



**Ref: 189TACD2020**

**BETWEEN/**

**REDACTED**

**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 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 income tax returns for the years 2013 and 2014 for the Appellant were submitted to Revenue on 2 January 2020. These returns were filed late because the Appellant was focused on the wellbeing of his family and for this reason was unable to submit the income tax returns on time.

4. The tax returns when processed by the Respondent, resulted in repayments due to the Appellant of €6,674.31 for 2013 and €6,288.55 for 2014.
5. By letters dated 7 February 2020 the Respondent advised the Appellant that repayments for the years 2013 and 2014 could not be made in accordance with s.865 TCA 1997.
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 his children were diagnosed with an illness that allowed him to claim incapacitated child tax credits for 2013 and 2014.

12. The Appellant submitted that he lost his job in 2016 and was focused more on the wellbeing of his family and trying to stay working. For this reason he was unable to submit his tax returns for 2013 and 2014.



13. The Appellant submitted that he was not made aware of the deadline of four years to submit a claim for tax credits.
14. The Appellant submitted that the refusal to allow the repayments does not take account of the considerable challenges in his family circumstances over the last number of years which effectively resulted in the delay in submitting the 2013 and 2014 tax returns on time.
15. The Appellant submitted an apology for the delay in filing his returns and appealed for leniency in the application of the four-year rule and to direct the Respondent to accept and refund the claims for repayment.
16. The Respondent submitted that the returns filed on 2 January 2020 for tax years 2013 and 2014, (claiming repayments of income tax €6,674.31 for 2013 and €6,288.55 for 2014), 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 as the tax returns and repayment claims for tax years 2013 and 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 submitted that income tax returns had been sought from the Appellant on various dates between 4 September 2014 and 19 March 2019.
19. The Respondent submitted that to meet the 4 year rule, the return for 2013 should have been submitted by 31 December 2017 and by 31 December 2018 for 2014.

### **Analysis and findings**

20. The Appellant's claim for repayments in respect of the tax years 2013 and 2014 were made for the first time by the Appellant in January 2020 on submission of the tax returns for the respective years. Thus, the Appellant's claims for repayment in respect of the tax years 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]*

21. 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.
22. 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](http://www.taxappeals.ie)
23. 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.
24. 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 request by the Appellant's appeal for leniency in the application of the four-year rule. I must therefore decline to consider this argument or to make any finding in relation thereto.

## **Determination**

25. 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 2013 and 2014, are out of time in accordance with the provisions of s.865 (4) TCA 1997.

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

**CHARLIE PHELAN**  
**APPEALS COMMISSIONER**  
**22 OCTOBER 2020.**