



**Ref: 85TACD2020**

**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.949AN (3) (a) TCA 1997 as a hearing is not necessary for the determining of this appeal.

#### **Background**

2. The Appellant, on 14 June 2019 sought a review of his tax affairs for 2014 in which emergency income tax of €702.85 was deducted from a retirement plan on 21 August 2014.
3. The Appellant has sought a repayment of the amount of €702.85 and has proffered extenuating circumstances in support of his claim to repayment.
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 by way of letter dated 14 June 2019 that he was unaware that he was entitled to the tax repayment due this his poor proficiency with the English language and has provided further details of his personal extenuating circumstances which includes references to his personal circumstances and budgetary requirements.
7. The Respondent by way of letter dated 15 July 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 unable to process any claim for the tax overpaid in 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 on 14 June 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.949AL TCA 1997.

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

**The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.**

