



163TACD2020

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 repayment relates to overpayments of income tax in 2009, 2010, 2011, 2012, 2013 and 2014.
2. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

3. The Appellant is acting as personal representative on behalf of her late father who is deceased.
4. The income tax returns for the years 2009 to 2018 for REDACTED were submitted in September 2019. The returns were filed late due to the illness of the deceased.



5. By letter dated 29 November 2019, the Respondent advised the Appellant that repayments for the years 2009 to 2014 could not be made.
6. The Respondent pointed out that s.865(4) of the Taxes Consolidation Act (TCA) 1997 provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within 4 years after the end of that chargeable period.
7. The Respondent advised the Appellant that as the claims for repayment were not made within the relevant 4-year period it was precluded from repaying the tax involved.
8. The Appellant has sought repayments of these amounts and duly appealed the matters to the Tax Appeals Commission on 15 May 2018.
9. The facts are not in dispute in this appeal.

Legislation

10. 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

11. The Appellant submitted that **REDACTED** was diagnosed with Alzheimer's and attended a consultant neurologist regarding his condition in 2012, 2013 and 2014. Owing to his medical condition income tax returns were not submitted for the years under appeal.
12. The Appellant submitted that as **REDACTED** was separated from his wife and that his daughter lived abroad the required data to submit his tax returns was unavailable.
13. The Appellant submitted that Revenue granted maintenance payment relief in 2008 based on the amount claimed in **REDACTED** return of income for that year. The





Appellant further submitted that Revenue should have granted relief for the following years by coding the amount claimed in 2008 to his tax credits.

14. The Appellant submitted that the main reason to there being tax refunds in the years under appeal was the failure of Revenue to continue to grant the maintenance relief in the years under appeal.
15. The Appellant submitted an appeal for leniency in the application of the four-year rule and suggested that there is provision in other cases for instances where an inspector of taxes can admit appeals in these circumstances.
16. The Respondent submitted that the returns filed on 26th September 2019 for tax years 2009, 2010, 2011, 2012, 2013 and 2014, (claiming repayments of income tax in the total amount of €12,300), cannot be repaid because of the restrictions imposed on the Respondent by s.865(4) of the Taxes Consolidation Act (TCA) 1997.
17. The Respondent submitted that the tax returns and repayment claims for tax years 2009 to 2014 were made more than 4 years after the end of the tax year to which the claims relate, the Revenue Commissioners are statute barred from making the repayments.
18. The Respondent noted that the deceased person had claimed, and had been allowed, a deduction from his income on the 2008 Form 11 Income tax return in respect of Maintenance payments to his separated spouse, but submitted that Revenue is not in a position to make adjustments to tax credits in future years based on a previous return in the absence of a request to do so. The Respondent further submitted that the Appellant's tax agents at the time, who are also his current agents, could have requested the necessary amendments to tax credits on his behalf, at any time.
19. The Respondent acknowledged the statement in the Notice of Appeal in relation to the medical and personal circumstances of the deceased person that prevented him from submitting the returns when due.
20. The Respondent submitted that neither of the above circumstances can override the provisions of s.865 TCA 1997 as amended.





Analysis and findings

21. The Appellant's claim for repayments in respect of the tax years 2009, 2010, 2011, 2012, 2013 and 2014 were made for the first time by the Appellant in September 2019 on submission of **REDACTED** tax returns for the respective years. Thus, the Appellant's claims for repayment in respect of the tax years 2009, 2010, 2011, 2012, 2013 and 2014 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]
22. 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.
23. 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
24. The determinations that can be made by an Appeal Commissioner are those delineated in s.949AK and s.949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.
25. Accordingly, I am satisfied that it would be ultra vires for me to embark upon a consideration of, or to make a finding or determination in relation to, the issue of leniency in the circumstances of the deceased person as argued by the Appellant. I





must therefore decline to consider this argument or to make any finding in relation thereto.

Determination

26. 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 2009, 2010, 2011, 2012, 2013 and 2014, are out of time in accordance with the provisions of s.865(4) TCA 1997.
27. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**CHARLIE PHELAN
APPEALS COMMISSIONER
12 AUGUST 2020.**

