



Ref: 08TACD2017

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim pursuant to section 865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax years of assessment 2006 to 2009 inclusive.
2. The Appellant and his spouse are jointly assessed and the Appellant is the assessable person. Each spouse was in receipt of emoluments chargeable to income tax under Schedule E during the relevant tax years of assessment and each was entitled to the PAYE tax credit in accordance with the provisions of s.472 TCA 1997. However, for the relevant tax years of assessment, the Appellant received the benefit of one PAYE tax credit only. The Appellant claimed a repayment of income tax based on an entitlement to the second PAYE tax credit in respect of the tax years 2006 to 2009 inclusive.

Background

3. In May 2016, the Appellant submitted a repayment claim for the preceding tax years on the basis that the second PAYE tax credit had not been allocated to him since 2006.



The Appellant received refunds of tax for the preceding tax years to 2012, on the basis that there were unused and transferrable rate-band and tax credits available during those years.

4. The Appellant was aggrieved not to have received the benefit of the second PAYE credit in respect of the tax years preceding 2012 and he submitted a repayment claim in respect of the tax years 2006 to 2009. The amount in unclaimed credits for those years totalled €[SUM REDACTED].
5. In June 2016 the Respondent wrote to the Appellant refusing the repayment claim in respect of the tax years prior to 2012 on the basis that the claim for repayment was out of time in accordance with the provisions of s.865(4) TCA 1997. The Appellant appealed this refusal by letter dated June 2016.
6. The Appellant, pursuant to this Appeal, seeks a repayment of income tax as if the tax credit had been availed of for the tax years of assessment 2006 to 2009 inclusive.
7. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Legislation

s.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].

....

Submissions

8. The Appellant's position was that this case involved significant overpayments of tax dating back several years and that the errors which occurred were not of his making. He stated that the repayment claim should not have been refused in respect of the tax years preceding 2012 as he was unaware that the tax credit was not being credited to him and was unaware that he was entitled to the tax credit in the first instance. The Appellant contended that the error should have been noticed by the Respondent and that the tax credits should have been allocated accordingly.



9. The Respondent submitted that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim related and that the Appellant was out of time as regards the repayment claim, in relation to the tax years of assessment 2006 to 2009. The Respondent stated that there was no discretion to amend records which were statute barred. The Respondent submitted that in any given tax year, the onus was on the taxpayer to make the Respondent aware of changes in his/her circumstances and to claim unused credits within the statutory limitation period. The Respondent submitted that in respect of the tax year 2006, a PAYE balancing statement issued to the Appellant in December 2007. The Respondent submitted that although the statement did not include a second PAYE tax credit, the matter was not appealed. In respect of 2007, 2008 and 2009 the Respondent stated that P2C tax credit certificates issued, showing the allocation of only one PAYE tax credit but that these were not appealed. The Appellant expressed frustration with this submission and stated that he did not adequately understand these certificates and was unaware of his appeal entitlements. The Appellant reiterated that the error was not of his making. He submitted that he was entitled to the tax credit in accordance with s.472 TCA 1997 and stated that the credits should be included automatically by the Respondent on the relevant certificates.
10. The Appellant did not challenge the meaning or interpretation of the four-year rule per s.865(4) TCA 1997 however, he submitted that it should not apply in relation to his claim for repayment. He contended that it was the error of the Respondent which resulted in the loss of the tax credits for the tax years in question.

Analysis and findings

11. The facts in this case are not in dispute. Both parties accepted that the repayment claims regarding the tax years 2006 to 2009 were not made within four years after the end of the chargeable period to which the claims related. The Respondent submitted that the Appellant's claim for repayment was thus out of time in accordance with section 865(4) TCA 1997 which provides; '*... 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]



12. In my view, the use of the word '*shall*' per 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. In short, I do not consider that I have the authority or jurisdiction to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997.
13. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations, numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016 and 02TACD2017, can be found on the Commission website at www.taxappeals.ie.

Conclusion

14. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "*shall*" per subsection 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside of the four-year period. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax years of assessment 2006 to 2009, is out of time in accordance with the provisions of section 865(4) TCA 1997.
15. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

APPEAL COMMISSIONER

July 2016

