



117TACD2023

Between

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of income tax, in accordance with the provisions of section 865 TCA 1997, in respect of the years of assessment 2015 & 2016.
2. The amount of overpayment of tax at issue is in the sum of €171.00 for the year 2015 and the sum of €967.14 for the year 2016. Also at issue, is a liability in the sum of €43.48 for the year 2017, which the Respondent states cannot be offset for the year 2017, as repayment cannot be made by reference to section 865 TCA 1997 for the years 2015 and 2016. Consequently, the Respondent is prevented from permitting an offset for the liabilities arising in 2017, in the sum of €43.48.
3. On 4 May 2022, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is determined without a hearing.

Background

4. On 10 April 2013, the Appellant re-registered for income tax with the Respondent with effect from 08 April 2013.
5. During the period March 2016 to February 2019, the Respondent issued reminders to the Appellant in relation to his tax returns for the period 2015 to 2017.
6. On 31 March 2022, the Appellant filed his tax returns through the revenue online system (“ROS”) for the years 2015, 2016 and 2017. As a consequence, Notices of Assessment to income tax for the years 2015, 2016 and 2017 automatically issued to the Appellant.
7. On 31 March 2022, Notices of Assessment to income tax issued for the years 2015 and 2016. On 4 April 2022, a Notice of Assessment issued for the year 2017, in the sum of €43.48.
8. Thereafter, on 7 April 2022, the Respondent issued correspondence to the Appellant refusing a repayment of tax paid for the years 2015 and 2016 in the sum of €171.00 and €967.14 respectively, in accordance with the provisions of section 865(4) TCA 1997.
9. In addition, the Respondent has not permitted an offset in relation to the sum of €43.48 due and owing for the year 2017, in accordance with section 865B TCA 1997.
10. The Appellant states that while the Respondent has applied section 865 TCA 1997 to deny a repayment of tax for the years 2015 and 2016, the revenue officer did not apply the same terms to the liabilities that arose for 2017, in the sum of €43.48.
11. On 4 May 2022, the Appellant duly appealed the Notices of Assessment to income tax to the Commission.

Legislation and Guidelines

12. The legislation relevant to this appeal is as follows:-

13. Section 865 of the TCA 1997, Repayment of Tax, *inter alia* provides:-

“(1)...

(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.

ii) Where all information which the revenue commissioners may reasonably require, to enable them determine if and to what extent a repayment of taxes 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 shall be treated as a valid claim when that information has been furnished by the person, and

(iii)....”

(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.

(6).....

*(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.*

14. Section 865B TCA 1997, No offset where repayment prohibited, *inter alia* provides:-

(1) In this section—

“Acts” means—

(a) the statutes relating to the duties of excise and to the management of those duties,

(b) the Tax Acts,

(c) the Capital Gains Tax Acts,

(d) Parts 18A, 18C and 18D,

*(e) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending
or extending that Act,*

*(f) the Stamp Duties Consolidation Act 1999 and the enactments amending or
extending that Act,*

*(g) the Value-Added Tax Consolidation Act 2010 and the enactments amending or
extending that Act*

(h) the Finance (Local Property Tax) Act 2012, and

*(i) any instruments made under any of the statutes and enactments specified
in paragraphs (a) to (h);]*

“relevant period”, in relation to a repayment, means—

*(a) in the case of corporation tax, the accounting period of the company in respect of
which the repayment arises,*

- (b) *in the case of income tax, capital gains tax, income levy, universal social charge or domicile levy, the year of assessment in respect of which the repayment arises,*
- (c) *in the case of stamp duties, the year of assessment or accounting period, as the case may be, within which falls the event in respect of which the repayment arises,*
- (d) *in the case of gift tax or inheritance tax, the year of assessment or accounting period, as the case may be, within which falls the latest of the dates referred to in section 57(3) of the Capital Acquisitions Tax Consolidation Act 2003 and in respect of which the repayment arises,*
- (e) *in the case of excise duty, the year of assessment or accounting period, as the case may be, within which falls the act or event in respect of which the repayment arises,*
- (f) *in the case of value-added tax, the year of assessment or accounting period, as the case may be, within which falls the taxable period in respect of which the repayment arises, and*

