



Between

29TACD2024

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Table of Contents

Introduction	3
Background.....	3
Legislation and Guidelines.....	4
Submissions.....	5
Appellant's submissions	5
Respondent's submissions.....	6
Material Facts	8
Analysis.....	9
Section 865 TCA 1997	10
Determination.....	13
Notification	13
Appeal.....	13

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 [REDACTED] (“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 income tax at issue is in the sum of **€6,465.49**.
2. On 25 August 2021, 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 adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**.
3. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has also received a Statement of Case from the Respondent and that has also been considered in this determination.

Background

4. On or about 30 June 2016, the Appellant [REDACTED]. On 16 December 2020, the Appellant made an application for Single Person Child Carer Credit (“SPCC”) for the year 2016.
5. On 18 July 2017, the Appellant, as the assessable spouse, submitted a Form 12 for the year 2016 and on 30 June 2019, the Appellant submitted a Form 12 for the years 2017 and 2018. The returns were submitted on a married, joint assessment basis [REDACTED]. The Respondent states that refunds, mainly relating to Health/Dental expenses, issued for each of these years.
6. On 5 November 2020, the Appellant registered for income tax with effect from 1 December 2020. Thereafter, on 28 December 2020, the Appellant’s Agent submitted the Appellant’s Form 11 for the years 2016 and 2019 and on 18 December 2020, the Appellant’s Agent submitted the Appellant’s Form 11 for the years 2017 and 2018.
7. On 29 December 2020, the Respondent processed the 2016 Form 11 and on the same date a Notice of Assessment issued showing a refund due to the Appellant in the sum of **€2,465.91**. Subsequent to correspondence with the Appellant’s Agent, the original

assessment was amended and on 22 June 2021, a Notice of Amended Assessment issued to the Appellant showing a refund due to the Appellant in the sum of **€6,465.49**.

8. The Respondent has made repayments of income tax for all relevant years with the exception of 2016. The repayment claim for the year 2016, has been refused, as a valid claim for repayment in accordance with the provisions of section 865(3) TCA 1997 was not made pursuant to section 865(4) TCA 1997.

Legislation and Guidelines

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

10. 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)....

.....

(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

(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.

(5)

(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

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

"I submitted a tax return for the above client for 2016 on December 29th 2020 claiming a refund of €2466.00.

However, she has been denied her refund that she was notified of €6465.00 on June 22nd this year.

I first wrote to revenue through MyEnquiries on July 10th. I received a reply on July 27th saying that the amendment made by revenue on June was outside the four-year limit and was therefore refused. I wrote again that same day. I received a response the next day again denying the refund. I wrote back that same day. I then received a reply telling me to email you. I am appealing on the grounds that:

I have appealed the decision within the 30 day limit. I wrote to revenue on July 10th.

[REDACTED]. She wanted to have her finances [REDACTED].

[REDACTED].

[REDACTED].

It is not my client's fault that revenue could not calculate the return until after the end of 2020.

If revenue could not calculate the refund due until after the year end, why was a letter sent to her in June 2021 indicating the amount of the refund she was due from 2016 and then another letter telling her she wasn't getting it after all?

[REDACTED], it is not unreasonable that my client was unable to think about getting this information to revenue before April the following year. [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED] She did the best she could.

I am asking you to please consider the position that [the Appellant] found herself in. While I understand that rules and deadlines are important and vital to the fairness of tax collection, I feel in this case that some latitude could be shown".

Respondent's submissions

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

"The appellant and her spouse are [REDACTED].

Neither party informed the Revenue of this until, at the earliest, 16/12/2020 when an application for [REDACTED] for tax year 2016 was submitted.

The appellant registered for Income Tax on 5/11/2020 with a date of registration requested with effect from 1/1/2020. The stated business was [REDACTED].

Although not a chargeable person under Section 959I, the appellant's agent submitted, through ROS, Forms 11 for tax years 2016 (28/12/2020), 2017 (18/12/2020), 2018 (18/12/2020 and 2019 (28/12/2020). Repayments have issued for all relevant years except tax year 2016.

.....

Although a return was submitted on 28/12/2020 it is Revenue's view that this was not a valid claim.

