



Between:

TIE MENG ZHANG

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against the refusal of the Revenue Commissioners (hereinafter "the Respondent") of a claim for the repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the "TCA1997") made by the Appellant in respect of the tax years 2014, 2015 and 2016.
2. The oral hearing of this appeal was heard on 30 May 2023.
3. The amount of tax at issue is €6,504.32.

Background

4. Mr Tie Meng Zhang (hereinafter the "Appellant") is a taxpayer who submitted tax returns to the Respondent for the years 2014, 2015 and 2016 each of which indicated that an overpayment of tax had been made by the Appellant as follows:

Tax Year	Date of submission of tax return	Overpayment amount €
2014	1 September 2015	2,520.44
2015	5 July 2016	2,746.88
2016	4 September 2017	1,237.00

5. Following receipt of the Appellant's tax returns in each of the years, the Respondent wrote to the Appellant indicating that the overpayment contained in the relevant tax return had been offset against an outstanding tax liability for a previous year as follows:
 - (i) On 1 September 2015 the Respondent wrote to the Appellant indicating that the overpayment of €2,520.44 for the year 2014 had been offset against an outstanding income tax liability for the tax year 2009;
 - (ii) On 4 July 2016 the Respondent wrote to the Appellant indicating that the overpayment of €2,746.88 for the year 2015 had been offset against an outstanding tax liability for the year 2010;

(iii) On 4 September 2017 the Respondent wrote to the Appellant indicating that the overpayment of €1,237.00 for the year 2016 had been offset against an outstanding tax liability for the year 2011.

6. The Appellant submitted a Notice of Appeal to the Commission on 21 November 2019 stating at Section 7 thereof that he relies on Section 865(4) of the TCA1997 and stated:

“Section 865(4) Taxes Consolidation Act 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. In his Notice of Appeal submitted to the Commission, the Appellant stated his Grounds of Appeal as follows:

“Since 2012, Revenue has stopped returning taxes on me. Up to now, it has accumulated 10198 Euros. For many years, I have been using letters and telephones to reflect to Revenue in various forms, but there has been no response. Therefore, I can only appeal and hope to resolve it through a final ruling.”

8. Prior to the tax year 2014, the Appellant had been the subject of an audit by the Respondent and on 19 December 2013 the Respondent issued the following relevant Notices of Amended Assessment to income tax to the Appellant:

Tax Year	Balance Payable €
2009	16,340.55
2010	11,506.75
2011	15,729.22

9. On 13 September 2018 the Commission received a Notice of Appeal from the Appellant which was dated 12 September 2018 and which was given the Commission reference M826/18. The Notice of Appeal related to Notices of Amended Assessment to income tax raised by the Respondent on foot of the audit which it had carried out on the Appellant's tax affairs. In addition, the Notice of Appeal related to the repayment of overpaid tax which is the subject matter of this appeal.

10. Section 949 of the TCA1997 sets out that appeals against decisions made by the Respondent must be made in writing within 30 days after notification in writing to the

person aggrieved of the Respondent's determination or decision. Appeals which are submitted to the Commission after the 30 day time limit are considered by the Commission and section 949O of the TCA1997 provides that Appeal Commissioners may accept a late appeal where they are satisfied that the appellant was prevented by absence, sickness or other reasonable cause from making the appeal within the 30 day period and where the appeal is made without unreasonable delay.

11. The Commission refused to accept appeal M826/18 and on 26 June 2019 the Commission wrote to the Appellant informing him that appeal M826/18 had not been accepted on the basis that it was not a valid appeal as it did not meet the requirements to be accepted as a late appeal in accordance with section 949O of the TCA1997.
12. At the remote oral hearing of this appeal the Appellant attended by telephone link and was accompanied by his son who acted as translator. The Appellant's son made an affirmation as to his translation at the oral hearing.
13. At the outset of the oral hearing the Commissioner asked the Appellant to confirm what precisely he understood this appeal to relate to. The Appellant replied that he understood he was appealing assessments relating to 2012 and 2013. The Commissioner informed the Appellant that this appeal did not relate to assessments raised in 2012 and 2013.
14. The Commissioner informed the Appellant that he had previously submitted an appeal reference M826/18 to the Commission and the Appellant stated that he did not have the documents relating to that appeal with him. The Appellant confirmed that he understood that appeal M826/18 had been refused by the Commission but stated that he could not remember why this had occurred. The Commissioner informed the Appellant that appeal M826/18 had been refused because it was a late appeal and the Appellant confirmed that he remember this but stated that he could not remember what appeal M826/18 related to.
15. This appeal therefore relates to the refusal of the Respondent of claims for the repayment of tax pursuant to section 865 of the TCA1997 made by the Appellant in respect of the tax years 2014, 2015 and 2016 and to the decision of the Respondent to offset overpayments of tax made by the Appellant for 2014, 2015 and 2016 against tax liabilities for 2009, 2010 and 2011.
16. The oral hearing of this appeal was heard on 30 May 2023.

