



06TACD2022

BETWEEN/

THE APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal against a refusal by the Revenue Commissioners (“the Respondent”) to grant tax relief in respect of the tax year ended 31 December 2018, to the Appellant, in respect of pension contributions of €19,800 and €20,000 made by him on 9th August 2019 and 6th September 2019 respectively.
2. On agreement of the parties, this appeal is determined by the Tax Appeals Commission (“the Commission”) without an oral hearing in accordance with section 949U of the Taxes Consolidation Act, 1997 (“TCA 1997”).

Facts

3. The Appellant is a PAYE worker, jointly assessed with his spouse. The Appellant made a pension contribution of €19,800 on 9th August 2019. His spouse made a pension contribution of €20,000 on 6th September 2019. The Appellant filed his tax return for the year 2018 on 15th March 2020. In this self-assessed return the Appellant elected to apply the tax relief due on the pension contributions paid in 2019, to the tax year 2018. The Respondent refused to grant tax relief to the Appellant for the year 2018 in respect of the pension contributions on the basis that the election was required to have been made by 31st October in the year the pension contributions were made. The election was refused as it was not made on or before the statutory deadline. The Appellant appealed this decision to the Commission by notice of appeal received on 27th October 2020.

Legislation

4. Section 776(3) TCA 1997 provides:

...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.

Section 865(4) and section 865(5) TCA 1997 provides:

(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made –

(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,

(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and

(c) in the case of claims made –

(i) under subsection (2) and not under any other provision of the Acts, or

(ii) in relation to any chargeable period beginning on or after 1 January 2003,

within 4 years,

after the end of the chargeable period to which the claim relates.

(5) Where a person would, on due claim, be entitled to a repayment of tax for any chargeable period under any provision of the Acts other than this section, and –

(a) that provision provides for a shorter period, within which the claim for repayment is to be made, which ends before the relevant period referred to in subsection (4), then this section shall apply as if that shorter period were the period referred to in subsection (4), and

(b) that provision provides for a longer period, within which the claim for repayment is to be made, which ends after the relevant period referred to in subsection (4), then that provision shall apply as if the longer period were the period referred to in subsection (4).

Submissions

5. The Appellant submitted that he filed his 2018 income tax return in March of 2020 and expected a tax rebate on his election to treat the pension contributions made in 2019 as having been paid in the year 2018. He further submitted that he completed this on the understanding that he had 4 years in which to complete his tax returns and claim the tax refund. The Appellant further submitted that he was hospitalised for surgery in early November 2019, which put him “out of action” until early January 2020. He stated that he subsequently submitted his tax return at the very earliest of convenience, in March 2020.
6. The Respondent submitted that the application by the Appellant was made after the statutory deadline i.e. 31 October 2019 and that the language of section 776(3) is such that it has no discretion with respect to this matter.

Analysis and findings

7. 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.
8. 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

9. The Commissioner has considered the mandatory nature of the wording in section 776(3) TCA 1997 which states that relief may be granted in respect of qualifying premiums ‘if the individual so elects on or before’ the ‘specified return date’. In the case of elections made for the tax year of assessment 2018, the ‘specified return date’ is 31st October 2019. The Commissioner is satisfied that there is no inherent ambiguity in the statutory wording used in section 776(3) TCA 1997. It is clear that the election must be made before the specified return deadline.
10. The Appellant made the election when he filed his tax return on 15 March 2020, therefore the election was made after the ‘specified return date’ and was late. The legislation does not afford any discretion to the Respondent and hence no discretion is afforded to the Commissioner to consider those circumstances in relation to elections made outside of the statutory time frame.
11. The Appellant sought a repayment of tax on the basis that he believed he had up to 4 years in which to make the claim. The Appellant is mistaken in the assumption that he had 4 years in which to make a claim for repayment of overpaid tax. While section 865(4) TCA 1997 imposes a general 4 year limit within which to make a claim for a repayment of overpaid tax, section 865(5) stipulates that if a person is entitled to a repayment of tax pursuant to any other provision within the TCA 1997 and that provision provides for a shorter time frame for the making of the claim, then the shorter time frame will apply. Thus the shorter timeframe imposed by section 776(3) TCA 1997 applies and the Appellant cannot avail of the longer 4 year time limit provided for in section 865 TCA 1997.

Determination

12. The Commissioner determines that the Appellant has not succeeded in establishing an entitlement to the pension relief relating to his pension contributions made on 9th August 2019 and 6th September 2019 respectively in respect of the year 2018. The Commissioner has sympathy for the position the Appellant finds himself in and his medical condition in 2019. Unfortunately, the Commissioner has no discretion which can assist the Appellant in his appeal. The Appellant was correct to appeal to seek clarity.
13. The appeal is determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
1st November 2021