



49TACD2024

Between:

[REDACTED]

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 Income Tax pursuant to section 865 of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997") made by the Appellant in respect of the tax year 2017.
2. The amount of tax at issue is €1,043.35.

Background

3. ██████████ (hereinafter the "Appellant") is a taxpayer who on 21 June 2023 filed a Form 11 tax return for the year 2017 (hereinafter the "Return") with the Respondent. The Return indicated that the Appellant had overpaid Income Tax for 2017 in the amount €1,043.35.
4. By way of letter dated 7 July 2023, the Respondent has disallowed repayment of the overpaid tax on the basis that the claim for repayment of Income Tax had not been made within 4 years of the end of the relevant tax year to which the claim related pursuant to the provisions of section 865 of the TCA 1997.
5. The Appellant has appealed the disallowance of the repayment of tax by the Respondent for the tax year 2017 by way of a Notice of Appeal which was submitted to the Commission on 12 July 2023.
6. On 4 December 2023 the Commission wrote to the parties indicating the Commissioner's intention to determine this appeal without the holding of an oral hearing pursuant to the provisions of section 949U of the TCA 1997 and allowed the parties 21 days to indicate their disagreement with same. The Appellant has not objected to this course of action. The Respondent, by correspondence dated 20 December 2023, indicated that it had no objection to this appeal being determined pursuant to the provisions of section 949U of the TCA 1997. As a result this appeal has been determined pursuant to the provisions of section 949U of the TCA 1997.

Legislation and Guidelines

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's Submissions

8. The Appellant submitted the following in support of this appeal in his Notice of Appeal:

"I paid Income tax in the year 2019 for the year 2017 but made an error while doing so. I never filled out the accompanying form 11 for my share options. I recently filled out the form 11 and paid the outstanding tax again as I was unsure if the original payment was submitted to the correct payment office. Now the year is fully paid up by I overpaid [sic] by a significant amount as stated above. The reason for the refusal of the refund is that it has surpassed the 4 years' timeframe. The sent me a letter to pay the arrears for the year 2017 so I believe it only fair to refund the overpayment too."

9. The Appellant submitted the following in support of this appeal in his Statement of Case:

"I paid Income Tax for the year 2017 in 2019 but made an error while doing so. I never filled out the accompanying Form 11 for my share options. I recently filled out the Form 11 for 2017 and paid the outstanding tax again as I was unsure if the original payment was submitted to the correct payment office. Now the year is overpaid [sic] by €1,043.35. I requested the refund for the overpayment but it was refused because it has surpassed the 2 year timeframe. However I received Notice of Payments his year to rectify the arrears and both payments were made during the last 4 years."

Respondent's Submissions

10. The Respondent submitted that the provisions of section 865 of the TCA 1997 mean that a valid claim for the repayment of tax 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.

Material Facts

11. The following material fact is not at issue in this appeal and the Commissioner accepts same:
- (i) The Appellant submitted a claim for repayment of tax for the tax year 2017 to the Respondent on 21 June 2023.

Analysis

12. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, 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 Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”

13. The Commissioner has considered the submissions made and documentation submitted on behalf of both parties in this appeal.
14. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid 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.
15. Section 865(1)(b)(i) of the 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.
16. Section 865(1)(b)(ii) of the 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.
17. 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].

18. A repayment of tax was sought by the Appellant on the basis that an amount of tax paid for 2017 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) of the TCA 1997 means the repayment of tax sought under section 865(2) of the TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €1,043.35 for the tax year 2017 to be due, the Respondent must have received a valid claim.
19. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due on 21 June 2023 following the delivery of the relevant claim to repayment by the Appellant by way of the submission of the Form 11 tax return. This was in excess of 4 years from the end of the tax year 2017.
20. Having established that there is a valid claim, the provisions of section 865(4) of the TCA 1997 must be applied. As the claim for repayment of tax was made outside the 4 year period specified in section 865(4) of the TCA 1997, no valid claim for repayment of tax had been submitted by the Appellant and the claim for repayment in the amount of €1,043.35 for the tax year 2017 was disallowed by the Respondent.
21. The use of the word “*shall*” as set out in section 865(4) of the 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 4 year rule might be mitigated.
22. 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 4 year period specified in section 865(4) of the TCA 1997.
23. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4 year statutory limitation period. These determinations, may be found on the Commission website.¹
24. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refund was payable by the Respondent.

Determination

25. For the reasons set out above, the Commissioner determines that this appeal has failed and that it has not been shown that the relevant refund was payable.
26. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the

¹ www.taxappeals.ie

Appellant's position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.

27. This appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular, sections 949AL and section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

28. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) of the TCA 1997 and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the 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 shall not receive any other notification of this determination by any other methods of communication.

Appeal

29. Any party dissatisfied with the determination has a right of appeal on a point or points of law only to the High Court within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Clare O'Driscoll
Appeal Commissioner
10 January 2024