



71TACD2020

BETWEEN/

APPELLANTS

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a liability to income tax in relation to funds withdrawn from a PRSA by Mrs REDACTED.
2. This case is adjudicated without a hearing in accordance with the provisions of Section 949U Taxes Consolidation Act (TCA) 1997 by agreement with the parties.
3. The Appellants are jointly assessed for income tax.

Background

4. The Respondent by way of a "PAYE/USC End of Year Statement (P21) For the tax year 2016" (treated as if it were an assessment to tax raised on the Appellants), included as income an amount of €5,449, from the encashment of an Irish Life Assurance ARF paid in 2016 to Mrs REDACTED.
5. The Appellants appealed the notice of assessment to the Tax Appeals Commission on 24 August 2017.

6. The facts are not in dispute in this appeal.

7. Legislation

787G Taxes Consolidation Act 1997 Taxation of payments from a PRSA

[Subject to subsections (2), (3) and (4)-

(a) the amount or value of any assets that a PRSA administrator makes available to, or pays to, a PRSA contributor or to any other person, including any annuity where the whole or part of the consideration for the grant of the annuity consisted of assets which, at the time of application of the said assets for the purchase of the annuity, were PRSA assets, [shall, notwithstanding anything in section 18 or 19,] be treated as a payment to the PRSA contributor of emoluments to which Schedule E applies and, accordingly, the provisions of Chapter 4 of Part 42 shall apply to any such payment or amount treated as a payment, and

(b) the PRSA administrator shall deduct tax from the assets at the higher rate for the year of assessment in which the assets are made available unless the PRSA administrator has received from the Revenue Commissioners [a revenue payroll notification (within the meaning of section 983)] for that year in respect of the PRSA contributor.

Submissions

8. The Appellants have submitted in relation to Mrs. REDACTED PRSA:

- (a) That it is unfair to treat the withdrawal of funds from her PRSA as income in 2016.
- (b) That the money was withdrawn early because Mrs Walsh was diagnosed with a serious illness which makes it difficult to walk, talk and eat.
- (c) That the money was used to adapt her home
- (d) That she lost money on the early encashment of the PRSA

9. The Respondent submitted in relation to Mrs. REDACTED PRSA:

- (a) That she withdrew funds from her PRSA and PAYE was correctly deducted from the funds by the PRSA provider.

(b) That the statutory provisions of Section 787A and 787G Taxes Consolidation Act (TCA) 1997 are being relied on in support of its assessment.

(c) That REDACTED was obliged to treat certain withdrawals as emoluments, taxable under Schedule E and to deduct PAYE at the higher rate or in accordance with any Tax Credit Certificate held.

(d) That the assessment made is in accordance with the income declared by the Insurance Company, other joint income of the Appellants less any tax credits and tax paid.

Analysis and findings

10. Section 787G (1) (a) and (b) provide for the taxation of certain emoluments under Schedule E in specific circumstances.
11. The PRSA provider correctly deducted the PAYE from the emolument paid to Mrs. REDACTED.
12. The Respondent has correctly made an assessment in the form of a “PAYE/USC End of Year Statement (P21) For the tax year 2016” that includes all of the Appellants income, deductions and tax credits in arriving at the Appellants joint income and tax liability for 2016.
13. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessment to tax, raised by the Respondent is incorrect.
14. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: ‘*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.*’



15. The question to be answered in this appeal is whether, the Respondent is correct in assessing the PRSA element of the Appellants' income to tax for 2016. I find that the Appellants have not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Respondent's view of the matter is incorrect. As a result, I determine that the Appellants have not succeeded in discharging the burden of proof and has not succeeded in showing that the PRSA income is not subject to income tax for 2016.

Determination

16. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the Appellants' tax liability for 2016 is as assessed by Revenue.

17. The appeal is hereby determined in accordance with Section 949 AK TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
11 February 2020

