From that point, the Appellant was statutorily tasked with managing the affairs of the Estate of the Bankrupt, which included establishing the expenses of the Estate, including its tax liabilities. Since the date of adjudication, the Appellant has submitted a Form 1 income tax return for each of the years, detailing the income and gains earned by the Estate.

28.5. Section 784A(3) TCA 1997 provides a mechanism for the collection of tax. It does not create a charge to tax. Section 784A(3) TCA 1997 does not override section 15(2) TCA 1997, as was argued by the Respondent. Section 15(2) TCA 1997 expressly applies "*notwithstanding anything in the Income Tax Acts but subject to section 16(2)*". Section 15(2) TCA 1997 applies subject only to section 16(2) TCA

1997. If there is a requirement that section 15 TCA 1997 be subject to the statutory ARF regime (or any other provision of the Tax Acts), it must be expressly stated in the legislation, as it is for section 16(2) TCA 1997.

28.6. In accordance with section 784B(1)(a) TCA 1997, the assets in an ARF are held by the QFM in the name of the individual who is beneficially entitled to the assets in the fund. This arrangement ensures that the ARF is managed in line with legislation. The QFM administers the ARF and he is required to deduct and account for tax on any distributions from the ARF. In accordance with section 784A(3)(a) TCA 1997 the distribution is treated as a payment of an emolument to which Schedule E applies.

28.7. Pursuant to section 784B(1)(c) TCA 1997, the individual, on the opening of the ARF, makes a declaration to the QFM that █ is the individual beneficially entitled to the assets. There is no ability to change this designation, as the individual beneficially entitled to the assets. There is no reference to insolvency or any other process which might affect the legal entitlement of the original owner to the assets and the legislation is drafted on the basis that the person who supplied the funds, is the individual beneficially entitled to the assets at all times. The reference to the words "to benefit" is descriptive of the person in whose name the ARF was set up, rather than a conclusion as to who, as a matter of law, was beneficially entitled to the assets.

28.8. Section 784A(3) TCA 1997 has a clearly discernible purpose which is to set out the rules applicable to the QFM as to what tax the QFM must deduct. Having regard to the language in section 784A(3) TCA 1997, it does not constitute a charge to tax. Rather, it is making the QFM accountable for deducting and remitting tax. Section 784A(3) TCA 1997 places the QFM in the role of an employer for the purpose of deducting and remitting tax, based on the fiction that the ARF distribution is the payment of an emolument. The QFM is accountable to the Respondent for the tax so deducted and the QFM is therefore the collection agent for the tax that he is mandated to deduct. If he failed to deduct the tax, he would be liable to the Respondent. Reference was made to Section 784A(7)(b) TCA 1997. It is clear that the accountable person for the tax deducted is the QFM.

28.9. Section 784A(3) TCA 1997 does not determine who was the person entitled to the ARF distribution or who was the chargeable person for tax on such a distribution. The Respondent suggests it is the Bankrupt or the creditors, but not the Appellant. The phrase "the person beneficially entitled to the assets" is

referable only to the person in whose name the ARF was set up. It is not an assessment as to who might have a claim on such assets, at the point of distribution by the QFM.

28.10. The Appellant is the person lawfully in receipt of the distributions from the ARF and he must return that income in the same way he returns all other income. The tax the Appellant pays is at the standard rate of tax applicable to him in accordance with section 15 TCA 1997, as he acts in a fiduciary capacity and that gives rise to a valid claim for a repayment of income tax in this appeal. The statutory ARF regime is a collection mechanism for tax. It does not create a charge to income tax.

28.11. In relation to deeming provisions in legislation, reference was made to decisions in *Marshall v Kerr* [1993] STC 360, *East End Dwelling Company Limited v Finsbury B.C* [1951] 2 All ER 587, *Re Levy ex parte Walton* (1881) 17 ChD 746, *Westcott (Inspector of Taxes) v Woolcombers Ltd* [1987] STC 600, *CIR v Metrolands* [1982] STC 259 ("*Metrolands*"), *Liam Liston v G.O'C and A O'C* [1996] 1 IR 501 ("*Liston v G.O'C and A O'C")* and *Erin Executor and Trustee Company Limited (as trustee of Irish Pension Fund Property Unit Trust) v The Revenue Commissioners* [1998] 2 IR 287. These cases are consistent with the rules on statutory interpretation and reinforce the principle that the literal and plain meaning of the words used should apply. The deeming provision found in section 784A(3) TCA 1997 has a clear purpose, namely it is for the deduction and collection of tax by the QFM who manages the ARF. It is an administrative provision which requires the QFM to deduct and remit tax. It is a fundamental rule of tax legislation that there must be a charge to tax. This is a different concept to collection of tax.

28.12. It was not logical to treat the distributions from an ARF differently to any other investment vehicle with regard to it being vested in the Appellant. The ARF was vested in the Appellant. It was a fact that the asset, namely the ARF was no longer an asset of the Bankrupt, as it was vested in the Appellant who was the person beneficially entitled to the asset.

Respondent's submissions

29. The Commissioner sets out a summary hereunder of the submissions made by the Respondent, both at the hearing of the appeal and in the documents submitted in support of this appeal:

29.1. Reference was made to the principles of statutory interpretation and to the decisions in *Dunnes Stores, Bookfinders*, *Heather Hill and* Hanrahan.

29.2. The effect of section 15 TCA 1997 is that those acting in a fiduciary or representative capacity are charged at the standard rate of tax, in accordance with subsection (1). The Respondent does not agree with the Appellant that section 15 TCA 1997 is a charging provision. Rather, section 15 TCA 1997 specifies the rate at which tax will be chargeable, as the title to the section states ("Rate of charge"). Section 15 TCA 1997 is clear in its terms.

29.3. Section 12 TCA 1997, entitled "The charge to income tax", sets out the charge to income tax, which describes the schedules under which income becomes chargeable depending on its source. As set out in the Appellant's Form 1 for the relevant years, the ARF income was returned under Schedule D. Schedule D income was chargeable to tax under section 18 TCA 1997.

29.4. Applying the principles of statutory interpretation, the Commissioner need look no further than the words in the sections. Section 18 TCA 1997 is clear in its terms and makes provision for tax to be charged on profits arising from the specified sources. Section 15 TCA 1997 makes no such reference. Rather, it confines itself to the rate applicable once the taxable income is established. The charge to tax for Schedule E income is set out at section 19 TCA 1997, with the basis of assessment set out in section 112 TCA 1997.

29.5. Section 15 TCA 1997 provides a mechanism for an individual acting in a fiduciary or representative capacity to pay income tax at the standard rate, but this did not apply in the context of the distributions from the ARF for the relevant years, as a consequence of the provisions of section 784A(3) TCA 1997.

