



158TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to repayment claims pursuant to s.865 of the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The request for repayments relates to overpayments of income tax in 2010, 2011, 2012 and 2013.
2. By notices dated 19 February and 6 March 2018, the Appellant was informed that income tax had been overpaid in respect of the tax years of assessment 2012 and 2013 in the amounts of €1,220.10 and €148.99 respectively. However, by letters dated 7 March 2018 the Respondent declined to process the repayment on the basis that a valid claim for repayment had not been made within the four-year limitation period in accordance with s.865(4) TCA 1997. The Appellant duly appealed to the Tax Appeals Commission
3. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

4. The Appellant is the executor of the will of REDACTED who is deceased since 3 February 2016.
5. The Respondent sought the completion of tax returns for the years 2012 to 2016, on behalf of REDACTED, from the Executor on 11 October 2016.
6. These returns were received by the Respondent on 25 January 2018 and showed repayments were due for the years under appeal as per 2 above.
7. The Appellant has sought repayments of the amounts and duly appealed the matters to the Tax Appeals Commission on 14 March 2018.
8. The facts are not in dispute in this appeal.

Legislation

9. 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

10. The Appellant outlined that he contacted the Respondent in relation to whether or not he could claim tax refunds for his late mother, due, for the previous four years.
11. The Appellant advised that, the Respondent, by letter dated 11 October 2016, requested a copy of his late mother's will, a copy of the grant of probate, a schedule of assets, confirmation whether his late mother had a life interest in a will or a trust as well as the completion of the Income Tax returns for 2012 to 2016 on behalf of his late mother.
12. The Appellant submitted that the grant of probate was applied for on 23 January 2017, but only received on 2 January 2018. The Appellant submitted the tax returns on 18



January 2018 and stated that he could not have done so earlier in following the instructions of the Respondent's letter of 11 October 2016.

13. The Appellant has submitted that the State had not been prejudiced by the delay in submitting the tax returns but on the contrary had in fact benefitted from having the money for several years.
14. The Respondent submitted that the returns for the years 2012 and 2013 were received on 25 January 2018 and processed on 16 February 2018.
15. The Respondent submitted that in order for a claim for repayment of Income Tax to be considered a valid claim, claims are to be made within 4 years after the end of the year of assessment to which the repayment relates. As the returns were filed outside of this four-year time limit, the repayments were disallowed.
16. The Respondent submitted that the returns filed for 2012 and 2013 which showed repayments of income tax as set out in the Notice of Appeal and at 2 above could not be repaid because of the restrictions imposed on the Respondent by s.865(4) of the Taxes Consolidation Act (TCA) 1997.

Analysis and findings

17. The Appellant's claim for repayments in respect of the tax years 2012 and 2013 were made for the first time by the Appellant in 2018 on submission of his mother's tax returns for the respective years. Thus, the Appellant's claims for repayment in respect of the tax years 2012 and 2013 were 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]
18. 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 discretion to direct that

repayments be made to the Appellant where the claim for repayment falls outside the four-year period specified in s.865(4) TCA 1997.

19. 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, may be found on the Commission website at www.taxappeals.ie.

Determination

18. 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 claims on behalf of the Appellant for the tax years of assessment 2012 and 2013, are out of time in accordance with the provisions of s.865(4) TCA 1997.

19. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

CHARLIE PHELAN
APPEALS COMMISSIONER
12 AUGUST 2020.