



82TACD2021

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 PREM (P35 liabilities) for the years 2010 and 2011.
2. The Appellant filed revised P35 end of year returns for 2010 and 2011 on 17 May 2017. The revised returns had the effect of reducing the overall liability for these years.
3. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 22 February 2021.

Background

4. The Appellant sought repayments of the excess amounts paid for 2010 and 2011 in the total amount of €9,884.58.
5. By letter dated 20 September 2017 the Respondent declined to process the repayment for 2010 (as computed by the Respondent) in the amount of €5,751 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 Respondent advised that the Appellant in fact owed an additional amount of €3,107 for 2011 (as computed by the Respondent) and has sought that amount from the Appellant by demand.
7. The Appellant duly appealed to the Tax Appeals Commission on 19 October 2017.

Agreed Facts

8. The parties agree that the correct liabilities for PREM (P35 liability) in respect of the years under appeal are:

2010	€9,516
2011	€9,147
9. The parties agree that the revised P35s leading to the disputed overpayments were submitted on 17 May 2017.

Legislation

10. 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.*
- ... ”

Submissions

Appellant

11. The Appellant submitted that the basis of its claim for an overpayment in the amount of €9,844.58 is computed as follows.

	2010 €	2011 €	Total €
Paid	17,544	10,964	28,508
Liability per P35	9,516	9,147	18,663
Overpaid	8,028	1,817	9,845

12. The Appellant disputed the amounts paid as per the Respondent's records and submitted that the above amounts represent the amounts paid for the years 2010 and 2011.



13. The Appellant sought to benefit from the exception to the general rule regarding offsets exception contained in section 865B (4) (b) TCA 1997 and quoted extensively from the Respondent's guidelines¹ in relation to the operation of section 865 TCA 1997.
14. The Appellant sought to gain benefit in particular from paragraphs 6 and 13 of these guidelines and asked that consideration be given to this request in the particular circumstances of the denial of the repayment for 2010 or offset of same to the liability alleged in the Respondent's submissions for 2011.

Respondent

15. The Respondent submitted that in denying the refunds it has relied on the statutory provision provided for in section 865 TCA 1997.
16. The Respondent submitted details of the tax position for 2010 and 2011 in accordance with its records, is computed as follows.

	2010 €	2011 €	Total €
Paid	15,267	6,040	21,307
Liability per P35	9,516	9,147	18,663
Overpaid/ (Due)	5,751	(3,107)	See Para.17

17. The Respondent advised that it was prohibited from repaying or offsetting the amount of €5,751 for 2010 in accordance with section 865 TCA 1997 and was statutorily obliged to collect the underpayment of €3,107 for 2011.
18. The Respondent provided evidence of the payments made and credited to the PREM liabilities of the Appellant for 2010 and 2011 and advanced the suggestion that part of the differences between the parties in relation to the amounts paid are due to the following:

¹ <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-37/37-00-30.pdf>



Payment per Appellant not received for Dec 2010	€1,139
Offset to VAT Sept/Oct 2008	906
Offset to VAT Jul/Aug 2009	524
Refund made 15 June 2012	<u>3,493</u>

19. The Respondent addressed the Appellant's request to benefit from the exception to the general rule regarding offsets contained in section 865B (3) and (4) (b) TCA 1997.
20. The Respondent submitted that in view of the fact that the revised liabilities in 2010 and 2011 were as a result of adjustments filed by the Appellant [rather than from an intervention of the Respondent] and also the fact that the overpayment and liability relate to two different years, the exception referred to in section 865B (3) and (4)(b) TCA 1997 cannot be availed of in the instant appeal.

Analysis

21. Both parties to this appeal submitted additional material after the formal appeal hearing. I have examined these submissions and I have found that they concern issues relating to various payments, refunds and offsets between the parties.
22. The matter of what payments, refunds and offsets were made by the Appellant to the Respondent, or by the Respondent to the Appellant, is not a matter for determination in this appeal. Rather the question to be answered is whether any refund arising in the years 2010 and 2011 should be repaid or offset by the Respondent in circumstances where any valid claim for repayment is made outside of the prescribed time limits.
23. 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.
24. 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.

25. 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.
26. 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].
27. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the years 2010 and 2011 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 any repayments of tax in the total amount of €9,844.58 as alleged by the Appellant or €5,751 as submitted by the Respondent to be due or to be offset, the Appellant must have made valid claims to the Revenue Commissioners.
28. The Revenue Commissioners had all the information which they required to enable them determine if and to what extent any repayment of tax for 2010 and 2011 was due to the Appellant following the delivery of the amended P35 returns on 17 May 2017.
29. This appeal centres on the refusal by Revenue to make a refund of the disputed amount either €5,751 per the Respondent or €9,845 per the Appellant, which is based on amended returns filed on 17 May 2017.
30. In deciding if the Appellant is entitled to any repayments or offsets 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 repayment or offset taking the view of either party as to the amount for the years 2010 and 2011 by the Appellant are not allowed.



31. 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.
32. I have carefully considered if the Appellant could benefit from section 865B TCA 1997 as requested by the Appellant. I concur with the views of the Respondent, that as the revised liabilities in 2010 and 2011 were as a result of adjustments filed by the Appellant rather than from an intervention of the Respondent, and also the fact that the overpayment and liability relate to two different years, the exception referred to in section 865B (3) and (4) (b) TCA 1997 cannot be availed of in the instant appeal.
33. The Appellant and the Respondent has submitted substantial material concerning the matter of payments, refunds and offsets as per their respective records. These disputed payments, refunds or offsets have no bearing on the matter under appeal and do not add any weight to the Appellant's appeal to achieve a remedy that is denied because of the Appellant's failure to make a valid claim within the prescribed time limits.
34. 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.
35. 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 website² of the Tax Appeals Commission.

² www.taxappeals.ie





Determination

36. I determine that valid claims in accordance with section 865 TCA 1997 were made by the Appellant for the years 2010 and 2011 on 17 May 2017, which is more than four years after the end of the chargeable period to which the claims for repayment relates.
37. 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 claims for repayment for the years 2010 and 2011 are not allowed under section 865 TCA 1997.
38. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
19 MARCH 2020

The Appeal Commissioners have been requested to state and sign a case for the opinion of the High Court under Chapter 6, Part 40A of the Taxes Consolidation Act, 1997.

