



03TACD2019

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 years of assessment 2011 and 2012.
2. This appeal is determined in accordance with section 949U TCA 1997.

Background

3. On 27 September 2017, the Appellant filed his income tax returns in respect of the tax years of assessment 2011 and 2012. The Respondent notified the Appellant that there was income tax overpaid of €855 and €364 in respect of 2011 and 2012 respectively. The Appellant sought repayment of the tax overpaid.



4. On 15 December 2017, the Respondent declined to process a repayment on the basis that a valid claim for repayment had not been made within the four-year statutory period in accordance with s.865(4) TCA 1997. The Appellant duly appealed.

Legislation

Section 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

5. The Appellant accepted that the claim for repayment was not made within the four-year statutory limitation period but submitted that he was not in a position to make a claim during the respective four-year periods. The Appellant's business collapsed in 2011 and in the eight years since 2011 the Appellant lost his home and suffered very serious health difficulties. He stated that the economic crash was an extremely trying time for him personally and professionally. The Appellant, who is now in his sixties, stated that he worked and paid taxes all his life and that the repayment was much needed and would mean a great deal to him. He stated that he had not been aware of the 4-year limitation period and with the difficulties he encountered, he submitted that he was not in a position to file his outstanding tax returns until 2017.
6. The Respondent accepted that the Appellant had been through an enormously difficult time having lost his business and his home. The Respondent's officials stated that they had sympathy for the Appellant's personal situation but that there was no discretion to process a repayment where a claim was submitted outside the four-year statutory period. The Respondent submitted that to be within time, the claim for repayment must be made within four years after the end of the tax year to which the claim relates.

Analysis

7. The facts in this appeal are not in dispute. The parties agreed that the repayment claim in respect of 2011 and 2012, was not made within four years after the end of the chargeable periods to which the claim 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].

8. 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.
9. 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, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 19TACD2018 and 25TACD2018 can be found on the Commission website at www.taxappeals.ie.

Conclusion

10. There is no doubt that the Appellant went through an extremely difficult time during the tax years of assessment 2011 and 2012 and the years that followed. The Respondent acknowledged and accepted that this was the case.
11. However, 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 do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside the four-year period.
12. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax years of assessment 2011 and 2012, is out of time in accordance with the provisions of section 865(4) TCA 1997.
13. This Appeal is determined in accordance with s.949AL TCA 1997.

COMMISSIONER LORNA GALLAGHER

December 2018