Legislation and Guidelines

17. The legislation relevant to the within appeal is as follows:

Section 865 of the TCA1997:

“(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."

Section 960H of the TCA1997:

"(1) In this section—

"claim" means a claim that gives rise to either or both a repayment of tax and a payment of interest payable in respect of such a repayment and includes part of such a claim;

"liability" means any tax due and payable which is unpaid and includes any tax estimated to be due and payable;

"overpayment" means a payment or remittance (including part of such a payment or remittance) which is in excess of the amount of the liability against which it is credited.

(2) Where the Collector-General is satisfied that a person has not complied with the obligations imposed on the person in relation to either or both—

(a) the payment of tax that is due and payable, and

(b) the delivery of returns required to be made,

then the Collector-General may, in a case where a repayment is due to the person in respect of a claim or overpayment—

(i) where paragraph (a) applies, or where paragraphs (a) and (b) apply, instead of making the repayment, set the amount of the repayment against any liability, and

(ii) where paragraph (b) only applies, withhold making the repayment until such time as the returns required to be delivered have been delivered.

(3)(a) Where a person (referred to in this subsection as the “first-mentioned person”) has assigned, transferred or sold a right to a claim or overpayment to another person (referred to in this subsection as the “second-mentioned person”) and subsection (2)(a) applies, then the Collector-General shall, in a case where a repayment would have been due to the first-mentioned person in respect of the claim or overpayment if he or she had not assigned, transferred or sold his or her right to the claim or overpayment, instead of making the repayment to the second-mentioned person, set that claim or over-payment against tax that is due and payable by that first-mentioned person.

(b) Where the first-mentioned person and the second-mentioned person are connected persons within the meaning of section 10, then the balance, if any, of the repayment referred to in paragraph (a) shall be set against tax due and payable by the second-mentioned person.

(4) Where the Collector-General has set or withheld a repayment by virtue of subsection (2) or (3), then he or she shall give notice in writing to that effect to the person or persons concerned and, where subsection (2)(ii) applies, interest shall not be payable under any provision of the Acts from the date of such notice in respect of any repayment so withheld.

(5) The Revenue Commissioners may make regulations for the purpose of giving effect to this section and, without prejudice to the generality of the foregoing, such regulations may provide for the order of priority of the liabilities to tax against which any claim or overpayment is to be set in accordance with subsection (2) or (3) or both.

(6) Every regulation made under this section is to be laid before Dáil Éireann as soon as may be after it is made and, if a resolution annulling the regulation is passed by Dáil Éireann within the next 21 days on which Dáil Éireann has sat after the regulation is

laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done under the regulation.

(7)The Taxes (Offset of Repayments) Regulations 2002 (S.I. No. 471 of 2002) shall have effect as if they were made under subsection (5) and had complied with subsection (6)."

Submissions

Appellant's Submissions

18. The following was submitted in support of the within appeal in the Statement of Case which was submitted to the Commission on 7 September 2022 by the Appellant:

"REVENUE stopped paying my overpaid personal income tax from 2013 (overpaid personal income tax for 5 financial years from 2012 to 2016), for some unknown reason, REVEUE did not refund me according to the tax regulations, but this part of the tax, REVENUE want to offset my personal income tax for 4 fiscal years including 2007, 2009, 2010 and 2011 respectively. But I paid my personal income tax in full for these 4 years, and some years REVENUE has a refund. To this end, REVENUE issued a notification No. 04009140-28117C on August 21 2020 and asked me to pay an additional tax of 5,082.52 euros (see Annex F). I am very puzzled about this? This is why I am requesting an appeal. My arguments are:

- 1. In the four financial years of 2007, 2009, 2010 and 2011, I have paid the personal income tax in full and on time according to the requirements of REVENUE (see Annex H1-4)*
- 2. The amounts for 2012 and 2013 in the notification are incorrect, the correct amounts are (see Annex G1-2).*

Therefore our petition is for REVENUE to correct its 2007, 2009, 2010, 2011, 2012 and 2013 errors in the calculation of my personal income tax and to refund all the taxes due to me."

