



154TACD2023

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 year 2017. The ground given for refusal was that the Appellant had not made a claim within the four year time-limit prescribed by section 865(4) of the Taxes Consolidation Act 1997 (“the TCA 1997”).
2. This appeal is determined, at the request of the parties, without a hearing pursuant to section 949U of the TCA 1997.

Background

3. The facts relevant to this appeal may be summarised as follows. On 31 May 2018 the Appellant filed a Form 11 self-assessment return for the year 2017, which included income from three rental properties in the gross amount of €23,400. Pursuant to the contents of the Appellant’s return, he assessed himself as having an amount of tax payable for 2017 of €5,027.18.

4. The Respondent issued an acknowledgement of the Appellant's self-assessment on the same date as the filing of his return.
5. On 15 August 2022, the Appellant sent email correspondence to the Respondent requesting that his liabilities for the years 2017, 2018, 2019 and 2020 be reassessed. The basis for this request was that the rental income included in his Form 11 return was in fact income attributable to his spouse.
6. It is apparent that the Respondent took no issue with this as a matter of fact because, on 30 August 2022, it issued a Notice of Amended Assessment for the year 2017, which assessed the Appellant as having overpaid tax in the amount of €2,602.68. The Notice of Amended Assessment stated that it was issued by the Respondent pursuant to section 959U of the TCA 1997.
7. On 2 September 2022, the Respondent issued correspondence to the Appellant stating that it would not make repayment of the tax assessed as having been overpaid for the year 2017. It did so on the ground that the claim for repayment was not made within four year of the end of the chargeable period to which the claim related, contrary to the time-limit imposed by section 865(4) of the TCA 1997.
8. In accordance with his right under section 865(7) of the TCA 1997, the Appellant appealed this decision by way of Notice of Appeal delivered to the Commission on 12 September 2022.

Legislation and Guidelines

9. 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."

10. 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. Section 865(1)(b)(i)(I) TCA 1997 provides that a valid claim shall have been made where a person files a return that contains:-

“...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...”

11. Section 865(4) TCA 1997 sets the following time-limit on repayments:-

“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—

[...]

(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.”

12. Section 959E of the TCA 1997 is entitled *“Notice of assessment by Revenue officer”* and provides at subsection (1) therein that:-

“Where a Revenue assessment is made or a self assessment is made by a Revenue officer in relation to a chargeable person under section 959U, a Revenue officer shall give notice to the person assessed of the assessment made.”

13. Section 959U of the TCA 1997 is entitled *“Self assessment by Revenue officer in relation to chargeable person*. Subsection 1 therein provides:-

“Where a chargeable person, or a person to whom section 959T applies, delivers a return but does not include a self assessment in the return, a Revenue officer, subject to section 959AA(1) —

(a) shall, where section 959S applies, and

(b) may, in any other case,

make the self assessment in relation to the chargeable person.”

14. Subsection 7 of the section 959U of the TCA 1997 then provides:-

“Any self assessment made by a Revenue officer under this section shall be deemed to be a self assessment made by the chargeable person and references in the Acts to the self assessment of a chargeable person shall be treated as including a self assessment made under this section.”

15. Section 959AA of the TCA 1997, to which section 959U refers, is entitled *“Chargeable persons: time limit on assessment made or amended by Revenue Officer”*. Subsections (1) and (2) therein provide:-

“(1) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period—

- (a) an assessment for that period, or*
- (b) an amendment of an assessment for that period,*

shall not be made by a Revenue officer on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and—

(i) no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and

(ii) no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(2) Nothing in this section prevents a Revenue officer from, at any time, amending an assessment for a chargeable period—

(a) where the return for the period does not contain a full and true disclosure of all material facts necessary for the making of an assessment for that period,

(b) to give effect to—

(i) a determination of an appeal against an assessment,

(ii) a determination of an appeal, other than one made against an assessment, that affects the amount of tax charged by the assessment, or

(iii) an agreement within the meaning of section 949V.

