



**125TACD2022**

Between:

████████████████████

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against the refusal of the Revenue Commissioners (hereinafter "the Respondent") of a claim for the repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the "TCA1997") made by the Appellant in respect of the tax year 2015.
2. The amount of tax at issue is €4,790.00.

**Background**

3. Mr ██████████ (hereinafter the "Appellant") is a UK resident individual who was engaged in construction work in the State. The Appellant was subject to Relevant Contacts Tax (hereinafter "RCT") pursuant to section 531 of the TCA1997 in 2015. Sub-contractors who are deemed not to have a Permanent Establishment in the State can apply for refunds of RCT by completing a Tax Repayment Claim Form IC1 and returning it to the Respondent.

4. For the years 2015, 2016, 2017, 2018 and 2019 the Appellant was subject to RCT in the State and on 24 November 2020 the Appellant submitted a Tax Repayment Claim Form IC1 for those years.
5. By way of letter dated 05 March 2021 the Appellant's claim for repayment of RCT for 2015 was disallowed by the Respondent on the basis that the claim for repayment of tax had not been made within 4 years of the end of the tax year to which the claim related pursuant to section 865 of the TCA1997.
6. The Appellant filed a Notice of Appeal with the Commission dated 08 March 2021 against the Respondent's decision to disallow his claim for repayment of RCT by the Respondent for the tax year 2015.
7. By correspondence dated 16 December 2021 the Commissioner wrote to both Parties signifying its intention to adjudicate the within appeal without a hearing pursuant to section 949U of the TCA1997. The Parties were given 21 days to indicate if they were not in agreement with this course of action and to request that the within appeal be adjudicated by way of an oral hearing. The Commission did not receive a response to the said correspondence and neither Party requested that the within appeal be adjudicated by way of an oral hearing. Therefore this appeal has been determined without an oral hearing pursuant to section 949U of the TCA1997.

#### 8. **Legislation and Guidelines**

9. The legislation relevant to the within appeal is as follows:

##### Section 865 of the TCA1997:

*“(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**

### **Appellant's Submissions**

10. In the Notice of Appeal submitted by the Appellant's Tax Agent the following grounds of appeal were relied upon:

*"(The Appellant)...was of the belief that a claim for the relevant 2015 period had been made by his previous accountant. The fact that the claim was not made only came to light when our office took over the case. Our client then had to contact the contractors whom he had worked for to obtain the relevant details to make the claim.*

*As this was the first claim we had to have an OC1 Form completed and signed by HMRC in the UK, as Revenue Commissioners will not accept a claim without this form. This again took a number of months to receive which again delayed making a claim for RCT repayment."*

### Respondent's Submissions

11. The Respondent submitted that the provisions of section 865 of the TCA1997 mean that there is no discretion available in relation to the application of the 4 year rule for claiming the repayment of tax and on that basis the Respondent declined to process the repayment made by the Appellant for 2015.

### **Material Facts**

12. The following material is not at issue in the within appeal and the Commissioner accepts same:

- (i) The Appellant made a claim for repayment of tax for the year 2015 on 24 November 2020.

### **Analysis**

13. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*

14. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in the within appeal.

15. Section 865(2) of the TCA1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person.

16. Section 865(3) of the TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
17. Section 865(1)(b)(i) of the TCA1997 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.
18. Section 865(1)(b)(ii) of the TCA1997 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.
19. In relation to a limitation period for a repayment of tax section 865(4) of the TCA1997 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].
20. A repayment of tax was sought by the Appellant on the basis that an amount of tax paid for 2015 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA1997. Section 865(3) of the TCA1997 means the repayment of tax sought under section 865(2) of the TCA1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €4,790.00 in relation to the tax year 2015 to be due, the Respondent must have received a valid claim.
21. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due on 24 November 2020 following the delivery of the relevant claim to repayment by the Appellant when he submitted his Tax Repayment Claim Form IC1 to the Respondent. This was some 4 years and 10 months after the end of the tax year 2015.
22. Having established that there is a valid claim, the provisions of section 865(4) of the TCA1997 must be applied. As the claim for repayment of tax was made outside the 4 year period specified in section 865(4) of the TCA1997, no valid claim for repayment of tax had been submitted by the Appellant and the claim for repayment for the tax year 2015 was disallowed by the Respondent.

23. The use of the word “*shall*” as set out in section 865(4) of the TCA1997, 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 4 year rule might be mitigated.
24. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the 4 year period specified in section 865(4) of the TCA1997.
25. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4 year statutory limitation period. These determinations, may be found on the Commission website.<sup>1</sup>
26. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refund was payable by the Respondent.

### **Determination**

27. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant refund was payable.
28. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the Appellant’s position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.
29. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”) and in particular, section 949 thereof. 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 TCA1997.



Clare O'Driscoll  
Appeal Commissioner  
19 July 2022

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