



123TACD2022

Between

■■■■■■■■■■

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ■■■■■■ (“the Appellant”) pursuant to section 865(7) of the Taxes Consolidation Act 1997 as amended (“the TCA 1997”) against the refusal by the Revenue Commissioners (“the Respondent”) to refund an overpayment of income tax in the amount of €4934.78 for the year 2014, on the ground that the repayment was sought outside the statutory timeframe.
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. On 29 November 2019, the Appellant filed his Form 11 income tax return for the tax year 2014 on the Respondent’s Revenue On Line (“ROS”) service. On 21 February 2020 the Respondent issued a Notice of Amended Assessment for 2014 to the Appellant’s agent, which stated that the Appellant had overpaid income tax of €4934.78. The notice also warned that “This repayment may not be due in accordance with s. 865 TCA 1997.”

4. The Appellant sought a repayment of the overpaid tax. On 4 March 2020, the Respondent refused the repayment, citing section 865(4) of the TCA 1997. On 3 April 2020 the Appellant appealed the refusal to the Commission.
5. The appeal was listed for a remote hearing on 1 July 2022. On 3 June 2022 the Appellant submitted a medical certificate and stated that he would be unable to attend the hearing. The Commissioner did not consider that the information provided was sufficient to warrant adjourning the hearing, and the Commission notified the Appellant that further information would be required in order to enable the Commissioner to consider a request for an adjournment. Nothing further was submitted by the Appellant and he did not attend the hearing on 1 July 2022. The Commission informed him that if he did not provide sufficient reason to explain his non-attendance within seven days, the appeal would be treated as withdrawn. The Appellant replied by again referencing the medical certificate submitted on 3 June 2022 and stated that he would be unable to attend a hearing “*for the foreseeable future.*”
6. On 5 July 2022, the Commission informed the Appellant that the Commissioner would reschedule the hearing for September 2022. Alternatively, the Appellant was informed that the Commissioner was satisfied that the appeal was suitable for determination without an oral hearing, and was asked to advise whether he was willing for the matter to proceed on the basis of the written submissions already received.
7. The Appellant replied that he would “*would like to proceed to a hearing using already supplied written evidence.*” The Commission responded with three potential dates in September and asked him to advise when he would be available. In reply, the Appellant stated that “*I apologise for my error. I should have been clearer - I am satisfied the written evidence can be used and to proceed to a NON-oral hearing. I should have typed:*

‘I would like to proceed to a non-oral hearing using already supplied written evidence.’”
8. The Respondent confirmed that it had no objection to the appeal being determined without a hearing. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing, pursuant to section 949U of the TCA 1997.

Legislation and Guidelines

9. Section 865 of the TCA 1997 provides *inter alia* that

“

(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.

[...]

(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.”

Submissions

Appellant

10. The Appellant submitted that:

“Due to family law issues I was unable to pursue matter with accountants. This overpayment is unfair and unwarranted as I was not resident in Ireland. I require the funds now given Covid-19 suspension [and] need to start own business.”

“The facts of the case are an appeal for overpayment of income tax (2014) to be refunded. The limitation is acknowledged. I was not informed by my accountants that I was owed this...When my new accountant detected this I appealed...I was away for some of the tax period in question. I wish to appeal now as I believe it to be fair and due to Covid hardship.”

“The lateness of the appeal arose due to a requirement from the Revenue to obtain details of my 2014 filing in order to process the 2019 return made. In 2014 I worked only partly the year and suffered badly with life event changes so there was a missing return which I filed through [accountants] when requested by the Revenue. When the report was done the overpayment was detected and I was very surprised this was not called to my attention earlier. All other years were accounted for.”

Respondent

11. The Respondent submitted that a reminder that his return was outstanding was sent to the Appellant and his agent on 30 October 2019. A further reminder was sent on 21 November 2019. As the claim was filed outside of four years after the end of the chargeable period to which the claim related, the credit was disallowed. Section 865(4) does not afford any discretion to the Respondent to allow a late claim. Previous determinations of the Respondent were referred: 20TACD2019, 1TACD2020, 151TACD2020, 191TACD2020.

Material Facts

12. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:

- 12.1. The Appellant submitted his Form 11 income tax return for the tax year ending 31 December 2014 on 29 November 2019.

Analysis

13. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: *“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*
14. Section 865(2) of the 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. However, section 865(4) states *inter alia* 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)
15. It was accepted by the Appellant that his income tax return for 2014 was filed late. The Commissioner notes that the Respondent’s ROS print-out (which was submitted by the

Respondent) states that “This is an acknowledgement of an Income Tax Return submitted, and of a Self Assessment made, as received by ROS on 29/11/2019.”

16. The Commissioner is satisfied that the requirement under section 865(4) that a claim for repayment of tax be made within a specified timeframe is mandatory and that no discretion is allowed to the Respondent, or to the Commission on appeal, to disapply it. In this instance, the relevant timeframe is four years after the end of the chargeable period. Therefore, as the chargeable period in question ended on 31 December 2014, the Appellant was obliged to make any claim for a refund by 31 December 2018.
17. The Appellant’s income tax return was not filed until 29 November 2019, and the Respondent issued the Amended Notice of Assessment on 21 February 2020 which stated that the Appellant had overpaid tax in the amount of €4934.78. No claim for a repayment of tax was made by 31 December 2018, as mandated by section 865(4).
18. Consequently, the Commissioner is satisfied that the Respondent was correct to refuse the claim for a refund, as section 865 does not allow the Respondent, or the Commission on appeal, to take into account any mitigating circumstances for the failure to comply with the mandated timeframe. The Commissioner appreciates that this is frustrating and disappointing for the Appellant, who was entitled to exercise his right to an appeal to the Commission of the Respondent’s refusal of his claim.
19. The Commissioner notes that the Appellant has contended that the failure to claim in time was the fault of his previous accountant. However, the Commissioner’s jurisdiction is limited to considering “the assessment and the charge”, as stated by Murray J. at para. 64 of the Court of Appeal’s judgment in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the Respondent’s refusal of the claim was correct in law, and has no equitable jurisdiction or broader power to consider the wider circumstances surrounding the failure to submit the tax return and claim in time, including the relationship between the Appellant and his former accountant.

Determination

20. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant’s application for a refund of income tax in the amount of €4934.78.
21. The appeal is hereby determined in accordance with sections 949U and 949AL of the Taxes Consolidation Act 1997 as amended (“the TCA 1997”). This determination contains

full findings of fact and reason 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.



Simon Noone
Appeal Commissioner
19/07/2022