



48TACD2021

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 years of assessment 2013 and 2014.
2. The Appellant filed his income tax returns for 2013 and 2014 on 30th March 2020. These returns indicated tax repayments due to the Appellant for the years 2013 and 2014 of €1,780 and €4,917 respectively.
3. This Appeal is adjudicated without a hearing in accordance with the provisions of Section 949U Taxes Consolidation Act ('TCA') 1997 by agreement with the parties.

Background

4. By letter dated 31 March 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.
5. The Appellant has sought repayments of the above amounts and duly appealed to the Tax Appeals Commission on 26 May 2017.

6. The Appellant made a payment to the Respondent on 8th June 2015 in the amount of €5,487. The availability of that payment for offset or refund reflects the matters in dispute in this Appeal.

Legislation

7. 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.*

...”

8. *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.*



9. *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

10. The Appellant submitted that he made a payment on 8th June 2015 to Revenue with the intention that it should cover any past or future tax liabilities as the Appellant was uncertain of where his income would come from due to illness.
11. The Appellant submitted that he did not specify that the payment was to go against 2014 liabilities only.



12. The Appellant submitted that at the time of the payment he was suffering from ill health and was unsure of what his income would be in future years.
13. The Appellant submitted that he was trying to make sure he wouldn't owe tax in years to come.
14. The Appellant submitted that due to his ill health and a subsequent further diagnosis of cancer, he fell behind in filing his tax returns.
15. The Appellant submitted that his returns are now up to date and he had hoped that the payment that he made in June 2015 would help cover his outstanding liabilities.
16. The Appellant submitted that he is currently undergoing another round of treatment for his cancer and has no income.
17. The Appellant submitted that if the refund that is due as pertaining to the tax year 2014 cannot be used to offset his liabilities then he has no way of making these payments.

Respondent

18. The Respondent submitted that the Appellant is seeking a repayment of taxes overpaid for the year ended 31 December 2014 in the amount of €4,916.68 and for the year ended 31 December 2013 in the amount of €1,780.42
19. The Respondent submitted that the Revenue Commissioner's records indicate that the relevant tax returns for the years ended 31 December 2013 and 31 December 2014 were both filed on 30 March 2020. The due date for these returns was 31 October 2014 and 31 October 2015 respectively.
20. The Respondent submitted that the Appellant was a chargeable person for the periods ended 31 December 2013 and 2014 as he was a self-employed farmer at that time.
21. The Respondent submitted copies of letters to the Appellant dated 4 September 2015 and 4 February 2016 regarding the submission of the outstanding return for 2014.



22. The Respondent submitted that in accordance with section 865(1)(b) a valid claim for the repayment of tax occurs 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, and the return contains all of the information reasonably required to determine if a repayment is due.
23. The Respondent submitted that as the Appellant filed the tax returns that are required to be delivered on 30 March 2020 a valid claim for the repayment only exists for both years from that date.
24. 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.
25. The Respondent submitted that as the claim was not made within 4 years of the end of the chargeable periods ending 31 December 2013 and 2014 the claims are out of time and are statute barred.
26. The Respondent submitted that the repayment or offset was disallowed for this reason.
27. The Respondent submitted that in accordance with previous Tax Appeal Commission determinations the use of the word '*shall*' in the legislation allows for no discretion or mitigating circumstances in the application of this section.
28. The Respondent noted the Appellant's contention that the payment of €5,487 made on 8 June 2015 was intended to cover taxes due and future taxes as they became due. However, the Respondent submitted that the Appellant did not give specific instructions as to how this sum was to be allocated and has not provided proof of his intentions in the matter.
29. The Respondent submitted that in the absence of specific instructions as to the allocation of this sum the Collector-General allocated the full sum to preliminary tax for 2014.
30. The Respondent submitted that at the time of the payment the Appellant had no other taxes outstanding to set the payment against. The tax return for the period ended 31 December 2013 was outstanding, so no tax liability was on record for that period. The preliminary tax for 2014 had not yet been paid having been due by 31 October 2014 and the tax return for 2014 was due by 31 October 2015.



