



Ref: 86TACD2020

BETWEEN/

REDACTED

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 years of assessment 1998 to 2012.
2. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

3. The Appellant commenced a life assurance policy with **REDACTED** on the 2nd November 1998 with funds arising from a personal injury claim.
4. The Respondent has advised that the Appellant is entitled to an exemption from income tax on income arising from this investment in accordance with section 189 (2) TCA 1997.
5. By letter dated 19 February 2016 **REDACTED** advised the Appellant of the encashment value of the policy called an **REDACTED**. It further advised that "*From the inception of your policy, tax at the prevailing standard rate of income tax was*



deducted from the Managed Growth fund on an ongoing basis and remitted to the Revenue Commissioners by REDACTED”.

6. By letter dated 15 March 2017 **REDACTED** estimated the amount of tax that was paid in respect of the Appellant’s policy was €12,487.
7. The Respondent advised the Appellant through the Revenue online enquiry service on 25 May 2017 that *“Revenue have a 4-year time limit for issuing repayments. Please note any repayment prior to the 4-year time limit cannot be processed”*. That communication also sought certificates to enable the Respondent to process repayments for the years 2013 to 2016.
8. By letter dated 17 June 2017, **REDACTED** advised the Appellant of the estimated tax paid for every year commencing on 2 November 2010 to 2 November 2015.
9. The Respondent duly processed the repayments for 2013, 2014, 2015 and 2016 amounting in total to €2,775.
10. The balance of the estimated tax paid by **REDACTED** of €9,712 (i.e. €12,487-€2,775) is the subject of this appeal.

Legislation

11. 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

12. The Appellant submitted the background to his investment with **REDACTED** commencing with his investment of the proceeds of a settlement arising from a serious accident over 30 years ago.
13. The Appellant submitted that he was unaware that **REDACTED** deducted tax at source from the income earned in the fund. He advised that the tax was deducted without his knowledge.
14. The Appellant submitted that he was not made aware of the right to appeal by the Respondent when it advised him on 25 May 2017 that it would only make a repayment for 4 years. He also advised that he never received formal notice of the refusal of the earlier years claims to repayment.



15. The Respondent submitted that the Appellant received the repayments for 2013 to 2016 and that any further repayments prior to 2013 would be in breach of the four-year limit on repayments in accordance with section 865 TCA 1997.

Analysis and findings

16. The facts in this appeal are not in dispute. Both parties accepted that the repayment claim regarding the earlier tax years 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, can be found on the Tax Appeals Commission website 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
12 MARCH 2020