29.6. Contributions made to an ARF are usually relieved from income tax. The funds held in the ARF are tax free, but the distributions from an ARF are taxable under Schedule E.

29.7. Section 784A(3)(b) TCA 1997 requires that the QFM deduct tax at source. In this appeal, the QFM deducted tax at the higher rate of tax from the payments made by the QFM to the Appellant. The QFM was obliged to do so, whether or not the individual, who was entitled to the distributions, was a bankrupt.

29.8. This was done in accordance with section 784A(3)(a) TCA 1997, which treats the distributions from an ARF as chargeable to tax on "the person beneficially entitled to the assets". Therefore, the payment was treated as a payment to the person

beneficially entitled to the assets, the distribution was treated as chargeable to income tax under Schedule E and the payment had tax deducted at the higher rate, in the absence of a tax deduction card or certificate of tax credits, as appropriate.

29.9. The "person beneficially entitled to the assets" is not defined by section 784A(3) TCA 1997 . As a matter of law, the person beneficially entitled to the assets could not be the same person as one acting "in a fiduciary or representative capacity" as defined by section 15 TCA 1997, the concepts are mutually exclusive.

29.10. It was not disputed that the Bankrupt's Estate vested in the Appellant on the date of adjudication. However, the Appellant was seeking a repayment of income tax in relation to distributions from an ARF which was governed by the provisions of Part 30, Chapter 2 TCA 1997. The repayment claim was made pursuant to section 865 TCA 1997. Section 865(6) TCA 1997, prohibits the Respondent from making a repayment unless permitted by the statute.

29.11. Section 784A(3) TCA 1997 is a deeming provision which allows one set of facts to be treated as if they were a different set of facts. This is often referred to as a statutory fiction. Reference was made to the decisions in *Erin Executor and Trustee Company v. Revenue Commissioners* [1998] 2 IR 287, *East End Dwellings Company Limited v Finsbury Borough Council* [1952] AC 109, *CIR v Metrolands* [1982] STC 259 and *Liston v G.O'C and A O'C* [1996] 1 IR 501.

29.12. Section 784A(3)(a) TCA 1997 has two aspects to it. Firstly, it treats a distribution from an ARF as a payment made to the person beneficially entitled to the asset and secondly, it treats that payment as an emolument, subject to Schedule E for the purposes of taxation. The section does so notwithstanding section 18 TCA 1997 and section 19 TCA 1997

29.13. Section 784A(3)(a) TCA 1997 creates its own charging provision irrespective of what is provided for by sections 18 and 19 TCA 1997. The effect of the deeming provision is to widen the net of what is encompassed under Schedule E for taxation purposes. The deeming provision relates to how the distribution is taxed by creating a fiction as to who is taxed. The section is saying that no matter who the distribution is made to, the person beneficially entitled to the asset is deemed the person chargeable to tax in respect of the distribution.

29.14. Section 784A(1)(e) TCA 1997 states that a distribution made under the section shall be deemed to emanate from the QFM. This is because the QFM holds the

funds. The Respondent does not dispute that the QFM is the accountable person for tax deducted with respect to ARF, but section 784A(3) TCA 1997 is not solely a collection mechanism with respect to the QFM. There remains a charge to tax within section 784A(3)(a) TCA 1997.

29.15. The legislation is drafted on the basis that the person who supplied the funds is the person beneficially entitled to the asset. This is borne out by interpreting the words in the section by their ordinary meaning. Consideration must be given as to who is the beneficial owner of the asset, in order to determine who is chargeable to tax in respect of the distribution. This interpretation does not ignore or undermine the status of the Appellant under the 1988 Act, rather it specifies how distributions are charged to tax. The question arises; who is the person beneficially entitled to the asset? The ARF was established for the Bankrupt's benefit and following bankruptcy, the assets in the ARF were distributed to the Bankrupt's creditors, in reduction of the Bankrupt's liabilities, and were thus, being applied for ███ benefit

29.16. As regards the question of who is "the person beneficially entitled to the assets", the Respondent submitted that "*there are three potential suspects who could be the person beneficially entitled to the assets*". The first suspect was the Bankrupt, being the person who placed the assets into the ARF at the commencement of the ARF and for whose benefit it was established. Moreover, the assets were being applied for the benefit of the Bankrupt, in the sense that they were being distributed by the Appellant in reduction of the Bankrupt's liabilities with ██ creditors. The second suspect was the Appellant. However, the Appellant cannot on one hand rely on his status pursuant to section 15(2) TCA 1997, namely that the Appellant was receiving the assets in a fiduciary capacity and on the other hand, claim that the Appellant was "the person beneficially entitled to the assets". The Appellant can be one or other, but not both. The third suspect was the Bankrupt's creditors.

29.17. It was acknowledged that Section 44 of the 1988 Act vested the Bankrupt's property in the Appellant for the benefit of the creditors. However, that does not answer the question, who was beneficially entitled to the asset underlying the ARF. Having regard to the plain and ordinary meaning of the words in section 784A(3) TCA 1997, the person beneficially entitled to the assets was the Bankrupt, as ██ provided the funds for the ARF and ██ was named as the holder

of the ARF. On that basis, the person that was treated as chargeable to tax in respect of the distribution was the Bankrupt, rather than the Appellant.

29.18. Reference was made to a previous determination of the Commission in *36TACD2019*. While the facts and circumstances are different, it clearly determined that section 784A(3) TCA 1997 was a charging provision.

29.19. The differing treatment of the ARF to any other investment vehicle vested in the Appellant was justified. Annuities and pensions are income in nature. The distributions from an ARF emanate from a capital fund. But these distributions are not converted into income, rather they are treated as such pursuant to section 784A(3) TCA 1997. In the absence of a provision similar to section 784A(3) TCA 1997, it was accepted that section 15 TCA 1997 would apply to any other investment vehicle vested in the Appellant, and did so with respect to the annuity payments. There was a clear logic to treating them differently, namely an express deeming provision pursuant to section 784A(3) TCA 1997.

Material Facts

30. Having read the documentation submitted and having listened to the oral legal submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

30.1. In addition to the findings of material fact, the Commissioner finds that the facts as set out in the document entitled "Statement of Agreed Facts" at points 1 to 35 inclusive of that document and which are replicated hereunder are also material facts found.

30.2. The Appellant in bankruptcy acts in his capacity as the assignee of the Estate of the Bankrupt.

30.3. ██████████ the Bankrupt was declared bankrupt and which is referred to as the date of adjudication.

