



AC Ref: 19TACD2016

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This case relates to a repayment claim pursuant to section 865 of the Taxes Consolidation Act 1997 as amended ('TCA 1997'), in the sum of [AMOUNT REDACTED], in respect of the tax year 2009.

Background

2. In July 2009 the Appellant's working arrangements changed and the Appellant's employer filed a P45 with the Respondent. The Appellant furnished the Respondent with a claim for medical expenses in [DATE REDACTED] 2010 and as a result, a P21 balancing statement issued on [DATE REDACTED] 2010 providing a refund to the Appellant of €[AMOUNT REDACTED]. This refund was based on the original P45 and thus is not disputed as between the parties.
3. Four days later, on [DATE REDACTED] 2010, the Appellant's employer submitted an amended P35 in respect of the tax year 2009. A further P35 was submitted by the employer on [DATE REDACTED] 2010. The P35 figures showed that increased tax had been paid on behalf of the Appellant and that a repayment of tax arose in relation to Appellant. The Appellant was unaware of the P35 returns and of the repayment of tax due to them.



4. In 2015 the Appellant contacted their local tax office requesting copy P60s in respect of the tax years of assessment 2005 to 2009. The Appellant was informed by the tax office that there was an overpayment of tax in the sum of €[AMOUNT REDACTED], in respect of the tax year of assessment 2009.
5. The Appellant contacted the Respondent by letter dated [DATE REDACTED] 2015 and furnished a repayment claim in respect of this amount. The Respondent wrote to the Appellant on [DATE REDACTED] 2015 and informed the Appellant that their repayment claim was out of time on the basis that it fell outside the four year limitation period set out per section 865 TCA 1997.
6. On [DATE REDACTED] 2015 the Appellant appealed on grounds that they were unaware of the repayment due to them until they were informed of its existence by an official in their local tax office in 2015 and that it was unreasonable for the Respondent to apply the four year rule in such circumstances. The Appellant also claimed that the Respondent had been placed on notice of the repayment claim by the Appellant's employer when the employer furnished updated P35 returns with the Respondent in 2010 and thus the Appellant contended that a '*valid claim*' for repayment within the meaning of s.865(b) had been made on their behalf within the requisite four year period.

Legislation

s.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 –

[(1) 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,]^{6]}⁵*

(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

7. The facts in this case are not in dispute. The Appellant became entitled to a repayment of tax in respect of the tax year of assessment 2009 in circumstances where they were unaware of the repayment due to them until they were informed of its existence by an official in their local tax office in 2015. The Appellant submitted that the tax overpaid was deducted through no fault of their own and that it was unreasonable for the Respondent to refuse to process the repayment in such circumstances.
8. The Respondent submitted that they first became aware of the Appellant's repayment claim in relation to the tax year of assessment 2009 when the Appellant contacted the Respondent by letter dated [DATE REDACTED] 2015. The Respondent's position was that they were prevented from issuing repayments of tax which had not been made within four years after the end of the tax year to which the claim related. The Respondent took the view that, to be within time, the claim needed to have been made or before 31 December 2013. The Respondent submitted that the Appellant's claim was out of time in accordance with the provisions of s.865 TCA 1997.
9. The Appellant submitted that the Respondent was on notice of the fact that there was tax due and owing to them from [DATE REDACTED] 2010 and/or [DATE REDACTED]



2010 when the Appellant's employer furnished the Respondent with updated P35s which showed that tax was overpaid in respect of the Appellant. A question which arises for consideration is whether this act on behalf of the Appellant's employer, amounts to a 'valid claim' on behalf of the Appellant, for the purposes of section 865 TCA 1997.

10. The legislation provides that the term 'valid claim' is to be construed in accordance with section 865(b) TCA 1997. In short, the provisions of s.865(b) make clear that a 'valid claim' for repayment can only be made by the person who furnishes the statement or return and to whom the repayment is due. Section 865(b)(i) provides; *'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...., such a statement or return shall be treated as a valid claim in relation to a repayment of tax where ... 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,....* [emphasis added]
11. While the Appellant contended that the Respondent was on notice of the repayment claim since [DATE REDACTED] and/or [DATE REDACTED] 2010 when their employer furnished the Respondent with updated P35 returns, notification of this nature does not constitute a 'valid claim' pursuant to s.865(b) in respect of the Appellant. Thus I determine that the repayment claim was made for the first time by the Appellant, in their correspondence dated [DATE REDACTED] 2015.
12. The Respondent contended that the Appellant's claim for repayment in relation to section 865 TCA 1997 was out of time on the basis that it was outside the four year statutory time limit contained at 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'*. While s.865(3A)(a) permits a repayment to be made by the Respondent *'on the basis of the information available'* to the Respondent (as opposed to via repayment claim by the taxpayer) section 865(3A)(b) requires that this repayment *'shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4)'* thus re-engaging a four year limitation period for this type of repayment. As a result, the Respondent submitted that they are out of time to process a repayment on the basis of s.865(3A)(a) TCA 1997.



13. The use of the word '*shall*' per section 865(3A)(b) and 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 have authority or jurisdiction to direct that a repayment be made to the Appellant where the claim in respect of the repayment is outside the four year time period specified in s.865(4) TCA 1997.

Conclusion

14. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "*shall*" per subsections 865(3A)(b) and 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four year limitation period in circumstances where the claim has been made outside the four year period. As a result, I determine as a matter of law, that the repayment claim on behalf of the Appellant 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

November 2016

