



61TACD2024

Between

████████████████████

**Appellant**

and

The Revenue Commissioners

**Respondent**

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**Determination**

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## **Table of Contents**

Introduction .....	3
Background.....	3
Legislation and Guidelines .....	4
Submissions .....	5
Appellant's submissions .....	5
Respondent's submissions .....	6
Material Facts .....	7
Analysis .....	8
Determination .....	12
Notification .....	12
Appeal .....	12

## **Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim by the Appellant for relief on qualifying pension premiums, in accordance with the provisions of **section 787 TCA 1997**, for the years 2020 and 2021.
2. On 4 September 2023, the Appellant duly appealed to the Commission. By agreement with the parties, this appeal is adjudicated without a hearing, in accordance with the provisions of **section 949U TCA 1997**.
3. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has also received a Statement of Case from the Respondent and that has also been considered in this determination.

## **Background**

4. Since 2006, the Appellant has been registered for income tax and has filed annual tax returns with the Respondent.
5. In 2019, the Appellant was made redundant from his employment. Thereafter, the Appellant engaged in [REDACTED] work and continued to make some additional pension contributions through an Additional Voluntary Contribution Scheme (AVC).
6. On 22 August 2022, an income tax return Form 11 for 2021 was filed by the Appellant. The Appellant claimed pension contribution relief in the sum of €33,000, (paid on 6 September 2021), which was allowed by the Respondent.
7. On 25 July 2023, an income tax return Form 11 for 2022 was filed by the Appellant. The Appellant claimed pension contribution relief in the sum of €46,000 (paid on 16 September 2022), which was allowed by the Respondent.
8. On 23 July 2023, the Appellant contacted the Respondent via the Respondent’s MyEnquiries portal. The Appellant informed the Respondent that he had made an error in his 2021 tax return, in relation to his claim for pension contribution relief, such that the claim for relief of €33,000 made and allowed in relation to his 2021 tax return, should have been claimed for the tax year 2020.
9. The Respondent contends that in order for the relief for pension contributions made by the Appellant in 2021 to be claimed in 2020, the necessary election to treat the pension contributions as being paid in the previous year, should have been made on or before 31

October 2021. As the necessary election was not made in time to claim relief in the previous year, the Respondent advised that the amendment could not be made. Therefore, the relief for the pension contributions remained in the year in which it was paid, namely 2021.

10. The Appellant seeks to make a similar adjustment for 2022, such that he states that he should have claimed relief for the sum of €46,000, for the year 2021, not 2022.

### **Legislation and Guidelines**

11. The legislation relevant to this appeal is as follows:-

12. Section 787 TCA 1997, Nature and amount of relief for qualifying premiums, *inter alia* provides that:-

.....

(6) *Where relief is to be given under this section in respect of any qualifying premium paid by an individual, the amount of that premium shall, subject to this section, be deducted from or set off against the individual's relevant earnings for the year of assessment in which the premium is paid.*

(7) *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 (and not in the year in which it is paid); but where—*

(a) *the amount of that premium, together with any qualifying premiums paid by the individual in the year to which the assessment relates (or treated as so paid by virtue of any previous election under this subsection), exceeds the maximum amount of the reduction which may be made under this section in the individual's relevant earnings for that year, or*

(b) *the amount of that premium itself exceeds the increase in that maximum amount which is due to taking into account the income on which the assessment is made,*

*the election shall have no effect as respects the excess.*

.....

- (13) *Where relief under this section for any year of assessment is claimed and allowed (whether or not relief is then to be given for that year), and afterwards there is made any additional assessment, alteration of an assessment, or other adjustment of the claimant's liability to tax, there shall be made also such adjustments, if any, as are consequential thereon in the relief allowed or given under this section for that or any subsequent year of assessment.*
- (14) *Where relief under this section is claimed and allowed for any year of assessment in respect of any payment, relief shall not be given in respect of that payment under any other provision of the Income Tax Acts for the same or a later year of assessment nor (in the case of a payment under an annuity contract) in respect of any other premium or consideration for an annuity under the same contract.*
- (15) *Relief shall not be given under this section in respect of a qualifying premium except on a claim made to and allowed by the inspector.*

## **Submissions**

### *Appellant's submissions*

13. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in his Notice of Appeal and Statement of Case:-

*"I will be reaching my retirement age [REDACTED]. I was made redundant in [REDACTED] 2019 and have been fortunate to find some [REDACTED] work on which I have been able to make AVC contributions. These contributions and the associated tax relief are extremely important to me at this stage in my life.*

*Unfortunately, I realise that I have made an error in my 2021 tax return. I claimed AVC relief for an AVC of €33,046 which should have been submitted as part of my 2020 return. During 2021, I made an AVC of €46,000 which I should have included in my 2021 tax return. The Personal Division Self Assessment Branch of the Revenue Commissioners have disallowed any relief on the AVC contribution of €46,000 due to an election of relief not being made on time by me.*

*Over many years I have had a personal pension gap which I have tried to bridge with AVCs. If you review my tax records you will note that I have always been diligent in making my returns on time. With my redundancy and some other personal changes, I made a*

