



Ref: 78TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim pursuant to s.865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax year of assessment 2012.
2. By letter dated 9 June 2017, the Appellant was informed that income tax had been overpaid in respect of the tax year of assessment 2012. The Respondent declined to make 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 amount of the overpayment was €8,420.66. The Appellant appealed the decision to deny the repayment claim to the Tax Appeals Commission 7 July 2017.
3. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

4. On 22 March 2017 the Appellant completed the relevant income tax return in respect of the year 2012. The return was processed by the Respondent on 13 May



2017 and notices of assessment issued to the Appellant on 9 June 2017. The notice of assessment for the year 2012 indicated that an overpayment of tax in the amount €8,420.66 had arisen for the year 2012. The Respondent notified the Appellant on 9 June 2017 that s.865 TCA 1997 precluded them from making the repayment, as the claim was not made within four years after the end of the chargeable period to which the claim relates. The Appellant submitted a notice of appeal which was admitted by the Tax Appeals Commission on 11 July 2017.

Legislation

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

5. The Appellant submitted that he suffered a REDACTED injury as a result of an accident in 1996. He stated that he has a bank overdraft which he used to keep his business going. He said he did not have any money for himself and that he would have to close his business in 2017 since the Respondent had taken all his payments. Furthermore, he stated that he would have to sign on the dole. He stated that he could produce medical records of his brain injury if required to do so.
6. The Respondent submitted that the Appellant is a chargeable person required to submit annual tax returns by the return filing date each year. The assessment for 2012 based on the Appellant's submission of his return for 2012 shows an overpayment of €8,420.66. The Respondent submitted that claims for repayment of tax must be made within four years after the end of the tax year to which the claim related in accordance with s.865 TCA 1997. The Respondent concluded therefore that the Appellant's claim for the year 2012 was out of time as it was received on 22 March 2017, and that the refund could not be made.

Analysis and findings

7. The facts in this appeal are not in dispute. Both parties accepted that the repayment claim regarding the tax year 2012 was not made within four years after the end of the chargeable period to which the claims 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]

8. 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.
9. 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, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 25TACD2018, 29TACD2018, 03TACD2019, 14TACD2019, 20TACD2019 and 1 TACD 2020 can be found on the Commission website at www.taxappeals.ie.

Conclusion

10. 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 claim on behalf of the Appellant for the tax year of assessment 2012, is out of time in accordance with the provisions of section 865(4) TCA 1997.
11. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
26 FEBRUARY 2020

