



Ref: 80TACD2020

BETWEEN/

REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a repayment claim pursuant to section 865 of the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The request for repayment relates to overpayments of income tax in 2012 and in 2013. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

2. The Appellant filed income tax returns for 2012 and 2013 on 27 November 2018. These returns declared income and tax due for 2012 and 2013 resulting in overpayments of €1,163.32 and €174.74 respectively.
3. The Appellant has sought repayments of these amounts.
4. The facts are not in dispute in this appeal.

Legislation

5. The relevant legislation in this appeal is section 865 TCA 1997.

Submissions

6. The Appellant contends that this is money that is essentially owed to him. He has stated that he is not a wealthy individual and needs the money to support his wife and family.
7. The Appellant in pointing to extenuating circumstances, advises that he is far from a wealthy man and requires the repayment in supporting his wife and family. He further elaborates that in late 2018, he was unable to electronically file the tax returns for 2012 and 2013 because the Revenue system would not permit him to file returns outside a four-year period. The Appellant has advised that he would have filed the returns for 2012 and 2013 at that time (late in 2018) if the system had permitted him to do so.
8. The Respondent submits that the Appellant filed his 2012 and 2013 income tax returns on 27 November 2018. The Respondent further submits that the respective dates for submission of these returns was 31 October 2013 and 31 October 2014.
9. The Respondent elaborates that Section 865(4) TCA 1997 states that all claims for repayment of tax made on or after 1 January 2005 may only be allowed within 4 years. According it was unable to repay the tax overpaid, because the Appellant's application for repayment had not been made within the four years after the end of the chargeable periods to which the claims relate.

Analysis and findings

10. The Appellant 's claim for repayment in respect of the tax years 2012 and 2013 was made for the first time by the Appellant on 27 November 2018. Thus the Appellant's claim for repayment in respect of the tax years 2012 and 2013 was out of time in accordance with section 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]

11. In my view, the use of the word 'shall' per section 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 a repayment be made to the Appellant where the claim for repayment falls outside the four-year period specified in s.865(4) TCA 1997.
12. 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.

Conclusion

13. Pursuant to the wording of section 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 years of assessment 2012 and 2013, is out of time in accordance with the provisions of section 865(4) TCA 1997.
14. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

Charlie Phelan
Appeals Commissioner
2 January, 2020.

