



Between

134TACD2022

██████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**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 grant income tax relief in the amount of approx. €7500 for the year 2007, 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. In 2007, the Appellant repaid a marriage gratuity in the total amount of €20,732. On 21 September 2012, the Appellant claimed tax relief on the repayment. The refund request was refused by the Respondent on the ground that it was outside the four-year time limit prescribed by section 865 of the TCA 1997. On 5 January 2022, the Appellant again requested a refund. On 17 February 2022, the Respondent refused this further request, on the same ground as previously stated.

4. On 11 February 2022, the Appellant appealed the refusal to the Commission. 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**

5. Section 776(2A)(a) of the TCA 1997 provides that

*“Paragraphs (b)(ii) and (bb) of subsection (2) shall operate notwithstanding any limitation in section 865(4) on the time within which a claim for a repayment of tax is required to be made where the officer or employee makes a claim for relief in respect of a contribution which is not an ordinary annual contribution within 4 years from the end of the year of assessment in which such contribution is paid or borne by the officer or employee and section 865(6) shall not prevent the Revenue Commissioners from making a repayment of tax as a consequence of such a claim, where a valid claim for a repayment of tax (within the meaning of section 865(1)(b)) has been made by the officer or employee.”*

6. 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*

7. The Appellant submitted that:

*“This appeal relates to a claim for income tax relief on a pension contribution being the  
buy back of my marriage gratuity.*

*The following are the key facts and dates*

*6 December 2007*

*I paid an amount of €20732 to █████ VEC in respect of buy back of my marriage gratuity  
in order to increase my pension contributions and my subsequent pension income.  
█████ VEC supplied an Official receipt for the amount of €20732. █████ VEC did not  
provide any associated details on my payslip or otherwise of the actual amount  
invested or any treatment of tax relief.*

*21 September 2012*

*Following a review of my pension investment and the tax relief which was due, I  
requested a review with Revenue, █████.*

*23 November 2016, 3 February 2017 and 16 November 2017*

*At the time of my retirement, it became clear █████ VEC had not provided me or  
Revenue any information on the pension contribution and associated tax relief nor had  
made any adjustment to the full pension contribution. I had not received my tax relief  
and under the 4 year time limit was being refused it. Following further follow [sic]  
communications, local Revenue accepted the validity of the claim but advised in a letter  
that the claim should have been made before 31 Dec 2011. It seems that if the payment  
been recorded in 26 days later then the claim would be within the allowed 4 years.*

*27 January 2021*

Following further representations, █████ VEC – now changed to █████  
ETB (█████) wrote a letter confirming the details of the original payment and stating  
that it was allowable for income tax purposes.

4 March and 5 March 2021

Further representation with █████ to get them to accept responsibility for their  
omissions resulted in a letter stating that their Internal Disputes Resolution could not  
address the claim or restore the tax.

5 January 2022 and 9 February 2022

After deliberating and seeking advice I wrote to Inspector of Taxes again and they  
responded advising the course of action via Tax Appeals Commission.”

Respondent

8. The Respondent submitted that:

“[The Appellant] worked for █████ VEC from 1/9/1976 to 31/8/1979

On leaving this employment she received a marriage gratuity of £2,715

Later [the Appellant] re-joined the VEC working for █████ VEC.

In December 2007 [the Appellant] repaid her marriage gratuity with an additional sum  
of interest of €18,017 – total €20732 paid

[The Appellant] claims that she was not told by █████ VEC that she could claim tax  
relief on the interest payment of €18,017

A request for repayment of this tax relief was received by [the Respondent] on  
21/9/2012 which is outside the 4-year time limit as set out by Section 865 of TCA 1997.  
The final date for receipt of the request was 31/12/2011.

[The Appellant] subsequently retired on 31/8/2016 and she pays income tax on her  
pension. [The Appellant] feels that she is effectively being double taxed as she did not  
claim the interest relief on the Interest she paid with her marriage gratuity.

[The Appellant] further wrote to Revenue on 5/5/2017, 18/6/2019 and 9/1/2022 asking  
for the refund to be issued. On each occasion [the Appellant] has been notified by  
Revenue that the tax relief cannot be granted due to the 4-year time limit under Section  
865 TCA 1997.”

## Material Facts

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

9.1 The Appellant repaid her marriage gratuity in the total amount of €20,732 in 2007.

9.2 The Appellant claimed tax relief on the interest payment on 21 September 2012.

## Analysis

10. 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.*”
11. 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)
12. The Appellant ceased employment with █████ VEC in 1979, and received a marriage gratuity payment of IR£2,715. She recommenced employment with █████ VEC in September 2002. In 2007 she repaid her marriage gratuity in order to improve her pension on retirement. She did not claim tax relief on the payment at the time, but subsequently sought to do so in September 2012.
13. Her claim for a refund of tax was refused by the Respondent on the ground that it was not made within four years, as required by section 865 of the TCA 1997. 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.
14. In this instance, the relevant timeframe is four years after the end of the chargeable period. The repayment of the marriage gratuity was made in 2007. Therefore, the claim for repayment had to be made by 31 December 2011. However, the Appellant sought repayment in September 2012.
15. Consequently, the Commissioner is satisfied that the Respondent was correct to refuse the claim for repayment, 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 notes that the Appellant has stated that "██████ VEC had a responsibility to provide more information on what happened and to advise me more fully on the pension contribution and tax relief at the time." 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 her former employer.

### **Determination**

16. 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 approx. €7,500.
17. The Commissioner appreciates that this outcome will be disappointing for the Appellant. He considers that she was correct to check her legal rights by appealing this matter to the Commission.
18. 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  
26/07/2022