



Ref: 95TACD2020

BETWEEN/

REDACTED

As Personal Representative for

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to repayment claims pursuant to section 865 of the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The request for repayments relates to overpayments of income tax in 2010, 2011, 2012 and 2013.
2. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

3. The Appellant is acting as personal representative on behalf of his late mother who is deceased since February 2016.

4. The Respondent sought details of income of the deceased taxpayer from 2002 to 2016 which resulted in tax overpayments for the years 2010, 2011, 2012 and 2013.
5. By letters dated 10 December 2018 the Respondent advised the Appellant that the repayments could not be made.
6. The Respondent pointed out that Section 865(4) of the Taxes Consolidation Act (TCA) 1997 provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within 4 years after the end of that chargeable period.
7. The Respondent advised the Appellant that as the claims for repayment were not made within the relevant 4-year period it was precluded from repaying the tax involved.
8. The Appellant has sought repayments of these amounts and duly appealed the matters to the Tax Appeals Commission on 15 May 2018.
9. The facts are not in dispute in this appeal.

Legislation

10. 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

10. The Appellant outlined that a considerable amount of time elapsed after his mother's death before being contacted by the Respondent requesting income details going back to 2002.

11. The Appellant advised that he was never made aware of the fact that any overpayment of tax would not be refunded for periods outside of the four-year period.



12. The Appellant submitted that his late mother had voluntarily entered into an agreement to pay a monthly amount of €168 to the Respondent. She continued to honour that agreement until her death and beyond. An amount of €29,232 was paid in this way by direct debit from 2002 until June 2016.
13. The Appellant has submitted that a holistic view should be taken of the tax liability of his late mother for the entire period under review from 2002 until 2016.
14. The Respondent submitted that the returns filed for 2010, 2011, 2012 and 2013 which show repayments of income tax cannot be repaid because of the restrictions imposed on the Respondent by Section 865(4) of the Taxes Consolidation Act (TCA) 1997

Analysis and findings

15. The Appellant's claim for repayments in respect of the tax years 2010, 2011, 2012 and 2013 were made for the first time by the Appellant in 2018 on submission of his mother's tax returns for the respective years. Thus, the Appellant's claims for repayment in respect of the tax years 2010, 2011, 2012 and 2013 were 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]
16. 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 discretion to direct that repayments be made to the Appellant where the claim for repayment falls outside the four-year period specified in s.865(4) TCA 1997.
17. 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, may be found on the Commission website at www.taxappeals.ie.





Determination

18. 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 claim has 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 2010, 2011, 2012 and 2013, are out of time in accordance with the provisions of section 865(4) TCA 1997.

19. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

CHARLIE PHELAN
APPEALS COMMISSIONER
18 MARCH 2020.

