



142TACD2022

BETWEEN/



Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

1. This is an appeal in relation to the Respondent's refusal regarding the Appellants' claim for repayment of income tax in the sum of €15,227.17 pursuant to section 865 of the Taxes Consolidation Act, 1997 as amended ('TCA 1997') in respect of the tax years of assessment 2006 to 2010 inclusive.

Background

2. In early 2015, the Appellants were alerted to a potential error in the amount of tax being deducted from their salaries under the PAYE system. On 2 March, 2015, the Appellants contacted the Respondent by telephone and requested a review of their taxes.
3. On foot of that request it was discovered that the Appellant had been subject to an excess of tax due to the fact that the standard rate tax band had been allocated to 'other income' in circumstances where the Appellants had no other income. For many years, the



Appellants did not seek balancing statements but assumed that the correct tax was being deducted from their salaries at source. As a result, the Appellants did not receive the benefit of the rate band for the tax years of assessment 2006-2014. The error had a significant effect on the amount of tax the Appellants paid each year from 2006, resulting in the Appellants paying tax at the marginal rate of 40-41% as opposed to at the standard rate of 20%.

4. By letter dated 10 April, 2015, the Appellants requested a repayment of tax backdated to 2006. The Respondent treated the Appellant's communication of 10 April, 2015 as a valid claim for repayment in accordance with the provisions of section 865(1)(b) TCA 1997 and processed repayments of tax in favour of the Appellants in respect of the tax years of assessment 2011-2014. However, in correspondence dated 30 April, 2015, and 4 June, 2015, the Respondent refused to process a repayment of tax in respect of the tax years 2006-2010 on the basis that the claim for repayment was not made within four years after the end of the chargeable periods to which the claim(s) related.
5. The claim for repayment pre-dates the establishment of the Tax Appeals Commission and the Appellant appealed to the Respondent (the procedure then in place) on 26 June, 2015. The appeal was unsuccessful as the Appellant's claim for repayment for the tax years of assessment 2006 to 2010 fell outside the four year statutory limitation period. The refusal of the repayment claims in respect of the years 2006-2010 was communicated to the Appellant by notice in writing dated 15 July, 2015.
6. On 9 September, 2015, the Appellant requested a stage two review in accordance with the Revenue complaint and review procedures. The Appellants were unsuccessful in this review and subsequently requested on 9 October, 2015, an external review. The external reviewer acknowledged that the legislation applied a four year limitation period and highlighted the absence of any exception to the four year rule. The reviewer stated that it was open to the Respondent to examine what occurred and to revisit the decision to refuse the repayment. Subsequent correspondence issued by the Respondent to the Appellant reaffirmed their position not to issue a repayment of tax in respect of the relevant tax years of assessment.
7. The Appellants appealed and the file was transferred to the predecessor body of the TAC, the Office of the Appeal Commissioners, on 18 February, 2016. The Appellants submitted that the Respondent's refusal to process the repayment claim was fundamentally unfair and unjust and that the Appellants had relied on their employer(s) and on the Respondent to correctly process their salaries and taxes including the correct allocation of their rate bands. The Appellants stated that they were unaware of the failure of their employer(s) and of the Respondent to allocate the standard rate band to their income in a manner

which would have adequately utilised the rate band and which would have mitigated their taxes appropriately.

Legislation

Section 865 TCA 1997 - Repayment of Tax

...

(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

8. The Appellants submitted that the Respondent's refusal to process the repayment claim was fundamentally unfair and unjust, that the error occurred through no fault of their own and that the Appellants had relied on their employer(s) and on the Respondent to correctly process their salaries and taxes including the correct allocation of their rate bands. The Appellants stated that they were unaware of the failure of their employer(s) and of the Respondent to allocate the rate band to their income in a manner which would have utilised the rate band and which would have mitigated their taxes and that they suffered undue hardship as a result of being taxed to excess in respect of the relevant tax years of assessment.
9. The Respondent submitted that they did not have a complete set of notes and documents going back to 2006 but that based on the records they had, it appeared that the Appellants' rate band of €32,000 was amended on 20 September, 2006, following a phone call from the Appellant. The Respondent submitted that they were unable to confirm as a matter of certainty that that phone call was the source of the movement of the rate band but the Respondent submitted that the instruction would have had to come from either the Appellants or their tax agent. The Respondent stated that while some taxpayers may allocate their rate band to other income to mitigate tax at the year end, it was possible that there was confusion about the decision to amend the rate band and/or that a miscommunication occurred at that time. In any event, from 20 September, 2006, onwards, the Appellants' standard rate band of €32,000 was credited against 'other

