



Ref: 105TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal relates to:
 - (a) 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 2012.
 - (b) an amount of CGT consequent to the imposition of a 10% surcharge in relation to the late filing of the Appellant's Capital Gains Tax (CGT) return for 2012.

2. The appeal is adjudicated without a hearing in accordance with section 949U TCA 1997.



Facts

3. The Appellant filed a return of income for 2012 on 27 July 2017 and a CGT Return for 2012 on 3 August 2017.
4. The Appellant submitted health expenses claims on Revenue Form MED 1 Health Expenses – Claim for Relief for the years 2012 – to 2015 on 19 December 2016.
5. The Appellant was notified by Revenue in a letter dated 14 January 2017 that as he was registered for Self-Assessment, income tax returns were required for each year.
6. By notice of Assessment dated 2nd August 2017 the Appellant was informed of a surcharge for late submission of his CGT return amounting €2,459.00 in relation to his CGT assessment for 2012.
7. The Appellant was advised that the Revenue Commissioners were precluded from repaying the overpayment of tax for the year 2012 as the claim was not made within the four-year period in accordance with section 865 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 21 August 2017 a notice of appeal was received by the Tax Appeals Commission.

Legislation

8. Section 865 TCA 1997
Section 959A TCA 1997





Section 959I TCA 1997

Section 1084 TCA 1997

Submissions

9. The Appellant submitted that:
- (a) He overpaid income tax in 2012 in the amount of €11,753.88 net of a late submission penalty of €2,809.76
 - (b) His business - a limited company of which he was a director ceased in 2011.
 - (c) He commenced PAYE employment in February 2012.
 - (d) That he made a claim on Revenue Form MED 1 Health Expenses – Claim for Relief for the years 2012 – to 2015 on 19 December 2016.
 - (e) That his Income Tax and CGT returns for 2012 were made late in July and August 2017 respectively.
 - (f) That he has been unfairly treated in this matter due to having to pay additional CGT resulting from the surcharge whilst not getting his income tax refund.
10. The Revenue Commissioners submitted that:
- (a) The Appellant was a proprietary director and 100% shareholder in **REDACTED** Ltd., which was placed in liquidation in 2012.
 - (b) According to Revenue records the Appellant and his wife were ceased as employees of the company on 31 December 2011 and on 29 November 2012 respectively.
 - (c) All of the Appellant's income for 2012 was from PAYE sources.



- (d) The Appellant was still a chargeable person in 2012, obliged to submit annual tax returns, as he held 100% of the ordinary share capital even though he did not receive any income in 2012 from that company.
- (e) The Appellant was issued an income tax return on 19 January 2013 and reminders were issued to file that return on 6 June 2013 and 10 April 2014. In the event the return was not filed until 27 July 2017.
- (f) Notices were issued to the Appellant for the years 2012-2016 informing him that he had returns outstanding and reminding him to Pay and File tax returns for all years.
- (g) As the return was filed late, Revenue did not receive a valid claim within four years after the end of the relevant period, 31 December 2012. Accordingly, any repayment is not allowed in accordance with Section 865 TCA 1997.
- (h) As the Appellant had a chargeable gain in in 2012 he was obliged to file a Capital Gains Tax (CGT) return by 31 October 2013.
- (i) The Appellant paid an amount of CGT in relation to the year 2012 on 12 February 2013.
- (j) The CGT return for 2012 was received on 27 July 2013 more than thirty days after the filing date – 31 October 2013.
- (k) A surcharge of 10% was correctly applied in accordance with Section 1084 TCA 1997.

Analysis

11. Section 865(2) TCA 1997 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) TCA 1997 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) TCA 1997 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) TCA 1997 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.

12. As regards a limitation period for a repayment of tax under section 865 TCA 1997, 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.*’
13. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the year 2012 was not due. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means that the repayment of tax sought by the Appellant under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Revenue Commissioners. Therefore, for the repayment of tax to be due, the Appellant must have made a valid claim to the Revenue Commissioners.
14. As regards when a valid claim was made by the Appellant for the year 2012, the return of income, for the year 2012 received by the Revenue Commissioners for the Appellant on 27 July 2017 satisfied the requirements of section 865(1)(b)(i).
15. The Respondent acknowledged that the Appellant’s income was of a PAYE nature but has pointed to the requirement in Section 865 that the return which



was required to be delivered was not in fact delivered until 27 July 2017. Accordingly, it was out of time.

16. Revenue by notice on 19 January 2013 requested the Appellant to deliver a return of his various sources of income and the amounts derived from each source of income in the tax year 2012. Revenue issued reminders to file that return on 6 June 2013 and 10 April 2014. In the event the return was not filed until 27 July 2017.
17. Even though, the Revenue Form MED 1 Health Expenses – Claim for Relief was submitted within the time frame, the return of income and chargeable gains required to be delivered by the Appellant was not delivered in time to permit Revenue to make a repayment, in accordance with Section 865 TCA 1997.
18. It is clear from the evidence adduced that the Appellant was a chargeable person within the meaning of Section 959A and Section 959I TCA 1997 for 2012. The Respondent is correct in coming to the conclusion, that the repayment should be denied in the absence of an on time return from the Appellant.
19. 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 €11,753.88 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.

20. 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, can be found on the website of the Tax Appeals Commission at www.taxappeals.ie .
21. The Appellant had a chargeable gain in in 2012. The Appellant was obliged to file a Capital Gains Tax (CGT) return by 31 October 2013. The CGT return was filed on 27 July 2017, more than thirty days after the filing date. A surcharge of 10% was correctly applied in accordance with Section 1084 TCA 1997.

Determination

22. I determine that a valid claim in accordance with section 865 TCA 1997 was made by the Appellant for the year 2012 on 27 July 2017, which is more than four years after the end of the chargeable period to which the claim for repayment of tax relates.
23. I determine pursuant to the wording of section 865 TCA 1997, and in particular the word ‘shall’ in section 865(4) TCA 1997, 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 2012 is not allowed under section 865 TCA 1997.
24. I determine, that the CGT assessment for 2012 in the amount of €27,054 including the imposed surcharge of €2,459 applied in respect of the late





submission of the CGT return for 2012 stands and accordingly the appeal is disallowed.

This appeal is therefore determined in accordance with TCA, section 949AK.

CHARLIE PHELAN
APPEAL COMMISSIONER
29 JANUARY 2020