(g) *in the case of local property tax, the year within which the repayment arises;*

“repayment” includes a refund;

“tax” means any income tax, corporation tax, capital gains tax, value-added tax, excise duty, stamp duty, gift tax, inheritance tax, income levy, domicile levy, universal social charge or local property tax and includes—

- (a) *any interest, surcharge or penalty relating to any such tax, duty, levy or charge,*
- (b) *any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, duty, levy or charge,*
- (c) *any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and*
- (d) *any amount paid on account of any such tax, duty, levy or charge or paid in respect of any such tax, duty, levy or charge; “taxable period” has the same meaning as in section 2 of the Value-Added Tax Consolidation Act 2010*

(2) *Subject to subsections (3) and (4), where a repayment of any tax cannot be made to a person by virtue of the operation of—*

- (a) *section 865,*
- (b) *section 105B of the Finance Act 2001,*
- (c) *section 99 of the Value-Added Tax Consolidation Act 2010,*

- (d) *section 159A of the Stamp Duties Consolidation Act 1999,*
- (e) *section 57 of the Capital Acquisitions Tax Consolidation Act 2003, or*
- (f) *any other provision of any of the Acts, then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person.*
- (3) *Where a repayment of tax cannot be made to a person in respect of a relevant period, it may be set against the amount of tax to which paragraph (a) of subsection (4) applies which is due and payable by the person in the circumstances set out in paragraph (b) of that subsection.*
- (4) (a) *The amount of tax to which this paragraph applies is the amount, or so much of the amount, of tax that is due and payable by the person in respect of the relevant period as does not exceed the amount of the repayment that cannot be made to the person in respect of that relevant period*
- (b) *The circumstances set out in this paragraph are where tax is due and payable in respect of the relevant period by virtue of an assessment that is made or amended, or any other action that is taken for the recovery of tax, at a time that is 4 years or more after the end of the relevant period.*
- (5) *No tax shall be set against any other amount of tax except as is provided for by the Acts.*

Submissions

Appellant

15. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in his Notice of Appeal and Statement of Case:-

15.1. The Appellant was assessed for income tax for the years 2015, 2016 and 2017 in April 2022. The Appellant completed the returns in 2022, as he was unaware that he was registered for income tax for the requisite periods, as he was [REDACTED] from 2014 to 2016. He understood that his spouse had informed the Respondent of his situation. During the years that he was [REDACTED], his spouse supported his family and he understands that the overpayment of tax by him was due to deductions made to his spouse's PAYE income.

15.2. The Appellant only realised that the returns for the requisite years were outstanding when he applied for a tax clearance certificate from the Respondent.

- 15.3. On 31 March 2022, the Appellant filed his tax returns through the revenue online system ("ROS") for the years 2015, 2016 and 2017, which indicated that he had made an overpayment of tax in the sum of €171.00 for the year 2015 and the sum of €967.14 for the year 2016.
- 15.4. The Appellant received Notices of Assessment for the years 2015 and 2016. In addition, the Appellant received a Notice of Assessment for the year 2017 showing an underpayment in the sum of €43.48.
- 15.5. Once the Appellant filed his returns through ROS, on 7 April 2022, correspondence issued to the Appellant from the Respondent refusing a repayment of tax paid for the years 2015 and 2016, in accordance with the provisions of section 865 TCA 1997, as the claim was not made within 4 years after the end of the chargeable periods.
- 15.6. On 4 May 2022, the Appellant appealed the refusals for repayment of tax to the Commission.

Respondent

16. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case and Outline of Arguments:-
 - 16.1. The Appellant was re-registered for income tax on 10 April 2013 with effect from 08 April 2013.
 - 16.2. The Respondent issued reminders to the Appellant in relation to his tax returns for the years 2015 to 2017, over the period March 2016 to February 2019.
 - 16.3. On 31 March 2022, tax returns for the years 2015, 2016 and 2017, were filed by the Appellant through ROS.
 - 16.4. Also on 31 March 2022, the Respondent issued Notices of Assessment for the years 2015 and 2016. On 4 April 2022, the Respondent issued a Notice of Assessment for the year 2017, showing an underpayment in the sum of €43.48.
 - 16.5. On 7 April 2022, correspondence issued from the Respondent to the Appellant, refusing repayments of income tax for the years 2015 and 2016, as a consequence of the provisions of section 865(4) TCA 1997.
 - 16.6. The Respondent has not permitted the sum of €43.48 due and owing for the year 2017, to be offset as a consequence of the provisions of section 865B TCA 1997.

