



155TACD2020

BETWEEN/

[NAME REDACTED] LTD.

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal against the refusal of a repayment claim in relation to a claim for repayment of relevant contracts tax ('RCT'). The claim is made in accordance with section 865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997'), in respect of the tax year of assessment 2007.

Background

2. On 11 January 2008, the Appellant filed a signed declaration on form RCT 30 in respect of the period 1 December 2007 to 31 December 2007, showing a liability of €9,475. The Appellant discharged the amount by cheque in the sum of €9,475 drawn on the Appellant's personal bank account.
3. On 25 May 2012, the Appellant filed form RCT 35 in respect of the year ended 31 December 2007, showing a nil liability in respect of 2007 and on 13 September 2012, the Appellant filed an amended RCT 30 which also showed a nil liability for the period. On



foot of same, the Appellant sought a repayment of tax in the sum previously paid, namely €9,475.

4. On 18 September 2012, the Respondent declined to process the repayment on the basis that a valid claim for repayment had not been made within the four-year statutory period in accordance with section 865(4) TCA 1997. The Appellant duly appealed

Legislation

Section 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

5. The Appellant accepted that the claim for repayment of RCT was not made within the four-year statutory limitation period contained in section 865(4) TCA 1997. The Appellant submitted that the payment of RCT was an inadvertent error by the taxpayer which should be refunded. The Appellant also contended that the payment '*was not a tax payment*' as it was drawn on the personal account of the Appellant. The Appellant submitted that the payment did not comply with the dictionary definition of taxation which the Appellant described as "*the definition of taxation is that it is a compulsory contribution*". The Appellant claimed that the payment was not a tax payment on the basis that it was self-assessed and did not relate to a charge to tax.
6. The Respondent submitted that the onus was on the Appellant taxpayer to self-assess, to submit the statutory forms and to pay the appropriate tax. The Respondent submitted that a claim for repayment of tax may be made by taxpayers but that the claim must be made within four years after the end of the chargeable period to which the claim relates. The Respondent submitted that as the Appellant's claim was out of time in accordance with the provisions of section 865 TCA 1997, the Respondent was unable to process the repayment.

Analysis and findings

7. The facts in this appeal are not in dispute. The parties accepted that the repayment claim regarding the tax year 2007 was not made within four years after the end of the



chargeable period to which the claim 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]. In addition, section 865 provides that:

"tax" means any income tax, corporation tax, capital gains tax, income levy, domicile levy or universal social charge and includes—

- (i) any interest, surcharge or penalty relating to any such tax, levy or charge,*
- (ii) any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, levy or charge,*
- (iii) any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and*
- (iv) any amount paid on account of any such tax, levy or charge or paid in respect of any such tax, levy or charge;*

8. Thus, section 865 is clear on the meaning of 'tax' for the purposes of the provision and there is no need therefore, to have recourse to dictionary definitions.
9. 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 be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997.
10. 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, 2TACD2017, 8TACD2017, 11TACD2017, 26TACD2017 11TACD2017, 26TACD2017, 9TACD2018, 12TAC2018, 16TACD2018, 19TACD2018, 25TACD2018, 29TACD2018, 3TACD2019, 4TACD2019 and 20TACD2019, can be found on the Commission website at www.taxappeals.ie.





Determination

11. 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 the four-year period. As a result, I have no option but to determine that the repayment claim on behalf of the Appellant in respect of the tax year of assessment 2007, is out of time in accordance with the provisions of section 865(4) TCA 1997.
12. This Appeal is determined in accordance with s.949AL TCA 1997.

COMMISSIONER LORNA GALLAGHER

10th day of August 2020

The Tax Appeals Commission has not been requested to state and sign a case for the opinion of the High Court in respect of this determination.