income' in circumstances where there was no other income and thus the benefit of the rate band was lost to the Appellants and they were subject to an excess of tax for 2007-2010. The Respondent stated that the allocation of the rate band to other income was contained on the Appellants' tax credit certificates for the relevant tax years of assessment and that to move the rate band back, it would have been necessary for the Appellants to contact the Respondent and to convey that instruction however, when the Appellants contacted the Respondent in 2015, the four year limitation period had expired.

10. At hearing, the Respondent acknowledged the hardship caused to the Appellants as a result of the additional tax incurred. The Respondent's position however, was that the Respondent was statutorily obliged to comply with the provisions of section 865 TCA 1997, and was unable to process the repayment claim in the Appellant's favour in respect of the tax years of assessment 2006 - 2010 on the basis that the claim for repayment, having been made on 10 April, 2015, was not made within four years after the end of the chargeable period to which the claim related in accordance with the provisions of section 865(4) TCA 1997. The Respondent submitted that the Respondent did not have power or authority to act other than in accordance with the applicable statutory provision, section 865 TCA 1997, and to refuse the claim for repayment of tax on the basis that the claim was out of time.

Analysis

11. The Appellants overpaid tax in the sum of €2,501.02 for 2007, €4,846.10 for 2008, €3,904.07 for 2009 and €3,975.98 for 2010 (€15,227.17 in total) in respect of the tax years of assessment 2006-2010. The claim for repayment of this tax was made by the Appellants by letter dated 10 April, 2015. The Respondent accepted that the claim constituted a '*valid claim*' for the purposes of section 865(1)(b) TCA 1997.
12. The Respondent submitted that the Appellant's claim for repayment was out of time in accordance with s.865(4) TCA 1997 which provides; '*... 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*'. I accept this submission on behalf of the Respondent. It was not in dispute that the claim for repayment was made by the Appellants on 10 April, 2015, outside of the four year statutory period, and it follows that the Appellant's repayment claim was not made within four years after the end of the chargeable periods to which the claim related.



13. The Appellants submitted that it was fundamentally unfair that they were denied repayment of the tax they overpaid and that the overpayment of taxes caused them undue hardship through no fault of their own as a result of being taxed to excess, without basis.
14. The scope of the jurisdiction of the Appeal Commissioners and of the Tax Appeals Commission, has been the subject of judicial consideration in very recent times, in a number of seminal Irish cases, namely; *Lee v Revenue Commissioners* [2021] IECA 18, *Stanley v The Revenue Commissioners* [2017] IECA 279 and *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49. See also *The State (Calcul International Ltd.) v The Appeal Commissioners III ITR 577* and *The State (Whelan) v Smidic* [1938] 1 I.R. 626. While the Appellant submitted that the denial of the repayment claim would lead to unfairness, and while it is noted that the external review recommended that the Respondent revisit the decision to refuse the repayment of taxes, it is clear from the authorities that the jurisdiction of the Tax Appeals Commission does not extend to the provision of equitable or declaratory relief nor to the provision of remedies available in High Court judicial review proceedings.
15. Section 865(4) TCA 1997 provides [emphasis added] 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*'.
16. In this appeal, the applicable provision is section 865 TCA 1997, and I am satisfied that the use of the word '*shall*' per s.865(4) TCA 1997, indicates an absence of discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances in which the four-year rule might be mitigated. In short, I do not consider that I have the authority or jurisdiction to determine that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997.
17. Previous determinations of the Tax Appeals Commission have considered and addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations may be found on the Commission website at www.taxappeals.ie.

Determination

35. Pursuant to the wording of s.865 TCA 1997, and in particular the use of the word "*shall*" per subsection 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside the four-year period. As a result, I have no option but to determine

that the repayment claim on behalf of the Appellant in respect of the tax years of assessment 2006-2010 is out of time in accordance with the provisions of section 865(4) TCA 1997.

A handwritten signature in black ink, appearing to read "Lorna Gallagher". The signature is fluid and cursive, with a long horizontal stroke at the end.

COMMISSIONER LORNA GALLAGHER

23rd day of August 2022

This determination has not been appealed.