



147TACD2022

BETWEEN/



Appellants

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

1. This is an appeal in relation to the Respondent's refusal to process a claim for repayment of income tax pursuant to section 865 of the Taxes Consolidation Act, 1997 as amended ('TCA 1997') in respect of the tax year of assessment 2017.

Background

2. The Appellant was contacted by the Respondent in March 2022, was informed that she was due a repayment of taxes in respect of the tax year of assessment 2017 and was requested to file a Form 11 in respect of 2017. The Appellant filed her form 11 on 28 March, 2022. The Appellant subsequently received correspondence requesting her to provide her bank details in respect of the overpayment, which she duly provided.
3. On 29 March, 2022, the Appellant received a notice from the Respondent titled '*Late claim for repayment of tax*'. The Appellant was notified therein that her claim for repayment of



tax was not made within the relevant four year limitation period and that the Respondent was precluded by the provisions of section 865 TCA 1997, from repaying the amount of tax overpaid. The notice did not specify the amount of tax overpaid. The Respondent stated that when the Form 11 was received, the bank details request issued automatically.

4. The Appellant filed a notice of appeal with the Tax Appeals Commission on the ground that she was unaware until 2022 that she had overpaid her taxes in respect of 2017. She stated that communication went through ROS and not through her revenue.ie online account. She stated that she was a PAYE worker and that she should have been informed of the overpayment within time so that she could have reclaimed the overpayment.

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

5. The Appellant submitted that she was a PAYE worker and was unaware that she had paid her taxes to excess in 2017. She stated that she should have been informed of the overpayment within time so that she could have claimed the overpayment within the four year statutory period.
6. The Respondent's position 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 year of assessment 2017, on the basis that the claim for repayment, having been made on 28 March, 2022, 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.

Analysis

7. In this appeal, it was not in dispute that the Appellant overpaid income tax in respect of the tax year of assessment, 2017, albeit the sum overpaid was unspecified.
8. A '*valid claim*' for repayment in accordance with the provisions of section 865(1)(b) TCA 1997 was made by the Appellant with the filing of the return on 28 March, 2022.
9. The provisions of section 865(4) TCA 1997 are clear as to the requirement that a claim for repayment '*shall not be allowed unless it is made... .. within 4 years after the end of the chargeable period to which the claim relates.*' The facts in this appeal are not in dispute. The return was not filed until 28 March, 2022, in circumstances where the limitation period for claims in relation to 2017, expired on 31 December, 2021. Accordingly, the Appellant's repayment claim was not made within four years after the end of the chargeable period to which the claim related.
10. The Appellant submitted that she was a PAYE worker and was unaware that she had paid her taxes to excess. She stated that she should have been informed of the overpayment within time so that she could have claimed the overpayment within the four year period.
11. 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. It is clear from the authorities that the jurisdiction of the Tax Appeals Commission does not extend to matters pertaining to equitable or declaratory relief nor to the provision of remedies available in High Court judicial review proceedings.
12. 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.*'
13. I am satisfied that the use of the word '*shall*' per section 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.

14. 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, in particular, that a claim for repayment '*..shall not be allowed*' unless it is made within four years after the end of the chargeable period to which the claim relates, 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 year of assessment 2017 is out of time in accordance with the provisions of section 865(4) TCA 1997.

A handwritten signature in black ink, reading "Lorna Gallagher".

COMMISSIONER LORNA GALLAGHER

7th day of September 2022

This determination has not been appealed