19. The Appellant submitted the following written statement prior to the oral hearing on which he indicated he wished to rely on at the oral hearing:

"TAC Ref: 1283/19

27/05/2023

Written statement

Dear Appellate Commissioners, Appellate Officers and Tax Officers

In order to further clarify, the real situation of the 1283/19 appeal case. I have prepared the following written statement for your reference.

- Grounds for my appeal.

My appeal is based on REVENUE's long-term and refusal to return the personal income tax I overpaid. REVENUE and issued Notice No. 04009140-28117C on August 21, 2020 (hereinafter referred to as the ((Notice))) (See Annex F). This ((Notice)) not only created a personal income tax that I overpaid, but it was used to offset my personal income tax in the four fiscal years of 2007, 2009, 2010 and 2011; And also created a claim notice that I owe REVENUE €5082.52 in personal income tax. So this "Notice" is logically absurd, and the data is also wrong, and it has caused huge economic losses to me personally. Therefore, I filed an appeal.

= The ((Notice)) error of REVENUE is in the following aspects:

- 1. The **Balance €2119.00** for 2012 in the "Notice" is wrong, and the basis is even more absurd. According to verification, the source of this €2119.00 is €1558.16 in the document issued by REVENUE on March 7, 2015 (See Annex F1) plus €331.20 in the document issued by REVENUE on September 5, 2013 (See Annex F2) plus €560.84 in the REVENUE document issued on January 24, 2015 (See Annex F3), and then subtracting €331.20 in the document issued by REVENUE on September 2013, is the result of the above three mutual Add and subtract and piece together. What is even more absurd is that the **Balance Payable and Balance Overpaid** in the documents issued by REVENUE at different times are different, but they are all for the same fiscal year in 2012. Obviously, **only one correct Balance** is needed. However, REVENUE simply adds up the different **Balances** in the documents issued at different times (**the same fiscal year in 2012**) to get the **Balance €2119.00 in 2012**. This is obviously wrong, and it is absurd double calculation (**Balance Payable and Balance Overpaid cannot be simply added under the Debit item**).*

2. The **Balance €2963.52 for 2013** in the ((Notice)) is wrong. In 2013, REVENUE issued notices of different versions of **Balance Payable** (See Annex 2013A-C). The **2013 Balance €2963.52** in the ((Notice)) is a notification issued by REVENUE on March 7, 2015 (See Annex 2013A). From the documentation it can be seen that:
- (A) REVENUE did not make a notification according to the correct Amount of income or profits rising for this period data (€24450.00) in P35Ls (See Annex D1), and in the notification (€37071.00) was wrong.
 - (B) The data of Panel8 OTHER CREDITS /RELIEFS in the notification is not filled in according to the correct (€4120.28) in P35Ls. So this notification is wrong.
3. To sum up, the balances in 2012 and 2013 in the ((Notice)) are both wrong. REVERNUE absurdly added the two wrong Balances to form the Statement Balance €5082.52 in the ((Notice)), which is obviously even more absurd and wrong.
4. According to REVENUE's records in ROS, recorded in P35Ls in 2012 and 2013 (See Annex D and D1), my Amount of income or profits rising for this period data is **€24650.00** and **€24450.00** respectively. According to this and other relevant records of P35Ls, my **Balance Overpaid** in the two fiscal years of 2012 and 2013 were **€1891.68** and **€1802.20** (See AnnexG1-5) respectively. So from 2012 to 2016, REVENUE withheld and misappropriated my overpaid personal income tax totalling **€10198.20**. (This does not include REVENUE in the 5 fiscal years of 2007, 2009, 2010, and 2011. REVENUE made mistakes in my personal income tax calculations).
5. REVENUE In the ((Notice)), REVENUE used all the personal income tax I overpaid the 5 fiscal years from 2012 to 2016 to offset 4 fiscal years of 2007, 2009, 2010 and 2011. The personal income tax is just plain wrong. Because my personal income tax in these 4 fiscal years was paid in full and on time according to the requirements of REVENUE. And according to the notice No. 04009140-28044B (See Annex2011A) issued by REVENUE on July 17, 2012, I overpaid in the 2011 fiscal year. With the personal income tax of **€39.42** (I don't agree with that), REVENUE made the actual return (See Annex H4).

