



**07TACD2021**

**APPELLANT**

**BETWEEN/**

**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 ('the AVC') in the amount of €21,570 made between 1 January 2017 and 31 October 2017 in respect of the tax year ended 31 December 2016 (hereafter 2016).
2. By agreement of the parties this appeal is adjudicated without a hearing in accordance with s.949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

**Background**

3. The Appellant took up employment with REDACTED Ltd ('employer') on REDACTED 2017. Soon after this and before 31 October 2017 the Appellant made the AVC payment to the pension fund of his employer. Prior to July 2017 the Appellant had been self-employed and was not in receipt of Schedule E employment income.



4. In October 2017, prior to submitting his income tax return for the 2016 tax year, the Appellant contacted the Respondent and enquired regarding the relief available for the AVC payment and regarding the fact that the Form 11 ROS return only allowed him to enter the payment in the 'RAC/PRSA/QOPP relief claimed in 2016" box. The Appellant submits that he was informed that "the making of the contribution was the key issue in terms of receiving the tax credit for 2016 and to include the payment in the box that would accept it". The Appellant submits that at "no point did the official cast any doubt on the eligibility of the payment for tax credit."
5. In October 2017, the Appellant submitted his 2016 income tax return and claimed a deduction in this return, against his 2016 Schedule D - Case I Income. The Appellant submitted that as a result of seeking and obtaining clarification regarding the validity of this relief claim from the Respondent's customer service section, prior to the return deadline, he decided not to make any additional PRSA contribution that would have been deductible against his Schedule D – Case I income for 2016.
6. A number of weeks after submitting his return, the Appellant submits that he received a telephone call from the Respondent advising that they would not allow a tax deduction for the AVC payment. The Appellant wrote to the Respondent in December 2017, arguing that if he had been made aware that the AVC would not qualify as a deduction in 2016 he would have made an additional contribution to a PRSA in respect of 2016.
7. The Respondent wrote to the Appellant in January and March 2018, noting that the AVC could only be deducted against "reckonable earnings i.e. pensionable Schedule E Income". The Appellant contacted the Respondent again, arguing that the deduction should be allowed, and on 13 March 2018 an assessment was issued to the Appellant, allowing the pension deduction in the amount of €21,570, and showing a refund due to the Appellant of €8,627.
8. However, the Appellant's pension deduction claim was subsequently disallowed by the Respondent on the basis that he did not have Schedule E employment income in 2016 and the contribution made was an AVC payment to his employer's occupational



pension scheme. The Respondent issued an amended notice of assessment on 29 March 2018 which indicated that there was no refund due to the Appellant. The Appellant duly appealed this assessment to the Tax Appeals Commission ("TAC") on 27 April 2018.

9. The Appellant made a further complaint to the Respondent in May 2018 regarding the alleged misinformation he had received from the Respondent's customer service section and in a reply issued on 15 June 2018, the Respondent stated that:

*"..this office can give guidance in relation to where on a tax return a customer may make a claim for an allowance or relief, an officer cannot give a definitive opinion as to the granting of a claim or otherwise in the absence of the full facts"*

*"Contributions to occupational pension schemes can only be relieved by reference to net relevant emoluments from the occupation in a relevant period. In your letter dated 21st December 2017 you stated that you took up employment with REDACTED Plc in REDACTED 2017 and that you were self-employed during 2016. As you had no relevant emoluments during 2016, I cannot find any statutory basis for additional relief."*

10. The Respondent also confirmed in their Statement of Case to the TAC that:

*"Mr REDACTED contacted the Customer Service area of Revenue and was given incorrect guidance in relation to the claiming of the relief and to the entitlement of the relief. Revenue has acknowledged and apologised for same."*

11. The TAC requested a copy of the AVC certificate from the Appellant, but were not provided with this. As a result the TAC was unable to identify whether the contribution made was an AVC PRSA, linked to his employers occupational scheme, that may qualify as a deduction against relevant earnings under the Personal Retirement Savings Accounts (PRSA) provisions contained in Part 30 Chapter 2A TCA 1997. The TAC also asked the Appellant to confirm whether relief was granted at



source through the PAYE system, or otherwise, by his employer for the 2017 AVC payment, but received no response.

12. Notwithstanding this lack of clarification, the Appellant does not dispute that the AVC payment was a contribution to his employers' occupational pension scheme and was not a PRSA. As a result, the relevant relieving provisions for the AVC payment made in this appeal are contained in Part 30 Chapter 1 (S.770 – S.782A TCA 1997) and not Part 30 Chapter 2A (S.787A – S.787L TCA 1997).

13. However the Appellant submits that

*“The issue I have is that if I had been provided with complete and accurate information which I sought out when completing my 2016 return I would have made a 2016 pension contribution to a PRSA and obtained the tax credit and sought a tax credit for the 2017 payment in 2017. There appears to be inconsistent understanding in Revenue as to how to treat this situation as evidenced by my initial call and the fact that I did receive an amended assessment on March 13 2018 granting the tax credit which was subsequently reversed.”*

## **Legislation**

Section 770 TCA 1997 – Interpretation, provides as follows: -

*“additional voluntary contributions” means voluntary contributions made to a scheme by an employee which are –*

*(i) contributions made under a rule or part of a rule, as the case may be, of a retirement benefits scheme (in this definition referred to as the “main scheme”) which provides specifically for the payment of members’ voluntary contributions, other than contributions made at the rate or rates specified for members’ contributions in the rules of the main scheme, or*



*(ii) contributions made under a separately arranged scheme for members' voluntary contributions which is associated with the main scheme;*

Section 774 (7) TCA 1997 – Certain approved schemes: exemptions and reliefs, provides as follows: -

*(7) (a) Any ordinary annual contribution paid under the scheme by an employee shall, in assessing income tax under Schedule E, be allowed to be deducted as an expense incurred in the year in which the contribution is paid.*

.....

