



111TACD2021

BETWEEN

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal by the Appellant to the Tax Appeals Commission (“the Commission”) relating to a repayment claim in respect of the tax year 2008 pursuant to section 865 of the Taxes Consolidation Act 1997, as amended (“TCA 1997”). The appeal was made on 17th September 2020.
2. This appeal is determined following a hearing on 21st June 2021, attended by the Appellant, his new tax agent and two representatives from the Revenue Commissioners.

Background

3. The Appellant had entrusted his tax affairs to an accountant. Each year his accountant would file his tax returns. The Appellant presented to the Commissioner as a law abiding and upstanding individual. There is no suggestion that the Appellant is at fault in any way and that was established at the appeal hearing.
4. The Appellant’s accountant filed tax returns for the years 2008 and 2018 in the year 2019. The tax return for the year 2018 was in time. But the tax return for the year 2008 was some 10 years late.
5. The tax return when processed by the Respondent for 2008 resulted in a repayment due to the Appellant in the amount of €12,283.95 for the tax year 2008.
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 15th October 2019 to advise that the claim for repayment of tax for the year 2008 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 Appellant was also advised of his right to appeal the matter to the Commission in accordance with section 865(7) TCA 1997.
7. The Appellant duly appealed this matter to the Commission on 17th September 2020.

The Hearing

8. At the hearing it was established that the Appellant's accountant had unfortunately died in 2020. Prior to his death, this accountant must have become aware that the Appellant had an outstanding tax return due for 2008. This tax return was filed along with the Appellant's 2018 tax return. It was established that the Appellant's deceased accountant had filed returns for the years 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and all within time. The only return not filed was for 2008. This was a challenging time for all due to the economic downturn in that same year. It appears that in 2019, the Appellant's deceased accountant filed the tax return for 2008. The Appellant was unaware that this tax return was outstanding and it was only when he received the correspondence from Revenue in 2019 did he become aware of the issue.
9. During the hearing, the Appellant was assisted by his new tax agent, who was very helpful to the Appellant and the Commissioner. She is to be commended. Revenue were also helpful in ascertaining the circumstances surrounding the tax returns. This matter is an unfortunate matter and the deceased accountant is not able to assist the Commissioner as to any reason for the late tax return. But, in any event, the reason does not assist the Appellant, as the time limit is strict in terms of the four year limit for making repayments. There are no deviations that the Commissioner can take into account or extenuating circumstances that can negate the four-year rule.

Legislation

10. 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

11. The Appellant submitted that he was unaware of the failure by his deceased accountant to file tax returns for 2008 until 2019. He has filed his tax returns since he registered for income tax on 1st February 1999.

Respondent

12. The Respondent submitted that the Appellant's accountant did not file the 2008 tax return until 3rd October 2019.
13. The Respondent submitted that as a result of section 865(4) TCA 1997, the Appellant is out of time for filing the return and therefore there is no repayment due, as the return was filed outside the four-year rule.
14. The Respondent submitted that repayment of income tax in the amount of €12,283.95 for 2008 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.

Analysis

16. The Commissioner has sympathy for the Appellant's situation brought about by the deceased accountant's failure to submit the 2008 tax return in 2009. 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 outside that period of time.
17. 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.

18. 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.
19. 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].
20. The Appellant is seeking a repayment of tax on the basis that an amount of tax paid for the 2008 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 Appellant 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 €12,283.95 to be due, the Respondent must have received a valid claim from the Appellants.
21. 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 2008 return was received in 2019.
22. 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 €12,283.95 for the year 2008 was disallowed.
23. 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.
24. 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
25. 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 Appellant has not contested the late submission of the claim, the burden is not met. The Appellant was correct to appeal to the Commissioner for clarity.
26. 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

27. 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 2008 is out of time, in accordance with the provisions of section 865 TCA 1997. Thus, the appeal does not succeed. While the Commissioner has sympathy for the circumstances of the Appellant, this does not afford the Commissioner the right to exercise discretion to set aside the four-year rule in this instance. The Appellant was correct to seek clarity of the position. The Appellant may have a cause of action against the accountants who should have filed his tax returns in 2009 in respect of the year 2008 but that is outside the remit of the Commission.
28. 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
29th June 2021**