30.4. Prior to the Date of Adjudication, the Bankrupt had triggered ██ pension such that ██ was receiving periodic annuity payments from the annuity and distributions from the ARF.

30.5. On the date of adjudication, the Estate, which included the annuity and the ARF, vested in the Appellant.

30.6. ██████████ the Bankrupt was discharged from bankruptcy.

30.7. .

30.8.

30.9. The Appellant returned a Form 1 income tax return in respect of the Estate annually, including in respect of the relevant years in dispute. The Form 1 for , included periodic annuity payments and annual imputed distributions from the ARF. The Form 1 for , included annual imputed distributions from the ARF.

30.10. As and from , the annuity ceased to form part of the Estate.

30.11. The tax return filed by the Appellant only included such annuity income as arose in the period .

30.12. Tax was withheld at source on such ARF distributions and annuity payments at the marginal rate of tax.

30.13. For the relevant years, the Appellant included the gross amounts of the annuity payments and the distributions from the ARF in the tax returns filed on behalf of the Estate annually which resulted in a self-assessment claiming a refund of income tax being due and owing to the Estate for the relevant years.

30.14. An Expression of Doubt was included by the Appellant in both the returns filed.

30.15. The Self-Assessment dated in respect of the financial year claimed a balance of tax overpaid by the Estate in the amount of €1,313,353.60.

30.16. The Self-Assessment dated in respect of financial year claimed a balance of tax overpaid by the Estate in the amount of €21,264.

30.17. By letter dated 21 October 2022, the Respondent refused the claims for repayment made by the Appellant in respect of the relevant years

30.18. On 18 November 2022, the Appellant appealed against the decision of the Respondent by filing a Notice of Appeal with the Commission detailing its grounds of appeal.

Analysis

The burden of proof

31. 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 ("Menolly Homes")* [2010] IEHC 49, wherein at paragraph 22, Charleton J. states that:

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

32. 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…"*

33. The law regarding the burden of proof and the reasons for it has been reaffirmed in recent subsequent judgments, for example in *McNamara v Revenue Commissioners* [2023] IEHC 15 and *Quigley v Revenue Commissioners* [2023] IEHC 244.

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 The Revenue Commissioners* [2024] IECA 113 ("*Hanrahan*"). 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………."

Statutory interpretation

35. In relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the judgment of Kennedy CJ. in *Revenue Commissioners v Doorley* [1933] I.R. 750 at page 765 wherein he held that:

    "*The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms...for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to the Acts of Parliament….*"

36. In relation to the relevant decisions applicable to the interpretation of taxation statutes, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores* and the judgment of O'Donnell J. in the Supreme Court in *Bookfinders*, as helpfully set out by McDonald J. 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*") at paragraph 74:

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

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

    (b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

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

37. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other judgments. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation

to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, as per the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

38. Furthermore, the Commissioner is mindful of the recent decision in *Heather Hill* and that the approach to be taken to statutory interpretation must include consideration of the overall context and purpose of the legislative scheme. The Commissioner is mindful of the *dictum* of Murray J. at paragraph 108 of his decision in *Heather Hill*, wherein he stated that:

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

39. To a certain degree it might be said that these cases suggest that the "literal" and "purposive" approaches to statutory interpretation are no longer hermetically sealed. To the extent that the line between what is now permissible has become blurred, Murray J. in *Heather Hill* sets out "*four basic propositions that must be borne in mind"* from paragraphs 113 to 116 as follows:-

    "*113. First, 'legislative intent' as used to describe the object of this interpretative exercise is a misnomer: a court cannot peer into minds of parliamentarians when they enacted legislation and as the decision of this court in Crilly v. Farrington [2001] 3 IR 251 emphatically declares, their subjective intent is not relevant to construction. Even if that subjective intent could be ascertained and admitted, the purpose of individual parliamentarians can never be reliably attributed to a collective assembly whose members may act with differing intentions and objects*.

    114. Second, and instead, what the court is concerned to do when interpreting a statute is to ascertain the legal effect attributed to the legislation by a set of rules and presumptions the common law (and latterly statute) has developed for that purpose (see DPP v. Flanagan [1979] IR 265, at p. 282 per Henchy J.). This is why the proper application of the rules of statutory interpretation may produce a result which, in hindsight, some parliamentarians might plausibly say they never intended to bring

about. That is the price of an approach which prefers the application of transparent, coherent and objectively ascertainable principles to the interpretation of legislation, to a situation in which judges construe an Act of the Oireachtas by reference to their individual assessments of what they think parliament ought sensibly to have wished to achieve by the legislation (see the comments of Finlay C.J. in McGrath v. McDermott [1988] IR 258, at p. 276).

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

116. Fourth, and at the same time, the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown. However - and in resolving this appeal this is the key and critical point - the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."

40. The *dictum* of Murray J. in *Heather Hill* was considered and approved by the Court of Appeal in the decision in *Hanrahan*. The Court of Appeal noted that the trial judge had cited and relied on the approach to the interpretation of taxation legislation that Murray J. in the Court of Appeal identified in the decision of *Used Car Importers Ireland Ltd. v Minister for Finance* [2020] IECA 298. Murray J., when considering the provision at issue, at paragraph 162 of the judgment stated that:

"[it] falls to be construed in accordance with well-established principle. The Court is concerned to ascertain the intention of the legislature having regard to the language used in the Act but bearing in mind the overall purpose and context of the statute."

41. Moreover, the Court of Appeal in *Hanrahan* at paragraph 83 held that:

"*Thus, the High Court correctly held that in interpreting taxation statutes generally, context and purpose are relevant. Therefore, not only does s. 811 direct Revenue and the court to have regard to the purpose of the provisions at issue but even in a more general manner the context and purpose of the statute is relevant.*"

42. Of note, the Court of Appeal in *Hanrahan* at paragraphs 79 and 80, when referring to the *dictum* of Murray J. in *Heather Hill,* in relation to the analysis of context and purpose, stated that:

    "Murray J. was very alive to the dangers of pushing the analysis of the context of the provision too far from the moorings of the language of the legislative section; the line between the permissible admission of "context" and identification of "purpose" may become blurred if too broad an approach to the interpretation of legislation is taken…..…He said that "the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown…"

43. Where there is an ambiguity in a tax statute it must be interpreted in the taxpayer's favour. In *Bookfinders*, O'Donnell J. explained that this rule against doubtful penalisation, also described as the rule of strict construction, means that if, after the application of general principles of statutory interpretation, there is a genuine doubt as to whether a particular provision creating a tax liability applies, then the taxpayer should be given the benefit of any doubt or ambiguity as the words should be construed strictly "*so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language*".