Material Facts

17. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 17.1. The Appellant has been registered for income tax, since 8 April 2013.
- 17.2. The Appellant did not file his tax returns for the years 2015, 2016 and 2017 until 31 March 2022.
- 17.3. On 31 March 2022, the Appellant filed his tax returns through the revenue online system ("ROS") for the years 2015, 2016 and 2017.
- 17.4. Notices of Assessment to income tax for the years 2015, 2016 and 2017 automatically issued to the Appellant.
- 17.5. On 4 April 2022, a Notice of Assessment issued for the year 2017 in the sum of €43.48.
- 17.6. On 7 April 2022, the Respondent issued correspondence to the Appellant refusing a repayment of tax paid for the years 2015 and 2016, in accordance with the provisions of section 865(4) TCA 1997.
- 17.7. The amount of tax at issue and which has been overpaid by the Appellant for the years 2015 and 2016 is in the sum of €171.00 and €967.14, respectively.
- 17.8. As a repayment of tax was claimed outside the relevant time limit prescribed under section 865(4) TCA 1997, no offset of tax liabilities in the sum of €43.48, for the year 2017, is permitted in accordance with section 865B TCA 1997.
- 17.9. The Appellant's submission of his tax return on 31 March 2022, is regarded as a valid claim for the purposes of section 865(3) TCA 1997.

Analysis

18. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at paragraph 22, Charleton J. stated:

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal

Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

19. The Appellant’s appeal relates to a refusal by the Respondent to permit a claim for a repayment of income tax pursuant to section 865 TCA 1997, made by the Appellant in respect of the years of assessment 2015 and 2016, in the sum of €171.00 and €967.14, respectively, as the claim was made outside of the four year time limit prescribed under section 865(4) TCA 1997.
20. In addition, the Appellant’s appeal relates to a refusal by the Respondent to permit the sum of €43.48 due and owing for the year 2017, to be offset against the overpayment of income tax for the years 2015 and 2016, as a consequence of the provisions of section 865B TCA 1997, in circumstances where a repayment of tax cannot be made.
21. The Commissioner intends firstly to deal with the provisions relating to the repayment of income tax, in accordance with section 865 TCA 1997 and the four year time limit, as it is applicable to the Appellant’s appeal and will thereafter, consider the application of section 865B TCA 1997 to the Appellant’s appeal herein.

Section 865 TCA 1997

22. The Appellant has been denied a repayment of tax by the Respondent on the grounds that he does not meet the criteria as outlined by section 865(4) TCA 1997, namely that a claim for repayment of tax for the chargeable period was not made within four years after the end of the chargeable period.
23. The Commissioner notes that the Appellant’s submission that in April 2022, the Appellant filed his income tax self-assessment forms for the years 2015, 2016 and 2017. The Appellant submits that during the requisite years, he was prevented from working due to being [REDACTED] but that his spouse was in employment and responsible for supporting his family. The Appellant submits that it is the deduction made to his spouse’s PAYE income that has caused the overpayments of income tax to arise herein. Nevertheless, the Commissioner was presented with no evidence of PAYE income of the spouse of the Appellant to support this contention. In addition, the Commissioner observes the Appellant’s argument that it is contradictory on the Respondent’s part, to disallow the repayment of tax for the years 2015 and 2016 but nevertheless to proceed to collect liabilities arising for 2017, in circumstances where this was not sought within four years after the end of the chargeable period.
24. Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section includes income tax and capital gains tax. It also covers: any interest,

surcharge or penalty relating to the tax, levy or charge; any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to the Respondent; and amounts paid on account of tax (for example, payments in excess of liability).

