



**39TACD2021**

**BETWEEN/**

**APPELLANT**

**Appellant**

**AND**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

### **Introduction**

1. This appeal relates to claims for the repayment of tax in accordance with section 865 of the Taxes Consolidation Act, 1997 (hereinafter 'TCA 1997') in respect of the tax year of assessment 2014.
2. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 18 January 2021.

### **Background**

3. The Appellant filed his income tax return for 2012 on 29<sup>th</sup> December 2016. This return indicated a zero tax liability for the year 2012 on the basis that no income was reflected thereon.
4. The Respondent processed this return under the self-assessment system and issued a notice of assessment reflecting the details on the return.
5. The Appellant subsequently advised the Respondent on 25 January 2018 of his correct income and the amount of tax deducted from PAYE sources for 2012.
6. The Respondent issued a notice of amended assessment for year ending 31 December 2012 to the Appellant on 2 February 2018 which indicated an overpayment €2,917.02.

7. By letter dated 16 February 2016 the Respondent declined to process the repayment on the basis that a valid claim for repayment had not been made within the four-year limitation period in accordance with s. 865(4) TCA 1997.
8. These facts were not in dispute between the parties.
9. The Appellant has sought a repayment of €2,917.02 and duly appealed to the Tax Appeals Commission on 7 March 2018.

## Legislation

10. Section 865 TCA 1997 provides:

- “(1) (a) *In this section and section 865A-  
“Acts” means the Tax Acts, the Capital Gains Tax Acts, Part 18A, Part 18C and  
Part 18D and instruments made thereunder,  
“chargeable period” has the meaning assigned to it by section 321.*  
...  
*“tax” means any income tax, corporation tax, capital gains tax, income levy,  
domicile levy or universal social charge and includes-*  
...  
*“valid claim” shall be construed in accordance with paragraph (b).*
- (b) *For the purposes of subsection (3) –*
- (i) *where a person furnishes a statement or return which is required to be  
delivered by the person in accordance with any provision of the Acts for a  
chargeable period, such a statement or return shall be treated as a valid  
claim in relation to a repayment of tax where-*
    - (I) *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 to the person for that chargeable period is  
contained in the statement or return, and*
    - (II) *the repayment treated as claimed, if due –*
      - (A) *would arise out of the assessment to tax, made at the time the  
statement or return was furnished, on foot of the statement or  
return, or*



- (B) *would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time.*
- (ii) *where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person, and*
- ...
- (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.*
- ...
- (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 provisions 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.*



- ...
- (6) *Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not –*
- (a) *repay an amount of tax paid to them, or*
  - (b) *pay interest in respect of an amount of tax paid to them.*
- (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.*

... ”

11. s. 959AN TCA 1997 *Obligation to pay preliminary tax*

(1) *Every person who is a chargeable person as respects any chargeable period is liable to pay to the Collector-General in accordance with this Chapter the amount of that person’s preliminary tax appropriate to that chargeable period.*

(2) *The amount of a chargeable person’s preliminary tax appropriate to a chargeable period is the amount of tax which in the opinion of the chargeable person is likely to become payable by that person for the chargeable period by reason of either a self assessment under Chapter 4 or a Revenue assessment under Chapter 5.*

(2A) *Reference in subsection (2) to the amount of tax which in the opinion of the chargeable person is likely to become payable shall be construed in accordance with the definition of “amount of tax payable” in section 959A.*

(3) *Any amount of preliminary tax appropriate to a chargeable period which is paid by and not repaid to a chargeable person in any capacity shall, to the extent of the amount of that payment or the extent of the amount of that payment less any amount that has been repaid, be treated as a payment on account of the tax payable by the chargeable person for the chargeable period.*

(4) *Where—*

(a) *the tax payable by a company for an accounting period does not exceed the relevant limit, and*

(b) *the accounting period started on the company coming within the charge to corporation tax,*



*then the preliminary tax appropriate to the accounting period shall be deemed to be nil and neither subsection (3) of section 959AR nor subsection (4) of section 959AS apply as respects that accounting period.*

*(5) This section does not apply to capital gains tax.*

**12. s. 960G TCA 1997 Duty of taxpayer to identify liability against which payment to be set**

*(1) Subject to subsection (2), every person who makes a payment of tax to the Revenue Commissioners or to the Collector-General shall identify the liability to tax against which he or she wishes the payment to be set.*

*(2) Where payment of tax is received by the Revenue Commissioners or the Collector-General and the payment is accompanied by a pay slip, a tax return, a tax demand or other document issued by the Revenue Commissioners or the Collector-General, the payment shall, unless the contrary intention is or has been clearly indicated, be treated as relating to the tax referred to in the document concerned.*

