



**132TACD2020**

**BETWEEN/**

**APPELLANT**

**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 2012 and 2013.
2. By notices dated 11 October 2018, the Appellant was informed that income tax had been overpaid in respect of the tax years of assessment 2012 and 2013 in the amounts of €1,221.95 and €585.51 respectively. The Appellant sought repayment of the tax, however, the Respondent declined to process the repayments on the basis that a valid claim for repayment had not been made within the four-year limitation period in accordance with s.865(4) TCA 1997. The Appellant duly appealed to the Tax Appeals Commission.
3. With the agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.



## Background

4. For the years ended 31 December 2012 and 31 December 2013 the Appellant was registered for Income Tax self-assessment as he was a proprietary director of REDACTED and as a result, he was a chargeable person for these years.
5. The Respondent issued a reminder to the Appellant to file his Income Tax return for the period ended 31 December 2013 on 26 March 2015. The Appellant was also contacted by the Respondent by letter on 15 June 2015 to inform him that he was obliged to file a tax return for 2013 and any other outstanding return. The Appellant was also advised to file the outstanding returns for 2012 and 2013 during a telephone conversation with Revenue on 12 July 2018.
6. In August 2018 the Appellant completed the relevant income tax returns in respect of the years 2012 and 2013. The returns were processed by the Respondent in October 2018 and notices of assessment issued to the Appellant shortly thereafter.
7. The notices of assessment for the years 2012 and 2013 indicated that overpayments of tax in the amounts of €1221.95 and €585.51 had arisen for the years 2012 and 2013 respectively. The Respondent notified the Appellant in October 2018 that section 865 TCA 1997 precluded it from making the repayment, as the claims were not made within four years after the end of the chargeable period to which the claims relate. The Appellant submitted a notice of appeal, which was received by the Tax Appeals Commission on 17 October 2018, seeking repayment of the tax overpaid.

## 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**

### **Appellant Submission**

8. Within this appeal, the Appellant stated:



*"I am not disputing the figures outlined by Revenue. I am however disputing that Revenue have said they will not issue me with the refund due to me as it's outside 4 year.*

*My argument is that Revenue did not request 2 x Form 11 for 2012 & 2013 until 2018 and therefore making it impossible for me to return the forms within the 4 year time frame.*

*As soon as I received notification from Revenue that they needed these documents I completed them and returned them immediately.*

*I am therefore asking you to reverse Revenue's decision not to issue me with the refund due to me."*

*"Revenue have refused to refund me €1221.95 for y/e 31/12/2012 and €585.51 for y/e 31/12/13. Their reason is that y/e figures were not returned on time. Please note that I received no correspondence from Revenue in relation to tax returns for these years until 09/07/18 ...Once this letter was received, my wife called Revenue and asked them to send out these forms so we could keep records up to date. As soon as I received the forms they were completed and returned which is what prompted Revenue to write to me reference the refunds. I was suffering from depression in 2012 and 2013 and was unfit to chase documents from Revenue. However, as my business ceased on 24/03/2012, I presumed there were no outstanding forms to be completed as Revenue had not contacted me."*

### **Respondent Submission**

9. The following was stated by the Respondent on its Statement of Case:

*"The Appellant is seeking a repayment of taxes overpaid for the years ended 31 December 2012 and 2013 on the grounds that the Revenue Commissioners did not notify him that the returns were due, did not pursue these returns until 2018 and the Appellant was suffering from health issues at the time that the returns were originally due.*

*For the years ended 31 December 2012 and 31 December 2013 the Appellant was registered for Income Tax self-assessment and was thus a chargeable person as he was a proprietary director of REDACTED having a 50% shareholding in that company.*



*In accordance with section 959I (1) every chargeable person shall deliver a return for the relevant chargeable period(s) in the prescribed form. Section 959I(4) places the onus on the chargeable person to deliver the return whether or not they have been notified that a return is due for the period. A lack of notification from the Revenue Commissioners that the returns were due is therefore not valid grounds to allow the repayment outside of the 4-year limit.*

*It should also be noted that the Appellant was issued with a reminder to file his Income Tax return for the period ended 31 December 2013 on 26 March 2015 ...*

