



**169TACD2020**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a claim pursuant to s.865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax year of assessment 2012.
2. The Appellant filed his Income Tax return in respect of 2012 on 21<sup>st</sup> September 2017. There was an overpayment on the 2012 income tax. The appellant wishes to offset the credit to outstanding IT and VAT.
3. The Appellant is appealing against the disallowance of credit under the four year limit per s.865 (4) TCA1997 issued in respect of year ending 2012.
4. This appeal was held by remote hearing with the Tax Appeals Commission on 4 September 2020.



## Background

5. On 21 September 2017 the Appellant completed the relevant income tax return in respect of the year 2012. The return was processed by the Respondent in November 2017 and a notice of assessment issued to the Appellant shortly thereafter. The notice of assessment for the year 2012 indicated that an overpayment of tax in the amount €3,683.01 had arisen for that year.
6. The Respondent notified the Appellant on 7 November 2017 that s.865 (4) Taxes Consolidation Act 1997 (TCA 1997) precluded them from making the repayment or offset, as the claim was not made within four years after the end of the chargeable period to which the claim relates. The Appellant submitted a Notice of Appeal which was received by the Tax Appeals Commission on 5 December 2017 seeking offset of the overpayment against other taxes due by the Appellant.

## 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**

7. The Appellant submitted the following :

*"I do not dispute any of the monies, estimates and liabilities. Nor do I require any payment, should one be due.*

*I do submit that incomplete Revenue records in of my PPS number caused a portion of the delay. This was not, however, the root cause of the lateness.*



*I contend that the Revenue Acts, in toto, are addenda to the Constitution of Ireland, and as such, are part of that document. This Constitution is the de facto Social Contract.*

*I therefore contend that the condition that allows Revenue to claim taxes more than 4 years old (in my case, for example, 2009) and refuse to allow refunds more than 4 years (2011) old is an Unfair Contract Term. Thus, Under European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (Irish S.I. No. 27/1995), it is not a valid Contract Term. As such it can neither be enforceable nor applied.*

*I ask that the Commission therefore simply allow all Credits to be offset against liabilities."*

8. The Respondent made the following submission:

*"A claim for repayment of tax must be made within four years after the end of the tax year to which a claim relates. The claim made by the appellant was outside the four year limit per section 865(4) TCA1997 and as such, is not a valid claim."*

### **Analysis and findings**

9. The facts in this appeal are not in dispute. Both parties accepted that the repayment claim regarding the tax year 2012 was 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 s.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]
10. In my view, the use of the word '*shall*' per s.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 or tax offset be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865 (4) TCA 1997.

11. 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, 69TACD2019, 70TACD2019, 01TACD2020, 78TACD2020, 80TACD2020, 81TACD2020, 82TACD2020, 83TACD2020, 84TACD2020, 85TACD2020, 95TACD2020, 96TACD2020, 103TACD2020, 105TACD2020, and 132TACD2020 can be found on the Commission website at [www.taxappeals.ie](http://www.taxappeals.ie).
12. The Appellant contends that the Taxes Acts, in toto, are addenda to the Constitution of Ireland, and as such, are part of that document. He asserts that the Irish Constitution is a de facto Social Contract.  
  
He argues that the application of the four year rule is an unfair contract term under European Communities (Unfair Terms in Consumer Contracts) Regulations, 1995 (Irish S.I. No. 27/1995) because, he believes, there is an imbalance between the rights of the parties (Appellant and Respondent). As such, it is not a valid contract term and can neither be enforceable nor applied.
13. The scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of Irish cases, namely; *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and the *State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577, is confined to the determination of the amount of tax owing by a taxpayer based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Tax Appeals Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings.
14. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of the repayment claim based on an alleged unfairness, such grounds of appeal do not fall within the jurisdiction of the TAC and thus do not fall to be determined as part of this appeal.



## **Conclusion**

15. 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 / offset claim on behalf of the Appellant for the tax year of assessment 2012, is out of time in accordance with the provisions of s.865 (4) TCA 1997.
16. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

***Designated Public Official***

**9 September 2020**