And this notice states that for the fiscal year before 2011, I personally do not owe REVENUE personal income tax.

My appeal request is to ask REVENUE to correct its errors in the calculation of my personal income tax in 2007, 2008, 2009, 2010, 2011, 2012 and 2013, and return all the overpaid taxes that should be refunded to me.

The above is my written statement based on the documents issued by REVENUE and the records of REVENUE, based on facts and based on the law. I hope to get your understanding and a fair ruling.

Yours sincerely

Tie Meng Zhang

20. The Appellant submitted the following documents in support of this appeal:

- a. Notice of Self-Assessment to income tax for 2014 No. 0400914-28085P issued 1 September 2015;
- b. Notice of Self-Assessment to income tax for 2015 No. 0400914-28092M issued 4 July 2016;
- c. Notice of Self-Assessment to income tax for 2016 No. 0400914-28097W issued 4 September 2017;
- d. Notice of Self-Assessment to income tax for 2015 No. 0400914-28112P issued 3 December 2019;
- e. Notice of Self-Assessment to income tax for 2016 No. 0400914-28111N issued 3 December 2019;
- f. Notice of Amended Assessment to income tax for 2012 No. 04009140-28119G issued 4 September 2020;
- g. Summary Statement of Account for income tax for the years of assessment 1 January 2012 to 31 December 2013 No 04009140-28121Q issued 8 September 2020;
- h. Notice of Amended Assessment to income tax for 2013 No. 04009140-28118E issued 4 September 2020;
- i. Summary Statement of Account for income tax for the years of assessment 1 January 2012 to 31 December 2016 No 04009140-28117C issued 21 August 2020;

- j. Income tax receipt for 2007 No. 04009140-28014P issued 24 April 2008;
- k. Notice of Assessment for 2009 (page 3 of 4) issued 3 November 2011;
- l. Form 11 return summary for 2010;
- m. Notice of Refund for 2011 No 04009140-28044B dated 17 July 2012;
- n. Form 11 return summary for 2012;
- o. Form 11 return summary for 2013;
- p. Notice of Amended Assessment for 2012 (page 3 of 4) issued 5 September 2013;
- q. Notice of Amended Assessment for 2012 (page 3 of 4) issued 24 January 2015;
- r. Notice of Amended Assessment for 2013 (page 3 of 4) issued 7 March 2015;
- s. Notice of Assessment for 2013 (page 3 of 4) issued 20 August 2014;
- t. Notice of Amended Assessment for 2013 (page 2 of 3) issued 4 September 2020;
- u. List of Amended / Supplementary P34Ls for Nivalis Ltd for 2012;
- v. List of Amended / Supplementary P34Ls for Nivalis Ltd for 2013;
- w. Notice of Assessment for 2011 (page 3 of 4) issued 17 July 2014.

21. The Appellant submitted that he had an accountant who had submitted incorrect tax returns on his behalf. He stated that when a correction to the incorrect tax returns was made, the Respondent launched an investigation into his tax affairs. He stated that the investigation lasted for 2 years but that no conclusion to the investigation had ever been reached.

22. The Appellant submitted that the reason that he did not appeal is that the Respondent did not reach a settlement with him. He stated that there was a continuous change in personnel from the Respondent who were dealing with his tax matters and that this continued for over a decade.

23. The Appellant confirmed to the Commissioner at the oral hearing that the details in his written submission dated 27 May 2023 are the details and arguments on which he wishes to rely for his appeal.

