



03TACD2022

BETWEEN/

THE APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal relates to a claim pursuant to section 865 of the Taxes Consolidation Act 1997 as amended (hereafter defined as “TCA 1997”) in respect of the tax years of assessment 2013 and 2014.
2. By notice dated 17 July 2019, the Appellant was informed by the Revenue Commissioners (“the Respondent”) that overpaid income tax in respect of the tax years of assessment 2013 and 2014 could not be repaid, on the basis that a valid claim for repayment had not been made within the four-year limitation period in accordance with section 865(4) TCA 1997. The Appellant duly appealed to the Tax Appeals Commission (“the Commission”).
3. On agreement of the parties, this appeal is determined without an oral hearing in accordance with section 949U of the TCA 1997.

Facts

4. By letter dated 20 November 2018 the Appellant’s spouse was informed by the Social Welfare Services Office in the Department of Employment Affairs and Social Protection, that she was not entitled to Carer’s Allowance payments which had been made to her. The payments were made during the period 03/01/2013 to 07/11/2018, totalling €31,682.60. The Appellant’s spouse accepted that she was not entitled to the payments and agreed a repayment plan. The Appellant was jointly assessed to tax with his spouse and had included the Carer’s Allowance payments in his income tax returns for the relevant years. The Appellant had therefore paid tax on the payments received. In January 2019 the Appellant contacted the Respondent seeking to revise

his income tax returns to remove the Carer's Allowance payments from the calculation of tax, which would put the Appellant in a tax refund position. The Appellant was advised by the Respondent that any tax overpayments for the years 2013 and 2014 could not be repaid as they were precluded from doing so by virtue of section 865 TCA 1997 i.e. the claim for the refund was made outside of the four year time limit.

Legislation

5. Section 865 TCA 1997 provides:

(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

6. The Appellant submitted that he discovered in late 2018 that his spouse was not entitled to Carer's Allowance that had been paid to her during the years 2013 to 2018. The Appellant stated that his spouse did not dispute that the payments were made in error and that a repayment schedule had been agreed with the Department of Employment and Social Protection.
7. The Appellant stated that he had included the Carer's Allowance in his income tax returns for the relevant years as he was jointly assessed with his spouse. The Appellant further stated that he was advised by the Respondent to submit a request for a tax review, once he had paid a 'significant amount' back to the Department of Employment and Social Protection.
8. The Appellant stated that when he sought a tax review in January 2019, the Respondent agreed to repay the overpaid tax in respect of the year 2015 but advised him that they were statute barred from repaying the overpaid tax for the years 2013 and 2014. With respect to the year of assessment 2015 the Appellant submitted that the Respondent advised as follows;

'As it is unlikely with your current arrangement, to have the €5,512 for 2015 paid back by the end of 2019, my supervisor has advised that we can go out of Statute Barred for 2015 as we've now been notified of it'.

The Appellant submitted that he seeks a similar treatment for the tax years 2013 and 2014.

9. The Appellant further stated that he could have repaid the money owed to the Department of Employment and Social Protection faster than the agreed schedule but for the advice received from the Respondent.
10. The Appellant submitted that his treatment by the Respondent was unfair.

11. The Respondent submitted that based on the four-year rule, which has a statutory basis in section 865 TCA 1997, that the Appellant was time-barred from seeking repayment of overpaid tax for the years 2013 and 2014.
12. The Respondent further submitted that they treated the repayment claim for the year 2015 as having been made on time (notwithstanding the fact that the full amounts due to be repaid for 2015 would not be fully repaid by the end of 2019). They did so on the basis that the Appellant had contacted them regarding the claim prior to the expiration of the four years.
13. The Respondent referred in their statement of case to previous determinations issued by the Commission on the matter of out of time tax repayment claims, and specifically referred to determination with reference 20TACD2019 which states:

'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 four-year rule might be mitigated. In short, I do not consider that I have the authority or jurisdiction to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997.'

14. The Respondent submitted that identical wording has been used in other determinations issued by the Commission on the matter, and that it has been clearly established in all cases where the Appellant has not made a valid claim within the statutory period, that the legislation allows for no discretion. The Respondent further submitted that the Appellant did not make a valid repayment claim for the years 2013 and 2014 within the required four-year period and consequently his appeal must fail.