*genuine error on this occasion. I would be very grateful if you could consider rectifying the situation for me.*

*I have made the following Additional Voluntary Contributions (AVCs) to my pension:*

<i>Tax-Year Ended</i>	<i>Amount €</i>
<i>2020</i>	<i>33,036</i>
<i>2021</i>	<i>46,000</i>

*Unfortunately, when making my tax returns for the above years, I made an error in the amounts that I claimed for tax-relief purposes.*

<i>Tax-Year Ended</i>	<i>Amount €</i>	<i>Amount Claimed for Tax Relief</i>
<i>2020</i>	<i>33,036</i>	<i>0</i>
<i>2021</i>	<i>46,000</i>	<i>33,036</i>

*I have provided context for this oversight under Section 6: Supplementary Information.*

*I hope that you will give your kind consideration to my appeal on two grounds: (i) A particularly stressful period in my personal life due to being made redundant; (ii) A major gap in my pension provisions that I have been trying to bridge with AVCs.”*

#### *Respondent’s submissions*

14. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

*“Fact 1: The appellant has been registered for income tax since 2006 and has filed annual tax returns. The appellant was employed by [REDACTED] and in 2021 and 2022 he made some additional pension contributions through an Additional Voluntary Contribution scheme (AVC).*

*Fact 2: An income tax return Form 11 for 2021 was filed on 22/08/2022. Pension Contribution Relief of €33,000 (paid on 06/09/2021) was claimed and allowed.*

*An income tax return Form 11 for 2022 was filed on 25/07/2023. Pension Contribution Relief of €46,000 (paid on 16/09/2022) was claimed and allowed.*

*Fact 3: On 23/7/23 the appellant contacted Revenue through MyEnquiries to advise that he had made an error in his 2021 tax return in relation to his claim for Pension Contribution*

*Relief. He stated that had claimed relief of €33,000 on his 2021 tax return that he now wanted to claim on his 2020 tax return.*

*Section 787 (7) provides that in order to claim relief for a qualifying premium in the tax year prior to that in which the payment is made, the payment must be made on or before the return filing date for that earlier tax year AND an election must be made on or before the return filing date for the earlier year. In this case, the pension contribution payment was made before the return filing date of 31/10/2021, however, the election to claim in the earlier year was not made until 23/07/2023.*

*In order for the contribution made in 2021 to be claimed in 2020 this claim should have been made by 31/10/2021. As the election was not made in time to claim relief in the previous year, Revenue advised that the amendment could not be made. The credit for the AVC payment remained in the year in which it was paid, 2021.*

*Fact 4 The appellant also stated in his correspondence dated 23/07/23 that he made an AVC contribution of €46,000 in 2022 which he now wanted to include in his 2021 return.*

*The same legislation provision as set out in Fact 3 above, also applies to the pension Contribution made in 2022. In order for the AVC contribution made in 2022 to be claimed on the 2021 income tax return, the election to claim should have been made by 31/10/2022. The claim was made on 23/07/2023 and thus the credit for the AVC remained in the year in which it was paid, 2022.”*

## **Material Facts**

15. Having read the documentation submitted and submissions made, the Commissioner makes the following findings of material fact:-

- 15.1. The Appellant has been registered for income tax since 2006 and has filed annual tax returns with the Respondent.
- 15.2. In 2019, the Appellant was made redundant from his employment.
- 15.3. Thereafter, the Appellant engaged in [REDACTED] work and continued to make some additional pension contributions through an AVC Scheme.
- 15.4. On 22 August 2022, an income tax return Form 11 for 2021 was filed by the Appellant. The Appellant claimed pension contribution relief in the sum of €33,000 (paid on 6 September 2021), which was allowed by the Respondent.

- 15.5. On 25 July 2023, an income tax return Form 11 for 2022 was filed by the Appellant. The Appellant claimed pension contribution relief in the sum of €46,000 (paid on 16 September 2022), which was allowed by the Respondent.
- 15.6. On 23 July 2023, the Appellant contacted the Respondent via the Respondent's "MyEnquiries" portal. The Appellant stated that he had made an error in his 2021 tax return in relation to his claim for pension contribution relief, such that the claim for relief of €33,000 made and allowed in relation to his 2021 tax return, should have been claimed for the year 2020.
- 15.7. On 29 August 2023, the Respondent advised the Appellant that the amendment could not be made.

### **Analysis**

16. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* ("Menolly Homes") [2010] IEHC 49, at paragraph 22, Charleton J. states that:

*"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".*

17. The Commissioner also considers it useful herein, to set out paragraph 12 of the Judgment of Charleton J. in *Menolly Homes*, wherein he states that:

*"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."*

18. The Appellant's appeal relates to a refusal by the Respondent to amend the Appellant's income tax return for the years 2021 and 2022, to allow a relief for pension contributions made by the Appellant in the sums of €33,000 and €46,000 to be reflected instead, as a claim for relief in the years 2020 and 2021, respectively.
19. The Respondent has disallowed the request for an amendment to the income tax returns for the years 2021 and 2022 on the basis that, in order for the pension contributions made in 2021 to be claimed as a relief in 2020, the necessary election to claim the relief in the



previous year should have been made on or before 31 October 2021, not 2023, when the Appellant highlighted his error to the Respondent. The Commissioner notes the Appellant makes a similar argument for the year 2022. The Respondent contends that it is precluded from amending the return and thus, providing relief as requested for the years 2020 and 2021, due to the provisions of section 787(7) TCA 1997.

