



138TACD2020

BETWEEN/

[APPELLANT]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal relates to a claim for the repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 in respect of the year of assessment 2011. The appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

2. On 18 August 2016 a Notice of Amended Assessment to Income Tax for the year 2011 issued to the Appellant with a balance overpaid of €703. By letter dated 23 August 2016 the Appellant was informed that the Revenue Commissioners were precluded from repaying the overpayment of tax for the year 2011 as the claim was not made within the four-year period in section 865(4) of the Taxes Consolidation Act, 1997. The Appellant was informed that, in accordance with section 865(7) of the Taxes Consolidation Act, 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. On 2 September 2016 the Appellant sought to appeal the decision.





Legislation

3. Section 865 of the Taxes Consolidation Act, 1997 provides:

"(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

4. The Appellant is an employee of [Company A]. The Appellant is a member of the [Company A] Pension Plan, which is managed by [Company B]. The Appellant was a chargeable person required to deliver a return of income, charges and capital gains for 2011. The Appellant submits that she delivered her tax return for 2011 on 2 August 2012, which included PAYE income and non-PAYE income. The Appellant did not consider that a payment of tax would arise as she understood that her tax was deducted and remitted by her employer. The Appellant submits that she contacted the Revenue Commissioners to ascertain the basis for the assessment of €540 for 2011 as she understood that her tax was deducted and remitted by her employer. The Appellant submits that she contacted the Revenue Commissioners for each subsequent year of 2012, 2013, 2014 and 2015 to ascertain the reason for the demands for payments of tax in





those years, given her understanding that her employer made the arrangements with regard to her tax and, as such, the Revenue Commissioners had knowledge of her tax position. The Appellant submits that her tax position was clarified in 2016. The Appellant submits that given her endeavours to establish her tax position with the Revenue Commissioners and her misunderstanding that arrangements with regard to pension contributions are between an employer and the Revenue Commissioners, her claim for repayment of tax for 2011 should be allowed.

5. The Revenue Commissioners submit that on 2 August 2012 the Appellant delivered a return of income, charges and capital gains for 2011. On 21 August 2012 a Notice of Amended Assessment issued to the Appellant with a balance payable of €540. The amended assessment was issued to adjust the amount for share options from €1,243 (being the amount included in the return of income, charges and capital gains) to €1,522 (being the amount in the relevant tax on a share option return). On 4 September 2012 the balance payable of €540 was discharged by the Appellant.

The Revenue Commissioners submit that on 8 August 2016 the Appellant provided the Revenue Commissioners with Pension Benefit Statements from [Company B], which included statements for the year 2011. The Pension Benefit Statements provided a breakdown of contributions received and invested for the Appellant in the [Company A] Pension Plan. The statements provided details of the employer's contributions, the Appellant's normal contributions and the Appellant's additional voluntary contributions. The Revenue Commissioners submit that the Appellant did not include details of the additional voluntary contributions in her tax return for 2011. Arising from the information provided by the Appellant in August 2016, the Revenue Commissioners issued a Notice of Amended Assessment to Income Tax for 2011 dated 18 August 2016 with a balance overpaid of €703. The amended assessment included an amount of 'Expenses in Employment' of €3,518, being the amount of the additional voluntary contributions made by the Appellant. The Revenue Commissioners





submit that they are precluded from repaying the overpayment of tax of €703 for 2011 as the claim was not made within the four-year period in section 865(4).

Analysis and Findings

6. 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.
7. 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].
8. The Appellant sought a repayment of tax on the basis that an amount of tax paid by her for the year 2011 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 €703 to be due, the Appellant must have made a valid claim to the Revenue Commissioners.
9. As regards when a valid claim was made by the Appellant for the year 2011, all the information which the Revenue Commissioners reasonably required to





enable them determine if and to what extent a repayment of tax was due to the Appellant followed the information in August 2016. For the purposes of section 865, an Appellant, who is a chargeable person, must demonstrate that a valid claim was made to the Revenue Commissioners before a repayment of tax may be due, regardless if there was engagement between the Appellant and the Revenue Commissioners.

10. The taxation system is developed on the premise of self-assessment. The Appellant is the person with access to the facts and information relating to her tax position. The Appellant arranged to make additional voluntary contributions to her pension plan. According to the Pension Benefit Statements from [Company B] the employer's contributions and the Appellant's normal contributions made through her employer were equal in amount and made continuously each month. The amount of the Appellant's additional voluntary contributions varied from month to month. The statements show that the Appellant did not make additional voluntary contributions continuously, for example, the Appellant did not make an additional voluntary contribution in December 2011 or make any additional voluntary contributions in 2012.

The additional voluntary contributions should have been included in the tax return of the Appellant for 2011 delivered on 2 August 2012. A comparison of the Notice of Amended Assessment to Income Tax for 2011 dated 21 August 2012 and the Notice of Amended Assessment to Income Tax for 2011 dated 18 August 2016 highlights the position:



	Notice of Amended Assessment (21 August 2012)	Notice of Amended Assessment (18 August 2016)
Panel 1	€27,718	€27,718
Panel 2	-	€3,518
Panel 3	-	-
Panel 4	-	-
Panel 5	€3,515.30	€3,515.30
Panel 6	€1,438.82	€1,438.82
Panel 7	-	-
Panel 8	€2,604.22	€2,604.22
Taxable Income	€25,998	€22,480

The difference in taxable income is the amount of the additional voluntary contributions of €3,518.

11. 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 €703 by the Appellant is not allowed. 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).





Determination

12. Pursuant to the wording of section 865 of the Taxes Consolidation Act, 1997, and in particular the word 'shall' in section 865(4) as regards the application of the four-year statutory limitation period, I determine that the claim for repayment of tax for the year of assessment 2011 is not allowed under section 865 of the Taxes Consolidation Act, 1997 in circumstances where a valid claim was made outside the four-year period.

13. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

13 MAY 2020

