



50TACD2021

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 year 2014.
2. The Appellant made a claim for a repayment of tax for 2014 in the amount of €1,524 in submitting his income tax return for 2014 on 28 January 2019.
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's Form 11 Income Tax return for the year ended 31 December 2014 was filed by the Appellant's agent on 28 January 2019. When processed it resulted in an overpayment of €1,524.
5. The return was filed more than 4 years after the end of the 2014 tax year.
6. By letter dated 13 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.

7. The Appellant has sought a repayment of the above amount and duly appealed to the Tax Appeals Commission on 12 March 2020.
8. These facts are not in dispute in this appeal.

Legislation

9. 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.*

10. Section 959L TCA 1997 – Delivery of a return by person action under authority

- (1) a return required by this Chapter may be prepared and delivered by the chargeable person or by another person acting under the chargeable person's authority in that regard.*
- (2) where a return is prepared and delivered by that other person, the Acts shall apply as if it had been prepared and delivered by the chargeable person*

Submissions

Appellant

11. The Appellant submitted that the late submission of his tax return was due to an error by his agent. He provided all the relevant details to him in good time and he (Appellant) was therefore not responsible for the late submission. In mitigation he advised that the submissions to his agent by email was directed to spam in the recipient's mailbox in the period prior to 31 December 2018.
12. The Appellant pointed out that this appeal was for a tax refund that he was entitled to, which has been calculated on the taxes that he paid in 2014. He stated that it is not an appeal for any additional amount.
13. The Appellant advised that his repayment for 2015 was delayed by the Respondent by eleven months.
14. The Appellant stated that he was a pensioner with a modest private pension, not in receipt of any state pension and will have no entitlement to such pension in the future. In addition



he stated that he had not received any state payments or subventions during the Covid crisis.

15. The Appellant acknowledged that the accepted precedent for appeals of this nature were not in his favour. He pointed to the financial burden placed on his family, like many in the state, is one that was totally unexpected and is now very distressing. He advised that the refund was to fund his daughter's college education. It is on this basis that he respectfully asked to grant the refund of his taxes for 2014.

Respondent

16. The Respondent submitted that in order for the Appellant's claim to be a valid claim for the repayment of tax, the tax return required to be filed in accordance with Section 959(I) should have been filed by the 31st of December 2018 at the latest.
17. The Respondent submitted that as the Appellant did not file the return until January 2019 and as the statutory four-year period to make a claim for repayment had elapsed the repayment cannot be allowed in accordance with Section 865(4) TCA 1997.
18. The Respondent further submitted in relation to the reason for failure to file on time, that in accordance with Section 959(L) TCA 1997, delivery of a return by another person acting under authority, the Act shall apply as if the return had been prepared and delivered by the chargeable person.

Analysis

19. 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.
20. 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.



21. 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.
22. 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].
23. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the year 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 €1,524 to be due, the Appellant must have made a valid claim to the Revenue Commissioners.
24. As regards when a valid claim was made by the Appellant for the year 2014, the claim for the respective year which was received by the Revenue Commissioners for the Appellant on 28 January 2019 did not satisfy the requirements of section 865(1)(b)(i).
25. 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 28 January 2019.
26. 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 amount of €1,524 for the year 2014 by the Appellant is not allowed.
27. In considering the Appellant’s submission in relation to the culpability in the late file filing of the return I have taken into account the provisions in section 959L which determines that an agent submitting a return under the authority of the chargeable person is regarded as having been submitted by the chargeable person.



28. 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.
29. 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.
30. 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 or the current Covid crisis in the state as requested by the Appellant. I must therefore decline to consider this argument or to make any finding in relation thereto.
31. 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

32. I determine that a valid claim in accordance with section 865 TCA 1997 was made by the Appellant for the year 2014 on 28 January 2019, which is more than four years after the end of the chargeable period to which the claim for repayment of tax relates.

¹ www.taxappeals.ie





33. 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 2014 amounting to €1,524 is not allowed under section 865 TCA 1997.
34. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER

5 FEBRUARY 2021