44. If there is any doubt, then a consideration of the purpose and intention of the legislature should be adopted. Then, even with this approach, the statutory provision must be seen in context and the context is critical, both immediate and proximate, but in some circumstances perhaps even further than that.

45. There is abundant authority for the presumption that words are not used in a statute without meaning and are not superfluous, and so effect must be given, if possible, to all the words used, for the legislature must be deemed not to waste its words or say anything in vain. In particular, the Commissioner is mindful of the *dictum* of McKechnie J. in *Dunnes Stores* at paragraph 66, wherein he stated that:

"*each word or phrase has and should be given a meaning, as it is presumed that the Oireachtas did not intend to use surplusage or to have words or phrases without meaning*."

46. The purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the Court or Tribunal is to seek to ascertain the meaning of the words. The general principles of statutory interpretation are tools used for clear understanding of a statutory provision. It is only if, after that process has been concluded, a Court or Tribunal is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language. The Commissioner will now proceed to consider the statutory provisions articulated in this appeal.

Substantive issue

47. The central issue to be determined in this appeal is the interpretation and application of section 15 TCA 1997 and section 784A(3) TCA 1997. In addition, there arises the question; who is the person beneficially entitled to the assets in the ARF, in accordance with section 784A(3) TCA 1997. Before embarking on her consideration of the interpretation of the relevant sections of the TCA 1997, the Commissioner considers it useful to set out the role of the Appellant in this appeal, which counsel for the Appellant helpfully set out at the commencement of the hearing of the appeal. The role of the Appellant in bankruptcy is not disputed. Rather what is disputed is the Appellant's role having regard to the relevant provisions of the TCA 1997 that govern an ARF.

The role of the Appellant

48. In accordance with section 44 of the 1988 Act, when a person is adjudicated bankrupt, the Appellant is vested with the assets of the bankrupt at the time of bankruptcy, for the benefit of the creditors. In this appeal, on [redacted], the date of adjudication, the assets owned by the Bankrupt, became vested in the Appellant for the benefit of the creditors (subject to certain limited exceptions set out in the 1988 Act). The law operated to divest the Bankrupt of the assets, so that the Bankrupt no longer had any interest in the assets, as a matter of law.

49. In accordance with section 82 of the 1988 Act, the Appellant is responsible for ensuring the distribution of the Estate. At the date of adjudication, the bankrupt is divested of the bankrupt's liabilities and the creditors who are owed money at the time of bankruptcy, have recourse to the pool of assets that are vested in the Appellant. The creditors are not permitted to look beyond that pool of assets to the bankrupt for payment or once the

bankrupt is discharged from bankruptcy, to any subsequent assets that a bankrupt acquires thereafter.

50. Part of the responsibilities of the Appellant, being vested with the assets, is to make tax returns. The Appellant may receive income such as, rental income, dividend income, investment income, annuities income or ARF income, all of which are subject to taxation. The Appellant files a tax return for the Estate of the bankrupt and is provided with a separate tax number for this purpose. In accordance with section 15 TCA 1997, that income is subject to a rate of taxation in the amount of 20 per cent (However, in this appeal the Respondent disputes that ARF income is subject to the rate of tax in accordance with section 15 TCA 1997 or that the Appellant was the chargeable person for the purposes of ARF income.)

51. Therefore, the role of the Appellant is to gather the assets, discharge any statutory duties, expenses and/or fees arising and then pay the creditors in accordance with the 1988 Act. The fact that the Bankrupt was discharged from bankruptcy in [redacted], does not affect the Estate that was vested in the Appellant and it continued to run parallel to the Bankrupt [redacted]. [redacted] The Commissioner will now proceed to consider the applicability of section 15 TCA 1997.

Section 15 TCA 1997

52. Section 12 TCA 1997 provides for the charge to income tax and provides that income tax shall, subject to the income tax acts, be charged in respect of all property, profits or gains described in the Schedules contained in sections 17, 18, 19 and 20 TCA 1997. It was not in dispute that section 12 TCA 1997 is interpreted as setting out the charge to tax in respect of all income and gains and it was not in dispute that section 12 TCA 1997 is the charge to tax.

53. The charge to tax, having been set out in section 12 TCA 1997, the rate of charge is then set out in section 15(1) TCA 1997 which states that *"[s]ubject to subsection (2), income tax shall be charged for each year of assessment at the rate of tax specified in the Table to this section as the standard rate*". Section 15(2) TCA 1997 states that *"[w]here 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..*". It was also not in dispute that the plain and ordinary meaning of section 15 TCA 1997 is that when an individual is acting in the capacity of a fiduciary or representative, the rate of the charge to tax is at the standard

rate of tax, being 20 per cent. The Commissioner notes the mandatory nature of the language in this section with respect to the standard rate of tax and the use of the word "shall" in section 15(1) TCA 1997. The Commissioner notes that it was not disputed by the Respondent that the Appellant was an individual acting in a fiduciary or representative capacity and that the standard rate of tax applicable to the Appellant was at the standard rate of tax. However, this the Respondent stated that did not apply to ARF income which was governed separately in accordance with section 784A(3) TCA 1997.

54. The Appellant argued that section 15 TCA 1997 provides for a final charge to tax which is called the standard rate. Section 15(1) TCA 1997 provides generally for the rate of income tax and subsection (2) sets out that those who do not fall within subsection (1), are subjected to a graduated rate of tax. Counsel for the Appellant used the example of Deposit Interest Retention Tax ("DIRT"), which she submitted was a final liability tax, because if a person has money in a financial institution in the State, that person will suffer DIRT at a particular rate which is currently, 33 per cent on deposits. It is that amount that is the final liability. Thus, the rate of 20 per cent set out in section 15 TCA 1997, was a final liability tax.

55. The Commissioner notes that section 15(2) TCA 1997 is subject to section 16(2) TCA 1997. Section 16(2) TCA 1997 provides that "*where a person is required to be assessed and charged with tax in respect of any property, profits or gains out of which such person makes any payment in respect of any annual interest, annuity or other annual sum, or any royalty or other sum in respect of the user of a patent, such person shall, in respect of so much of the property, profits or gains as is equal to that payment and may be deducted in computing such person's total income, be charged at the standard rate only*."

56. The Appellant submitted that section 15(2) TCA 1997 was therefore only limited by section 16(2) TCA 1997 and nothing else. The Respondent did not agree with that submission and stated that the Appellant had misinterpreted the section, such that section 15(2) TCA 1997 had general application insofar as a fiduciary was concerned.

