Certain benefits payable under Social Welfare Acts – increase for qualified adult

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1. Introduction

Section 126 of the Taxes Consolidation Act 1997, as amended, sets out the tax treatment of various payments under the social welfare code, including payments which, subject to certain conditions, can attract an increase in respect of a qualified adult.

The purpose of this Manual is to clarify the tax treatment of the increase in the State Pension Contributory in respect of a qualified adult dependent.

- For all tax years post 1st January 2014 and
- For the period between the 24th September 2007 to the 31st December 2013

2. The tax treatment of an increase in the State Pension (Contributory) for a qualified adult for the tax year 2014 and subsequent tax years

The following State pensions paid by the Department of Social Protection DSP are taxable sources of income:

- The State Pension (Contributory)
- The State Pension (Transition)
- The State Pension (Non-Contributory)
- The pre-1953 State Pension (Contributory).

Subject to certain conditions, these pensions can attract an increase in respect of a qualified adult (as defined in the Social Welfare Consolidation Act 2005).

Section 126 (2B) of the Tax Consolidation Act 1997, as inserted by Section 12 of the Finance (No. 2) Act of 2013, provides that the increase in the State Contributory Pension for a qualified adult is, for tax purposes, part of the pension. Therefore, from the 1st January 2014, the increase for a qualified adult does not represent a separate source of income for the qualified adult. Consequently, the PAYE employee tax credit and extended rate band are not available in respect of the increase for a qualified adult.

3. The tax treatment of the increase for a qualified adult from the 24 September 2007 to 31 December 2013

Section 112 of the Social Welfare Consolidation Act 2005, as amended by Section 14 of the Social Welfare and Pensions Act 2007, provides for the direct payment of the increase in the State Contributory Pension for a qualified adult to the qualified adult or their nominee.

The High Court in the case of Michael O'Neill v The Revenue Commissioners concluded that the qualified adult was the beneficial owner, in his or her own right, of the amount of the increase and, therefore, was entitled to the PAYE tax credit and increased Standard Rate Cut-Off Band (SRCOB).

It should be noted that this ruling, which has been accepted by Revenue, dealt with the legislation applicable prior to the enactment of the Finance (No. 2) Act 2013 referred to above. This High Court ruling is only relevant for new claimants of the State Contributory Pension from the Department of Social Protection DSP on or after the 24th September 2007 to the 31st December 2013. The ruling (in relation to the particular facts of the case) found in favour of the taxpayer's claim for the second employee (PAYE) tax credit and extended the SRCOB due to the taxpayer. The ruling related to the receipt of the qualified adult increase for the tax years 2012 and 2013.

Based on Section 126 (2B) of the Tax Consolidation Act 1997, as inserted by Section 12 of the Finance (No. 2) Act of 2013, Revenue's position is that for the tax year 2014 and onwards the State Contributory Pension, together with any "increase" for a qualified adult, is deemed to be the emoluments of the person beneficially entitled to the pension. The fact that the increase in the pension in respect of a qualified adult may be paid directly to the qualified adult or his or her nominee does not give rise to an entitlement to a second PAYE credit or an extension of the SRCOB.