



AC Ref: 26TACD2016

[NAMES REDACTED]

(FIRST NAMED APPELLANT & SECOND NAMED APPELLANT)

Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a repayment claim pursuant to section 865 of the Taxes Consolidation Act 1997 as amended ('TCA 1997') in respect of the tax year 2010.
2. By agreement of the parties this appeal is determined in accordance with the provisions of s.949U TCA 1997.

Background

3. On [DATE REDACTED] 2010 the first named Appellant wrote to the Respondent requesting a repayment in respect of tax deducted from a lump sum payment received under an Approved Minimum Retirement Fund ('AMRF'). By reply dated [DATE REDACTED] 2010 the Respondent informed the first named Appellant that as the first named Appellant was jointly assessed with the second named Appellant, the claim for repayment would need to be reflected in the 2010 joint income tax return of the spouses, at the time of filing of that return. The letter informed the first named Appellant that



the Respondent was unable to deal with the repayment claim dated [DATED REDACTED] 2010, being a date during the tax year of assessment 2010, in circumstances where the first named Appellant was seeking a repayment in respect of the tax year of assessment 2010.

4. The Appellants' joint return was filed in November 2011 however it omitted details in relation to the repayment claim of the first named Appellant, namely, details of the distributions received from the AMRF and details of the tax deducted from said distributions. On [DATE REDACTED] 2011 a notice of assessment issued per the 2010 income tax return filed. This notice of assessment was not appealed.
5. By letter dated [DATE REDACTED] 2016, followed by a further letter dated [DATE REDACTED] 2016, the first named Appellant informed the Respondent that details of the lump sum payment had been omitted from the 2010 return as filed. In [DATE REDACTED] 2016 a notice of amended assessment issued, which was appealed in accordance with s.949I TCA 1997.
6. The Appellant contended that a '*valid claim*' for repayment within the meaning of s.865(b) TCA 1997 had been made within the requisite four-year period per s.865(4) TCA 1997, while the Respondent submitted that no '*valid claim*' had been made during this period.

Legislation

s.865 TCA 1997 - Repayment of Tax

....

"valid claim" shall be construed in accordance with paragraph (b).

(b) For the purposes of subsection (3) –

(i) where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a



chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –

[(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period is contained in the statement or return, and

(II) the repayment treated as claimed, if due—

(a) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or

(b) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time,]^{6]}

(ii) where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person, and

(iii) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.

(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.

.....

....

(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 –

- i. 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,

ii. 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

iii. in the case of claims made –

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].

....

Analysis

7. The first named Appellant relied on the letter dated [DATE REDACTED] 2010 as constituting a 'valid claim' for repayment within the meaning of s.865(b) TCA 1997 in respect of the tax year of assessment 2010 and in the alternative, submitted that the Respondent was aware of all relevant information within the requisite four-year period and thus a 'valid claim' should be determined as having been made within that time period.
8. The legislation provides that the term 'valid claim' is to be construed in accordance with section 865(b) TCA 1997. Section 865(b)(ii) TCA 1997 provides; '*where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment*



of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person'

9. The facts in this case as set out above, are not in dispute. The Respondent wrote to the first named Appellant on [DATE REDACTED] 2010 and informed the first named Appellant that the claim for repayment would need to be reflected in the 2010 joint income tax return to be filed on behalf of the Appellants. The Appellants accepted that this letter was received. However, by reason of oversight or error, the details of the repayment claim were omitted from the 2010 return, filed in November 2011. Thus the return did not contain *'all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due'* as required by s. 865(b)(ii) TCA 1997. As a result, I determine that the return did not comprise a *'valid claim'* for the purposes of s.865(b) TCA 1997 in respect of the repayment of tax deducted from the AMRF.
10. As regards the letter of [DATE REDACTED] 2010, a request for repayment based on this letter did not contain *'all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due'* as required by s. 865(b)(ii) TCA 1997 because in order to process a repayment claim in respect of the tax year of assessment 2010, the Respondent required all relevant information in relation that tax year. This information was not available to the Respondent in circumstances where the tax year was not yet at an end and where the Appellants had not yet filed their return and thus I determine that no *'valid claim'* for repayment within the meaning of s.865(b) TCA 1997 was made on foot of the letter dated [DATE REDACTED] 2010.
11. While the Appellants claimed that, at the time of the filing of the return, the Respondent was on notice of the Appellants' claim by reason of the letter dated [DATE REDACTED] 2010, the Appellants do not satisfy the technical requirements of s.865(b) TCA 1997 as regards the meaning of *'valid claim'*. In addition, the Respondent, in its letter [DATE REDACTED] 2010, outlined the



steps which were required for processing the repayment claim, informing the first named Appellant that the claim for repayment would need to be reflected in the 2010 joint income tax return of the Appellants. The Appellants accepted that this letter was received.

12. The Respondent contended that the Appellant's claim for repayment in relation to section 865 TCA 1997 was out of time on the basis that no '*valid claim*' was made within the four year statutory time limit contained at 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*'.
13. 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 have authority or jurisdiction to direct that a repayment be made to the Appellant where a '*valid claim*' in respect of the repayment has not been made within the four-year time period specified in s.865(4) TCA 1997.

Conclusion

14. I determine that the Appellants' 2010 income tax return did not comprise a '*valid claim*' for the purposes of s.865(b) TCA 1997 in respect of the repayment of tax deducted from the AMRF of the first named Appellant because it did not contain '*all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due*' as required by s. 865(b)(ii) TCA 1997.
15. I determine that no '*valid claim*' for repayment within the meaning of s.865(b) TCA 1997 was made on foot of the letter dated [DATE REDACTED] 2010.





16. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word “*shall*” per section 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year limitation period in circumstances where no ‘*valid claim*’ has been made within the four-year period. As a result, I determine as a matter of law, that the repayment claim on behalf of the Appellant is out of time in accordance with the provisions of section 865(4) TCA 1997.

17. This appeal is hereby determined in accordance with s.949AK TCA 1997.

APPEAL COMMISSIONER

December 2016