*(c) The aggregate amount of annual contributions (whether ordinary annual contributions or contributions treated as ordinary annual contributions) allowed to be deducted in any year shall not exceed-*

*(i) in the case of an individual who at any time during the year of assessment was of the age of 30 years or over but had not attained the age of 40 years, 20 per cent,*

*(ii) in the case of an individual who at any time during the year of assessment was of the age of 40 years or over but had not attained the age of 50 years, 25 per cent,*

*(iii) in the case of an individual who at any time during the year of assessment was of the age of 50 years or over but had not attained the age of 55 years, 30 per cent,*

*(iv) in the case of an individual who at any time during the year of assessment was of the age of 55 years or over but had not attained the age of 60 years, 35 per cent,*



*(v) in the case of an individual who at any time during the year of assessment was of the age of 60 years or over, 40 per cent, and*

*(vi) in any other case, 15 per cent,*

*of the remuneration for that year of the office or employment in respect of which the contributions are paid.*

Section 774(8) TCA 1997, as amended, provides as follows: -

*“(8) Subject to paragraphs (b) and (ba) of subsection (7) where in relation to a year of assessment any contribution, which is not an ordinary annual contribution, is paid by an employee under the scheme after the end of the year of assessment but before the specified return date for the chargeable period (within the meaning of Part 41A), the contribution 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 (and not in the year in which it is paid); but where the amount of that contribution, together with any other contribution to the scheme paid by the individual in the year to which the contribution relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of contributions allowed to be deducted in that year, the election shall have no effect as respects the excess.”*

### **Appellant's Submissions**

14. The Appellant included the following in his submissions:

*“...I was self-employed during 2016 and joined a company in REDACTED 2017 as an employee. In 2017 I made a pension contribution to the pension fund of my new employer.*

*The issue I have is that if I had been provided with complete and accurate information which I sought out when completing my 2016 return I would have*



*made a 2016 pension contribution to a PRSA and obtained the tax credit and sought a tax credit for the 2017 payment in 2017. There appears to be inconsistent understanding in revenue as to how to treat this situation as evidenced on my initial call and the fact that I did receive an amended assessment on March 13 2018 granting the tax credit which was subsequently reversed.*

*I wrote a letter indicating that I wished to avail of the revenue complaint procedure and received an unsatisfactory reply to which I replied on June 28 2018 seeking additional information from revenue including transcripts of my phone calls since they were made on the 1890 number which is a recorded line and despite a number of phone call/letters there has been no response since that date. At this point five months later I am very frustrated by the complaints procedure and the willingness to engage with individuals in a fair and transparent manner..."*

### **Respondent's Submissions**

15. The Respondent included the following in its submissions:

*"Contributions to occupational pension schemes can only be relieved by reference to net relevant emoluments from the occupation in a relevant period. In your letter dated 21st December 2017 you stated that you took up employment with REDACTED Plc in REDACTED 2017 and that you were self-employed during 2016. As you had no relevant emoluments during 2016, I cannot find any statutory basis for additional relief..."*

16. The Respondent also noted the following relevant facts in its submissions:

- *Mr REDACTED was self-employed during the year 2016 and was not in receipt of employment income.*
- *The claim for relief in respect of the additional voluntary contribution of €21,570 was disallowed.*



- *Mr REDACTED is appealing against the notice of amended assessment which issued on 29 March 2018.*
- *Mr REDACTED contacted the Customer Service area of Revenue and was given incorrect guidance in relation to the claiming of the relief and to the entitlement of the relief. Revenue has acknowledged and apologised for same.*
- *The payment of the contribution was made to an occupational pension scheme in 2017 and Mr REDACTED was claiming relief under Section 774 (8) TCA 1997 in respect of 2016. As Mr REDACTED was not in receipt of relevant earnings i.e. employment income in 2016, he is not entitled to claim relief in 2016 in respect of the additional voluntary contribution paid in 2017 to his employer's pension scheme.*

## Findings

17. The facts in this appeal are not in dispute. Both parties agree on the circumstances of the claim for relief in respect of the additional voluntary contribution of €21,570.
18. I agree with the Respondent, who asserted that contributions to occupational pension schemes can only be relieved by reference to net relevant emoluments from the occupation in a relevant period. The Appellant took up employment with REDACTED Plc in REDACTED 2017 and was self-employed during 2016.
19. In my view, the use of the word 'shall' per s.774 (7 a) TCA 1997, indicates an absence of discretion in the application of this provision which only provides for relief as an expense of employment income under Schedule E. As the Appellant had no Schedule E income in 2016, it cannot be relieved in that year. The wording of the provision does not provide for extenuating circumstances in which this rule might be mitigated. In short, I do not consider that I have the authority or jurisdiction to rule in favour of the Appellant's appeal.
20. The Appellant, has expressed understandable disappointment and frustration that the adverse outcome for him arose as a result of the incorrect advice, specifically sought, from a Revenue official. Insofar as the Appellant seeks that the Tax Appeals





Commission set aside the refusal of the repayment claim based on an alleged unfairness, such grounds of appeal do not fall within the jurisdiction of the TAC and thus do not fall to be determined as part of this appeal.

### **Conclusion**

21. I determine that as the Appellant had no Schedule E income in 2016, he is not entitled to claim relief in 2016 in respect of the additional voluntary contribution paid in 2017 to his employer's pension scheme.
22. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

*DESIGNATED PUBLIC OFFICIAL*

**11 December 2020**

