



04TACD2022

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 (“TCA 1997”) in respect of the tax year of assessment 2014.
2. By notice dated 25 March 2020, the Appellant was informed by the Revenue Commissioners (“the Respondent”) that income tax had been overpaid in respect of the tax year of assessment 2014. The Appellant sought repayment of the tax however 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 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. On 19 October 2019 the Appellant filed an income tax return for the tax year of assessment 2018, which indicated that the Appellant had overpaid his tax for that year. The Respondent subsequently selected the 2018 tax return for a verification check. Some errors in the return were discovered in the course of the verification check, one of which was that the Appellant had inadvertently declared a dividend received in the year 2018 as having been received for tax purposes in the previous year. It

transpired that the same error had occurred in previous years. The errors were corrected and as a result the Appellant found himself in a tax overpayment position in the amount €9,601.53 for the year of assessment 2014. The Respondent notified the Appellant by letter dated 25 March 2020 that section 865 TCA 1997 precluded them from repaying the overpaid tax, as the claim for repayment was not made within four years after the end of the chargeable period to which the claim relates. The Appellant appealed this decision to the Commission by notice of appeal received on 3rd April 2020.

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 the following;

'Please note that whilst dividends were paid to me from my employer in March (or April) each year, these dividends always related to the prior year results of the company. So, for example, dividend received in March 2014 related to 2013 tax year. As such, we had always accounted for these dividends in the year to which they pertained, not the year in which they were physically received by me. We were effectively declaring dividends one year earlier than we should have been. All previous notices of assessments issued and agreed with our assessments.

...The amended assessment for 2014 has now resulted in an overpayment of tax in the sum of over €9,000 for that period. This amended assessment was only raised earlier this year. Whilst we acknowledge why this amended assessment has issued, this refund has seemingly effectively been ruled out as being repayable by virtue of the fact that is beyond the 4 year look back rule under legislation, even though the assessment has only been raised this year.

...I feel this is grossly unfair as the returns previously submitted to Revenue Commissioners were completed in utmost good faith and all taxes due have always been paid on time'.

7. The Respondent submitted that the 2014 and 2018 returns were amended in order to correct the errors which had occurred by including the dividend income in the wrong years. The amendments resulted in a liability to tax for the year 2018 and an overpayment in the amount €9,601.53 for the year 2014.
8. The Respondent further submitted that repayment of the overpaid tax was refused as the provisions of subsection (4)(c) of section 865 TCA 1997 precluded them from making the refund as the repayment claim was not made within four years after the end of the chargeable period to which the claim relates, i.e. on or before the 31 December 2018.

Analysis and findings

9. 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.
10. Section 865(1)(b)(i) TCA 1997 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 Respondent 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 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.

11. 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].
12. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the tax year 2014 was not due. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means 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. Therefore, for the repayment of tax in the amount of €9,601.53 to be due, the Appellant must have made a valid claim to the Respondent.
13. In deciding if the Appellant is entitled to repayment of tax, and having established that there is a valid claim, the provisions of section 865(4) TCA 1996 are applied. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayment of the overpaid tax for the year 2014 was disallowed.
14. 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.
15. The Commissioner accepts that the Appellant made a genuine error when completing his returns and is very unfortunate to have fallen foul of the four-year rule, having corrected those errors. Unfortunately as stated above, there is no discretion afforded to the Commissioner to consider those circumstances in relation to the four-year rule, nor does the Commissioner have discretion to adjudicate on matters of fairness or equity. The Appellant was correct to appeal to seek clarity on the situation.
16. 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.
17. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

¹ www.taxappeals.ie

Determination

18. 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 claim on behalf of the Appellant for the tax year of assessment 2014, is 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.
19. 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