Respondent's Submissions

24. The Respondent submitted that for the tax year 2014 a tax return was filed by the Appellant on 1 September 2015 which gave rise to an overpayment of income tax of €2,520.44. The Respondent submitted that this income tax overpayment was offset against an outstanding liability to income tax which the Appellant had for 2009 in accordance with section 960H of the TCA1997.
25. The Respondent submitted that for the tax year 2015 a tax return was filed by the Appellant on 5 July 2016 which gave rise to an overpayment of income tax of €2,746.88. The Respondent submitted that this income tax overpayment was offset against an outstanding liability to income tax which the Appellant had for 2010 in accordance with section 960H of the TCA1997.
26. The Respondent submitted that for the tax year 2016 a tax return was filed by the Appellant on 4 September 2017 which gave rise to an overpayment of income tax of €1,237. The Respondent submitted that this income tax overpayment was offset against an outstanding liability to income tax which the Appellant had for 2009 in accordance with section 960H of the TCA1997.
27. The Respondent submitted that an audit was carried out into the Appellant's tax affairs in 2013 which resulted in Notices of Amended Assessment for the years 2006 to 2011 being raised. The Respondent submitted that the liabilities which arose in those Notices of Amended Assessment became final and conclusive 30 days after the date of issue.
28. The Respondent submitted that audit liabilities remained outstanding from the Appellant and as a result the Respondent applied the provisions of section 960H of the TCA1997 to offset the Appellant's overpayments of income tax in the years 2014, 2015 and 2016 against the Appellant's outstanding liabilities for 2009, 2010 and 2011.

Material Facts

29. The Commissioner accepts the following as a material facts in this appeal:
 - (i) The Appellant submitted tax returns to the Respondent for the years 2014, 2015 and 2016 each of which indicated that an overpayment of tax had been made by the Appellant as follows:

Tax Year	Date of submission of tax return	Overpayment amount €
2014	1 September 2015	2,520.44
2015	5 July 2016	2,746.88
2016	4 September 2017	1,237.00

(ii) Following receipt of the Appellant's tax returns in each of the years, the Respondent wrote to the Appellant indicating that the overpayment contained in the relevant tax return had been offset against an outstanding tax liability for a previous year as follows:

- i. On 1 September 2015 the Respondent wrote to the Appellant indicating that the overpayment of €2,520.44 for the year 2014 had been offset against an outstanding income tax liability for the tax year 2009;
- ii. On 4 July 2016 the Respondent wrote to the Appellant indicating that the overpayment of €2,746.88 for the year 2015 had been offset against an outstanding tax liability for the year 2010;
- iii. On 4 September 2017 the Respondent wrote to the Appellant indicating that the overpayment of €1,237.00 for the year 2016 had been offset against an outstanding tax liability for the year 2011.

(iii) Prior to the tax year 2014, the Appellant had been the subject of an audit by the Respondent and on 19 December 2013 the Respondent issued the following relevant Notices of Amended Assessment to income tax to the Appellant:

Tax Year	Balance Payable €
2009	16,340.55
2010	11,506.75
2011	15,729.22

(iv) The Appellant did not appeal the Notices of Amended Assessment to income tax for 2009, 2010 and 2011 raised by the Respondent on 19 December 2013 within 30 days of the date of issue.

- (v) As of the dates of the Notices of Amended Assessment for the years 2014, 2015 and 2016 being raised, the Appellant's liabilities to tax for the years 2009, 2010 and 2011 remained outstanding.
- (vi) On 13 September 2018 the Commission received a Notice of Appeal from the Appellant which was dated 12 September 2018 and which was given the Commission reference M826/18. The Notice of Appeal related to Notices of Amended Assessment to income tax raised by the Respondent on foot of the audit which it had carried out on the Appellant's tax affairs. In addition, the Notice of Appeal related to the repayment of overpaid tax which is the subject matter of this appeal.
- (vii) The Commission refused to accept appeal M826/18 and on 26 June 2019 the Commission wrote to the Appellant informing him that appeal M826/18 had not been accepted on the basis that it was not a valid appeal as it did not meet the requirements to be accepted as a late appeal in accordance with section 949O of the TCA1997.

Analysis

30. In appeals before an Appeal Commissioner the burden of proof rests on the Appellant who must prove on the balance of probabilities that the contested tax is not payable. This is confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 by Charleton J at paragraph 22:-
1. *"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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable."*
31. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in the within appeal.
32. Section 865(2) of the TCA1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person.
33. Section 865(3) of the TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
34. Section 865(4) of the TCA1997 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].

