



Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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 inclusive.
2. The amount of tax at issue is €2,208.24.

Background

3. ██████████ (hereinafter the "Appellant") is single parent and by way of application dated 23 May 2016 submitted Forms SPCC1 Claim for Single Person Child Carer Credit as Primary Claimant (hereinafter an "SPCC1") for the tax years 2014, 2015 and 2016 to the Respondent.
4. For the tax year 2015 the Appellant answered "Yes" to the following question on the SPCC1:

“In the year for which this tax credit is claimed are or were you living with another person as a couple whether married or in a civil partnership or cohabiting?”

5. On 28 October 2016 an electronic Form 12 tax return for 2015 was submitted on behalf of the Appellant for 2015. In the tax return for 2015 a claim for the Single Person tax credit was made but no claim for Single Person Child Carer Credit was made.
6. On 28 October 2016 and on foot of the Form 12 tax return a PAYE Balancing Statement Form P21 was issued to the Appellant. The PAYE Balancing Statement Form P21 did not show any Single Person Child Carer Credit.
7. On 19 January 2021 the Appellant’s new tax agent submitted a Form 11 tax return for 2015 to the Respondent on behalf of the Appellant which contained a claim for a Single Person Child Carer Credit. The Form 11 return showed an overpayment of €2,208.24 by the Appellant for 2015.
8. By way of letter dated 10 February 2021 the Appellant’s claim for the overpayment made by the Appellant in 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 relevant tax years to which the claim related pursuant to section 865 of the TCA1997.
9. The Appellant has appealed the disallowance of the claim for repayment of tax by the Respondent for the tax years 2007 to 2015 inclusive.
- 1) On 22 April 2022 the Commission wrote to the Parties indicating its intention to determine the within appeal pursuant to section 949U of the TCA1997 and allowed the Parties 21 days to indicate their disagreement with same. Neither Party has objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”).

Legislation and Guidelines

10. 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

11. The Appellant submitted the following in support of the within appeal in her Notice of Appeal:

“I appreciate the tax year involved is 1/1/15 to 31/12/15 but there were significant reasons why this was a late submission. I appeal your decision to withhold my overpaid tax for that period as it is outside of your four year period. I have outlined below the traumatic situation I was and beg that you reconsider your decision and make an exception.

I returned to Ireland in [REDACTED] 2014 having spent a number of years in [REDACTED]. I was married with [REDACTED] children at the time. When I returned to Ireland, my marriage fell apart and my husband refused to seek employment. I found myself pregnant with my [REDACTED] child and raising my children on my own. My husband has since [REDACTED] [REDACTED] and to this day does not provide emotionally, financially or other for our [REDACTED] children. The children are now, [REDACTED] [REDACTED] and reside with me. I have gone through the separation process and divorce decree is overdue for covid reasons and postponement of court dates.

I am working hard to provide for these children and hold down full time employment. I do not receive single mother's allowance , medicals cards or any benefits from the state. Furthermore, I do not receive even 1 Euro of maintenance from their father nor have I ever since we separated in [REDACTED].. The withheld overpaid tax is amounting to an excess of 2 thousand Euro and this money would go very far in my household to help school and feed my [REDACTED] children.

2015 was a terrible year for me. I separated from my husband who was violent in [REDACTED] [REDACTED] when I was pregnant. I gave birth in [REDACTED] [REDACTED] and the year was turbulent to say the least. My ex husband was harassing me and a domestic violence order was obtained to keep him away from me. The harassment continued for years after and still does to this day but with counselling and legal orders to support me, I am now in a better place and managing to get all my affairs in order, like my tax returns. I believe I am fully compliant and up to date.

I appreciate your 4 year rule but I can fully support my claims above. I have lived in fear for years now. My ex has supervised access only as the children and I were

deemed as 'at high risk'. There is a provision that if he gets a job, he should start to contribute to the three children's lives but I cannot see that happening given his [REDACTED] issues.

Correspondence was at my parent's house where I lived with children before at [REDACTED] but I have now moved to [REDACTED].

Please, please reconsider releasing these overpaid tax claim to me as I say, those funds would go far in helping me look after my children.”

12. The Appellant submitted the following in support of the within appeal in her Statement of Case:

“This appeal is to have money reimbursed to me. I was late in getting my tax returns done for tax year 2015. I did eventually submit them but was told by revenue that i was too late to lodge the returns and in spite of me being owed in excess of 2,000 Euro in over paid taxes, that i could not get this money back.

Reason for delay in my tax return was due to the fact that I left a domestic violent relationship with my husband in [REDACTED] when I was already three months pregnant with our [REDACTED] child. I gave birth to that child in [REDACTED] and the months and indeed years following that have been torturous in his treatment of me and the children. I have had over 120 litigations to deal with through the court system and still find myself in court approx twice a month due to litigation against me by my ex. The children reside full time with me and I work full time. He has since been diagnosed as [REDACTED] and has supervised access only (which he never avails of). I get no maintenance from him and no help from the state and therefore every penny I earn counts in keeping my head above water. He meanwhile get HAP, social welfare and free legal aid by going from one county to the next to get free legal aid to bring me to court. I have thousands I owe a solicitor who has helped me through a lot of this. I can provide court orders to support this. Available on demand.

This money back to me means so much and will help me pay for bills that are mounting with utility bills etc. please consider this appeal and repay me my overpaid tax that was due from 2015. I simply was not in a good place and was unduly burdened. I feel my case is except from the norm of late submission of taxes.

I pay my taxes, I contribute to society and plead for justice in granting me my own money back. please!!

I appreciate I was late in getting my act together and getting a tax agent to help me to submit the return.”

Respondent's Submissions

13. 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 their hands are tied.

Material Facts

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

- (i) The Appellant submitted a claim for repayment of tax for the tax year 2015 to the Respondent on 19 January 2021.

Analysis

15. 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.”

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

17. 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. 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.

18. 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.

19. 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.
20. 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].
21. 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 €2,208.24 in relation to the tax year 2015 to be due, the Respondent must have received a valid claim.
22. 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 19 January 2021 following the delivery of the relevant claim to repayment by the Appellant. This was in excess of 4 years from the end of the tax year 2015.
23. 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 in the amount of €2,208.24 for the tax year 2015 was disallowed by the Respondent.
24. 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.
25. 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.

26. 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.¹

27. 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

28. 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.

29. 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.

30. 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
27 July 2022

¹ www.taxappeals.ie