



Between



**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against a refusal of the Revenue Commissioners (hereinafter “the Respondent”) to allow a claim for the repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the “TCA 1997”).
2. In accordance with the provisions of section 949U Taxes Consolidation Act 1997, this appeal is determined without a hearing. Both parties agreed to this adjudication format in accordance with section 949U TCA 1997.

**Background**

3. The Appellant filed his 2018 Income Tax return through the Respondent’s online service (“ROS”) on 16<sup>th</sup> March 2023. ROS enables a taxpayer to view their tax position under various tax heads and avail of other services which includes the submission of their tax returns and the payment of their taxation liabilities. Based on the figures included in the Appellant’s submitted return, he was due a refund of tax for 2018 in the sum of €955.30.

4. On 12<sup>th</sup> April 2023, the Respondent issued the Appellant with a document titled “Late Claim for Repayment of Tax”. This document advised the Appellant that as his claim for repayment was received more than four years after the end of the chargeable period to which it relates, the Respondent was unable to repay the tax refund sought by the Appellant under the provisions of section 865 (4) TCA 1997.
5. That document also advised the Appellant of his right of appeal to the Commission under section 865 (7) TCA 1997.
6. On 3<sup>rd</sup> May 2023, the Appellant exercised his right of appeal and submitted his Notice of Appeal with the Commission.

### **Legislation**

7. The legislation relevant to this appeal is as follows:

Section 865 of the TCA 1997:

*“(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**

### *Appellant*

8. The Appellant stated that two years of the four-year timeframe coincided with the Covid-19 pandemic which necessarily required periods of lockdowns and business closures. The Appellant submitted there was uncertainty as to whether normal income tax services were available during this period.
9. The Appellant advised he was of the belief that he needed a meeting with a tax advisor in order to submit his 2018 tax return. However, the Appellant submitted that owing to the Covid related restrictions in place, he was unable to locate anybody to assist him with the preparation and submission of his 2018 tax return.

10. In addition, the Appellant submitted that he suffered with [REDACTED] at times throughout the pandemic. He advised in his own words that *“the priority was on mine and my family's health and mental wellbeing across 2020-2022”*
11. The Appellant submitted that he returned to work, after [REDACTED] of unemployment during the pandemic, and focused on getting his life back in order. As part of this process, the Appellant explained that he attended to the submission of his 2018 Income Tax return and noted that he only filed it “a number of months late”.
12. In those circumstances, the Appellant requested the Commission to allow his appeal and direct the Respondent to repay the sum of €955.30 to him.

#### *Respondent*

13. The Respondent expressed empathy with the Appellant's circumstances. However, the Respondent stated while there was no dispute that the refund was owed to the Appellant, it was unable to repay the amounts sought for 2018 owing to the lapse of time between the date the refund arose and the date the Appellant submitted his claim.
14. The Respondent submitted as the refund arising was in respect of the tax year 2018, it could not make the refund to the Appellant as the claim was submitted outside the four-year period required under section 865 (4) TCA 1997.
15. In summation, the Respondent submitted while they had every sympathy for the position the Appellant found himself in, as a result of a valid claim not being made within the statutory timeframe and as there was no discretion provided in the relevant legislation, then his claim could not succeed.

#### **Material Facts**

16. The Commissioner finds the following material facts:-
  - 16.1 The Appellant was due a refund of tax in the sum of €955.30 for the year of assessment 2018.
  - 16.2 The Appellant did not seek that repayment until he submitted his 2018 Income Tax return on 16<sup>th</sup> March 2023.
  - 16.3 The Respondent was first advised of the refund for the year 2018 by the Appellant on 16<sup>th</sup> March 2023.
  - 16.4 The Respondent did not issue the refund for the year 2018 as the claim was not submitted within the four-year timeframe stipulated under section 865 (4) TCA 1997.

These material facts are not at issue between the parties and the Commissioner accepts them.

### Analysis

17. Section 865(2) TCA 1997 provides that a person is entitled to a repayment of tax where an amount of tax paid is not due from that person. 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.
18. Section 865(1) (b) (i) TCA 1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Respondent may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
19. Section 865(1) (b) (ii) TCA 1997 provides that where all the information which the Respondent may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.
20. In relation to a limitation period for a repayment of tax section 865(4) of the 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].
21. A repayment of tax was sought on the basis that an amount of tax paid for 2018 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) TCA 1997 means the repayment of tax sought under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax for the year 2018 to be due, the Respondent must have received a valid claim.
22. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due, following the delivery of the relevant claim to repayment, only when the inquiry to the Respondent was made by the Appellant on 16<sup>th</sup> March 2023.
23. Having established that there is a valid claim, the provisions of section 865(4) TCA 1997 must be applied. As the claim for repayment of tax was made outside the four-year period

specified in section 865(4) TCA 1997, the claim for repayment for the year 2018 was disallowed.

24. 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.
25. 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.
26. 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 website<sup>1</sup>.
27. The Commissioner notes the Appellant's comments regarding his mental health during the Covid-19 pandemic and hopes with the easing of Covid related restrictions, that his condition has improved. While of limited assistance to the Appellant, in acknowledging his comments that he was unable to find a tax advisor and as to whether the Respondent was operational during the period of Covid restrictions, the Government published a Statutory Instrument<sup>2</sup> ("S.I.) at the onset of the pandemic.
28. This S.I. contained details of "essential goods" and "essential services" which the Government recognised needed to be available even during the most stringent lockdown conditions imposed. Included within "essential services" is "Financial and legal activities"<sup>3</sup> which permitted both the Respondent and tax service providers to open for business during those periods.
29. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof in appeals seeking repayments of tax under section 865 TCA 1997 is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

<sup>2</sup> S.I. No 701 of 2020. Health Act 1947 (Section 31A – Temporary Restrictions) (Covid-19) (No. 10) Regulations 2020.

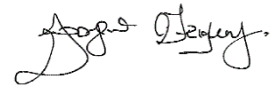
<sup>3</sup> At Page 26 of that S.I.

30. The burden of proof has not been discharged to satisfy the Commissioner that the refund for the years 2018 is payable by the Respondent pursuant to section 865 TCA 1997.

**Determination**

31. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant refunds are payable. The Commissioner appreciates that the Appellant will be disappointed with this determination but he was correct to seek legal clarity on his appeal.

32. This Appeal is determined in accordance with Part 40A TCA 1997. 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 within 42 days of receipt in accordance with the provisions set out in the TCA 1997



Andrew Feighery  
Appeal Commissioner  
22<sup>nd</sup> August 2023