



Between

94TACD2024

██████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ██████████ (“the Appellant”) pursuant to section 787(16) of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) against the refusal by the Revenue Commissioners (“the Respondent”) to grant tax relief to the Appellant for the 2022 tax year in respect of an Additional Voluntary Contribution (“AVC”) in the amount of €15,400. The request was refused on the ground that it was made outside of the statutory timeframe.
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. On ██████████ 2023, the Appellant made an AVC to her pension scheme. On 29 November 2023, the Appellant requested the Respondent to grant her tax relief in respect of the AVC against her income tax liability for 2022.
4. On 28 December 2023, the Respondent notified the Appellant that the AVC had been applied to her income tax record for 2022. On 16 January 2024, the Appellant contacted

the Respondent to ask when an amended Statement of Liability for 2022 would issue to her.

5. On 24 January 2024, the Respondent notified the Appellant that her request to apply the AVC to 2022 was not made before the extended filing deadline of 15 November 2023, and therefore the AVC was applied instead to her 2023 tax year record.
6. On 1 February 2024, the Appellant appealed against the Respondent's refusal to grant tax relief for 2022 to the Commission. Both parties informed the Commission that they had no objection to the appeal being determined without a hearing, pursuant to section 949U of the TCA 1997. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation

7. Section 787 of the TCA 1997 provides *inter alia* that

“(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)...

(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.”

8. Section 959A of the TCA 1997 provides *inter alia* that

“specified return date for the chargeable period” means—

(a) in relation to a tax year for income tax or capital gains tax purposes, 31 October in the tax year following that year...

9. The Respondent's eBrief Number 88/23 stated *inter alia* that

“Today, 05 April 2023, Revenue announced an extension to the ROS return filing and payment date for certain self-assessment Income Tax customers and for customers liable to Capital Acquisitions Tax (CAT).

For customers who file their 2022 Form 11 return and make the appropriate payment through ROS for:

- *Preliminary Tax for 2023, and*

- *Income Tax balance due for 2022*

the due date is extended to Wednesday, 15 November 2023.”

Submissions

Appellant

10. The Appellant submitted that

“Under advice from [a financial institution], I paid the AVCs on [REDACTED] 2023 in time to claim against my 2022 tax credits. To submit this claim I needed proof of payment. I received a statement from [the financial institution] on 29.11.23 and submitted it to [the Respondent] on the same day. This confirms payment date.

On 28.12.2022 10:15 I was advised by [the Respondent] that "this has been added to your record and an amended 2022 Statement of Liability will issue in 5-10 days". Based on this I made AVC payments to [REDACTED] to use against my 2023 credits. I then was informed by [the Respondent] that "Your claim for single premium contribution of €15,400 against tax year 2022 was received by [the Respondent] on 29th November 2023, the extended filing date was the 15th November 2023. As a timely election to claim relief was not made, your claim has been disapproved. Your contribution has been added to your 2023 record and amended Statement of Liabilities have been issued for both years".

My employer is paying 40% of my salary into my Pension since 1st week January 2024. I thought I was being totally tax compliant as I have always been, you can see from my record from [REDACTED] to date that this is the case. I am preparing to retire in [REDACTED] [REDACTED] and was trying to maximize my credits.

I attempted to make a return online before the deadline but was unable to do so as no Tax certificate had been issued. I submitted my claim as soon as proof of payment was issued to me by [the financial institution]. [The financial institution has] advised me that the requirement for proof of payment was newly introduced last year, and the [Respondent] did not communicate this in advance. As this was a new requirement that the [Respondent] did not announce in advance, there should be grounds for an appeal.”

Respondent

11. The Respondent submitted that

“The Appellant originally contacted the Respondent through MyEnquiries on 29 November 2023 concerning an Additional Voluntary Contribution (AVC) made by her on [REDACTED] 2023 in the amount of €15,400. The Appellant requested that this AVC contribution be backdated to tax year 2022.

The Appellant submitted a further message to the Respondent through MyEnquiries on 15 December 2023 and requested an update on her previous message and clarification if she needed to do anything else on her side.

The Respondent replied to the Appellant on 28 December 2023 and noted that the AVC contribution had been applied to the record of the Appellant for 2022. The Respondent notes that this information was not correct and apologises to the Appellant for any misunderstanding.

The Appellant contacted the Respondent on 16 January 2024 and sought confirmation when an amended Statement of Liability for tax year 2022 would issue to her.