(c) to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(d) to correct an error in calculation in the assessment, or

(e) to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid (notwithstanding any limitation in section 865(4) on the time within which a claim for a repayment of tax is required to be made) where appropriate in accordance with any such amendment.”

16. Section 959V of the TCA 1997, entitled “Amendment by chargeable person of return and of self assessment in return”, provides:-

“(1) Subject to the provision of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.

(2) Where a return is amended in accordance with subsection (1), the chargeable person shall as part of that notice amend the self assessment for the chargeable period at the same time. Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.

(2A) A return and self assessment may be amended under this section only where such an amendment –

[...]

[b] is necessary to correct either an error or a mistake [...]

and notice of an amendment under this section shall specify which of paragraphs (a), (b) and (c) applies.

[...]

(7) Notice under this section shall not be given in relation to a return and a self assessment after a Revenue officer has started to make enquiries under section 959Z in relation to the return or self assessment or after he or she has commenced an

audit or other investigation which relates to the tax affairs of the person to whom the return or self assessment relates for the chargeable period involved.”

Submissions

Appellant

17. The Appellant submitted that, in circumstances where there was no dispute that he had overpaid tax for 2017, the Respondent was under a legal and moral duty to repay to him the tax overpaid.

Respondent

18. The Respondent submitted that the amended Notice of Assessment for 2017 giving rise to the repayment request issued under section 959V(2)(a) of the TCA 1997, contrary to the statement on its face that is issued under section 959U of the same legislation.
19. Section 959V(2)(a) allows for a self-assessed return or assessment to be amended by a chargeable person in order to correct an error therein. The chargeable person must give the appellant “notice” of their intention to avail of this right of amendment. Critically, section 959V(6) of the TCA 1997 prohibits amendment by a chargeable person where their notice is given more than four years after the end of the chargeable period to which the return in question relates.
20. The Respondent contended that in this instance it had issued a Notice of Amended Assessment on foot of the Appellant’s notice of 15 August 2022, which was delivered outside the aforementioned time-limit under section 959V(6) of the TCA 1997. The Respondent submitted that the Appellant’s notice seeking amendment was clearly out of time and it had issued the Notice of Amended Assessment in error. In essence it asked the Commissioner to disregard the assessment made.
21. The Respondent submitted that, in any event, section 865(4) of the TCA 1997 expressly prohibits it from making repayment in respect of claims made more than four years after the end of the chargeable period to which the repayment claim relates. As the repayment claim related to the year 2017, the Appellant had until the end of 2021 to make a valid claim within the meaning of section 865 of the TCA 1997 to stop time running. The Appellant had missed this deadline by over 7 months and the decision to refuse was correct in law.

Material Facts

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

- on 31 May 2018 the Appellant filed a Form 11 self-assessment return for the year 2017, which included income from three rental properties in the gross amount of €23,400;
- reflecting the information contained in the Form 11 return, including that relating to the rental income from the three properties, the Appellant assessed himself as having a charge to income tax for the year 2017 of €5,027.18;
- on 15 August 2022, the Appellant sent email correspondence to the Respondent requesting that his tax return for the year 2017 be reassessed. The basis for this request was that the rental income included in his Form 11 return was in fact income attributable to his spouse;
- on 30 August 2022, the Respondent issued a Notice of Amended Assessment for the year 2017, which assessed the Appellant as having overpaid tax in the amount of €2,602.68;
- this Notice of Amended Assessment was issued under section 959U of the TCA 1997;
- on 2 September 2022, the Respondent issued correspondence to the Appellant stating that it would not make repayment of the tax assessed as having been overpaid for the year 2017.

