



29TACD2018

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to the refusal by the Respondent to allow an offset of relevant contracts tax overpaid in 2009 against the Appellant's income tax liability in respect of the tax year of assessment, 2014.
2. This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997 ('TCA 1997').

Background

3. In 2009, the Appellant operated as a sub-contractor. In accordance with the relevant legislation, relevant contracts tax ('RCT') was applied and withheld at the rate of 35% by the principal contractor, in respect of payments made to the Appellant.
4. The RCT withheld was set against the Appellant's income tax liability for 2009 resulting in a tax overpayment of €3,458.32.



5. On 27 July 2016, the Appellant's tax agent contacted the Respondent seeking that tax overpaid in respect of 2009 be offset against the Appellant's income tax liability in respect of 2014. The Respondent replied on 8 August 2016 refusing the offset on the basis that the claim was made outside the four-year statutory time limit.
6. The Appellant accepted that section 865 TCA 1997 restricted repayments of tax where a valid claim was not made within the four-year statutory period contained in s.865(4). However, the Appellant did not accept that the same restrictions applied in relation to claims for offset.
7. By letter dated 27 September 2016, the Respondent advised the Appellant that s865B TCA 1997 restricted offsets where a repayment cannot be made pursuant to s865 TCA 1997 and as a result, the claim for offset in respect of the sum of €3,458.32 would be disallowed. This position was formalised by notice in writing from the Respondent dated 18 November, refusing the claim for offset.

Legislation

As set out in **Appendix I** below, the relevant legislative provisions are;

- Section 531 TCA 1997 – Payment to subcontractors in certain industries
- Section 865 TCA 1997 - Repayment of Tax
- Section 865B – No offset where repayment prohibited

Submissions

8. The Appellant accepted that neither a claim for offset nor repayment was made within the four-year statutory limitation period contained in s.865(4) TCA 1997.
9. The Appellant submitted that s.865 TCA, while disallowing a repayment of tax in respect of a claim falling outside the four-year statutory period, did not prevent an offset of the tax overpaid against liabilities arising outside the four-year statutory period. The Appellant submitted that he was unaware that he had overpaid tax in 2009. He stated that he was a compliant taxpayer in all respects



10. The Respondent submitted that sections 531 TCA 1997 and 865B(2) TCA 1997 did not allow for offset of tax where a repayment of tax would not be available pursuant to section 865(4) TCA 1997.

Analysis

11. The facts in this appeal are not in dispute. The parties accepted that a repayment claim in respect of the tax year of assessment 2009, was not made within four years after the end of the chargeable period to which the claim related.

12. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four-year rule in determinations numbered; 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 02TACD2017, 08TACD2017, 11TACD2017, 26TACD2017, 11TACD2017, 26TACD2017, 9TACD2018, 12TACD2018, 16TACD2018, 19TACD2018 and 25TACD2018. The Tax Appeals Commission has also addressed the 4-year time limit in the context of an offset claim in determination number 18TACD2018. These determinations can be found on the Commission website at www.taxappeals.ie.

13. The dispute in this appeal relates to whether the overpayment of tax in 2009 may be offset against the income tax liability of the Appellant in 2014.

14. Section 865B(2) TCA 1997 provides;

‘... where a repayment of tax cannot be made to a person by virtue of the operation of

-

(a) section 865

...

...

then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person’.

15. It is clear that section 865B(2) does not permit tax overpaid to be offset against tax liabilities in circumstances where a repayment claim in respect of the tax overpaid would not be available in accordance with the provisions of s.865(4) TCA 1997. In this appeal, a repayment would not be available to the Appellant in respect of the tax overpaid in 2009, as a valid claim for repayment was not made within the four-year statutory limitation period contained in s.865(4) TCA 1997.





16. As a result, I have no option but to determine that the tax overpaid of €3,458.32 arising in respect of the tax year of assessment 2009, is not available for offset against tax liabilities arising in respect of the tax year of assessment 2014.

Conclusion

17. In accordance with section 865B(2) TCA 1997, I determine that the Appellant cannot succeed in his claim for offset in 2014, of tax overpaid in 2009, where a repayment claim cannot be made in respect of the tax overpaid in 2009 in accordance with the provision of s.865(4) TCA 1997.

