



108TACD2021

BETWEEN

THE APPELLANTS

Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal by the Appellants to the Tax Appeals Commission ("the Commission") relating to a repayment claim in respect of the tax year 2015 pursuant to section 865 of the Taxes Consolidation Act 1997, as amended ("TCA 1997"). The appeal was made on 25th June 2020.
2. This appeal is determined by agreement of the parties, without a hearing, in accordance with section 949U of the TCA 1997.

Background

3. The Appellants, a married couple, had a rental property for which they were registered as self-assessed. On disposal of that property they deregistered for income tax, receiving confirmation from the Revenue Commissioners ("the Respondent") on 11th November 2016, noting the date of deregistration as 27th April 2015.
4. The Appellants submitted their 2015 return to the Respondent in 2020.
5. The tax return when processed by the Respondent resulted in a repayment due in the amount of €758.38 for the tax year 2015.
6. The Respondent declined to process the repayment on the basis that a valid claim for repayment had not been made within the four-year statutory period in accordance with section 865(4) TCA 1997. A Notice issued to the Appellants on 9th June 2020 to advise that the claim for repayment of tax for the year 2015 was filed outside the four-year time limit set out in section 865(4) TCA 1997 therefore precluding the Respondent from making the refund. The Appellants were also advised of their right to appeal the matter to the Commission in accordance with section 865(7) TCA 1997.
7. The Appellants duly appealed this matter to the Commission on 25th June 2020.

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

Appellant

9. The Appellants submitted that on the disposal of a rental property in 2015 they notified the Respondent of the change to their income tax liability receiving confirmation of the amended status on 11th November 2016.

10. The Appellants submitted that following an online request for P21 statements from the Respondent in 2019 they were informed that 2015 was closed/unavailable. They also noted that P21 statements were not issued. Thus the Appellants submitted that they were unaware of the refund position.
11. The Appellants submitted that while they understand that "*time has passed*", they would be grateful if, in the absence of a refund, consideration could be afforded to the allocation of tax credits.

Respondent

12. The Respondent submitted that the Appellants on disposal of a rental property were deregistered for income tax as of 27th April 2015. This was confirmed in written correspondence dated 11th November 2016 which also advised the Appellants to ensure that 'all outstanding returns/liabilities' were up to date.' The Respondent notes that the Appellants did not file their tax return for 2015 until 2020.
13. The Respondent submitted that they have no record of a request for a P21 statement. They do note an enquiry was received on 22nd May 2019 querying the allocation of credits to 2005. A response issued the following day noting "*years prior to the 1st January 2015 are now statute barred. I regret credits cannot be added to 2005.*" The Respondent noted for clarification that a P21 statement cannot be processed until such a time as the return for that year is filed.
14. The Respondent submitted that repayment of income tax in the amount of €758.38 for 2015 cannot be made because of the restrictions and lack of discretion imposed on the Respondent by section 865(4) TCA 1997.
15. The Respondent submitted that the Commission in previous determinations has provided clarity on the lack of discretion afforded by section 865(4) TCA 1997. The Respondent asserts that as the Appellants accept the claim was not made within the statutory period rather than a decision by the Respondent, the Appellants are appealing the legislation itself.
16. The Respondent referencing *Menolly Homes Ltd v Appeal Commissioners and Revenue Commissioners* [2010] ITR 75 submitted that in tax appeals the burden is on the Appellants to demonstrate that the Respondent misapplied the relevant legislation. The Respondent states that as the Appellants acknowledge they did not make the claim in time the burden of proof cannot be met.

Analysis

17. The Commissioner has sympathy for the Appellants' personal circumstances in this uncertain time. However, there is no discretion afforded to the Respondent and hence no discretion afforded to the Commissioner to consider personal circumstances in relation to the four-year rule and any repayment or allocation of credits outside that period of time.
18. 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.
19. 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 Respondent 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.

20. 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].
21. The Appellants sought a repayment of tax on the basis that an amount of tax paid for the 2015 tax year was not due. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means the repayment of tax sought by the Appellants under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €758.38 to be due, the Respondent must have received a valid claim from the Appellants.
22. 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 Appellants, following the delivery of the relevant claim to repayment, only when the 2015 return was received in 2020.
23. In deciding if the Appellants are 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 Appellants was made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayment in the amount of €758.38 for the year 2015 was disallowed.
24. 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 or credits allocated to the Appellant where the claim for repayment falls outside the four-year period specified in section 865(4) TCA 1997.
25. 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
26. In appeals before the Commission, the burden of proof rests on the Appellant to prove on the balance of probabilities that the Respondent misapplied the legislation. In this instance as the Appellants have not contested the late submission of the claim, the burden is not met. The Appellants were correct to appeal to the Commissioner for clarity.
27. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

¹ www.taxappeals.ie

Determination

28. 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 Appellants for the tax year of assessment 2015 is out of time, in accordance with the provisions of section 865 TCA 1997. Thus, the appeal is denied. While the Commissioner has sympathy for the personal circumstances of the Appellants, this does not afford the Commissioner the right to exercise discretion to set aside the four-year rule in this instance. The Appellants were correct to seek clarity of the position.
29. The 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
15th June 2021