



102TACD2021

BETWEEN

THE APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal by the Appellant relating to a repayment claim in respect of the tax year 2011 pursuant to section 865 of the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The Appellant submitted the appeal on 27th February 2020. It was outside the 30 day timeframe as per the notice from the Revenue Commissioners ("the Respondent"). The Tax Appeals Commission ("the Commission") can accept a late appeal in extenuating circumstances relating to absence, sickness or other reasonable cause. On 8th April 2020, the Appellant responded to the Commission with details of reasons for the late submission of the appeal and those were accepted by the Commission. Hence, her appeal was allowed to proceed.
2. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.

Background

3. The Appellant is appealing the refusal to refund a repayment in relation to the tax return for 2011. The Appellant's income tax return for the year 2011 was submitted to Revenue on 29th August 2019. The due date for the 2011 return was 31st October 2012. In order for the claim to have come within the four year rule, it had to have been filed by 31st October 2015. The tax return filing was therefore significantly out of time.
4. The tax return when processed by the Respondent resulted in a repayment due to the Appellant in the amount of €161.65 for 2011.
5. The overpayment for 2011 was disallowed by the Respondent on the basis that section 865(4) TCA 1997 provides that a claim for repayment of tax for a chargeable period shall **not** be allowed unless it is made within four years after the end of that chargeable period. A Notice issued to the Appellant on 7 January 2020 to advise her that the claim for repayment of tax for the year 2011 was filed outside the four-year time limit set out in section 865(4) TCA 1997. The Appellant was also informed that the Respondent was precluded from making the refund due to the claim being made outside the four-year time

limit. The Appellant was also advised of her right to appeal the matter to the Tax Appeals Commission in accordance with section 865(7) TCA 1997.

6. The Appellant sought repayment of the amount overpaid in respect of the year 2011 and duly appealed the matter to the Tax Appeals Commission on 27th February 2020, as referred to above.
7. The facts are not in dispute in this appeal.

Legislation

8. The relevant legislation that applies in respect of this appeal is section 865 TCA 1997 - Repayment of Tax. This section states as follows:

'(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 949], within the period of 30 days after the date of the notice of that decision].

Submissions

9. The Appellant submitted that due to health complications and personal challenging circumstances relating to extremely private matters, she did not pay close attention to her tax affairs. Hence, she failed to recognise she was due a tax refund for the year 2011. As stated above, the Appellant appealed for a refund of the tax overpaid for 2011.
10. The Respondent submitted that repayment of income tax in the amount of €161.65 for 2011 cannot be made because of the restrictions imposed on the Respondent by section 865(4) TCA 1997.
11. The Respondent submitted that as the tax return and repayment claim for tax year 2011 were made more than four years after the end of the tax year to which the claim relates, the Revenue Commissioners are statute barred from making the repayment.

Analysis and findings

12. The extenuating circumstances in this appeal have been recognised by the Commission. The Commissioner has the utmost sympathy for the position the Appellant found herself in, relating to her challenging personal circumstances. However, there is no discretion afforded to the Respondent and hence no discretion afforded to the Commissioner to consider those circumstances in relation to the four-year rule and any repayment outside that period of time. The Appellant was correct to appeal to seek clarity on the situation.
13. Section 865(2) TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of the tax paid is not due from that person. Section 865(3) provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
14. Section 865(1)(b)(i) TCA 1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person. Section 865(1)(b)(ii) provides that where all the information which the Respondent may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.
15. As regards a limitation period for a repayment of tax under section 865, subsection (4) provides that *'...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].

16. The Appellant sought a repayment of tax on the basis that an amount of tax paid by her for the tax year 2011 was not due. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means that the repayment of tax sought by the Appellant under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Revenue Commissioners. Therefore, for the repayment of tax in the amount of €161.65 to be due, the Appellant must have made a valid claim to the Respondent.
17. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant, following the delivery of the relevant claim to repayment, only when the 2011 return was received in 2019.
18. In deciding if the Appellant is entitled to repayment of tax, and having established that there is a valid claim, the provisions of section 865(4) TCA 1996 are applied. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayment in the amount of €161.65 for the year 2011 was disallowed.
19. The use of the word 'shall' as set out in 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. The Commissioner has no authority or discretion to direct that repayment be made to the Appellant where the claim for repayment falls outside the four-year period specified in section 865(4) TCA 1997.
20. 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.¹
21. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

Determination

22. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "shall" as set out in subsection 865(4) TCA 1997, the Commissioner determines that there is no 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, the Commissioner has no alternative but to determine that the repayment claim on behalf of the Appellant for the tax year of assessment 2011, is out of time in accordance with the provisions of section 865(4) TCA 1997. Hence, the appeal is denied. The Commissioner appreciates that the Appellant will no doubt be disappointed by this determination. The Appellant was correct to appeal to have clarity on the position. The Commissioner hopes that the Appellant's personal circumstances have altered to be more positive for her.
23. This Appeal is hereby determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party

¹ www.taxappeals.ie

dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
3rd June 2021