



102TACD2023

Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) of the refusal of the Revenue Commissioners to make repayment to the Appellant of tax overpaid for the years 2014 and 2016. The ground given for refusal was that the Appellant had not made a claim within the four-year time-limit prescribed under section 865(4) of the Taxes Consolidation Act 1997 (“the TCA 1997”). In determining this appeal, the Commissioner had the benefit of written and oral submissions made by both parties.

Background

2. The Appellant is taxpayer who in the years 2014 and 2016 had a gross income under Schedule E of €5,721 and €9,336 respectively.
3. In the year 2014 income tax of €2,345.68 was deducted at source from the Appellant’s income under the PAYE system, along with Universal Social Charge (“USC”) of €400.
4. In the year 2016 income tax of €3,033.13 was deducted at source from the Appellant’s income under the PAYE system, along with USC of €400.

5. It would appear that in years preceding 2014 the Appellant was in receipt of income under Schedule D.

6. On 29 April 2021, the Appellant submitted a statement to the Respondent in which he said:-

“There is no taxable income for [the years 2014 and 2016].

I have been in receipt of a previously declared benefactor’s loan of €10,000 per month. This loan is repayable to the benefactor. This is the source of my entire income, with the exception of a small pension from my previous employment with [REDACTED], via [REDACTED]. The monthly amount of this pension is circa €690 per month (varies by 5%).

7. Also on or about 29 April 2021, the Appellant filed Form 11 self-assessment tax returns for the years 2014 and 2016. Prior to this the Appellant had delivered no returns for these years.

8. Based on the information contained in these returns, the Respondent issued Notices of Assessment assessing the Appellant as having no taxable Schedule D income for these years and as having overpaid tax in the amount of €2,745.68 for 2014 and €3,779.13 for 2016. These sums represent credit for the amount of income tax and USC deducted in each year from the Appellant’s schedule E income.

9. On 31 May 2021, the Respondent issued decisions to the Appellant informing him that it would not repay to him the tax overpaid on the grounds that his claim was made outside of the four year time-limit prescribed under section 865(4) of the TCA 1997.

10. In accordance with his right under section 865(7) of the TCA 1997, the Appellant appealed these decisions to the Commission.

Legislation and Guidelines

11. Section 865 of the TCA 1997 is headed “Repayment of tax”. Subsection 2 therein provides:-

“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.”

12. Section 865(3) TCA 1997 provides that no repayment of income tax shall be made unless a “valid claim” has first been made to the Respondents.

13. Section 865(1)(b) of the TCA 1997 deals with the question of what constitutes a valid claim. It provides:-

“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—

(l) 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 [...].”

14. Section 865(3A) of the TCA 1997 provides:-

“(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).”

15. The time-limit for claims prescribed under section 865(4) of the TCA 1997 is, in respect of claims made 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.”*

“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—

(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.”

Submissions

Appellant

16. The Appellant's grounds section of his Notice of Appeal of 9 September 2021 set out his case against the refusal of the Respondent to make the repayment of the sums overpaid in respect of the years 2014 and 2016 on account of the time-limit in section 865(4) of the TCA 1997. In summary, the Appellant made the point that he was not an expert in taxation law and, specifically, had not been aware until the refusal of his claim of the existence of the time-limit. Furthermore, the Appellant argued that if the situation had been reversed – that is if the Respondent had been due money from him – it would not have been constricted by any comparable time-limit.
17. The Appellant stated that the reason that his claim had not been submitted by way of Form 11 returns until the end of April 2021 was that he and his wife had suffered from serious health problems in the course of 2020 and 2021.

Respondent

18. The Respondent submitted that the Appellant had not submitted a claim until he filed his Form 11 returns, which led it to assess his entitlement to credit in respect of the income tax and USC previously deducted under the PAYE system. Section 865(4) of the TCA 1997 mandates that repayments claimed in excess of four years after the end of the chargeable period to which the claim relates shall not be made. In this instance the claim had to be made no later than the end of 2018 in respect of the sum overpaid for 2014 and 2020 in respect of the sum overpaid for 2016. As he did not do so until 29 April 2021 repayment was prohibited.

