



Ref: 82TAC2020

**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 an overpayment of income tax in 2014. This case is adjudicated without a hearing in accordance with the provisions of s.949U.

**Background**

2. The Appellant, submitted his 2014 return of income in January 2019 and the subsequent Revenue assessment indicated a repayment due to the Appellant of €1,672.88.
3. The Appellant has sought a repayment of the amount of €1,672.88 and has proffered extenuating circumstances in support of his claim to repayment. These include his recollection of a telephone conversation with a Revenue staff member who purportedly advised him it was perfectly fine to file his returns over the Christmas/New Year period. The Appellant contends that the Revenue staff member did not inform him that the 2014

return should be filed before 31 December 2018 to ensure compliance with the four-year rule on repayments

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 has submitted in his appeal documentation that he was a PAYE worker only for 2014 and has provided further details of his personal extenuating circumstances. The Appellant has further elaborated on his purported telephone conversation with a Revenue staff member in which he was not advised about the crucial requirement to submit his 2014 income tax return by 31 December 2018. He asserts that he would have made the return in time had he been advised by the Revenue official to do so.
7. The Respondent by way of letter dated 9 March 2019 stated that it is unable to review the Appellant's income tax position for 2014 as 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 precluded from repaying the tax due for repayment in respect of 2014, because the Appellant's application for repayment had not been made within the four years after the end of the chargeable period to which the claim relates.

### **Analysis and findings**

8. The Appellant's claim for repayment in respect of the tax year 2014 was made for the first time by the Appellant in January 2019. Thus the Appellant's claim for a repayment in respect of the tax year 2014 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]

9. 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.
10. 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).

### **Conclusion**

11. 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 year 2014, is out of time in accordance with the provisions of section 865(4) TCA 1997.
12. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

**Charlie Phelan**  
**Appeals Commissioner**  
**2 January, 2020.**

