



58TACD2021

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 2009.
2. The Appellant is appealing against a decision by the Respondent to deny a repayment of tax for the tax year 2009 in which the Respondent holds a valid claim for refund in the amount of €6,990.79.
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. By notice of assessment dated 23 March 2017 the Respondent advised the Appellant of an overpayment of tax for the year 2009 in the amount of €6,990.79.
5. By letter dated 20 April 2017 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.



6. The Appellant has sought a repayment of the above amount and duly appealed to the Tax Appeals Commission on 7 June 2017.

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 had learned that he had overpaid Income Tax for 2009 in March 2017. He also learned that as the amount owing to him had not been claimed in time, the amount that he had overpaid (€6,990.79) would not be repaid to him.
11. He stated in his appeal submission that there are extenuating circumstances, in relation to a family illness and subsequent bereavement. In addition he was made redundant in 2009.
12. Mr. ██████ submitted that he learned of the overpayment after he received a notice of assessment in March 2017 for the year ended 31/12/2009. The notice of assessment issued subsequent to him having resubmitted a tax return for 2009.
13. The Appellant contended in his submissions that, he re-submitted his return for 2009 because an income tax refund which was due to him, in respect of an overpayment of income tax for the 2014 tax year, was being withheld, pending the satisfactory completion of his 2009 tax return.





14. The Appellant was adamant in his submissions that, between his agent and himself, a completed income tax return had been submitted previously in respect of 2009.
15. The Appellant submitted that he settled what he understood to be a supplementary tax liability for that year of €8,116 and he does not believe that he would have done so had he not filed a return.
16. The Appellant has submitted that the allocation of the cheque paid on 31 December 2010 in the amount €8,116 and allocated to the tax year 2009 by the Respondent is directly attributable to the apparent overpayment for the tax year 2009.

Respondent

17. The Respondent submitted that as the Appellant was registered for income tax since 8 August 2006 he was obliged to file income tax returns in accordance with section 959(i) TCA 1997.
18. The Respondent submitted that the Appellant submitted his 2009 income tax return on 26 January 2017. The submission of this return in turn led to the issue of the assessment for 2009 showing an amount overpaid of €6,990.79. The Respondent confirmed that the return for 2009 resulting in the repayment due was submitted 26 January 2017 and as such was outside the statutory four-year period in which the Respondent was permitted to make a refund of such tax.
19. The Respondent submitted that in denying the refund it has relied on the statutory provision provided for in s. 865(4) TCA 1997 which precluded it from making a repayment for a claim received outside the four-year time limit.

Further enquiries by the TAC

20. The TAC sought clarification from the parties in relation to the payment of €8,116 on 31 December 2010, its allocation to the tax year 2009, copies of any evidence in support of the date of making the 2009 return and clarifications in respect of the parts of the submissions made by both parties.





21. The Appellant was unable to provide any evidence of having previously submitted the 2009 return and confirmed to the TAC that he has no evidence of submitting the return earlier than in 2017. He did not retain a copy of a letter dated 26 January 2017 to the Respondent enclosing the 2009 return. He was also unable to provide details of the payment made on 31 December 2010 or any details of how he wished to have the cheque allocated at that time.
22. The Respondent advised the TAC (and provided the accounting evidence) that the cheque was received on 31 December 2010 and brought to account on 9 January 2011 against any liability to preliminary tax for 2009.
23. The Respondent provided copies of its letters dated 11 September 2009 reminding the Appellant of his obligation to pay and file his 2009 income tax return. The Respondent also provided copies of its letters dated 3 February 2011 to both the Appellant and his agent seeking the 2009 return. In addition, the Respondent provided a copy of the letter from the Appellant dated 26 January 2017 that enclosed the 2009 return.
24. The Appellant was unable to provide the details of why the payment of €8,116 was made by him in December 2010. The Appellant stated in the letter of 26 January 2017 that he had settled a supplementary liability for that year (2009) and believed that he would not have done so without making a return for 2009.

Analysis

25. 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.
26. 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.

27. 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].
28. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him on 31 December 2010 allocated to the tax year 2009 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 amount of €6,990.67 to be due, the Appellant must have made a valid claim to the Revenue Commissioners.
29. 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 2009 return was received in 2017.
30. 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 €6,990.79 for the year 2009 by the Appellant is not allowed.
31. I have also considered whether the tax repayment sought correctly arises for the tax year 2009. The Respondent allocated the payment received on 31 December 2010 to the tax year 2009. A repayment arises in the records of the parties for 2009 consequent to the submission of a return for 2009 displaying a lesser liability for that year.
32. 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.

33. The allocation of the payment to 2009 was legislatively based, reasonable, and administratively suitable to the Respondent. I find therefore that the payment made on 31 December 2010 by the Appellant was correctly allocated to 2009 and correctly became part of the Appellants tax records for 2009.
34. 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.
35. 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.
36. 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 extenuating circumstances that existed in this case, as submitted by the Appellant, is discriminatory or unfair. I must therefore decline to consider this argument or to make any finding in relation thereto.





37. 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 are included on the website of the Tax Appeals Commission¹.

Determination

38. I determine that a valid claim in accordance with section 865 TCA 1997 was made by the Appellant for the year 2009 on submission of the return for that year in 2017, which is more than four years after the end of the chargeable period to which the claim for repayment of tax relates.

39. 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 €6,990.79 is not allowed under section 865 TCA 1997.

40. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

4 MARCH 2021

¹ www.taxappeals.ie