Revenue view the Form 11 submitted on 28/12/2020 as not being valid as:

While, in the personal details section of the return the appellant correctly indicated that she was [REDACTED] she did not complete either of the questions in the next section.

.....

Had the form been correctly completed stating that the appellants previous status was [REDACTED] and that the date of the change was [REDACTED] form would then have shown the following section to be completed:

.....

The answers to these questions were that the previous basis was [REDACTED] and that the appellant was [REDACTED], i.e. the box should have been ticked.

Had they been correctly completed the [REDACTED] credit of €3,300 would have been applied, as would the [REDACTED] rate band and a different calculation of the tax payable/repayable issued

The return contains a claim for [REDACTED] under the provisions of Section 462B.....

i.e. where the [REDACTED] basic personal credit of €3,300 applies the [REDACTED] cannot be claimed. Had the form been correctly completed the claim for [REDACTED] would not have been allowed.

1) The appellant's [REDACTED]
[REDACTED]. As the appellant was [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

An incorrect figure for tax refunded as a result of the submission of the Form 12 for tax year 2016 was entered on the Form 11 submitted.

Although the Appellant filed the tax return that was required to be delivered on 28 December 2020 a claim for repayment only exists from that date if the claim is a valid claim under the provisions of section 865.

All the information to allow for a correctly calculated claim of any refund due, and therefore a valid claim, did not exist until after 31/12/2020"

Material Facts

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

- 13.1. On or about 30 June 2016, [REDACTED].
- 13.2. On 18 July 2017, the Appellant, [REDACTED], submitted Forms 12 for the year 2016 and on 30 June 2019, for the years 2017 and 2018. The returns were submitted on a [REDACTED] basis with no reference to the [REDACTED].
- 13.3. On 5 November 2020, the Appellant registered for income tax, with effect from 1 December 2020.
- 13.4. On 16 December 2020, the Appellant made an application for [REDACTED] for the year 2016.
- 13.5. The Respondent was not informed until on or around 16 December 2020, at the earliest, that [REDACTED], when the Appellant submitted an application for [REDACTED] for the year 2016.
- 13.6. On 28 December 2020, the Appellant's Agent submitted the Appellant's Form 11 for the years 2016 and 2019 and on 18 December 2020, the Appellant's Agent submitted the Appellant's Form 11 for the years 2017 and 2018.

- 13.7. On 29 December 2020, the Respondent processed the 2016 Form 11 and on the same date, a Notice of Assessment issued showing a refund due to the Appellant in the sum of €2,465.91.
- 13.8. The Appellant did not correctly complete the Form 11, for the year 2016.
- 13.9. The income of [REDACTED] for the part of the year [REDACTED] was not included on the return.
- 13.10. As the Appellant was [REDACTED] [REDACTED] her income for the full year [REDACTED] [REDACTED] was required to be entered on the return.
- 13.11. Had the Appellant's income tax return been correctly completed, the [REDACTED] credit of €3,300 would have been applied, as would the [REDACTED] rate band and a different calculation of the tax payable/repayable would have issued.
- 13.12. Where a [REDACTED] basic personal credit of €3,300 applies, the [REDACTED] cannot be claimed.
- 13.13. Had the Appellant's Form 11 been completed correctly, the claim for [REDACTED] would not have been allowed.
- 13.14. On 22 June 2021, subsequent to correspondence with the Appellant's Agent, the original assessment was amended by the Respondent and a Notice of Amended Assessment issued to the Appellant showing a refund due to the Appellant in the sum of €6,465.49.
- 13.15. On 29 June 2021, correspondence issued from the Respondent denying the claim for repayment in accordance with the provisions of section 865(4) TCA 1997.
- 13.16. The information required by the Respondent for a valid claim for repayment to be made in relation to the year 2016, was not furnished to the Respondent until after 31 December 2020.

Analysis

14. 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(4) TCA 1997 made by the Appellant in respect of the year 2016, in the sum of €6,465.00.

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. states that:

“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 Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute...”

