



05TACD2022

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 year of assessment 2013.
2. By notice dated 10 March 2020, the Appellant was informed that income tax had been overpaid in respect of the tax year of assessment 2013. The Appellant sought repayment of the tax from the Revenue Commissioners (“the Respondent”). 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 5 March 2020 the Appellant’s agent submitted the relevant income tax return in respect of the year of assessment 2013. The return was processed by the Respondent and a notice of assessment issued to the Appellant shortly thereafter. The notice of assessment indicated that PRSI of €500 plus a late filing surcharge of €50 was due for that year. As the Appellant had already paid an amount of

€2,645.53 to the Collector General for that period, an overpayment of the difference (€2,095.53) had arisen. The Respondent notified the Appellant on 10 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.

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 her tax return for the year 2013 had been overlooked owing to some very difficult personal matters which the Appellant experienced over a prolonged period of time and which incapacitated her. She further advised that during this difficult time she struggled to keep her “head above water” and found it difficult to cope because of the strain she was under. She therefore was unable to keep her tax affairs in order. The Appellant submitted that she brought her tax affairs up to date during 2020 and was informed shortly thereafter by the Revenue Commissioners that tax had been overpaid for the year 2013. The Appellant stated that she hopes the Commissioner will look favourably on her appeal due to her exceptional personal circumstances.
7. The Respondent submitted that a valid claim for the repayment of tax arises when a person furnishes a return as required to be delivered in accordance with any provision of the Tax Acts. The Respondent further submitted that per section 865(4) TCA 1997 a claim for the repayment of tax shall not be allowed unless it is made within four years after the end of the tax year to which the claim relates. The Respondent submitted therefore that the Appellant’s claim for the year 2013 was out of time as it was received in March 2020, and that the refund is statute barred.

Analysis and findings

8. 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.
9. 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.

10. 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].
11. The Appellant sought a repayment of tax on the basis that an amount of tax paid by her for the tax year 2013 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 €2,095.53 to be due, the Appellant must have made a valid claim to the Respondent.
12. The Respondent 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 2013 return was received in 2020.
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 2013 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 extenuating circumstances in this appeal have been recognised by the Commissioner. The Commissioner has the utmost sympathy for the position the Appellant found herself in, relating to her challenging personal circumstances. 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 repayment outside that period of time. 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.

¹ www.taxappeals.ie

17. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

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 2013, 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. The Commissioner read the complex personal circumstances pertaining to the Appellant and her own health situation. Unfortunately, the Commissioner’s own hands are “tied” due to the legislation. The Commissioner hopes that the Appellant’s personal circumstances have since improved and she has stability in her personal life.

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