



**66TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against a refusal by the Respondent to grant tax relief in respect of the tax year ended 31 December 2015 (hereafter 2015) to the Appellant in respect of a once-off pension contribution in the amount of €28,750 made on 28 October 2016.
2. The appeal is adjudicated without a hearing in accordance with section 949U TCA 1997.

**Background**

3. The Appellant was a PAYE taxpayer for the year 2015.
4. The Appellant made a pension contribution of €28,750 on 28 October 2016 which she wished to be treated as a contribution for 2015. The pension contribution was made on or before the specified filing date for 2015 (which was 31 October 2016 for manual

- income tax returns and extended to mid-November 2016 for returns filed online).
5. The Appellant filed an annual income tax return (Form 12) on 12 December 2016. In that return she elected to treat the pension contribution made in 2016 as relating to 2015.
  6. The Respondent, by way of letter dated 9 February 2017, refused to grant tax relief to the Appellant in respect of the €28,750 pension contribution on the basis that the Appellant's election for relief in 2015 was filed late with her filing of the 2015 tax return on 12 December 2016, notwithstanding the fact that the pension contribution was made before the specified filing date for 2015.
  7. On 26 April 2018 the Respondent further elaborated that the pension contribution could be allowed in 2016 and subsequent years, if appropriate.
  8. The Appellant lodged an appeal dated 15 June 2017 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 she is entitled to tax relief in respect of the pension contribution made by her on 28 October 2016 to the financial institution.
11. The Appellant submits that she made calls to Revenue during September and October 2016 to notify them of issues regarding her access to her electronic records enabling her to file her returns of income.
12. She contends that she had to file paper returns for 2014 due to technical issues within Revenue. She further contends that she was assured in 2015 and in September and October 2016 that these issues would be resolved.
13. She further elaborates that during a telephone call with Revenue in October 2016 she explained her concern about filing her tax return. She contends that she was advised that she had no need to worry as the deadline was a hard deadline for the self-employed but not for her as she was a PAYE worker.
14. The appellant has advised that she was not aware of the obligation to make an election to Revenue with regards to an AVC contribution made in 2016 which she wished to be treated as a contribution for 2015. The appellant further submits that she had not been made aware of the requirement to make such an election during her telephone conversations with Revenue.
15. The Appellant acknowledges that the claim for relief for a PRSA contribution for 2015 made, when filing her income tax return on 12 December 2016, was late but she attributes this lateness to her not having access to her electronic Revenue record.
16. The Respondent outlined the following:
  - The Appellant is an accountant
  - Her salary for 2016 was €150,460



- Form 12 (return of income) for 2015 was received on 12 December 2016
  - Relief was claimed in that return for a PRSA contribution of €28,750
  - The Appellant was entitled to the relief claimed but the Respondent was unable to grant the relief as the election to do so was filed late.
  - The Respondent confirmed the relief could be allowed in 2016 if appropriate.
  - The Respondent acknowledged that the Revenue 1890 Helpline took a call on 28 October 2016 from the Appellant as stated by her. A partial transcript of that telephone conversation from 28 October 2016 is available and was supplied to the Tax Appeals Commission on 29 January 2020.
17. The Respondent asserts that it was first notified of the Appellant's election to carry back her pension contribution to 2015 when she filed her tax return for 2015 on 12 December 2016 (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 2015.

### **Analysis and findings**

18. The Appellant has argued that her failure to claim the relief lay in the advice given to her in her telephone contacts and in the Respondents failure to restore her access to her electronic records.
19. The Respondent's partial transcript of the telephone conversation with the Appellant on 28 October 2016 sets out part of the conversation that took place at the time. Included in that conversation the Revenue official stated:

*"the 31<sup>st</sup> October deadline is really for self-assessment people",*

*"If you're filing a form 12 for the year 2015, I mean like, being realistic, you've got four years to file that, you know"*

The transcript further outlines the discussion between the parties around issues the Appellant had with filing her Income tax and Capital Gains tax return and they also discussed access to the Appellant's MyAccount.

20. The telephone conversation might have led the Appellant to understand that she had time to file a return and qualify for any reliefs available. The transcript does not however, include any mention of a discussion around the particular relief sought in relation to the pension payment. The onus remained on the Appellant to elect in time to have the €28,750 pension contribution allowed in 2015.
21. 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.
22. 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’*
23. I am not satisfied that the Appellant has discharged the onus of proof in relation to her entitlement to tax relief in respect of her pension contribution in respect the 2015 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 is not sufficient to override this express statutory requirement in Section 787 TCA 1997.
24. 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.



### **Conclusion and Determination**

25. I determine that the Appellant has not succeeded in establishing an entitlement to the pension relief relating to her pension contribution dated 28 October 2016 in respect of 2015.
26. I uphold the decision of the Respondent refusing tax relief in 2015 relating to the Appellant's pension contribution in the amount of €28,750 made in 2016.

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**Charlie Phelan**  
**Appeals Commissioner**  
**30 January, 2020.**