35. There is no dispute between the Parties that the Appellant submitted his tax returns for 2014, 2015 and 2016 within 4 years of the end of those tax years. Therefore valid claims for repayment were made by the Appellant for 2014, 2015 and 2016.
36. The Commissioner has already found as a material fact that the Appellant had been the subject of an audit by the Respondent and on 19 December 2013 the Respondent issued the following relevant Notices of Amended Assessment to income tax to the Appellant which established liabilities to income for 2009 in the amount of €16,340.55, for 2010 in the amount of €11,506.75 and for 2011 in the amount of €15,729.22.
37. The Commissioner has also found as a material fact, and it is agreed by both Parties, that the Appellant did not appeal those Notices of Assessment. The Commissioner has also found as a material fact that as of the dates of the Notices of Amended Assessment for the years 2014, 2015 and 2016 being raised, the Appellant's liabilities to tax for the years 2009, 2010 and 2011 remained outstanding.
38. In this appeal the Appellant's arguments rest on the fact that he does not agree with the Notices of Amended Assessment to income tax for the year 2006 to 2011 which the Respondent issued on 19 December 2013. The Appellant is steadfast in his position that those Notices of Amended Assessment are incorrect and that the Respondent is mistaken in the basis and calculation for same.
39. The position, however, is that the Appellant did not submit an appeal to the Appeal Commissioners in relation to those Notices of Amended Assessment within 30 days of them being raised by the Respondent. The first time that the Appellant attempted to engage with the appeal process was on 13 September 2018 when the Commission received a Notice of Appeal from the Appellant which was dated 12 September 2018. This was almost 5 years after the Notices of Amended Assessment to income tax were issued by the Appellant in December 2013. The Commission refused to accept the appeal lodged by the Appellant in September 2018 on the basis that it was a late appeal and on 26 June 2019 the Commission wrote to the Appellant informing him that appeal M826/18 had not been accepted on the basis that it was not a valid appeal as it did not meet the requirements to be accepted as a late appeal in accordance with section 949O of the TCA1997.
40. The Appellant did not object to this course of action, nor did the Appellant bring any action to the courts challenging the Commission's decision to refuse to accept the 2018 appeal.

41. The Commissioner therefore makes no comment on the contents of the Noticed of Amended Assessment to income tax raised by the Respondent on 19 December 2013 save to state that they have not been appealed by the Appellant and therefore the liabilities which arise from them stand.
42. The Appellant submitted this appeal to the Commission on 21 November 2019 stating at Section 7 thereof that he relies on Section 865(4) of the TCA1997 and stated:
- “Section 865(4) Taxes Consolidation Act 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.”*
43. This appeal therefore relates to the Respondent’s decision to offset overpayments of tax made by the Appellant for 2014, 2015 and 2016 against tax liabilities for 2009, 2010 and 2011.
44. Section 960H(1) of the TCA1997 contains the following definitions:
- “claim” means a claim that gives rise to either or both a repayment of tax and a payment of interest payable in respect of such a repayment and includes part of such a claim;
- “liability” means any tax due and payable which is unpaid and includes any tax estimated to be due and payable;
- “overpayment” means a payment or remittance (including part of such a payment or remittance) which is in excess of the amount of the liability against which it is credited.
45. Section 960H(2) of the TCA1997 provides that where the Collector-General is satisfied that a person has not complied with the obligations imposed on the person in relation to the payment of tax that is due and payable, then the Collector-General may, in a case where a repayment is due to the person in respect of a claim or overpayment instead of making the repayment, set the amount of the repayment against any liability.
46. The Appellant made claims for repayment in relation to the overpayment of tax for the tax years 2014, 2015 and 2016. The Respondent, when considering those claims for repayment, applied the provisions of section 960H(2) of the TCA1997 set the amounts of the repayments against outstanding liabilities to income tax for the years 2009, 2010 and 2011.
47. Having carefully considered all matters and submissions in this appeal, the Commissioner finds that the Appellant has not succeeded in establishing that the Respondent was

incorrect to offset the overpayments of income tax for the years 2014, 2015 and 2016 against liabilities to tax for the years 2009, 2010 and 2011.

Determination

48. For the reasons set out above, the Commissioner determines that the within appeal has failed.

49. It is understandable the Appellant will be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

50. This appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and in particular, section 949AK thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only to the High Court within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
21 June 2023