



**09TACD2018**

**BETWEEN/**

**[NAME REDACTED]**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a claim pursuant to section 865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax years of assessment 2009, 2010 and 2011.
2. By notices of assessment dated 1 December 2016, the Appellant was notified that income tax totalling €1,528.06 had been overpaid in respect of the tax years of assessment 2009, 2010 and 2011. The Appellant also submitted that tax of €1,959.65 in respect of relevant contracts tax paid on his behalf during 2011, in respect of the tax year of assessment, 2011 had been overpaid and should be repaid. The Appellant sought repayment of tax overpaid however the Respondent declined to process the repayment on the basis that valid claims for repayment had not been made within the four-year limitation period in accordance with section 865(4) TCA 1997. The Appellant duly appealed.

3. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997

### **Background**

4. The Appellant, a [REDACTED] by trade, stated that work became scarce in 2009 and that he was no longer able to engage the services of an accountant. The Appellant ceased trading on 31 October 2011.
5. The Appellant stated that he filed income tax returns in respect of the tax years of assessment 2009, 2010 and 2011, in September 2016. The Respondent stated that the returns were received on 17 November 2016. The difference between these dates is not material as both dates fall outside the four-year period contained in s.865(4) TCA 1997.
6. On 1 December 2016, notices of assessment issued to the Appellant showing tax overpaid of €907.54, €42 and €578.52 in respect of the tax years 2009, 2010 and 2011. Each notice of assessment contained the statement '*This repayment may not be due in accordance with s.865 TCA 1997.*' The Appellant stated that when he saw that tax had been overpaid, he anticipated that the Respondent would process the repayment automatically and would repay the tax directly into his bank account. When this did not occur the Appellant contacted the Respondent by telephone and was informed that the repayment of tax overpaid would not be processed as the four-year rule applied. The Appellant submitted that he was unaware of the existence of the four-year rule. The Appellant filed a notice of appeal on 14 January 2017 seeking repayment of the tax overpaid.

### **Legislation**

#### s.865 TCA 1997 - Repayment of Tax

...

*(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or*



*statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid. ....*

*....*

*[(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.]*

*[(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.*

*(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).]*

*(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. ....*

*(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, [the person may appeal the decision to the Appeal*



*Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision]. ....*

### **Submissions**

7. The Appellant's position was that the income tax returns were filed late as he was unable to pay for the services of an accountant due to financial constraints he was experiencing in his business at that time. The Appellant submitted that he had no accounting knowledge and that he was unable to complete his returns in a timely manner but that he eventually did so to the best of his ability.
8. The Appellant submitted that the repayment claim should not be refused as he had complied with his obligations in discharging his liabilities to income tax during the relevant tax years of assessment. The Appellant accepted that his returns were not filed within the relevant statutory deadlines. The Appellant submitted that he was unaware of these deadlines.
9. The Respondent submitted that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim related. The Respondent submitted that to be within time, a claim for repayment in relation to the tax years 2009, 2010 and 2011 would have been required on or before 31 December 2013, 31 December 2014 and 31 December 2015, respectively. The Respondent submitted that as the Appellant's claims were out of time in accordance with the provisions of s.865 TCA 1997, the Respondent was unable to process the repayment.

### **Analysis and findings**

10. The facts in this appeal are not in dispute. Both parties accepted that the repayment claims regarding the tax years 2009, 2010 and 2011 were not made within four years after the end of the chargeable period to which the claims related. The Respondent submitted that the Appellant's claims for repayment were therefore out of time in accordance with section 865(4) TCA 1997 which provides; '*... a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made -*



*..... within 4 years, ..... after the end of the chargeable period to which the claim relates'. [emphasis added]*

11. In my view, the use of the word '*shall*' per section 865(4) TCA 1997, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the four-year rule might be mitigated. In short, I do not consider that I have the authority or jurisdiction to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997.
12. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations, numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 02TACD2017, 08TACD2017, 11TACD2017 and 26TACD2017 can be found on the Commission website at [www.taxappeals.ie](http://www.taxappeals.ie).

### **Conclusion**

13. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "*shall*" per subsection 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claims have been made outside of the four-year period. As a result, I have no alternative but to determine that the repayment claims on behalf of the Appellant for the tax years of assessment 2009, 2010 and 2011, are out of time in accordance with the provisions of section 865(4) TCA 1997.
14. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

**APPEAL COMMISSIONER**

**April 2018**