18. This appeal is determined in accordance with s.949AL TCA 1997.

COMMISSIONER LORNA GALLAGHER

November 2018



APPENDIX I – Legislation

Section 531 TCA 1997 – Payment to subcontractors in certain industries

Section 531(5A) TCA 1997 provides; *“that a claim to repayment under regulations made in accordance with paragraph (b) or (c) of subsection (5) shall not be allowed at a time at which a claim to repayment in respect of the chargeable period (within the meaning of Section 321), within which the period for which the claim to repayment falls, would not be allowed under Section 865(4)”.*

Section 865 TCA 1997 - Repayment of Tax

...

(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].

Section 865B – No offset where repayment prohibited

[(1) In this section—

“Acts” means—

(a) the statutes relating to the duties of excise and to the management of those duties,

(b) the Tax Acts,

(c) the Capital Gains Tax Acts,

(d) Parts 18A, 18C and 18D,

(e) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act,

(f) the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act,

[(g) the Value-Added Tax Consolidation Act 2010 and the enactments amending or extending that Act,

(h) the Finance (Local Property Tax) Act 2012, and

(i) any instruments made under any of the statutes and enactments specified in paragraphs (a) to (h);]

“relevant period”, in relation to a repayment, means—



(a) in the case of corporation tax, the accounting period of the company in respect of which the repayment arises,

(b) in the case of income tax, capital gains tax, income levy, universal social charge or domicile levy, the year of assessment in respect of which the repayment arises,

(c) in the case of stamp duties, the year of assessment or accounting period, as the case may be, within which falls the event in respect of which the repayment arises,

(d) in the case of gift tax or inheritance tax, the year of assessment or accounting period, as the case may be, within which falls the latest of the dates referred to in section 57(3) of the Capital Acquisitions Tax Consolidation Act 2003 and in respect of which the repayment arises,

[(e) in the case of excise duty, the year of assessment or accounting period, as the case may be, within which falls the act or event in respect of which the repayment arises,

(f) in the case of value-added tax, the year of assessment or accounting period, as the case may be, within which falls the taxable period in respect of which the repayment arises, and

(g) in the case of local property tax, the year within which the repayment arises;]

“repayment” includes a refund;

[“tax” means any income tax, corporation tax, capital gains tax, value-added tax, excise duty, stamp duty, gift tax, inheritance tax, income levy, domicile levy, universal social charge or local property tax and includes—]

(a) any interest, surcharge or penalty relating to any such tax, duty, levy or charge,

(b) any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, duty, levy or charge,

(c) any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and

(d) any amount paid on account of any such tax, duty, levy or charge or paid in respect of any such tax, duty, levy or charge;

“taxable period” has the same meaning as in section 2 of the Value-Added Tax Consolidation Act 2010.

(2) Subject to subsections (3) and (4), where a repayment of any tax cannot be made to a person by virtue of the operation of—

(a) section 865,



(b) section 105B of the Finance Act 2001,

(c) section 99 of the Value-Added Tax Consolidation Act 2010,

(d) section 159A of the Stamp Duties Consolidation Act 1999,

(e) section 57 of the Capital Acquisitions Tax Consolidation Act 2003, or

(f) any other provision of any of the Acts,

then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person.

(3) Where a repayment of tax cannot be made to a person in respect of a relevant period, it may be set against the amount of tax to which paragraph (a) of subsection (4) applies which is due and payable by the person in the circumstances set out in paragraph (b) of that subsection.

(4)(a) The amount of tax to which this paragraph applies is the amount, or so much of the amount, of tax that is due and payable by the person in respect of the relevant period as does not exceed the amount of the repayment that cannot be made to the person in respect of that relevant period.

(b) The circumstances set out in this paragraph are where tax is due and payable in respect of the relevant period by virtue of an assessment that is made or amended, or any other action that is taken for the recovery of tax, at a time that is 4 years or more after the end of the relevant period.

(5) No tax shall be set against any other amount of tax except as is provided for by the Acts.]

