



12TACD2018

BETWEEN/

[NAME REDACTED]

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim for repayment of tax in accordance with section 865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax year of assessment 2011.
2. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997

Background

3. On 8 February 2017 the Appellant filed his income tax return, in respect of the tax year of assessment 2011. A notice of assessment issued to the Appellant on 28 March 2017, showing tax overpaid of €1,748 in respect of 2011. The notice of assessment contained the statement *'This repayment may not be due in accordance with s.865 TCA 1997'*.



4. By letter to the Respondent dated 4 October 2017, the Appellant sought repayment of the tax overpaid. He stated that his return was late as he mistakenly understood that there was no requirement to file a return in circumstances where tax was not underpaid or outstanding.
5. By written reply dated 11 October 2017, the Respondent declined to process the repayment on the basis that a valid claim for repayment had not been made within the four-year limitation period in accordance with s.865(4) TCA 1997. The Appellant duly appealed.

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

6. The Appellant retired in 2011 and was issued with a form P45 on his departure from employment. The Appellant stated that he believed that the amount of tax that he had paid in respect of 2011 was correct. He submitted that as he had no outstanding tax liability in respect of the tax year of assessment 2011, he assumed that he was not obliged to file a return for 2011. The Appellant submitted that he now knows that he misunderstood the requirements in relation to the filing of returns.
7. 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 relates. The Respondent submitted that to be within time, a claim for repayment in relation to the tax year 2011 would have to have been made on or before 31 December 2015. The Respondent submitted that as the Appellant's claim was out of time in accordance with the provisions of s.865 TCA 1997, the Respondent was unable to process the repayment.

Analysis and findings

8. The facts in this appeal are not in dispute. The parties agreed that the repayment claim regarding the tax year 2011 was not made within four years after the end of the chargeable period to which the claims related. The Respondent submitted that the Appellant's claim for repayment was thus out of time in accordance with s.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]

9. In my view, the use of the word '*shall*' per s.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.
10. 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.

Conclusion

11. Pursuant to the wording of s.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 claim has been made outside of the four-year period. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax year of assessment 2011, is out of time in accordance with the provisions of section 865(4) TCA 1997.
12. This Appeal is determined in accordance with s.949AL TCA 1997.

APPEAL COMMISSIONER

May 2018