57. The Appellant submitted that tax on receipts by the Appellant was always at the standard rate of tax of 20 per cent, rather than the marginal rate of 40 per cent, as that was what was provided for pursuant to section 15 TCA 1997. There was no dispute between the parties in respect of that statement, but for the Respondent's position in respect of ARF income, which it argued was governed by section 784A(3) TCA 1997. The Commissioner understands that it was on the basis of section 15 TCA 1997, that the Respondent accepted that the claim for repayment of income tax sought by the Appellant in respect of the annuity income, was allowed.

58. Therefore, if section 15 TCA 1997 was the only provision applicable, the Appellant would be successful in this appeal. However, the Commissioner must consider the application of section 784A TCA 1997, which is a section in the TCA 1997 dealing specifically with ARF income and the tax implications of same. The Appellant argued that the Appellant was entitled to a repayment of income tax on the basis of section 15 TCA 1997, but the Respondent argued that section 784A(3) TCA 1997 overrides section 15 TCA 1997 to deny the Appellant the claim for repayment of income tax. Hence, the marginal rate of tax was applicable to the Appellant herein. Moreover, it was argued that the Appellant was not the chargeable person for the purposes of section 784A TCA 1997, as he was not the person beneficially entitled to the assets. Nonetheless, it was accepted by the Respondent that the Appellant was the chargeable person for all other receipts. This, the Respondent submitted, was due to the deeming provision in section 784A(3) TCA 1997. The Commissioner will now proceed to consider that section.

Section 784A TCA 1997

59. Section 784A TCA 1997 provides for an ARF which subsection (1) states is "*a fund which is managed by a qualifying fund manager and which complies with the conditions of section 784B*."

60. Furthermore, section 784A(1)(b) TCA 1997 provides that "*[f]or the purposes of this Chapter, references to an approved retirement fund shall be construed as a reference to assets in an approved retirement fund which are managed for an individual by a qualifying fund manager and which are beneficially owned by the individual*." The Commissioner is satisfied that the section provides that whilst the ARF is managed by the QFM, it is beneficially owned by the individual. It is important to note that the "person beneficially entitled to the asset" is not defined by the section. Also of relevance is section 784A(1)(e) TCA 1997 wherein it states that *"[f]or the purposes of this section, any distribution in relation to an approved retirement fund shall be deemed to have been made by the qualifying fund manager*".

61. The relevant subsection for the purposes of this appeal is section 784A(3) TCA 1997 which has two further subsections, namely (a) and (b). It was the interpretation of subsection (a) that was at issue in this appeal and the extent to which the deeming provision applied. It was not in dispute between the parties that subsection (a) contains a deeming provision.

62. The Commissioner is satisfied that a deeming provision effectively allows one set of facts to be treated as if they were a different set of facts. It is often referred to as a statutory fiction. This was not in dispute. Both parties made reference to the jurisprudence relating to deeming provisions and the parties were agreed that the seminal decision was

Metrolands which was approved by the Supreme Court in this jurisdiction in *Liston v G.O'C and A O'C*. The Supreme Court considered whether the extension of the deeming provision would produce a result that was unjust, anomalous or absurd. The Court followed the decision in *Metrolands* and referred with approval to the comments of Nourse J. in *Metrolands* wherein it was stated that:

> "*When considering the extent to which a deeming provision should be applied, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. It will not always be clear what those purposes are. If the application of the provision would lead to an unjust, anomalous or absurd result then, unless its application would clearly be within the purpose of the fiction, it should not be applied. If on the other hand, its application would not lead to any such result then, unless that would clearly be outside the purposes of the fiction, it should be applied*."

63. The relevant portion of section 784(3)(a) at issue are the words *"…shall…..be treated as a payment to the person beneficially entitled to the assets in the fund of emoluments to which Schedule E applies…"*. [Emphasis added] This is said to be notwithstanding anything in section 18 or 19 TCA 1997. The issue that arises herein is extent to which the deeming provision applies.

64. Before considering that, it is notable that section 784A(3)(b) TCA 1997 provides that the QFM "*shall deduct tax from the distribution at the higher rate for the year of assessment in which the distribution is made…*". There was no dispute between the parties that the QFM was mandated to apply the higher rate of tax to the distributions from the ARF. The dispute herein relates to the disagreement as to the extent to which the deeming provision applies and who is "the person beneficially entitled to the asset".

65. Returning to section 784A(3)(a) TCA 1997, the Appellant submitted that the plain and ordinary meaning of the words in context are that the subsection deems that the payment made was to be treated as the payment of an emolument to which Schedule E applies and goes no further than that. Of importance, it was submitted, the section does not deem nor attempt to define any individual as "the person beneficially entitled to the assets". As aforementioned, section 784A TCA 1997 does not provide for a definition of "the person beneficially entitled to the assets". The Appellant submitted that "the person beneficially entitled to the assets", was a matter of fact. The Appellant argued that section 784A(3)(a) TCA 1997 is a deeming provision, which deems the distribution from an ARF to be the payment of an emolument to which Schedule E applies and thus, engages the operation of the PAYE system. However, it does not go as far as to deem who was "the person

beneficially entitled to the assets”. Furthermore, the section does not create a charge to tax, it merely deems the distribution to be a payment of emoluments chargeable to tax in accordance with Schedule E and mandates the QFM to apply the higher rate of tax, subject to a certificate of tax credits or similar. The Appellant submitted that the charge to tax is set out in section 12 TCA 1997 and what subsection (3)(a) does is provide for a “collection mechanism” for tax for the QFM, not a charge to tax.

66. The Appellant submitted if the legislation required that distributions from an ARF be treated differently to all other assets vested in the Appellant, then the legislation must set that out in clear and certain terms. Counsel for the Appellant directed the Commissioner to section 784A(4)(a) TCA 1997 which specifically provides for circumstances of death and which states *“[w]here the distribution referred to in subsection (3) is made following the death of the individual who was prior to death beneficially entitled to the assets of the approved retirement fund, the amount or value of the distribution shall be treated as the income of that individual for the year of assessment in which that individual dies and, subject to paragraph (b), subsection (3) shall apply accordingly*”.

67. The Appellant submitted that the legislation recognises that an event such as death can result in a change in “the person beneficially entitled to the assets” and the legislature considered it necessary to draft that expressly into the legislative provisions relating to distributions from an ARF. Moreover, it was submitted that the legislation is further specific wherein it states that in the event of death, if the payment was made to a child who had attained the age of 21, the QFM “*shall deduct income tax from the distribution under Case IV of Schedule D at a rate of 30 per cent*” and the amount shall not be reckoned in computing the total income for the purposes of income tax. Counsel for the Appellant stated that in the circumstances described, the QFM does not treat the distribution as the payment of emoluments to which Schedule E applies. Moreover, counsel for the Appellant argued that this was a final liability tax in light of the manner in which it was drafted, because the rate of tax was fixed at 30 per cent and no repayment claim was possible on foot of that amount being expressly provided for in the statute. The Commissioner notes that counsel for the Appellant stated that such language was absent from subsection (3) and thus, it was not a final liability tax, meaning that a repayment claim may be made as appropriate.