Analysis

23. The Appellant in this case has appealed, pursuant to section 865(7) of the TCA 1997, the refusal of the Respondent to make repayment. The Respondent based this refusal on section 865(4) of the TCA 1997, which prohibits the repayment of overpaid tax where the chargeable person makes their claim more than four years after the end of the tax year to which the claim relates.
24. Part of the submission made by the Respondent in this case focused on the power under which it made the amended assessment that calculated the Appellant's overpayment for 2017. The Respondent suggested that it issued the amended assessment pursuant to section 959V(2) of the TCA 1997. However, it is clear from the Notice of Amended Assessment issued by the Respondent on 30 August 2022, that the amended assessment was made under section 959U of the TCA 1997. Assessments are made by the Respondent under particular powers conferred on it by the Oireachtas in legislation. It is not the function of the Commissioner to look behind the express wording contained in an assessment stating that it has issued pursuant to one such legislative provision. By

the same token it is not within the power of the Commissioner to deem an assessment made, as a matter of fact, under one provision as having been made under another.

25. Notwithstanding the foregoing, the Commissioner wishes to make the *obiter* comment that it is not clear what subsection within section 959V of the TCA 1997 might allow the Respondent to issue a Notice of Amended Assessment. This provision as a whole concerns to the amendment of a return or self-assessment by a chargeable person themselves. It does not concern amendments made by an officer of the Respondent.
26. Section 959U of the TCA 1997 permits the Respondent to, in effect, step into the shoes of a taxpayer who has delivered a Form 11 return but has not self-assessed and perform that self-assessment on their behalf. Subsection 7 therein makes clear that any assessment made by an officer of the Respondent in this context shall be deemed to be a self-assessment of that taxpayer themselves.
27. Section 959U(1) of the TCA 1997 provides that the power to assess under this provision is subject to the time-limit prescribed by section 959AA(1) of the TCA 1997 on the making of an assessment by an officer of the Respondent. This provides that no assessment shall be made “*after the end of 4 years commencing at the end of the chargeable period in which the return is delivered.*” The return of the Appellant in this instance triggering the assessment was delivered, at the earliest, in 2018 and, consequently, an assessment within the parameters of the limitation period could have issued up until the end of 2022. As such, the assessment made by the officer of the Respondent, but deemed pursuant to section 959U(7) of the TCA 1997 to be one made by the Appellant himself, was made within time.
28. The question that then arises is whether the sum overpaid by the Appellant for 2017, calculated in an assessment deemed to be one made by the Appellant himself, should be repaid. The answer to this is clear having regard to the time-limit on repayment set out in section 865(4) of the TCA 1997. This, unlike that set out in section 959AA of the TCA 1997 relating to the issuing of assessments, prescribes that a taxpayer has until four years after the end of the “*chargeable period to which the claim relates*” to make their “valid claim” required by section 865(3). This means that the claim had to be made no later than the end of 31 December 2021.
29. Section 865(1)(b)(i)(I) of the TCA 1997 defines a valid claim as having been made where the Respondent has been provided by a taxpayer with all the information it may “reasonably require” in order to determine if a repayment of tax is due. There can be no doubt that the earliest point at which it could be said that the Respondent was provided with the information necessary to determine that the Appellant was in this instance due a

repayment was 15 August 2022. This brings the Appellant's claim outside the time within which the Respondent is permitted by legislation to make repayment.

30. The jurisdiction of the Commissioner in the hearing of an appeal is limited to the application of relevant legislation, as passed by the Oireachtas and thereafter enacted. The Commissioner has no jurisdiction to consider questions relating to the fairness of legislation as it applies in an individual case (in this regard see the judgment of the Court of Appeal in *Lee v Revenue Commissioner [2021] IECA 18*, which the Commissioner is bound by law to follow). For good or ill, the Oireachtas decided that claims for the repayment of tax made more than four years after the end of the chargeable period to which the claim relates should not be allowed. This being so, the Commissioner must find that the decision of the Respondent under appeal was correct and stands affirmed.

Determination

31. It is determined that the Appellant's claim for the repayment of income tax assessed as having been overpaid for the year 2017, in the sum of €2,602.68, was out of time and must be refused having regard to the time-limit prescribed by section 865(4) of the TCA 1997.
32. 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
19 September 2023