Section 865 TCA 1997

17. The Appellant has been denied a repayment of income tax by the Respondent on the grounds that the Appellant does not meet the criteria as outlined by section 865(3) TCA 1997, namely that a claim for repayment of income tax for the chargeable period was not a valid claim and thus, a valid claim was not received in accordance with the provisions of section 865(4) TCA 1997.

18. The Commissioner has considered the Appellant’s submissions as set out in both her Notice of Appeal and Statement of Case. In addition, the Commissioner has considered the Respondent’s submissions as set out in its Statement of Case, in relation to the repayment claim. In that regard, the Commissioner notes that repayments have been made to the Appellant for the years claimed, with the exception of the year 2016, as the Respondent submits that it did not have all the information if reasonably required to determine the extent of the repayment due, if any, within the relevant time limit prescribed by legislation.

19. The Commissioner observes that on 28 December 2020, the Appellant’s Agent submitted the Appellant’s Form 11 for the year 2016. The Commissioner notes that the Appellant’s Agent submits that it is not the Appellants fault that the Respondent could not calculate the return until after the end of 2020. The Appellant’s Agent queries, if the Respondent could not calculate the refund due until after the year end 2020, why did correspondence

issue to the Appellant in June 2021, indicating the amount of the repayment of income tax due for 2016 and then subsequently, issue further correspondence informing the Appellant that the repayment was disallowed. The Commissioner notes that the Appellant's Agent states that "*I am asking you to please consider the position that [the Appellant] found herself in. While I understand that rules and deadlines are important and vital to the fairness of tax collection, I feel in this case that some latitude could be shown*".

20. 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).
21. 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.
22. 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.
23. 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].
24. 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 the year at issue. The Appellant filed her Form 11 for the year 2016 on 28 December 2020. However, the Respondent did not consider that the claim was a valid claim in accordance with section 865(3) TCA 1997 and sought further information from the Appellant. The Commissioner is satisfied that the information that the Respondent reasonably required to determine if and to what extent a repayment was due was not contained in the return submitted by the Appellant, on 28 December 2020.
25. The Commissioner notes from the submissions that on 29 December 2020, the Respondent processed the 2016 Form 11 and on the same date, a Notice of Assessment

issued showing a refund due to the Appellant of €2,465.91. The Commissioner further notes that on 22 June 2021, subsequent to correspondence with the Appellant's Agent, the original assessment was amended and a Notice of Amended Assessment issued to the Appellant showing a refund due to the Appellant of €6,465.49. Thereafter, on 29 June 2021, correspondence issued from the Respondent denying the claim, in accordance with the provisions of section 865(4) TCA 1997.

26. The Commissioner is satisfied that no valid claim for repayment existed until 2021, when the Respondent had all the information it reasonably required from the Appellant to determine if a repayment is due. The Commissioner is satisfied that section 865(1)(b)(ii) TCA 1997 is clear and self-evident, such that it states that "*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 period shall be treated as a valid claim when that information has been furnished by the person*". [Emphasis added]
27. As no valid claim for repayment of income tax was made by the Appellant within the four year period specified in section 865(4) TCA 1997, the claim for repayment in the amount of **€6,465.49** for the year **2016** was disallowed. The Commissioner notes that correspondence issued on 29 June 2021 from the Respondent, informing the Appellant that an overpayment of income tax was made and subsequently that the repayment of income tax was disallowed under section 865(4) TCA 1997. The Commissioner understands that this is the process of the Respondent, that a notice of assessment or notice of amended assessment would issue for the relevant year showing a taxpayers liabilities for the relevant year and if an overpayment of tax is due on foot of a notice of assessment or notice of amended assessment, that will be indicated to a taxpayer. Nevertheless, thereafter the Respondent must consider any repayment in light of the legislative provisions and thus, section 865(4) TCA 1997 is applied to determine if a repayment is allowed.
28. 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.

29. 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.
30. 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

31. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(3) and 865(4) TCA 1997.
32. 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.
33. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

34. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

35. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has

¹ www.taxappeals.ie

no discretion to accept any request to appeal the determination outside the statutory time limit.

A handwritten signature in black ink, appearing to read "Claire Millrine". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Claire Millrine
Appeal Commissioner
07 December 2023