



69TACD2019

BETWEEN/

NAME REDACTED

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal relates to a claim for the repayment of tax in accordance with section 865 of the Taxes Consolidation Act, 1997 (hereinafter 'TCA 1997') in respect of the tax year of assessment 2008. The appeal is adjudicated without a hearing in accordance with section 949U TCA 1997.

Facts

2. On 29 October 2009 a return of income, charges and capital gains for the year 2008 was received by the Revenue Commissioners for the Appellant. On 24 March 2010 the tax return was returned to the Appellant as the Appellant had not provided information which would enable the Revenue Commissioners to determine the liability to tax for 2008.



3. On 23 February 2015, in a letter from the Revenue Commissioners to the Appellant in relation to a claim for the year 2010, the Appellant was informed:

‘To enable me deal with your claim for Top Slicing Relief 2010, please complete and return Form 11 2008. I am unable to deal with your claim until the 2008 return is filed and assessment raised. This form was returned to you on the 24th March 2010 as it was incomplete. I have no record of the completed form being returned to this office.’

4. On 10 November 2016 the return of income, charges and capital gains for the year 2008 was received by the Revenue Commissioners for the Appellant. On 8 December 2016 a Notice of Assessment to Income Tax for the year 2008 issued and notified the Appellant of a balance of tax overpaid of €4,128.43. The Notice of Assessment included the statement *‘This repayment may not be due in accordance with S.865 TCA 1997.’*
5. On 22 February 2017, in a letter from the Revenue Commissioners to the Appellant, the Appellant was informed that the Revenue Commissioners were precluded from repaying the overpayment of tax for the year 2008 as the claim was not made within the four-year period in section 865(4) TCA 1997. The Appellant was informed that, in accordance with section 865(7) TCA 1997, an appeal against the decision not to repay the overpayment of tax could be made, within 30 days after the date of the letter, to the Tax Appeals Commission. On 23 March 2017 a notice of appeal was received by the Tax Appeals Commission.

Legislation

6. Section 865 TCA 1997 provides:



“Section 865 Repayment of tax

(1) (a) *In this section and section 865A-*

“Acts” means the Tax Acts, the Capital Gains Tax Acts, Part 18A, Part 18C and Part 18D and instruments made thereunder,

“chargeable period” has the meaning assigned to it by section 321.

...

“tax” means any income tax, corporation tax, capital gains tax, income levy, domicile levy or universal social charge and includes-

...

“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*

...

- (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.*

...

- (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 provisions 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.

...

(6) *Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not –*

(a) *repay an amount of tax paid to them, or*

(b) *pay interest in respect of an amount of tax paid to them.*

(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 submits that as the tax return for 2008 was used to determine the claim for repayment, and as the tax return was delivered on 29 October 2009, being a date within the four-year period specified in section 865(4), then the claim for the repayment of tax should be allowed. The Appellant further submits that as section 865(4) only refers to a ‘claim’ being made within four years after the end of the chargeable period to which the claim relates, that the ‘claim’ is not dependent on being a ‘valid claim’ to be within the four-year period specified in section 865(4) TCA 1997.

8. The Revenue Commissioners submit that a claim for repayment of tax must be made within four years after the end of the chargeable period to which the claim relates. The Revenue Commissioners further submit that as the claim by the



Appellant for the year 2008 was not made within the period specified in section 865 TCA 1997, the Revenue Commissioners were precluded from making the repayment of tax.

Analysis

9. 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. Section 865(1)(b)(ii) provides that where all the information which the Revenue Commissioners may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.
10. 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].
11. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the year 2008 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 repayment of tax of €4,128.43 to be due, the Appellant must have made a valid claim to the Revenue Commissioners.
12. As regards when a valid claim was made by the Appellant for the year 2008, the return of income, charges and capital gains for the year 2008 received by the Revenue Commissioners for the Appellant on 29 October 2009 did not satisfy the requirements of section 865(1)(b)(i). The Revenue Commissioners had all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant following the delivery of the tax return for 2008 by the Appellant on 10 November 2016 and at the time of the Notice of Assessment dated 8 December 2016.
13. 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 of €4,128.43 by the Appellant is not allowed. The use of the word '*shall*' in section 865(4) TCA 1997, 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 valid claim for repayment of tax has not been made within the four-year period specified in section 865(4) TCA 1997.
14. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment of tax in the context of the four-year statutory limitation period. These determinations, number 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 02TACD2017, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 19TACD2018, 25TACD2018,

29TACD2018, 03TACD2019, 04TACD2019 and 20TACD2019, can be found on the website of the Tax Appeals Commission at www.taxappeals.ie .

Determination

15. I determine that the return of income, charges and capital gains for the year 2008 received by the Revenue Commissioners on 29 October 2009 did not comprise a valid claim for the purposes of section 865 TCA 1997 for a repayment of tax because it did not contain '*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*'. I determine that a valid claim in accordance with section 865 TCA 1997 was made by the Appellant for the year 2008 in 2016, which is more than four years after the end of the chargeable period to which the claim for repayment of tax relates.
16. Pursuant to the wording of section 865 TCA 1997, and in particular the word 'shall' in section 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 a valid claim is made outside the four-year period. As a result, I determine that the claim for repayment of tax for the year of assessment 2008 is not allowed under section 865 TCA 1997. This appeal is hereby determined in accordance with section 949AL TCA 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

21st NOVEMBER 2019

