



104TACD2021

**BETWEEN**

**THE APPELLANT**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by the Appellant relating to a repayment claim in respect of the tax years 2013 and 2014 pursuant to section 865 of the Taxes Consolidation Act 1997, as amended (‘TCA 1997’). The Appellant submitted the appeal on 16<sup>th</sup> February 2020. The Commission noted that the Appellant’s father also passed away on [REDACTED] November 2020. In addition, the Commissioner notes that the Appellant was made redundant with effect from the [REDACTED] March 2020. The Appellant held senior positions within the airline industry. The Commissioner notes the many personal challenges the Appellant and his family have suffered and extends the utmost sympathy in relation to his circumstances.
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 2013 and 2014 by the Revenue Commissioners (“the Respondent”). The Appellant’s income tax return for the year 2013 was submitted to the Respondent on 12<sup>th</sup> December 2019. The Appellant’s income tax return for the year 2014 was submitted to the Respondent on 14<sup>th</sup> December 2019. The due date for the 2013 return was no later than 13<sup>th</sup> November 2014. In order for the claim to have come within the four-year rule, it had to have been filed by 13<sup>th</sup> November 2018. The due date for the 2014 return was no later than 12<sup>th</sup> November 2015. In order for the claim to have come within the four-year rule, it had to have been filed by 12<sup>th</sup> November 2019. The 2014 return was submitted on 14<sup>th</sup> December 2019. Hence, both returns were submitted outside the four-year rule for claims for repayment.
4. The tax return when processed by the Respondent resulted in a repayment due to the Appellant in the amount of €3,403.07 for 2013 and €8587.12 for 2014. The total overpayment is €11,990.19.

5. The overpayment for 2013 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. The overpayment for 2014 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 16<sup>th</sup> January 2020 to advise him that the claim for repayment of tax for the year 2014 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 his 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 years 2013 and 2014 and duly appealed the matter to the Tax Appeals Commission on 16<sup>th</sup> 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 949I, within the period of 30 days after the date of the notice of that decision].*

### **Submissions**

9. The Appellant submitted that due to his wife's serious health complications and personal challenging circumstances relating to extremely private matters, he was not in a position to apply for tax relief and his tax affairs were understandably not his top priority. The Appellant provided a doctor's letter in support of his personal circumstances. The Commission accepts the truth of these circumstances based on his own report and that of his doctor.
10. Hence, the Appellant failed to claim tax relief since 2013. As stated above, the Appellant appealed for a refund of the tax overpaid for 2013 and 2014.
11. The Respondent submitted that repayment of income tax cannot be made because of the restrictions imposed on the Respondent by section 865(4) TCA 1997.
12. The Respondent submitted that as the tax return and repayment claim for tax years were made more than four years after the end of the tax year to which the claim relates, the Respondent is statute barred from making the repayment.

### **Analysis and findings**

13. The extenuating circumstances in this appeal have been recognised by the Commission. The Commissioner has the utmost sympathy for the position the Appellant found himself in, relating to his 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.
14. 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.
15. 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.

16. 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]
17. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the tax years 2013 and 2014 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 years 2013 and 2014 to be due, the Appellant must have made a valid claim to the Respondent.
18. 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 2013 and 2014 returns were received in 2019.
19. 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 for the years 2013 and 2014 was disallowed.
20. 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.
21. 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.<sup>1</sup>
22. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

## Determination

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

23. 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 years of assessment 2013 and 2014 are 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 but the Commissioner has no statutory discretion to take into account extenuating personal circumstances. The Commissioner accepts the gravity and truth of the extenuating circumstances but there is no statutory provision which allows for consideration of them. The Appellant was correct to appeal to have clarity on the position. The Commissioner hopes that the Appellant’s personal and professional circumstances have altered to be more positive for himself and his family.
24. 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 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**  
**9<sup>th</sup> June 2021**