31. The Respondent submitted that the Appellant is not registered for any Fiduciary Taxes so an offset to those taxes in preference to other taxes was not an option.
32. The Respondent submitted that in the circumstances and in the absence of specific instructions from the Appellant it was reasonable for the Collector-General to allocate the payment to the tax year 2014 as preliminary tax for that year remained unpaid and it was the next return due to be filed.
33. The Respondent submitted that the payment of €5,487 became part of the Appellant's tax record for 2014. The Respondent submitted that the Appellant did not dispute the allocation of the payment to preliminary tax for 2014 and had not sought to have it transferred or offset to other years in the intervening years.
34. The Respondent submitted furthermore that, the Respondent contacted the Appellant's agent in May 2016 regarding the non-filing of the returns for 2013 and 2014. The Appellant's agent advised the Respondent of his illness. The Appellant's agent also advised that they would contact the Appellant regarding the outstanding returns as preliminary tax had been paid for 2014. The Appellant's agent was therefore made aware in 2016 that preliminary tax had been paid for the year ended 31 December 2014.
35. The Respondent submitted that after the due date for the filing of the tax return for the period ended 31 December 2014 passed on 31 October 2015 the only way to seek a repayment or offset of any surplus amount paid is to submit a valid claim. A valid claim was not submitted within the permitted 4 years.

Analysis

36. The question to be answered in this Appeal is whether the payment made by the Appellant on 8th June 2015 was correctly allocated to the year 2014 or if not what year it should be allocated to.
37. The Respondent has submitted it was reasonable for the Collector-General to allocate the payment to the tax year 2014, as preliminary tax for that year, remained unpaid and it was the next return due to be filed.



38. The Respondent has also submitted that the Appellant did not give specific instructions as to how this sum was to be allocated and in the absence of detailed accounting instructions the payment was allocated to the tax year 2014.
39. The Respondent allocated the payment of €5,487 to 2014 which then became part of the Appellant's tax record for 2014. The Appellant did not dispute the allocation of the payment to preliminary tax for 2014 and did not seek to have it transferred or offset to other years in the intervening years.
40. The Appellant on the other hand disputes the allocation of the payment in June 2015 to the tax year 2014 and asserts that the payment was made to cover taxes in previous and future years.
41. The Appellant (a chargeable person for income tax) had an obligation to pay preliminary tax for the year ended 31 December 2014 on or before 31 October 2014 in accordance with s. 959AN TCA 1997. The Appellant did not make such a payment despite having a tax liability for the period per the assessment issued on 30 March 2020.
42. The Appellant was accordingly in default of his preliminary tax obligations for 2014. The payment made on 5 June 2015 for €5,487 was correctly allocated in full to cover the tax liability for 2014 as the Appellant had no other taxes due at that time. The payment of €5,487 then became part of the Appellant's tax record for 2014 and so unavailable for repayment or offset in circumstances where a valid claim is made outside of the four-year time limit set out in s. 865 TCA 1997.
43. In correspondence with the TAC the Appellant has advised that there was a liability for preliminary tax in 2015, which would permit the Respondent allocate the balance of the payment made in June 2015 to the tax year 2015. Consequently the Appellant argued, any overpayment generated by such action would then be within the four-year time limit.
44. The Respondent has pointed out in subsequent correspondence with the TAC that there was no obligation on it to allocate any of the payment received in June 2015 to the tax year 2015 as the Appellant had until October 2015 to his preliminary tax for 2015.
45. Section 960G TCA 1997 sets out the duty of the taxpayer to identify the liability against which a payment is to be set, etc. In particular s. 960G (3) states:



(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.

46. The Allocation of the payment to 2014 was legislatively based, reasonable, clearly administratively suitable to the Respondent and would even have been beneficial to the Appellant in respect of any interest charge in circumstances where he might have underpaid tax for 2014. I find therefore that the payment made on 8th June 2015 by the Appellant was correctly allocated to 2014 and correctly became part of the Appellants tax records for 2014.
47. 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.
48. 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].
49. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him 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 repayments of tax in the amounts of €1,780 for 2013 and of €4,917 for 2014 (comprising €5,487 paid by the Appellant on 8th June 2015 less



actual preliminary tax liability €570) to be due, the Appellant must have made valid claims to the Revenue Commissioners.

50. As regards when a valid claim was made by the Appellant for the years 2013 and 2014, the returns of income, charges and capital gains for the respective years which were received by the Revenue Commissioners for the Appellant on 30 March 2020 did not satisfy the requirements of section 865(1)(b)(i).
51. 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 tax returns on 30 March 2020.
52. 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 claims for repayment of tax by the Appellant were made outside the four-year period specified in section 865(4) the claims for repayments in the amounts of €1,780 and €4,917 for the years 2013 and 2014 by the Appellant are not allowed.
53. 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.
54. 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
55. 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.

56. 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 on the matter of his inability to make payments of income tax in circumstances where the repayment cannot be used to offset his liabilities. I must therefore decline to consider this argument or to make any finding in relation thereto.

Determination

57. 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 years of assessment 2013 and 2014, are out of time in accordance with the provisions of s. 865(4) TCA 1997.

58. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

1 FEBRUARY 2021