68. The Commissioner notes that the Appellant posited that there was only one person who was beneficially entitled to the assets and that was the Appellant. Counsel for the Appellant submitted that whilst the Bankrupt may have been the individual who, at the commencement of the ARF, deposited the funds into the ARF establishing the ARF that did not mean that the Bankrupt remained “the person beneficially entitled to the assets”.

Moreover, it was submitted that section 784A TCA 1997 does not state that. The Appellant submitted that as a matter of law, namely section 44 of the 1988 Act, "the person beneficially entitled to the assets" changed and did so at the date of adjudication when the assets vested in the Appellant.

69. In contrast, Counsel for the Respondent submitted that section 784A(3)(a) TCA 1997 created its own charging provision irrespective of what was provided for by sections 18 and 19 TCA 1997, the effect of which was to widen the net of what was encompassed under Schedule E for taxation purposes, by the use of a deeming provision. Moreover, the Respondent posited that "*the deeming provision relates to how the distribution is taxed by creating a fiction as to who is taxed. The section is saying that no matter who the distribution is made to, the person beneficially entitled is deemed the person chargeable to tax in respect of the distribution*".

70. Counsel for the Respondent submitted that the words in section 784A(3) TCA 1997 are clear and self-evident, such that it deems any distribution to be the payment of emoluments to which Schedule E applies, to the person beneficially entitled to the assets, including a payment or a transfer of assets out an ARF. Thus, the Respondent argued that a charge to tax is created by subsection (3), as it deems the distribution to be an emolument under Schedule E which is to be taxed at the higher rate (subsection (3)(b)). Therefore, the section is not simply a collection mechanism for tax, as was argued by the Appellant herein.

71. Furthermore, Counsel for the Respondent submitted that annuities and pensions are income in nature, but distributions from an ARF are different, because they emanate from a capital fund, which is not converted into income. Rather, the distributions are treated as such. Thus, in the absence of a provision akin to section 784A(3) TCA 1997, the Respondent submitted that it was accepted that section 15 TCA 1997 would apply to the Appellant. Hence, there was a clear logic in treating the income differently, as a consequence of section 784A(3) TCA 1997, which contains an express deeming provision in respect of ARF income.

72. As regards the question of who is "the person beneficially entitled to the assets", the Respondent submitted that "*there are three potential suspects who could be the person beneficially entitled to the assets*". Counsel for the Respondent argued that the first suspect was the Bankrupt, being the person who placed the assets into the ARF at the commencement of the ARF and for whose benefit it was established. Moreover, the assets were being applied for the benefit of the Bankrupt, in the sense that they were being distributed by the Appellant in reduction of the Bankrupt's liabilities with ██ creditors.

73. The second suspect it was submitted, was the Appellant. However, the Respondent submitted that "*there is a fundamental incongruity at the heart of the argument*" that the Appellant was "the person beneficially entitled to the assets". Counsel for the Respondent argued that the Appellant cannot on one hand rely on his status pursuant to section 15 TCA 1997, namely that the Appellant was receiving the assets in a fiduciary capacity and on the other hand, claim that the Appellant was "the person beneficially entitled to the assets". The Respondent submitted that the Appellant can be one or other, but not both. The Appellant disagreed and argued that the Respondent was wrong in its contention, as the assets were fully vested in the Appellant, in accordance with section 44 of the 1988 Act.

74. The third suspect, it was argued, was the Bankrupt's creditors and reference was made to section 44 of the 1988 Act wherein it states that *"…all property belonging to that person shall on the date of adjudication vest in [the Appellant] for the benefit of the creditors of the bankrupt*". However, the Respondent seemed to suggest that it was unlikely that this was "the person beneficially entitled to the assets" for the purposes of section 784A(3) TCA 1997. The Appellant argued that it was simply illogical to maintain that the creditors could somehow be "the person beneficially entitled to the assets". The Commissioner agrees with that submission, having regard to the fact that there may be a multitude of creditors in a bankruptcy.

75. The Commissioner has considered section 784B(1)(c) TCA 1997 which provides that the funds are held by the QFM in the name of the individual who is beneficially entitled to the assets in the fund, who on opening the ARF declared in accordance with that section that █ was "the person beneficially entitled to the asset". The Commissioner notes that the Respondent argued that there was no facility to change this designation. Certainly, the Commissioner considers it axiomatic that there are no express provisions in sections 784A or 784B TCA 1997 providing for a change of name.

76. Moreover, the Commissioner notes the Respondent's submission that section 784A(3) TCA 1997 is not a mere collection mechanism for tax as was argued by the Appellant, but in fact it creates a real charge to tax. This was so, it was argued, because whilst the distributions from an ARF may not fall exactly within the definition of Section 112 TCA 1997, they are deemed chargeable as such, pursuant to section 784A(3) TCA 1997. This, it was submitted, was supported by a previous determination of the Commission in *36TACD2019*. The Respondent submitted that the determination is important as it clearly determines that section 784A(3) TCA 1997 is a charging provision, which was relevant to the present appeal. The Commissioner has considered the determination in *36TACD2019* and is of the view that the determination is not relevant to the matters at issue in this

appeal, and whilst the parties agreed that the said relevant portion opened to the Commissioner would be *obiter dictum* if it were to be a decision of the Courts, the Commissioner is not persuaded that it is of any assistance to the Respondent's position herein, in respect of the section 784A(3) TCA 1997 being a charging provision.

77. As aforementioned, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, as per the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical. Having considered the submissions and documentation, including the statement of agreed facts submitted in this appeal, the Commissioner is satisfied that on a literal interpretation of section 784A(3) TCA 1997, the plain and ordinary meaning of the words is that the section deems a distribution from an ARF to be the payment of an emolument to which Schedule E applies. That is the statutory fiction that is created. It is true to state that part of the deeming provision is that the distribution shall be treated as a payment to "the person beneficially entitled to the asset". However, the words of the section must be considered in the context of the whole section.

