



191TACD2020

BETWEEN/

REDACTED

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to claims for the repayment of tax in accordance with section 865 of the Taxes Consolidation Act, 1997 (hereinafter 'TCA 1997') in respect of the tax years of assessment 2010, 2011 and 2012.
2. The Appellant filed his income tax returns his returns for 2010, 2011 and 2012 on 24th April 2017. These returns showed tax repayments due to the Appellant for these years of €3,955.11, €2,988.81 and €3,192.21 (total €10,136.13) respectively.
3. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 4 November 2020.

Background

4. By letters dated 18 May 2017 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.
5. The Appellant has sought repayments of the above amounts and duly appealed to the Tax Appeals Commission on 26 May 2017.
6. The facts are not in dispute in this appeal.

Legislation

7. Section 865 TCA 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

Appellant

8. The Appellant submitted that the relevant tax returns were filed late due to the illness of his bookkeeper who sadly died in early 2017.
9. The Appellant submitted that the illness suffered by his bookkeeper impacted on her ability to do the job even though she continued to work.
10. The Appellant submitted that he understood the rules in relation to late filing but the amount of the repayment would be an enormous amount for his business to lose. He contended that the legislation was unfair insofar as Revenue could look for the amounts if he owed them but could refuse to make an out of time refund.
11. The Appellant further submitted that his business is struggling and his wife has to input money from her salary to keep the business going. Obtaining the refund would mean he could pay outstanding creditors and loans and in fact could take on an employee to extend his business.
12. The Appellant submitted, at the appeal hearing, that had he not looked for the repayment, it would have remained as a credit in his account with the Respondent. He sought to have the refund due credited to his account with Revenue again to offset future tax liabilities.
13. The Appellant stated that most of the refund due is made up of tax paid by his wife on her salary from her employer.

Respondent

14. The Respondent submitted that in denying the refunds it has relied on the statutory provision provided for in s. 865 TCA 1997.
15. The Respondent submitted that in the years under Appeal, 2010, 2011 and 2012, Mr. REDACTED was self-employed operating a Garage.
16. The Respondent submitted that s. 959I(1) TCA 1997 specifies



“Every chargeable person shall as respects a chargeable period prepare and deliver to the Collector General on or before the specified return date for the chargeable period a return in the prescribed form”.

17. The Respondent submitted that the relevant specified return dates for the Appellant, in respect of the years under Appeal were 15th November 2011, 15th November 2012 and 14th November 2013 respectively.
18. The Respondent submitted that Mr. REDACTED filed his returns for those years on 24th April 2017.
19. The Respondent submitted that s. 865(1)(b)(i)(I) and s. 865(1)(b)(i)(II)(A) state:

“For the purposes of subsection (3) – 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 – 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 the repayment treated as claimed, if due- 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”.
20. The Respondent submitted that s. 865(4)(c)(ii) states

“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 – in relation to any chargeable period beginning on or after 1st January 2003, within 4 years after the end of the chargeable period to which the claim relates”.
21. The Respondent submitted that as the Appellant did not file his returns for 2010, 2011 and 2012 until 24th April 2017 his claim to repayment for those years were outside the 4 year time limit and were consequently disallowed on 16th May 2017 and the Appellant was so advised.
22. The Respondent expressed sympathy with the Appellant in the circumstances surrounding the late submission of the returns which has led to the refunds being denied. The Respondent pointed out however, that the Respondent is legislatively prohibited from making the refunds in these circumstances.



23. The Respondent submitted and confirmed that irrespective of the request by the Appellant for a repayment of tax, the respondent would not have been in a position to either repay the tax or to make it available for offset against future liabilities by the Appellant.

Analysis

24. 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. Section 865(1)(b)(ii) provides that where all the information which the Revenue Commissioners may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.
25. 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].
26. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the years 2010, 2011 and 2012 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 repayments of tax in the total amount of €10,136.13 to be due, the Appellant must have made valid claims to the Revenue Commissioners.
27. As regards when a valid claim was made by the Appellant for the years 2010, 2011 and 2012, the returns of income, charges and capital gains for the respective years which were received by the Revenue Commissioners for the Appellant on 24th April 2017 did not satisfy the requirements of section 865(1)(b)(i).



28. The Revenue Commissioners had all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant following the delivery of the relevant tax returns on 24th April 2017.
29. In deciding if the Appellant is entitled to repayments of tax, and having established that there are valid claims, the provisions of section 865(4) are applied. As the claims for repayment of tax by the Appellant were made outside the four-year period specified in section 865(4) the claims for repayments in the total amount of €10,136.13 for the years 2010 to 2012 by the Appellant are not allowed.
30. The use of the word '*shall*' in section 865(4) TCA 1997, 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 valid claim for repayment of tax has not been made within the four-year period specified in section 865(4) TCA 1997.
31. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 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.
32. 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 whether the legislation and Revenues application of it, concerning out of time repayment claims, as argued by the Appellant, is discriminatory or unfair or otherwise unlawful. I must therefore decline to consider this argument or to make any finding in relation thereto.
33. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment of tax in the context of the four-year statutory limitation period. These



determinations, can be found on the website of the Tax Appeals Commission at www.taxappeals.ie .

Determination

34. I determine that valid claims in accordance with section 865 TCA 1997 were made by the Appellant for the years 2010, 2011 and 2012 on 24th April 2017, which is more than four years after the end of the chargeable period to which the claim for repayment of tax relates.
35. Pursuant to the wording of section 865 TCA 1997, and in particular the word '*shall*' in section 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year limitation period in circumstances where a valid claim is made outside the four-year period. As a result, I determine that the claims for repayment of tax for the years of assessment 2010, 2011 and 2012 are not allowed under section 865 TCA 1997.
36. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

17 NOVEMBER 2020

