



38TACD2019

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against a refusal by the Respondent to grant tax relief to the Appellant in respect of a once-off pension contribution in the amount of €23,000 made on 10 October 2017 in respect of the tax year ended 31 December 2016 (hereafter 2016).

Background

2. The Appellant was a PAYE taxpayer for the year 2016.
3. As the Appellant had income in excess of €115,000 in 2016 and was aged 35 in that year, the maximum pension contribution he could make in that year qualifying for tax relief was an amount of €23,000.
4. The Appellant made a pension contribution of €23,000 on 10 October 2017 which he wished to be treated as a contribution for 2016. The pension contribution was made on or before the specified filing date for 2016 (which was 31 October 2017 for manual income tax returns and extended to mid-November 2017 for returns filed online).

Income Tax for Pension Contribution

5. The Appellant filed an income tax return (Form 12) on 15 December 2017. In that return he elected to treat the pension contribution made in 2017 as relating to 2016.
6. The Respondent, by way of email dated 10 January 2018, refused to grant tax relief to the Appellant in respect of the €23,000 pension contribution on the basis the Appellant's election for 2016 was filed late with his filing of a tax return on 15 December 2017, notwithstanding the fact that the pension contribution was made before the specified filing date for 2016.
7. On 17 January 2018 the Respondent further elaborated that the first notification of the Appellant's election in respect of his pension contribution for 2016 was when he filed his income tax return for 2016 on 15 December 2017. As this notification was after the specified filing date for the 2016 return, the election was not a valid election for that year and accordingly the pension contribution did not qualify for tax relief in 2016 and did not generate a PAYE refund for that year. The pension contribution could be allowed in 2017 and subsequent years, if appropriate.
8. The Appellant lodged an appeal dated 31st January 2018 against the Respondent's decision.
9. The facts are not in dispute in this appeal.

Legislation

Section 787 Taxes Consolidation Act (hereafter TCA) 1997 provides for tax relief on certain qualifying pension premiums subject to certain earnings' limits and age-related restrictions.

Section 787 (7) TCA 1997 provides-

"Where in relation to a year of assessment a qualifying premium is paid after the end of the year of assessment but (on or before the specified return date for the chargeable



period (within the meaning of Part 41A), the premium may, if the individual so elects on or before that date, be treated for the purposes of this section as paid in the earlier year....”

Section 787(15) TCA 1997 provides-

“Relief shall not be given under this section in respect of a qualifying premium except on a claim to and allowed by the inspector”

Submissions

10. The Appellant contends he is entitled to tax relief in respect of the pension contribution made by him on 10 October 2017 to the financial institution.
11. The Appellant submits that the payment of the pension contribution and his instruction to his financial institution on or before the specified return date in 2017 for 2016 constituted a sufficient election for section 787(7) TCA 1997 purposes. He argues that such actions evidenced a clear unambiguous intention to backdate the pension contribution to 2016.
12. The Appellant argues that neither Section 787 (7) TCA 1997 nor the Revenue’s Pension Manual prescribe a particular manner of election and hence his actions in making the contribution and notifying the financial institution were adequate as an election for the purpose of Section 787(7) TCA 1997.
13. The Appellant acknowledges that his income tax return was filed late and he attributes this lateness to his lack of familiarity with the income tax return filing deadlines, given his status as a PAYE taxpayer.
14. The Appellant points out that the Revenue Pension’s Manual acknowledges the challenges faced by PAYE taxpayers when seeking to claim tax relief on pension contributions in a timely manner. He argues that the manual provides for concessional late elections in certain circumstances. He argues that it is unreasonable of Revenue to exercise discretion in some circumstances of late pension contribution elections by PAYE taxpayers, but not in his case.

15. The Appellant cites the case of *O'Brien v the Revenue Commissioners* (2016) IEHC2 as authority for his proposition that his actions/conduct gave rise to a binding election for the purpose of Section 787(7) TCA 1997.
16. The Appellant cites the case of *Inspector of Taxes v Kiernan* as authority for this submission that as there is a slackness in the wording of section 787(7) TCA 1997 as to the requisite form of election for the purpose of the section. He argues that the resulting ambiguity should be construed in his favour. Hence, he argues that this actions in making the pension contribution and notifying the financial institution constituted an election which was made before the specified return date.
17. The Respondent asserts that it was first notified of the Appellant's election to carry back his pension contribution to 2016 when he filed his tax return for 2016 on 15 December 2017 (which was outside the return filing deadline). The Respondent contends there is no statutory basis on which to accept a late election in respect of 2016. Accordingly, it argues that it is statute bound to grant the relief in 2017 and if there is inadequate income to absorb the relief in 2017, the excess relief can be carried forward to succeeding tax years until it is utilised in full.

Analysis and findings

18. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on a balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemption, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see *Revenue Commissioners v Doorley* (1933) 1 IR750 and *McGarry v Revenue Commissioners* (2009) ITR 131.
19. In the High Court case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at par.22 Charleton J. stated:
'The burden of proof in this appeals 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'

20. I am not satisfied that the Appellant has discharged the onus of proof in relation to his entitlement to tax relief in respect of his pension contribution in respect the 2016 tax year. In particular, I have considered the mandatory nature of the wording in Section (787) (15) TCA 1997 which states that relief shall not be granted in respect of qualifying premiums except in respect of a claim made to and allowed by the inspector. The conduct of the Appellant in making the pension contribution and notifying the financial institution is not sufficient to override this express statutory requirement in Section 787 TCA 1997.
21. I am satisfied that there is no inherent ambiguity in the statutory wording used per Section 767 TCA 1997. It is clear that the election referred to in Section 767(7) TCA when read in conjunction with Section 767(15) TCA 1997 must be made to the Inspector and the election must be made before the specified return deadline under Section 767(7) TCA 1997.
22. The Appellant has argued that the circumstances outlined in Appendix III of the Revenue Pension's Manual relating to late elections being allowed in certain circumstances, should be applied in his case. I am satisfied that all of the conditions set out by Revenue for granting such late elections are not met by the Appellant.

Conclusion

23. I determine that the Appellant has not succeeded in establishing an entitlement to the pension relief relating to his pension contribution dated 10 October 2017 in respect of 2016.
24. I uphold the decision of the Respondent refusing tax relief in 2016 relating to the Appellant's pension contribution in the amount of €23,000 made in 2017.
25. The appeal is determined in accordance with sections 949AL and 949U TCA 1997.

PAUL CUMMINS
Appeals Commissioner
25th September, 2019.