78. Relevant therefore is the *dictum* of McKechnie J in the Supreme Court in *Dunnes Stores* wherein he stated that *"… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that."* The Commissioner is also mindful of the *dictum* of Murray J in *Heather Hill* wherein he stated that "*the Oireachtas usually enacts a composite statute, not a collection of disassociated provisions, and it does so in a pre-existing context and for a purpose. The best guide to that purpose, for this very reason, is the language of the statute read as a whole, but sometimes that necessarily falls to be understood and informed by reliable and identifiable background information of the kind described by McKechnie J. in Brown. However - and in resolving this appeal this is the key and critical point - the 'context' that is deployed to that end and 'purpose' so identified must be clear and specific and, where wielded to displace the apparently clear language of a provision, must be decisively probative of an alternative construction that is itself capable of being accommodated within the statutory language."* Therefore, the Commissioner is satisfied that she must consider the plain and ordinary meaning of the words in context, but she may also consider the purpose.

79. Section 784A TCA 1997 contains numerous references in many of the subsections to "the person beneficially entitled to the assets" and many of those references do not contain the words "treated as", so as to be considered a deeming provision. The Commissioner is satisfied that the question that arises is; does the use of deeming words, prior to the use of the words "the person beneficially entitled to the asset", mean that the section deems

that the payment is to be made to the person who established the fund and who is named in the declaration made in accordance with section 784B TCA 1997, as "person beneficially entitled to the assets". The Commissioner has considered the words "the person beneficially entitled to the assets" in the context of the section as a whole. It is clear to the Commissioner that these words are used in various subsections without deeming words such as "treated as". It occurs to the Commissioner if she is to interpret the words in subsection (3)(a) as meaning what is contended for by the Respondent, namely that subsection (3)(a) deems the payment to be made to "the person beneficially entitled to the assets", as the person who established the fund, namely the Bankrupt, then what interpretation is to be ascribed to the meaning of those words in the subsections that do not contain deeming provisions. The Commissioner has considered the case law opened to the Commissioner by the parties in relation to deeming provisions. The Commissioner has also considered the extracts from Bennion, Baily and Norbury on Statutory Interpretation, which were referred to by the Respondent and which state that *"…[i]n determining the precise scope of a deeming provision the court must, as with any other question of construction, attempt to discover the legislative intention from the words used and the other relevant interpretative criteria*."

80. The Commissioner is satisfied that the plain and ordinary meaning of the words in context, is that the section is instructing the QFM, who is the person responsible for managing the fund, to treat any distribution made from an ARF as the payment of an emolument to which Schedule E applies and which is to be taxed at the higher rate. It is logical that it would state who that payment is to be made to, and the person who established the ARF is described in the section throughout as "the person beneficially entitled to the asset". Therefore, Commissioner is satisfied that the deeming words operate to ensure that the distribution is treated as a payment of an emolument to which Schedule E applies. The deeming provision is creating a statutory fiction that the distribution is the payment of an emolument to which Schedule E applies. It is not deeming the person, who established the fund, to be "the person beneficially entitled to the assets" in the fund. The Commissioner accepts that is something that must be determined as a matter of fact.

81. Moreover, the Commissioner is satisfied that subsection (3) is not creating a charge to tax, it is simply directing the distribution into Schedule E, because the deeming provision creates the fiction that it is the payment of an emolument. Whilst the section directs the QFM to apply the higher rate of tax, it is not a final tax liability having regard to the references in subsection (3)(b) to certificates of tax credits and rate cut off points.

82. Of note, is section 784B(1)(a) wherein it states that "*an approved retirement fund shall be held by a qualifying fund manager in the name of the individual who is beneficially entitled*

to the assets in the fund". Whilst section 784A TCA 1997 deals with what is to occur if there is a death, it does not deal with bankruptcy. The Commissioner considers that it is logical that the event of death is provided for, in circumstances where the section is dealing with an ARF.

83. The Commissioner has considered section 44 of the 1988 Act which provides for the vesting of property in the Appellant and which states that *"[w]here a person is adjudicated bankrupt, then, subject to the provisions of this Act, all property belonging to that person shall on the date of adjudication vest in the [Appellant] for the benefit of the creditors of the bankrupt.*" The Commissioner has considered the dictionary meaning of the word "vest". The Oxford English Dictionary describes the word vest as a verb meaning "to endow formally or legally with some possession or property". The Appellant submitted that this is distinct from, for example; a liquidator where the property does not vest in the liquidator. The Appellant submitted that the estate under section 44 of the 1988 Act was all of the assets of the Bankrupt between the date of adjudication and the discharge from bankruptcy that vested in the Appellant. The fact that the Appellant may act in some fiduciary or representative capacity does not mean that the full title to those assets does not vest in the Appellant. The Appellant gave the example of a piece of land vesting in the Appellant and that the piece of land, if sold, would be sold in the name of the Appellant. Thus, the Appellant argued the Appellant was "the person beneficially entitled to the assets", where the ARF had vested in the Appellant. There was no other person capable of being "the person beneficially entitled to the assets".

84. The Commissioner is satisfied that the words in section 44 of the 1988 Act are clear and the meaning self-evident, such that it provides in mandatory terms that the property of the bankrupt on the date of adjudication shall vest in the Appellant for the benefit of the creditors. The Commissioner is satisfied that the ARF vested in the Appellant at the date of adjudication. This is what is provided for pursuant to section 44 of the 1988 Act. There was no dispute between the parties that the assets vested in the Appellant on the date of adjudication.

85. The Commissioner has considered the plain and ordinary meaning of the word fiduciary. The dictionary meaning of the word "fiduciary" in the Oxford English Dictionary is "*in trust of a person or thing; holding something in trust*". The Commissioner has also considered the dictionary meaning of the word "representative" which the Oxford English Dictionary states as meaning "*that stands in the place or assumes the functions of*". These are ordinary words used in common parlance and have no special meaning ascribed to them. The Commissioner notes that it is accepted by the Respondent that section 15 TCA 1997 applied to the Appellant in respect of the annuity income, as the Appellant was acting in a

fiduciary capacity. The Commissioner notes that the Respondent argued that the Appellant cannot be on the one hand acting in a fiduciary capacity and on the other be "the person beneficially entitled to the assets" for the purposes of ARF income. The Respondent did not direct the Commissioner to any legislative provision or case law that precluded such a scenario. Thus, the Commissioner, having had regard to the plain and ordinary meaning of the words "fiduciary" and "vest", and the fact that the Respondent accepted that the Appellant acts in a fiduciary capacity with respect to annuity income, cannot accept the Respondent's argument that the Appellant cannot be "the person beneficially entitled to the assets" for the purposes of section 784A(3)(a) TCA 1997.

