



**Between**

138TACD2023

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**Appellant**

and

The Revenue Commissioners

**Respondent**

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**Determination**

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**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 (“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 year of assessment 2016. The amount of overpayment of tax at issue is in the sum of €221.00 for the year 2016.
2. On 20 October 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**

3. On 18 March 2017, as requested by the Appellant, the Respondent issued a paper Form 11 to the Appellant, for the year 2016. On 1 February 2018, the Respondent issued an income tax return reminder to the Appellant, for the year 2016 return.

4. On 15 June 2022, the Respondent received from the Appellant a paper Form 11 for the year 2021. On 14 June 2022, the Appellant confirmed to the Respondent that the paper Form 11 was in fact a return for the year 2016.
5. On 30 September 2022, the paper Form 11 was processed by the Respondent. On 1 October 2022, a Notice of Assessment issued to the Appellant, showing an overpayment of income tax for the year 2016, in the sum of €221.00.
6. On 4 October 2022, a refund of income tax in the sum of €221.00 was generated and disapproved for repayment by the Respondent, as it was outside the 4 year timeline provided for in Section 865 TCA 1997.
7. On 4 October 2022, the Respondent issued correspondence to the Appellant informing the Appellant that the Respondent is precluded from repaying the overpayment of income tax in the sum of €221.00.
8. The Appellant states that it was very difficult to obtain a paper Form 11 from the Respondent and it was not clear in correspondence that there might be an issue with the repayment of overpaid income tax.
9. Following the refusal of the repayment of the sum of €221.00, the Appellant states that it again was very difficult to engage with the Respondent and each time the Appellant telephoned the Respondent, the Appellant was redirected back to the Revenue Online System (“ROS”), which the Appellant found very challenging to navigate. When the Appellant eventually got through to the Respondent, the Appellant requested that a paper Form 11 be sent to the Appellant. Further, the Appellant states that the Covid-19 pandemic contributed to the inability of the Appellant to engage with the Respondent.

### **Legislation and Guidelines**

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

11. Section 865 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.*

## **Submissions**

### *Appellant's submissions*

12. 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:-

12.1. The Appellant was unaware that a refund was due and owing. The Appellant is a [REDACTED], working full time and is extremely busy with everyday life.

12.2. The Appellant found it very difficult to obtain a paper Form 11 from the Respondent and it was not clear in correspondence that there might be an issue with repayment of overpaid income tax.

12.3. When the Appellant was informed about the refund payment being precluded, the Appellant contacted the Respondent, but found it very difficult to engage with the Respondent.

12.4. Each time the Appellant telephoned the Respondent, the Appellant was redirected back to the ROS, which the Appellant found very challenging to navigate. When the Appellant eventually got through to the Respondent, the Appellant requested that a paper Form 11 be sent to the Appellant.

12.5. The Covid-19 pandemic contributed to the delay and created further difficulties for the Appellant contacting the Respondent as many offices were closed.

### *Respondent's submissions*

13. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

- 13.1. The appeal relates to repayments of overpaid income tax for the year 2016, disallowed under section 865 TCA 1997, because the claims were made outside the 4 year time limit.
- 13.2. On 18 March 2017, a paper Form 11 issued to the Appellant and on 1 February 2018, a reminder issued to the Appellant to submit the Appellant's 2016 income tax return.
- 13.3. On 1 June 2022, the Respondent received a paper Form 11 for 2021 from the Appellant. On 14 July 2022, the Appellant confirmed that the paper Form 11 for 2021, was in fact for the year 2016.
- 13.4. On 30 September 2022, the Respondent processed the Appellant's Form 11 for the year 2016 and on 1 October 2022, a Notice of Assessment issued to the Appellant.
- 13.5. On 4 October 2022, a refund of overpaid income tax in the sum of €221.00 was generated by the Respondent and thereafter disapproved, as the claim was made outside the 4 year time limit, as provided for in Section 865 TCA 1997.

#### **Material Facts**

14. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
  - 14.1. The Appellant is a [REDACTED] working full time and is extremely busy with everyday life.
  - 14.2. On 18 March 2017, a paper Form 11 issued to the Appellant.
  - 14.3. On 1 February 2018, a reminder issued to the Appellant to submit the Appellant's 2016 income tax return.
  - 14.4. On 1 June 2022, the Respondent received a paper Form 11 for 2021 from the Appellant.
  - 14.5. On 14 July 2022, the Appellant confirmed that the paper Form 11 for 2021, was in fact for the year 2016.
  - 14.6. On 30 September 2022, the Respondent processed the Appellant's Form 11 for the year 2016.
  - 14.7. On 1 October 2022, a Notice of Assessment issued to the Appellant.

14.8. On 4 October 2022, a refund of overpaid income tax in the sum of €221.00 was generated by the Respondent and thereafter disapproved, as the claim was made outside the 4 year time limit provided by Section 865 TCA 1997.

14.9. The Appellant's income tax return for the year 2016 resulted in an overpayment of income tax in the sum of €221.00.

### **Analysis**

15. 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".*

16. 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 year **2016**, in the sum of **€221.00**, as the claim was made outside of the four year time limit prescribed in **section 865(4) TCA 1997**.

### **Section 865 TCA 1997**

17. The Appellant has been denied a repayment of tax by the Respondent on the grounds that the Appellant 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.

18. The Commissioner observes the Appellant's submissions that the Appellant found it very difficult to obtain a paper Form 11 from the Respondent and it was not clear in correspondence that there might be an issue with a repayment of overpaid income tax. Moreover, the Commissioner notes the Appellant's submission that following the refusal by the Respondent of a repayment of income tax in the sum of **€221.00**, the Appellant again found it very difficult to engage with the Respondent and that each time the Appellant telephoned the Respondent, the Appellant was redirected back to the ROS, which the Appellant found very challenging to navigate. When the Appellant eventually got through to the Respondent, the Appellant requested that a paper Form 11 be sent to the Appellant.

Further, the Commissioner notes the submission of the Appellant in relation to the Covid-19 pandemic. The Commissioner is of the view that public services should be accessible to all citizens of the State and that if a citizen is finding it difficult to navigate a system that every effort is made to assist that person.


19. 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).
20. 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.
21. 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 a paper Form 11 on **1 June 2022**, is regarded as a valid claim for the purposes of section 865(3) TCA 1997.
22. 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].
23. As the Appellant's claim for repayment of income tax relates to the tax year **2016**, a valid claim for repayment must have been made on or before **31 December 2020**, for year at issue. The Appellant filed a paper Form 11 on **1 June 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.
24. As the claim for repayment of income tax by the Appellant was made outside the four year period specified in section 865(4) TCA 1997, the claim for repayment in the amount of **€221.00** was disallowed. The Commissioner notes that correspondence issued on **4**

**October 2022** from the Respondent, informing the Appellant that repayment of income tax was disallowed under section 865 TCA 1997.

25. 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.
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 has every sympathy for the Appellant’s situation. Unfortunately, the Commissioner has no discretion to assist in these circumstances due to the four year rule prescribed by legislation. Hence, the appeal is denied.

#### **Determination**

28. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in the appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865 TCA 1997.
29. 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. The Appellant was correct to appeal to have clarity on the position.
30. This appeal is hereby determined in accordance with Part 40A 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  
24 August 2023

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