Analysis and findings

15. Section 865(2) TCA 1997 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 Respondent.
16. Section 865(1)(b)(i) TCA 1997 provides that where a person furnishes a statement or return which is required to be delivered by the person for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Respondent may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the statement or return furnished by the person. Section 865(1)(b)(ii) provides that where all the information which the Respondent 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.

17. 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].
18. The entitlement to a repayment of tax arises under section 865(2) TCA 1997 and section 865(3) TCA 1997 requires that the repayment of tax sought by the Appellant under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent. In order for the Respondent to have repaid overpaid tax for the year 2013, the Appellant was required to have made a valid claim by the 31st December 2017. For the year 2014, the Appellant was required to have made a valid claim by 31st December 2018 and for the year 2015 the Appellant was required to have made a valid claim by 31st December 2019.
19. The Appellant contacted the Respondent in January 2019 to advise of the error which had arisen in relation to the Carer's Allowance payments made to his spouse and to request that the Respondent make the appropriate downward adjustments to his income for the relevant years on the basis that his spouse had agreed a repayment plan. The Respondent agreed to make the appropriate adjustments but declined to repay any resulting overpaid tax for the years 2013 and 2014 as they were precluded from doing so owing to the four year time limit. The Respondent agreed to repay any overpaid tax for the year 2015 *on a concessionary basis*, despite the fact that the total payments received by the Appellant's spouse for that year would not be fully repaid by the end of the year.
20. In deciding if the Appellant is entitled to repayment of tax, and having established that the Appellant has made valid claims, the provisions of section 865(4) TCA 1996 are applied. As the claims for repayment of tax for the years 2013 and 2014 were made outside the four-year period specified in section 865(4) TCA 1997, the claims for repayment of the overpaid tax for those years were disallowed.
21. The use of the word 'shall' as set out in section 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 four-year rule might be mitigated. The Commissioner has no authority or discretion to direct that repayment be made to the Appellant where the claim for repayment falls outside the four-year period specified in section 865(4) TCA 1997.
22. The Appellant seeks the same concessionary treatment which was applied by the Respondent for the year 2015, to be applied to the years 2013 and 2014. The Appellant appears to misunderstand the concessionary treatment which was afforded to him. The Appellant had until the 31st December 2019 to make a valid claim for repayment of overpaid tax. The claim for repayment was made by the Appellant in January 2019, well before the 31st December 2019 deadline. The concession afforded by the Respondent was that they agreed to treat the claim as a *valid* claim by removing the Carer's Allowance payments from the calculation of the Appellant's

income, notwithstanding the fact that the payments included in the calculation of the Appellant's income tax for 2015 would not be fully repaid by 31st December 2019. The concessionary treatment did not extend to the previous years as the claims for repayment were made outside of the four-year time limit for doing so.

23. The Commissioner notes that concessionary treatments are a matter for the Respondent. The role of the Commissioner is to establish if there is a charge to tax and if so, that the correct amount of tax been charged in accordance with the relevant legislation. The matter before the Commissioner is whether the Appellant is entitled to a refund of overpaid tax for the years 2013 and 2014. The refund of overpaid tax for the year 2015 is outside the scope of this determination. In addition, the jurisdiction of the Commissioner does not extend to matters of treatment.
24. The Commissioner has the utmost sympathy for the Appellant to find himself in a position where he was required to repay social welfare payments paid in error but was unable to claim a corresponding repayment of the income tax paid on those payments for the years 2013 and 2014. However, as stated there is no discretion afforded to the Respondent and hence no discretion afforded to the Commissioner to consider those circumstances in relation to the four-year rule and any repayments outside that period of time. The Appellant was correct to appeal to seek clarity on the situation.
25. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website¹.
26. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

Determination

27. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "shall" as set out in subsection 865(4) TCA 1997, the Commissioner determines that there is no 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, the Commissioner has no alternative but to determine that the repayment claims on behalf of the Appellant for the tax years of assessment 2013 and 2014, are out of time in accordance with the provisions of section 865(4) TCA 1997. Hence, the appeal is denied. The Commissioner appreciates that the Appellant will no doubt be disappointed by this determination. The Appellant was correct to appeal to have clarity on the position.

¹ www.taxappeals.ie

28. The appeal is determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
1st November 2021