



60TACD2021

BETWEEN/

APPELLANTS

Appellants

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a repayment claim in respect of the tax year 2012 pursuant to s.865 of the Taxes Consolidation Act 1997, as amended ("TCA 1997").
2. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.

Background

3. The income tax return for the year 2012 for the Appellants was submitted to Revenue on 23 October 2017. This return was filed late due to a mistaken assumption by the Appellants that a professional in the accountancy firm engaged by them had made the requisite return on time and it was only subsequently that the Appellants became aware the return was filed late.

4. The tax return when processed by the Respondent resulted in a repayment due to the Appellants in the amount of €2,236.08 for 2012.
5. The overpayment for 2012 was disallowed by the Respondent on the basis that s.865(4) TCA 1997 provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within 4 years after the end of that chargeable period. A Notice issued to the Appellants on 23 October 2017 to advise them that as the claim for repayment of tax for the year 2012 was filed outside the 4-year time limit set out in s. 865(4) TCA 1997, the Respondent was precluded from making the refund. The Appellants were also advised of the right to appeal the matter to the Tax Appeals Commission in accordance with s. 865(7) of the TCA 1997.
6. The Appellants sought repayment of the amount overpaid in respect of the year 2012 and duly appealed the matter to the Tax Appeals Commission on 25 November 2017.
7. The facts are not in dispute in this appeal.

Legislation

8. s.865 TCA 1997 - Repayment of Tax

...

'(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

9. The Appellants submitted that they had understood the accountancy firm engaged by them had made their 2012 return in a timely fashion through the Revenue Online System. They submitted that they were under this misapprehension until August 2017 when they were notified by Revenue that income tax returns were outstanding for the years 2012-2015. They stated that the individual whom they understood to be dealing with their tax affairs had left the firm so they were not aware why the returns were not filed on time.
10. The Appellants stated that on notification of the outstanding returns they referred matters to another individual in the accountancy firm who duly filed the returns on their behalf.



11. The Appellants appealed for a refund of the tax overpaid for 2012.
12. The Respondent submitted that repayment of income tax in the amount of €2,236.08 for 2012 cannot be repaid because of the restrictions imposed on the Respondent by s.865(4) of the Taxes Consolidation Act (TCA) 1997.
13. The Respondent submitted that as the tax return and repayment claim for tax year 2012 was made more than 4 years after the end of the tax year to which the claim relates, the Revenue Commissioners are statute barred from making the repayment.

Analysis and findings

14. 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.
15. 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.
16. 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].
17. The Appellants sought a repayment of tax on the basis that an amount of tax paid by them for the tax year 2012 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 Appellants 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 €2,236.08 to be due, the Appellant must have made a valid claim to the Revenue Commissioners.

18. In considering the Appellants submission regarding that lack of awareness in relation to the non-filing of their returns until it was brought to their attention by Revenue, 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.
19. 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 Appellants, following the delivery of the relevant claim to repayment, only when the 2012 return was received in 2017.
20. In deciding if the Appellants are 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 €2,236.08 for the year 2012 by the Appellants is not allowed.
21. 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 4-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 Appellants where the claim for repayment falls outside the 4-year period specified in s.865(4) TCA 1997.
22. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4-year statutory limitation period. These determinations, may be found on the Commission website.¹
23. 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,

¹ www.taxappeals.ie





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.

24. 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 whether the extenuating circumstances that existed in this case, as submitted by the Appellants, merits consideration. I must therefore decline to consider this argument or to make any finding in relation thereto.

Determination

25. I determine that the Appellants made a valid claim in accordance with section 865 TCA 1997 for the year 2012 on 23 October 2017, which is more than four years after the end of the chargeable period to which the claim for repayment of tax relates.

26. 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 4-year statutory limitation period in circumstances where the claim has been made outside of the 4-year period. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellants for the tax year of assessment 2012, is out of time in accordance with the provisions of s.865(4) TCA 1997

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

**CHARLIE PHELAN
APPEAL COMMISSIONER
DESIGNATED PUBLIC OFFICIAL
12 MARCH 2021.**