The Respondent replied to the Appellant on 24 January 2024 advising the Appellant that the election to revert her AVC payment to 2022 was not made before the extended filing deadline of 15 November 2023 and therefore the AVC contribution was instead applied to tax year 2023.

The Appellant contacted the Respondent by phone on 1 February 2024 and sought clarification on her tax record and her AVC contribution. The Appellant also submitted an appeal with the Respondent on that date and requested that the AVC payment made on [REDACTED] 2023 be reverted against tax year 2022.

On the same date the Appellant submitted her appeal with Tax Appeals Commission on this matter.

The Respondent contacted the Appellant on her appeal via MyEnquiries on 27 February 2024 and clarified the legislation under Section 787 (7) TCA 1997. In the correspondence, the Respondent clarified that the election to revert the AVC payment in this case was done outside of the statutory time limits and therefore the AVC payment could not be reverted to 2022.

The Appellant replied to this message on the same date and sought clarification on why she received information on 28 December 2023 which confirmed the AVC payment had been allocated to tax year 2022.

The Respondent replied to this message on 5 March 2024 and stated that the message of 28 December 2023 contained incorrect information and apologised to the Appellant

for any inconvenience caused on foot of this. The Respondent also reaffirmed the position with regards to the legislation and noted the payment could not be reverted to 2022.

The Appellant [sic] is sympathetic to the Appellant in this matter but has no discretion under the existing legislation Section 787(7) TCA 1997 to revert the AVC payment to 2022 and notes it is now correctly recorded in 2023...”

Material Facts

12. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:
 - 12.1. The extended filing date for income tax year 2022 was 15 November 2023.
 - 12.2. On 29 November 2023, the Appellant requested the Respondent to grant tax relief in respect of her AVC payment of €15,400 against her 2022 income tax record.

Analysis

13. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse her request to grant tax relief for 2022 in respect of her AVC payment. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 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.*”
14. In this appeal, it is not in dispute that the Appellant’s request was made on 29 November 2023. In her submission, the Appellant stated that, while the AVC payment was made by her in [REDACTED] she received a statement from her financial institution confirming payment on 29 November 2023, and that she subsequently made the request of the Respondent on the same date.
15. The Commissioner is satisfied that the Appellant’s request for tax relief in respect of 2022 was made out of time. This is because section 787(7) of the TCA 1997 requires that a request for tax relief, in respect of pension payments made after the year of assessment, must be made on or before the specified return date for the chargeable period. Section 959A of the TCA 1997 states that the specified return date for the chargeable period shall be 31 October of the following year. In this case, that would be 31 October 2023 for the

2022 tax year. However, in eBrief 88/23, the Respondent provided for an extended filing date for customers using ROS of 15 November 2023.

16. Therefore, the Commissioner is satisfied that the extended filing date for the 2022 tax year was 15 November 2023, and that therefore the Appellant's request had to be made on or before that date. The Commissioner considers that there is no discretion allowed by section 787 of the TCA 1997 for this deadline to be extended further or waived. However, in this instance, the Appellant's request was not made until 29 November 2023.
17. The Commissioner appreciates that this is frustrating for the Appellant. He considers that her frustration can only have been increased by the incorrect information provided to her by the Respondent on 28 December 2023, when she was told that tax relief had been credited to her 2022 record. The Respondent subsequently advised her that this information was incorrect and has apologised for the error.
18. Certainly, this error was unfortunate, and should not have happened; however, the Commissioner considers that the Respondent, and the Commission on appeal, does not have any discretion to disapply the time limit set out in section 787 of the TCA 1997. In this regard, it is important to note that the Respondent's error occurred after the Appellant's request, which in itself was made after the statutory time limit – therefore, it cannot be said that the lateness of the Appellant's request was caused by, or as a result of, the error on the part of the Respondent. Therefore, the Commissioner does not consider that the Respondent's error is material for the purposes of this determination.
19. Consequently, the Commissioner is satisfied that the Appellant's request was made out of time, and that therefore the appeal cannot succeed. He appreciates that this determination will be disappointing for the Appellant, who was entitled to check whether the Respondent's refusal of her request was correct. He also notes that the AVC payment has been applied to the Appellant's 2023 income tax record. However, for the reasons set out herein, the Commissioner is satisfied that the Respondent's refusal to grant tax relief for 2022 was correct, and therefore the appeal is unsuccessful.

Determination

20. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant's request to be granted tax relief for 2022 in respect of an AVC payment made in 2023, as the request was made out of time.

21. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

22. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the 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

23. 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 of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Simon Noone
Appeal Commissioner
30th May 2024