



54TACD2021

BETWEEN/



Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim pursuant to s.865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax year of assessment 2011.
2. The Appellant sought repayment of the tax overpayment for 2011. However, by notices dated 21 October 2019, 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. The Appellant duly appealed to the Tax Appeals Commission.
3. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.



Background

4. The Appellant is seeking a repayment of taxes overpaid for the tax year 2011, in the amount of €691, on the grounds that he suffered business and financial hardship at the time the return was due and this prevented him from submitting the return on time.
5. The Respondent issued filing reminder notices to the Appellant to file his Income Tax return for the tax year 2011 in March 2013 and June 2018.
6. The Respondent's records indicate that the relevant return for 2011 was not filed until November 2018. The returns were processed by the Respondent and on 21 October 2019 the Respondent notified the Appellant that s.865 TCA 1997 precluded them from making the repayment arising, as the claims were not made within four years after the end of the chargeable period to which the claims relate.
7. The Appellant submitted a notice of appeal which was received by the Tax Appeals Commission on [REDACTED] seeking repayment of the tax overpaid for 2011.

Legislation

s.865 TCA 1997 - Repayment of Tax

(1)

.....

(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 –

(1) 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

.....





(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

8. Appellant's Submission

The Appellant in his Notice of Appeal stated:

"In 2011 we experienced severe financial difficulty. We were not able to settle our account with our accountant and he then wasn't in a position to make these returns for us so they went unattended to until recently. We even had to declare insolvency after."

"Hardship at the time prevented the returns being made in a timely fashion."

9. Respondent's Submission

The Respondent in its Statement of Case stated:

"Outline of Relevant Facts

The Appellant was chargeable person for the year ended 31 December 2011 as he was a proprietary director of [REDACTED] having a 50% shareholding in the company.

In accordance with Section 959I (1) a chargeable person shall deliver a return to the Collector General for each year that they are/were a chargeable person.

Per Revenue records the Appellant did not deliver the return for the period ended 31 December 2011 until 23 November 2018. The due date for this return was 31 October 2012.

The Appellant was issued a reminder to file this return on 1 March 2013.

The Appellant filed the outstanding returns after being requested to do so by Revenue in June 2018 as the outstanding returns including the 2011 income tax return were holding up the Appellant's PAYE repayment for 2014.

In accordance with Section 865(1)(a) a "valid claim" shall be construed in accordance with paragraph (b).

Per Section 865(1) (b) a valid claim to the repayment of tax arises when a person furnishes a return as required to be delivered in accordance with any provision of the Tax Acts. In this case as a chargeable person the Appellant was required to file a Form 11 Income Tax return for the period ended 31 December 2011.



Per Subsection 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.

The Revenue Commissioners submits that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim relates. The Revenue Commissioner's position is that no valid claim for repayment had been made by the Appellant within the four year limitation period per s.865(4) TCA 1997 and that as a result, the repayment claim in respect of the tax year of assessment 2011 was out of time.

In order for the Appellants claim to be a valid claim for the repayment of tax the tax return required to be filed in accordance with Section 959(I) must have been filed by the 31 December 2015 (4 years). As the Appellant did not file the return until November 2018 the repayment shall not be allowed in accordance with Section 865(4) and is statute barred."

Analysis and findings

10. The facts in this appeal are not in dispute. Both parties accepted that the repayment claim regarding the tax year 2011 was not made within four years after the end of the chargeable period to which the claim relates.
11. 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.
12. 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].
13. As the claim for repayment of tax by the Appellant was made when he filed his tax return for 2011 in November 2018, outside the four-year period specified in section 865(4), the claim for repayment for the year 2011 by the Appellant is not allowed.
14. The use of the word 'shall' in section 865(4), 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 claim for repayment of tax was made outside the four-year period specified in section 865(4).



15. 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 include, those numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 25TACD2018, 29TACD2018, 03TACD2019, 14TACD2019, 20TACD2019, 01TACD2020, 17TACD2020, 103TACD2020 and 132TACD2020 can be found on the Commission website at www.taxappeals.ie.

Conclusion

16. 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 claim on behalf of the Appellant for the tax year of assessment 2011, is out of time in accordance with the provisions of section 865(4) TCA 1997.

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

Paul Cummins
Appeal Commissioner
Designated Public Official

4th March 2021