*(3) Where a payment is received by the Revenue Commissioners or the Collector-General from a person and it cannot reasonably be determined by the Revenue Commissioners or the Collector-General from the instructions, if any, which accompanied the payment which liabilities the person wishes the payment to be set against, then the Revenue Commissioners or the Collector-General may set the payment against any liability due by the person under the Acts.*

**Submissions**

*Appellant*

13. The Appellant submitted that he filed his return for 2012 on 29 December 2016 under the self-assessment system.

14. The Appellant submitted that his 2012 return on the Respondent's system contained pre-populated and correct details of his and his wife's PAYE income and tax. However as he was new to using the Revenue System he failed to confirm these figures when submitting the tax return for 2012. This resulted in the omission of the income and tax paid figures from his return and consequent assessment for 2012.



15. The Appellant confirmed that he provided the details of his own and his wife's PAYE income to the Respondent on 25 January 2018.

*Respondent*

16. The Respondent submitted that the return and consequent assessment submitted on 29 December 2016 failed to include the PAYE income and tax deducted of the Appellant and his wife.
17. The Respondent submitted that the Appellant subsequently advised the amount of income and tax deducted under PAYE for 2012 for the Appellant and his wife. The Respondent consequently made an amended assessment on 2 February 2018 indicating a repayment due to the Appellant of €2,917.02.
18. The Respondent submitted that in accordance with section 865(4) a claim for the 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.
19. The Respondent submitted that as the claim was not made within 4 years of the end of the chargeable periods ending 31 December 2012 the claim is out of time and accordingly statute barred.

**Analysis**

20. 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 Revenue Commissioners. Section 865(1)(b)(i) 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 Revenue Commissioners 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.

21. 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].
22. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for 2012 was not due. The entitlement to a repayment of tax arises under section 865(2). Section 865(3) means that the repayment of tax sought by the Appellant under section 865(2) is not due unless a valid claim has been made to the Revenue Commissioners. Therefore, for the repayment of tax in the amount of €2,917.02 paid by the Appellant on the PAYE income of himself and his spouse, the Appellant must have made a valid claim to the Revenue Commissioners.
23. As regards when a valid claim was made by the Appellant for 2012, the return of income, charges and capital gains, received by the Revenue Commissioners for the Appellant on 29 December 2016 did not satisfy the requirements of section 865(1)(b)(i) in circumstances where the PAYE income and the tax deducted was omitted from the return.
24. The Revenue Commissioners 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 submission of the PAYE income and tax details submitted by the Appellant on 25 January 2018.
25. In deciding if the Appellant is entitled to repayments of tax, and having established that there are valid claims, the provisions of section 865(4) are applied. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) the claim for repayment in the amount of €2,917.02 for 2012 by the Appellant is not allowed.
26. The question to be answered in this Appeal is whether the return made by the Appellant on 29<sup>th</sup> December 2016 contained all the information reasonably required by the Respondent to enable the Respondent to determine to what extent a repayment of tax was due to the Appellant.



27. The Respondent has submitted that it was not in a position to determine the extent of any repayment until it received the details of the PAYE income and tax paid in January 2018 and was consequently precluded from making the repayment due to the provisions of section 865(4) TCA 1997.
28. The Appellant on the other hand has submitted that the return submitted on 29 December 2016 had initially included the necessary pay and tax details, pre-populated by the Respondent but excluded by the Appellant in making his return for 2012 due to his unfamiliarity with the Respondent's IT systems.
29. 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 discretion to direct that repayments be made to the Appellant where the claim for repayment falls outside the four-year period specified in s.865(4) TCA 1997.
30. 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 at [www.taxappeals.ie](http://www.taxappeals.ie)
31. The determinations that can be made by an Appeal Commissioner are those delineated in s.949AK and s.949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.
32. Accordingly, I am satisfied that it would be *ultra vires* for me to embark upon a consideration of, or to make a finding or determination in relation to, the Appellant's view that the return submitted, erroneously excluded the correctly pre-populated details that would have enabled the Respondent to determine to what extent a repayment was due for 2012 within the time limits for making a claim for repayment. I must therefore decline to consider this argument or to make any finding in relation thereto.







### **Determination**

33. 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 claims on behalf of the Appellant for the tax year 2012 is out of time in accordance with the provisions of s.865(4) TCA 1997.

34. This Appeal is hereby determined in accordance with s.949AK TCA 1997.

**CHARLIE PHELAN**

**APPEAL COMMISSIONER**

**20 JANUARY 2021**

