



47TACD2021

BETWEEN/

APPELLANT

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim for the repayment of tax in accordance with section 865 of the Taxes Consolidation Act, 1997 (hereinafter 'TCA 1997') in respect of the tax years 2013 and 2014.
2. The Appellant made a claim for a repayment of tax for 2013 and 2014 on 18 November 2019 in the amount of €645 arising from tax professional services withholding tax (PSWT) incurred in those years.
3. This appeal, with the agreement of the parties, is being held without a hearing, under Section 949U Taxes Consolidation Act 1997 (TCA 1997).

Background

4. The Appellant had previously filed her returns of income for 2013 and 2014 on 12 November 2014 and on 4 November 2015 respectively but had omitted to claim a refund or a credit for the PSWT incurred in those years
5. The Appellant's submission dated 18 November 2019 included the relevant PSWT certificates (F45's) for 2013 and 2014.

6. The Respondent issued amended notices of assessment for 2013 and 2014 arising from the Appellant's submissions. These amended assessments displayed the amounts of tax overpaid for 2013 and 2014 in the total amount of €645 the subject of this appeal.
7. By letters dated 25 February 2020 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. The Appellant has sought a repayment of the above amount and duly appealed to the Tax Appeals Commission on 9 March 2020.
9. These facts are not in dispute in this appeal.

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.*

Submissions

Appellant

11. The Appellant submitted that she was unaware that the amounts of PSWT reflected in the F45's submitted to the Respondent could be reclaimed or set against liabilities to income tax for the years 2013 and 2014.
12. The Appellant pointed out she was incorrectly informed by the company she worked for at the time and by her accountant in relation to the mechanism for claiming the tax deducted from her payments for services supplied by her.
13. The Appellant stated that the tax paid overpaid was deducted through no fault of her own and that it was unreasonable for the Respondent to refuse to refund the overpayment.

Respondent

14. The Respondent submitted that the Appellant made a claim for repayment of PSWT in the amount of €2,440 in respect of the tax years 2013 to 2018 on 18 November 2019.



15. The Respondent advised that it issued amended assessments for all years 2013 to 2018 on 22 February 2020. The amended assessments for 2013 and 2014 showed overpayments of tax in the amounts of €248.60 and €396.39 respectively.
16. The Respondent further submitted that the Appellant was advised by letter dated 25 February 2020, that it was precluded from making the repayments, for the years 2013 and 2014 as her claims for repayment was not made within the relevant four-year period in accordance with section 865 (4) TCA 1997.
17. The Respondent relied on a number of TAC Determinations in support of its position in relation to section 865 (4) TCA 1997 and the four-year rule.

Analysis

18. Section 865(2) 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.
19. 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.
20. 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 her for the years 2013 and 2014 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 €645 to be due, the Appellant must have made valid claims to the Revenue Commissioners.
23. As regards when a valid claim was made by the Appellant for the years 2013 and 2014, the claim for the respective years which were received by the Revenue Commissioners for the Appellant on 18 November 2019 did not satisfy the requirements of section 865(1)(b)(i).
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 delivery of the relevant claim to repayment, only when the claim was received on 18 November 2019.
25. In deciding if the Appellant is entitled to repayments of tax, and having established that there is a valid claim, the provisions of section 865(4) are applied. As the claim for repayment of tax by the Appellant were made outside the four-year period specified in section 865(4) the claim for repayment in the total amount of €645 for the years 2013 and 2014 by the Appellant are not allowed.
26. The use of the word '*shall*' in section 865(4) TCA 1997, indicates an absence of discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances in which the four-year period might be mitigated. In the circumstances, I do not consider that I have the authority to direct that a repayment be made to the Appellant where a valid claim for repayment of tax has not been made within the four-year period specified in section 865(4) TCA 1997.
27. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 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.

28. 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 issue of whether I can consider the circumstances of the Appellant's awareness of the existence of the amount due to her as requested by the Appellant. I must therefore decline to consider this argument or to make any finding in relation thereto.
29. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment of tax in the context of the four-year statutory limitation period. These determinations, can be found on the website of the Tax Appeals Commission¹.

Determination

30. I determine that a valid claim in accordance with section 865 TCA 1997 was made by the Appellant for the years 2013 and 2014 on 18 November 2019, which is more than four years after the end of the chargeable periods to which the claims for repayment of tax relates.
31. Pursuant to the wording of section 865 TCA 1997, and in particular the word '*shall*' in section 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year limitation period in circumstances where a valid claim is made outside the four-year period. As a result, I determine that the claim for repayment of tax for 2013 and 2014 amounting to €645 is not allowed under section 865 TCA 1997.
32. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

8 FEBRUARY 2021

¹ www.taxappeals.ie