25. Section 865(2) TCA 1997 provides that a person who has paid tax which is not due, or which but for an error or mistake in the person's return would not have been due, is entitled to repayment of that tax.
26. Section 865(3) TCA 1997 provides that a repayment of tax referred to in section 865(2) TCA 1997 is not due unless a valid claim to repayment has been made. A return or statement which a person is required to deliver under the Acts and which contains all the information that the Respondent may reasonably require to determine if and to what extent a repayment is due, is regarded as a valid claim. The Commissioner is satisfied that the Appellant's submission of his tax return on 31 March 2022, is regarded as a valid claim for the purposes of section 865(3) TCA 1997.
27. In relation to a limitation period for a repayment of tax, section 865(4) TCA 1997 provides that '*...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].
28. The Commissioner notes the Respondent's submission that correspondence dated 7 April 2022, refusing a refund of tax paid for the requisite years issued automatically by the Respondent, on foot of the returns being made. As the Appellant's claim for repayment relates to the tax years 2015 and 2016 inclusive, a valid claim for repayment must have been made on or before 31 December 2019 and 31 December 2020 for years at issue. The Appellant filed his returns for the aforementioned years on 31 March 2022 and as set out above, it is this date that establishes a valid claim for the purposes of section 865(3) TCA 1997. Having regard to this date, the Commissioner is satisfied that the claim falls outside of the 4 year time limit prescribed in section 865(4) TCA 1997.
29. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayment in the amounts of €171.00 and €967.14 for the years 2015 and 2016, was disallowed.
30. The use of the word "shall" as set out in 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. The Commissioner has no authority or discretion to direct that repayment be made or credits

allocated to the Appellant where the claim for repayment falls outside the four year period specified in section 865(4) TCA 1997.

31. Previous determinations of the 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 website¹.

Section 865B TCA 1997

32. In addition, the Appellant seeks that the outstanding tax liabilities for the year 2017, in the sum of €43.48, is offset against the overpayment of income tax for the years 2015 and 2016. The Commissioner observes that the Respondent relied on section 865B(2) TCA 1997 to deny the claim.
33. Section 865B TCA 1997 provides that, where a repayment of tax cannot be made to a person because a claim is lodged outside of the relevant time limit as provided for in section 865(4) TCA 1997, offset against any other tax liabilities of the person is prohibited. Section 865B TCA 1997 also confirms that there is no right of offset outside of that already provided for under the tax codes. Section 865B TCA 1997 provides that the rules apply to these taxes regardless of when the tax is or was paid.
34. Section 865B(4)(b) TCA 1997 contains an exception to the general rule regarding offsets. It applies where tax is due and payable for a tax year or accounting period by virtue of action taken by the Respondent to assess or recover tax, at a time that is four years or more after the end of the year or period involved. Having regard to the facts of this appeal, the application of section 865B(4) TCA 1997 does not arise herein, as it was the Appellant who filed his tax returns on 31 March 2022, rather than any action of the Respondent.
35. Where a repayment of tax is claimed outside the relevant time limit, the Respondent cannot offset the tax involved against any other tax liability of the taxpayer as no repayment is due to the taxpayer.
36. For the sake of completeness, the Commissioner notes the Appellant's reference to the ability of the Respondent to seek liabilities for 2017 in the sum of €43.48, despite that being outside the relevant time limit for the Appellant to be in a position to seek repayment of tax paid. As the Appellant filed his tax returns for 2015, 2016 and 2017 in 2022, the Respondent is not precluded from seeking any outstanding liabilities arising from the late filing of the Appellant's tax returns. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of

¹ www.taxappeals.ie

legitimate expectation, or disproportionality, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

37. The scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577, is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings.
38. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. The Commissioner determines that a repayment is not available to the Appellant in relation to tax overpaid in respect of the years 2015 and 2016, as a valid claim for repayment was not made within the four year statutory period contained in section 865(4) TCA 1997.
39. Additionally, in accordance with section 865B(2) TCA 1997, the Commissioner has no option but to determine that the tax overpaid arising in respect of the years 2015 and 2016, is not available for offset against outstanding tax liabilities for the year 2017, in the sum of €43.48. Section 865B(2) TCA 1997 does not permit tax overpaid to be offset against tax liabilities, in circumstances where a repayment claim in respect of the tax overpaid would not be available.

Determination

40. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865 TCA 1997 and section 865B TCA 1997.
41. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties.

42. This appeal is hereby determined in accordance with Part 40A of the TCA 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine
Appeal Commissioner
11 July 2023