20. Section 787(7) TCA 1997 provides that in order to claim relief for a qualifying premium in the tax year prior to that in which the payment is made, the payment must be made on or before the return filing date for that earlier tax year. There is no dispute between the parties that the pension contribution payments were made in accordance with the provision, in this regard.
21. However, the Commissioner notes the additional requirement imposed by the section, such that it requires that an election is made on or before the return filing date for the contributions to be treated as paid in the earlier year. The Commissioner notes the wording of the statute, namely that “...*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...*”.
22. In this appeal, the Respondent states that the election to claim in the earlier year was not made until 23 July 2023, when the Appellant contacted the Respondent via MyEnquiries. The Respondent argues that the amendment to the return cannot be made, as in order for the pension contributions made in 2021, to be claimed in 2020, the necessary election should have been made on or before 31 October 2021. In relation to the year 2022, the Respondent states that the necessary election should have been made on or before 31 October 2022, if relief was to be claimed for 2021. Therefore, the relief for the pension contributions made by the Appellant, remained in the years in which it was paid, namely 2021 and 2022.
23. The Commissioner has considered the provisions of section 787 TCA 1997 in its entirety. At this remove, the Commissioner considers it useful to set out herein, the well settled principles relating to statutory interpretation.
24. In relation to the relevant decisions applicable to the interpretation of taxation statutes, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the Judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners, The Minister for the Environment, Heritage and Local Government, Ireland and the Attorney General* [2019] IESC 50 and the Judgment of O'Donnell J. in the Supreme Court in *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners,*

*the Minister for Finance, Ireland and the Attorney General [2020] IEHC 552 (“Perrigo”) at paragraph 74:*

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd. v The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*

*.....*

*(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

*“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible.”*

25. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other Judgments. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, the principles enunciated in subparagraphs (b) and (g) of paragraph 74 of *Perrigo* are of relevance in this appeal.
26. The Commissioner notes that it is not in dispute that the Appellant is entitled to relief for the pension contributions, but that the Respondent does not accept that the Appellant is entitled to amend his income tax returns to avail of the relief in 2020 and 2021, rather than 2021 and 2022, due to the necessary election being made in 2023. The Commissioner notes that section 787(7) TCA 1997 specifically requires that: “...*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...*”
27. The Commissioner is satisfied that the plain and ordinary meaning of the words in this section, in context, is that the premium may be treated for the purposes of this section as paid in the earlier year, if the individual so elects on or before that date, for the earlier year. The Commissioner is satisfied that the evidence establishes that there was no such election made in accordance with section 787(7) TCA 1997 in this appeal.
28. The Commissioner notes that the Appellant argues that he made an error when submitting his income tax returns for the years 2021 and 2022. The Appellant states that this is due to personal challenges, including being made redundant in 2019, at the age of 60 years. The Appellant submits thereafter he engaged in [REDACTED] work and was in a position to continue to contribute to his pension fund. This appears to the Commissioner to be a considered and prudent approach taken by the Appellant. It appears to the Commissioner that the Appellant is someone who has diligently saved for retirement via pension contributions and that this is something of value and importance to him, which he emphasises in his submissions.
29. Nonetheless, the Commissioner is satisfied that having regard to the plain and ordinary meaning of the words in section 787(7) TCA 1997, the Appellant was required to elect that the pension contributions be treated for the purposes of the previous year on or before 31 October 2021 or 31 October 2022. The Commissioner is satisfied that the Appellant has not shown on balance that this occurred, rather the evidence suggests that the first mention of the pension contributions being treated for the purposes of the

preceding years, namely 2020 and 2021, was when the Appellant contacted the Respondent via MyEnquiries, in July 2023.

30. Whilst the Commissioner has every sympathy for the Appellant's situation, the Commissioner is satisfied that the Appellant has not shown that he has complied with the requirements of section 787(7) TCA 1997. Consequently, the Commissioner is satisfied that the Respondent was correct to refuse to amend "*the premium [so that it] may.....be treated for the purposes of this section as paid in the earlier year...*" Thus, the Appeal fails.

### **Determination**

31. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that he is entitled to relief for pension contributions for the years 2020 and 2021, pursuant to section 787 TCA 1997.
32. It is understandable that the Appellant will be disappointed with the outcome of his appeal. This is an unfortunate situation for the Appellant. The Appellant was correct to check to see whether his legal rights were correctly applied.
33. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

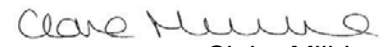
### **Notification**

34. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

35. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has

no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine  
Appeal Commissioner  
15 March 2024