



**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 the "TCA 1997") in respect of the tax year of assessment 2012.
2. By notice dated 24<sup>th</sup> March 2017, the Appellant was informed that income tax had been overpaid in the amount €1,699.87 in respect of the tax year of assessment 2012. Subsequently by notice, dated 27<sup>th</sup> March 2017 the Appellant was informed by the Revenue Commissioners ("the Respondent") that they were precluded from repaying the overpaid tax as a claim for repayment was not 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 TCA 1997.

**Facts**

4. On 24<sup>th</sup> March 2017 the Appellant, through his agent filed income tax returns for the tax years 2011 and 2012. Notices of assessment subsequently issued showing that the Appellant had overpaid tax in the amount €1,699.87 for the year 2012 and had underpaid tax in the amount €1,196.13 for the year 2011. The Respondent advised the Appellant by letter dated 27<sup>th</sup> March 2017 that the overpaid tax for the year 2012 could not be repaid due to the statutory four-year limitation period. The Appellant appealed this decision to the Commission by notice of appeal received on 12<sup>th</sup> April 2017.

## 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].*

Section 865B TCA 1997 provides:

*(2) Subject to subsections (3) and (4), where a repayment of any tax cannot be made to a person by virtue of the operation of—*

*(a) section 865,*

...

*then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person.*

### **Submissions**

6. The Appellant submitted that his company went into receivership in ■■■ 2012 and he became unemployed as a result. The Appellant stated that he found the experience of losing his business very traumatic and suffered from ■■■■■ as a result. The Appellant further submitted that he experienced other personal difficulties during the following three years. The Appellant submitted that he fell into arrears with his accountant during this time and as a result of this and his personal difficulties had inadvertently overlooked his tax filing obligations. The Appellant submitted that his tax affairs were brought up to date in March 2017 when his returns for 2011 and 2012 were filed. The Appellant further submitted that he is not seeking a refund of the overpaid tax for 2012, but he is instead requesting that the overpayment be offset against the liability for 2011.
7. The Respondent submitted that a letter issued to the Appellant dated 27<sup>th</sup> March 2017 advising that the overpayment in respect of 2012 had been disallowed. The Respondent referred to section 865(4) TCA 1997 in their submission but did not offer any explanations as to the application of this section to the facts of the appeal. The Respondent also failed to address the Appellant's request to offset the overpaid tax for 2012 against the liability for 2011.

### **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 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. 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 €1,699.87 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 filing of the return in March 2017.
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 2012 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. Alternatively, the Appellant sought to offset the overpaid tax in 2012 against the liability, for the year 2011. Section 865B(2) TCA 1997 provides;  
  
*'... where a repayment of tax cannot be made to a person by virtue of the operation of*  
  
*(a) section 865 ...*  
  
*...*   
  
*then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person'.*
16. It is clear that section 865B(2) does not permit tax overpaid to be offset against tax liabilities in circumstances where a repayment claim in respect of the tax overpaid would not be available in accordance with the provisions of section 865(4) TCA 1997. In this appeal, a repayment would not be available to the Appellant in respect of the tax overpaid in 2012, as a valid claim for repayment was not made within the four-year statutory limitation period contained in section 865(4) TCA 1997.
17. As a result, the Commissioner has no option but to determine that the tax overpaid of €1,699.87 in respect of the tax year of assessment 2012, is not available for offset against tax liabilities arising in respect of the tax year of assessment 2011.

18. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. The Commission has also addressed the matter of repayment, in the context of an offset claim. These determinations may be found on the Commission's website<sup>1</sup>.
19. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL TCA 1997.

**Determination**

20. In accordance with section 865B(2) TCA 1997, the Commissioner determines that the Appellant cannot succeed in his claim for offset in 2011, of tax overpaid in 2012, where a repayment claim cannot be made in respect of the tax overpaid in 2012 in accordance with the provision of s.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 wishes to express the utmost sympathy for the financial difficulties the Appellant experienced which no doubt contributed to his medical issues. Unfortunately, the Commissioner has no discretion to assist in these circumstances due to the "four year rule".
21. 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  
1<sup>st</sup> November 2021

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)