



11TACD2017

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against assessment in relation to a claim for repayment of income tax.
2. By notice of assessment dated 20 October 2016, the Appellant was informed that income tax of €[SUM REDACTED] had been overpaid in respect of the tax year of assessment 2011. The Appellant sought repayment of the tax however the Respondent declined to process a repayment on the basis that a valid claim for repayment had not been made within the four-year limitation period in accordance with section 865(4) TCA 1997. The Appellant duly appealed.
3. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.



Background

4. The Appellant filed her income tax returns in respect of the tax years of assessment 2008, 2009 and 2010 in a timely manner through her tax agent, **[NAME REDACTED]**.
5. The return in respect of 2011 was not filed on time and on 6 March 2013, the Respondent issued a reminder letter in respect of the filing of the return. The letter was sent to the Appellant at her Dublin 4 address however the Appellant no longer resided at that address. As at 6 March 2013 the Appellant had not yet notified the Respondent of a change of address. A copy of this letter was also sent to the Appellant's tax agent.
6. The Appellant stated that in or about November/December 2015 she contacted the Respondent by telephone to make inquiries in relation to the filing of her Med 1 form. The Appellant stated that during the phone call she queried the status of her tax affairs and was informed by the Revenue official that her tax affairs were up to date and in order.
7. In January 2016 the Appellant filed a form Med 1 in respect of medical expenses for the years 2012-2015 and notified the Respondent of her change of address. The Appellant stated that it was not until a further telephone call to the Respondent in April 2016 that she was informed that her 2011 income tax return was outstanding.
8. In October 2016, the Appellant filed her income tax return in respect of the tax year 2011. A notice of assessment issued to the Appellant later that month showing tax overpaid in the sum of €**[SUM REDACTED]**. The Respondent declined to process the overpayment on the basis that a valid claim for repayment was not made by the Appellant within the four-year limitation period per section 865(4) TCA 1997.

Legislation

Section 951 TCA 1997 – Obligation to make a return *[subsequently repealed by FA 2012 s.129 and Schedule 4. Please note that section 951 TCA 1997 (obligation to make a return) applies as respects the year of assessment 2013 and successive years of assessment].*



(1) Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form of -

(a) in the case of a chargeable person who is chargeable to income tax or capital gains tax for a chargeable period which is a year of assessment -

(i) all such matters and particulars as would be required to be contained in a statement delivered pursuant to a notice given to the chargeable person by the appropriate inspector under section 877, if the period specified in such notice were the year of assessment which is the chargeable period, and

(ii) where the chargeable person is an individual who is chargeable to income tax or capital gains tax for a chargeable period, in addition to those matters and particulars referred to in subparagraph (i), all such matters and particulars as would be required to be contained in a return for the period delivered to the appropriate inspector pursuant to a notice given to the chargeable person by the appropriate inspector under section 879, or

.... Etc.

Section 865 TCA 1997 - Repayment of Tax

....

“valid claim” shall be construed in accordance with paragraph (b).

(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 tax is 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, and

(iii) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.

(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 –

- i. 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,*
- ii. 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*
- iii. in the case of claims made –*

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

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 relates. The Respondent's position was that no valid claim for repayment had been made by the Appellant within the four-year limitation period per s.865(4) TCA 1997 and that as a result, the repayment claim in respect of the tax year of assessment 2011 was out of time.



10. The Appellant's position was that she contacted an agent of the Respondent by telephone in late 2015 and was wrongly informed that her tax affairs were up to date and in order. The Appellant claimed that had she been made aware during this phone call that her income tax return in respect of the tax year 2011 was outstanding, she would have filed her form 11 in December 2015 i.e. within time for the repayment to be processed.
11. The Respondent stated that there was no record of this telephone contact but that in any event, the Appellant, as a chargeable person was obliged to file her 2011 return in accordance with the provisions of section 951 TCA 1997 which provides that *'every chargeable person shall as respects a chargeable period prepare and deliver to the Collector-General on or before the specified return date for the chargeable period a return in the prescribed form.'*
12. The Respondent also 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 make any valid claims for repayment within the statutory limitation period. The Appellant expressed frustration with this submission and stated that she was not a tax expert and was unaware of the statutory limitation period which applied.
13. The Appellant did not challenge the meaning or interpretation of the four-year rule per s.865(4) TCA 1997 however, she stated that had she been informed by the Revenue official in late 2015, that her 2011 income tax return was then outstanding, she would have filed her form 11 in December 2015 and would have been in a position to avail of the tax repayment. The Appellant stated that she had a young family and that the amount of money involved was very significant to her. The Appellant submitted that the limitation period should not apply in this case.

Analysis and findings

14. The Appellant claimed that she contacted the Respondent in late 2015 and was given incorrect information in relation to the status of her tax affairs. The Respondent submitted that there was no record of this telephone contact but that irrespective of the phone call, the onus was on the Appellant to file her 2011 income tax return in accordance with the provisions of section 951 TCA 1997.



15. The Appellant stated that on foot of the phone call to the Respondent in late 2015, she took the decision to wait until January 2017 to file her Med 1 form. However, as the Med 1 related to medical expense claims for the tax years of assessment 2012 to 2015, it would not have constituted a 'valid claim' in accordance with s.865(1)(b) TCA 1997 in respect of the overpayment of income tax for the tax year 2011, even if it had been filed in December 2015.
16. The position is that the repayment claim was made for the first time by the Appellant on 10 October 2016, when she filed her income tax return in respect of 2011. Thus the Appellant's claim for repayment was 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]
17. 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.
18. 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 02TACD2017 and 08TACD2017 can be found on the Commission website at www.taxappeals.ie.

Conclusion

19. 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 year of assessment 2011, is out of time in accordance with the provisions of section 865(4) TCA 1997.

20. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

APPEAL COMMISSIONER

August 2017.