86. Therefore, the Commissioner is satisfied that the Appellant was "the person beneficially entitled to the assets" in respect of the distributions from the ARF. The Commissioner has set out in the preceding paragraphs her findings in respect of the deeming provisions and the operation of section 44 of the 1988 Act, which vested the assets of the Bankrupt in the Appellant. The ARF may bear the name of the Bankrupt, in the same way the annuity reflected the name of the Bankrupt, but the Bankrupt was no longer the person beneficially entitled to the assets, as the ARF in the same way as the annuity, vested in the Appellant on the date of adjudication, and the distributions from the ARF were made to the Appellant.

87. Having, found that the Appellant was "the person beneficially entitled to the assets" by the operation of bankruptcy, the Commissioner is satisfied that he was the chargeable person for the purpose of the ARF, as the section does not deem that "the person beneficially entitled to the assets" must be the person that established the fund. Section 44 of the 1988 has operated to change that as a matter of fact. There was no suggestion by the Respondent that the Appellant was not the person entitled to receive the distributions. The Commissioner notes that the Respondent accepted that the Appellant was the chargeable person for the purposes of the annuity income.

88. Consequently, the Commissioner is satisfied that the Appellant was entitled to the rate of tax pursuant to section 15(1) TCA 1997, being the standard of rate of tax, as a result of the Appellant having acted in a fiduciary capacity. In circumstances where the QFM imposed a rate of tax at the higher rate on the distributions from the ARF, as the QFM was mandated to do in accordance with section 784A(3)(b) TCA 1997, the Appellant was entitled to the claim for a repayment of income tax in accordance with section 865(4) TCA 1997. Accordingly, the Commissioner is satisfied that the Respondent was incorrect in its decision to refuse the Appellant's claim for a repayment of the amount of income tax, in accordance with section 865(4) TCA 1997, in respect of the ARF income.

Conclusion

89. As per the principle enunciated in *Hanrahan*, when an appeal relates to the interpretation of the law only, the Commissioner cannot by swayed by a consideration of who bears the burden of proof and "*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…*"

90. It was not in dispute that the charge to tax is set out in section 12 TCA 1997. However, the Respondent was steadfast in its argument that section 784A(3) TCA 1997 created a charge to tax. The Appellant described the section as a collection mechanism. The Commissioner does not accept that subsection (3) creates a charging provision. As stated, having regard to the plain and ordinary meaning of the words in subsection (3), in context, the subsection created a mechanism whereby it deemed the distributions from the ARF to be a payment of emoluments to be dealt with under Schedule E, and directed the QFM to apply the higher rate of tax.

91. The Commissioner is satisfied that the Appellant was the chargeable person for the purposes of the estate of the Bankrupt. The Commissioner is not satisfied that the person beneficially entitled to the assets is the Bankrupt and the Commissioner has set out in the preceding paragraphs, her reasons for making this finding. It would be illogical to determine that the Bankrupt was so for the purposes of subsection (3), having regard to the section as a whole, in context. The 1988 Act fundamentally changed the position of the Bankrupt and who was entitled to ██ assets from the date of adjudication. The Respondent acknowledged that section 44 of the 1988 Act operated to vest the Bankrupt's property in the Appellant for the benefit of ██ creditors, but for the purposes of ARF income, the distributions should be attributed to the Bankrupt. As stated, this is not logical nor what a literal interpretation of the section provides for. The Commissioner is satisfied that "the person beneficially entitled to the assets" was to be established on the facts and the Commissioner has considered both parties' submissions in this appeal.

92. Furthermore, the Commissioner is satisfied that having regard to the plain and ordinary meaning of the words in context in section 15 TCA 1997 it provides a mechanism for an individual acting in a fiduciary or representative capacity to pay income tax at the standard rate. Section 15 TCA 1997 could not be clearer, that an individual who receives money in a fiduciary or representative capacity is to be taxed at the standard rate and that is accepted by the Respondent for all receipts of the Appellant including payments from the annuity, but not for distributions from an ARF. The Commissioner does not consider the rationale posited by the Respondent for treating the distributions from an ARF differently, as plausible or logical.

93. Additionally, the Commissioner is satisfied that the QFM, correctly applied the higher rate of tax to the distributions, in accordance with section 784A(3)(b) TCA 1997. However, as the Appellant, by reason of the operation of the 1988 Act, was "the person beneficially entitled to the assets", the Appellant was entitled to the rate of tax, at the standard rate, in accordance with section 15 TCA 1997. The Respondent accepted that the Appellant was an individual acting in a fiduciary or representative capacity (with the exception of the distributions from the ARF). The Commissioner is satisfied that to hold the Bankrupt as being "the person beneficially entitled to the assets", would be to stray from the literal meaning of the words in context, having regard to the change in circumstances as a result of section 44 of the 1988 Act.

94. Accordingly, in light of the Commissioner's findings that the Appellant was "the person beneficially entitled to the assets", as the ARF had vested in him, and the chargeable person for the purposes of the distributions from the ARF, the rate of tax to be applied to the distributions was the standard rate. Consequently, the Respondent was incorrect in its decision to refuse the Appellant's claim for a repayment of income tax, in accordance with section 865(4) TCA 1997, in respect of the ARF income.

Determination

95. As such and for the reasons set out above, the Commissioner determines that the Appellant has succeeded in showing that the Respondent was incorrect in its decision dated [redacted], to refuse the Appellant's claim for a repayment of income tax in accordance with section 865(4) TCA 1997, in respect of the ARF income, for the relevant years, in the amounts of [redacted] and [redacted], respectively.

96. 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

97. 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

98. 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
30 January 2025

Appendix 1

Table of Cases

1. *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50;

2. *Bookfinders v The Revenue Commissioners* [2020] IESC 60;

3. *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43;

4. *Hanrahan v The Revenue Commissioners* [2024] IECA 113;

5. *Marshall v Kerr* [1993] STC 360;

6 *East End Dwelling Company Limited v Finsbury B.C* [1951] 2 All ER 587;

7. *Re Levy ex parte Walton* (1881) 17 ChD 746;

8 *Westcott (Inspector of Taxes) v Woolcombers Ltd* [1986] STC 182;

9. *CIR v Metrolands* [1982] STC 259;

10. *Liam Liston v G O'C and A O'C* [1996] 1 IR 501;

11. *Determination 36TACD2019;*

12. *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49;

13. *McNamara v Revenue Commissioners* [2023] IEHC 15;

14. *Quigley v Revenue Commissioners* [2023] IEHC 244.

Appendix 2

Agreed Booklets of Documentation and Transcript

1. Book of Authorities # 1 (Legislation)
2. Book of Authorities # 2 (Case law)
3. Book of Pleadings
4. Book of Correspondence
5. Book of Core Documents
6. The Bankruptcy Act 1988
7. Transcript of the hearing, 12 November 2024