*The Appellant was also contacted by letter on 15 June 2015 to inform him that he was obliged to file a tax return for 2013 and any other outstanding return...*

*The Appellant was also advised to file the outstanding returns for 2012 and 2013 during his telephone call to Revenue on 12 July 2018 ...*

*The Revenue Commissioners records indicate that the relevant tax returns were filed on the following date;*

*2012 tax return – date received 14 August 2018*

*2013 tax return – date received 14 August 2018*

*In accordance with section 865(1) a valid claim for the repayment of tax is made where a person furnishes a statement or return which is required to be delivered by that person and it contains all of the information the Revenue Commissioners reasonably require to determine that a repayment is due.*

*The Revenue Commissioners submits 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 Revenue Commissioner's position is 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 claims in respect of the tax years of assessment 2012 and 2013 were out of time.*

*In order for the Appellants claim to be a valid claim for the repayment of tax the tax returns required to be filed in accordance with section 959I must have been filed by 31 December 2016 and 31 December 2017 respectively (4 years). As the Appellant did not file the returns until August 2018 the repayments shall not be allowed in accordance with section 865(4) and are statute barred.*



*Regarding the issue of the Appellant's ill health and the closure of his business these matters have already been dealt with in determination 03TACD2019. In this case the Appellant submitted that the collapse of his business and serious health difficulties meant that he was not in a position to file the returns within the 4-year limit. Commissioner Gallagher found that these issues were not grounds to allow for the repayment outside the 4-year limit as the use of the word shall allow for no discretion.*

*"There is no doubt that the Appellant went through an extremely difficult time during the tax years of assessment 2011 and 2012 and the years that followed. The Respondent acknowledged and accepted that this was the case.*

*However, pursuant to the wording of s.865 TCA 1997, and in particular the use of the word "shall" per subsection 865(4) TCA 1997, 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 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 2011 and 2012, is out of time in accordance with the provisions of section 865(4) TCA 1997."*

### **Analysis and findings**

10. The facts in this appeal are not in dispute. Both parties accepted that the repayment claims regarding the tax years 2012 and 2013 were not made within four years after the end of the chargeable period to which the claims related.
11. Section 865(2) provides that a person is entitled to a repayment of tax paid where an amount of the tax paid is not due from that person. Section 865(3) provides that a repayment of tax is not due unless a valid claim has been made to the Revenue Commissioners. Section 865(1)(b)(i) 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 Revenue Commissioners 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.



12. As regards a limitation period for a repayment of tax under section 865, subsection (4) 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].
13. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the years of assessment 2012 and 2013 was not due. The entitlement to a repayment of tax arises under section 865(2). Section 865(3) means that the repayment of tax sought by the Appellant under section 865(2) is not due unless a valid claim has been made to the Revenue Commissioners. Therefore, for the repayments of tax for 2012 and 2013 to be due, the Appellant must have made a valid claim to the Revenue Commissioners. As regards when a valid claim was made by the Appellant for the years of assessment 2012 and 2013, the Revenue Commissioners submit that all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant followed the delivery of the return on 14 August 2018
14. In deciding if the Appellant is entitled to a repayment of tax, and having established that there is a valid claim, the provisions of section 865(4) are applied. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) the claim for repayment for the years 2012 and 2013 by the Appellant is not allowed.
15. The use of the word ‘shall’ in section 865(4), indicates an absence of discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances in which the four-year period might be mitigated. In the circumstances, I do not consider that I have the authority to direct that a repayment be made to the Appellant where a claim for repayment of tax was made outside the four-year period specified in section 865(4).
16. 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, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 25TACD2018, 29TACD2018, 03TACD2019, 14TACD2019, 20TACD2019, 01TACD2020, 17TACD2020 and 103TACD2020 can be found on the Commission website at [www.taxappeals.ie](http://www.taxappeals.ie).



## **Conclusion**

17. Pursuant to the wording of s.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 claims on behalf of the Appellant for the tax years of assessment 2012 and 2013, are out of time in accordance with the provisions of section 865(4) TCA 1997.
18. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**23 June 2020**