Material Facts

19. The facts material to this appeal are as follows:-

- for the years 2014 and 2016 the Appellant was a taxpayer with income under Schedule E in the amounts of €5,721 and €9,336, from which tax, including USC, of €2,745.68 and €3,779.13 respectively was deducted at source under the PAYE system;
- on 29 April 2021, the Appellant filed Form 11 self-assessment income tax returns for the years 2014 and 2016;
- arising from these returns the Respondent issued Notices of Assessment dated 28 May 2021 for 2014 and 2016, wherein the Appellant was assessed as having no taxable income under Schedule D and an entitlement to credits in respect of the full amounts of tax deducted under the PAYE system for those years;
- the Appellant was thereby assessed as having overpaid tax for the year 2014 in the amount of €2,745.68 and for the year 2016 in the amount of €3,779.13;
- on 31 May 2021, the Respondent issued decisions to the Appellant in which it refused to make repayment of the sums overpaid for the years 2014 and 2016 on the grounds that the claims for repayment had been made outside the time-limit prescribed under section 865(4) of the TCA 1997;
- on 9 September 2021 the Appellant appealed these refusal decisions to the Commission pursuant to section 865(7) of the TCA 1997.

Analysis

20. There would appear, on the basis of the content of the statement accompanying the Appellant's returns filed on 29 April 2021, to be doubt that the Appellant was, for the years 2014 – 2016, a "chargeable person"¹ obliged to file Form 11 annual returns. However, the lack of certainty regarding his status in this respect does not have any material impact on the result of this appeal, which is that the Respondent's decision to refuse repayment must be upheld. This is so for the following reasons.

21. Section 865 of the TCA 1997 provides that no repayment shall be made by the Respondent in circumstances where a claim is not submitted prior to the expiry of four years from the end of the relevant chargeable period.

22. Although the Respondent has the power, pursuant to section 865(3A) of the TCA 1997, to make repayment of tax overpaid under the PAYE system in the absence of any claim

¹ Defined under section 959A of the TCA 1997

by a taxpayer, it is prohibited from doing so outside of the time-limit prescribed under subsection (4) of the same provision.

23. Ultimately, it is incumbent upon any taxpayer who seeks repayment to make a claim and do so on time if they are to be sure of their entitlement. This applies whether the overpayment arises from tax deducted from a taxpayer by their employer at source or from tax paid directly to the Respondent by a taxpayer under the pay and file self-assessment system.
24. The Appellant in this appeal did not dispute that he made his claim for the repayment of the tax overpaid upon the filing of his Form 11 returns on 29 April 2021. His submission, however, was that there was a lack of fairness in the refusal to repay in circumstances where he was unaware of the particular legislation prescribing the four year time-limit and could not reasonably have been expected to have been aware of it at the relevant time. He also submitted that he was prevented from making a claim in 2020 because of health problems on his own part and on the part of his wife. Lastly, he observed that the Respondent was subject to no comparable time-limit when it came to the collection of any tax underpaid by a taxpayer.
25. The Commissioner has much sympathy for the Appellant, in particular with regard to the health problems that he and his wife suffered from. However, in determining this case it is necessary to adhere to the meaning of the legislation as intended by the Oireachtas and apply it to the facts as they present themselves. As is clear from paragraph 74 of the judgment of McDonald J in *Perrigo Pharma International Activity Company v McNamara & Ors* [2020] IEHC 152, this meaning is to be established in the normal course by reference to the natural and ordinary meaning of the words used in the relevant legislation. It is not within the jurisdiction conferred on the Tax Appeals Commission by statute to depart from or disapply legislation in a specific instance on the grounds of fairness (see *Lee v Revenue Commissioner* [2021] IECA 18 at paragraph 68).
26. The mandatory nature of the prohibition on repayment after four years under section 865(4) of the TCA 1997 is clear from the inclusion of the words “*shall not be allowed*”. It is not possible to find in this provision any discretion given to the Respondent, and consequently the Commissioner, whereby the time-limit might be disapplied on the grounds that the Appellant was unaware of its existence or was prevented from making his claim within time because of issues with his or his wife’s health. Although not directly relevant to the determination of the issue in this appeal, it also should be observed in light of the arguments made by the Appellant that the Respondent is itself constrained in the recovery of underpaid tax by sections 959AA and 959AB of the TCA 1997, which prevent

the making or amending of assessments after the expiry of four-years periods in respect of chargeable and non-chargeable persons alike.

27. In light of the above, the Commissioner finds that that the decision to refuse repayment was in accordance with the applicable legislation and must stand.

Determination

28. It is determined that the Appellant's claims for the repayment of tax overpaid for the years 2014 and 2016 must be refused on the grounds that they were made outside of the time-limit prescribed by section 865(4) of the TCA 1997. While the Appellant was not successful in this appeal, he was correct to seek to establish his legal entitlement by way of appeal to the Commission.
29. This appeal has been determined in accordance with section 949AL of the TCA 1997. This determination contains full findings of fact and law. Any party dissatisfied with the determination has the right to appeal to the High Court on a point or points of law within a period of 42 days from receipt of this Determination in accordance with the provisions of the TCA 1997.



Conor O'Higgins
Appeal Commissioner
24 May 2023