



149TACD2022

Between

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**Appellant**

and

The 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”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a refusal of the Revenue Commissioners (“the Respondent”) of a claim for a repayment of income tax pursuant to section 865 TCA 1997 made by the Appellant in respect of the years of assessment 2010, 2011, 2012, 2014 and 2015. The amount of tax at issue is €12,999.07. On 9 December 2020, the Appellant duly appealed to the Commission.
2. On 26 August 2022, the hearing of the appeal took place remotely. The Appellant was not present at the hearing of the appeal but was represented by his Tax Agent, ██████████. The Commissioner heard submissions from the Appellant’s representative and the Respondent’s representative, ██████████.

**Background**

3. On 1 January 2002, the Appellant registered for income tax with the Respondent. In the absence of income tax returns filed by the Appellant for the years 2010 to 2015 inclusive, the Respondent raised estimated assessments for tax in the sum of €12,999.07, which

issued to the Appellant on 14 June 2018. The estimated assessments for tax were raised following a number of compliance letters being issued to the Appellant in the period November 2013 to February 2018, requesting tax returns for the years 2010 to 2015 inclusive. This included a 21 day warning letter to file outstanding returns being sent to the Appellant on 27 February 2018.

4. On 8 January 2019, the Appellant made payment to the Respondent in the amount of €12,999.07. The Appellant directed that the payment be allocated against outstanding liabilities demanded by the Respondent on 27 November 2018. On 20 May 2020, the Appellant's Agent filed income tax returns via Revenue Online System ("ROS") on behalf of the Appellant for the years 2010 to 2015 inclusive. On 20 May 2020, Notices of Amended Assessment issued to the Appellant indicating overpayments of income tax for the years 2010 to 2015 inclusive.
5. On 21 May 2020, the Respondent disallowed any repayment of income tax and on 25 November 2020, the Respondent wrote to the Appellant to state that any repayment claim was disallowed, as the claim was made outside the 4 year time limit, as prescribed by section 865 TCA 1997.
6. The Appellant argues that the late filing of his tax returns was due to difficult personal circumstances and health issues and that he responded to the demands of the Respondent by discharging the estimated liabilities in full in the sum of €12,999.07. He submits that this was done under duress in light of his personal circumstances and the demands that were being made of him by the Respondent.

### **Legislation and Guidelines**

7. The legislation relevant to this appeal is as follows:
8. Section 865 of the TCA 1997, Repayment of Tax, provides:-

*"(1)...*

*(b) For the purposes of subsection (3) –*

*(i) Where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –*

*(I) all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is*

*due to the person for that chargeable period is contained in the statement or return, and*

*(II) the repayment treated as claimed, if due -*

*(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or*

*(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time.*

*ii) Where all information which the revenue commissioners may reasonably require, to enable them determine if and to what extent a repayment of taxes due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable shall be treated as a valid claim when that information has been furnished by the person, and*

*(iii)....”*

*(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.*

*(6).....*

*(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.*

9. Section 959V TCA 1997, Amendment by chargeable person of return and of self assessment in return, provides:-

*(1) Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period*

*(2) Where a return is amended in accordance with subsection (1), the chargeable person shall as part of that notice amend the self assessment for the chargeable period at the same time*

*(2A) A return and self assessment may be amended under this section only where such an amendment—*

*(a) arises from an allowance, credit, deduction or relief due under the Acts,*

*(b) is necessary to correct either an error or a mistake, or*

*(c) is necessary to comply with any other provision of the Acts,*

*and notice of an amendment under this section shall specify which of paragraphs (a), (b) and (c) applies.*

*(3) Subject to subsection (4), notice under this section shall be given in writing to a Revenue officer in the Revenue office dealing with the tax affairs of the chargeable person.*

*(4) (a) Notice under this section in relation to the amendment of a return and a self assessment shall be given by electronic means where the return was delivered by electronic means*

*(b) The electronic means by which notice under this section shall be given shall be such electronic means as may be specified by the Revenue Commissioners for that purpose*

*(c) This subsection shall not apply to an amendment to a return or self assessment in so far as it relates to capital gains tax*

*(5) Where another person, as referred to in section 959L, is acting under the chargeable person's authority—*

*(a) notice under subsections (1) and (2) may be given by that other person, and*

*(b) where notice is so given by that other person—*

*(i) the Acts apply as if the return and the self assessment had been amended by the chargeable person, and*

*(ii) a return and a self assessment purporting to have been amended by or on behalf of any chargeable person shall for the purposes of the Acts be deemed to have been amended by that person or by that person's authority, as the case may be, unless the contrary is proved.*

*(6) (a) Subject to paragraph (b) and subsection (7), notice under this section in relation to a return and a self assessment may only be given within a period of 4 years after the end of the chargeable period to which the return relates*

*(b) Where a provision of the Acts provides that a claim for an exemption, allowance, credit, deduction, repayment or any other relief from tax is required to be made within a period shorter than the period of 4 years referred to in paragraph (a), then notice of an amendment under this section shall not be given after the end of that shorter period where the amendment relates to either the making or adjustment of a claim for such exemption, allowance, credit, deduction, repayment or other relief*

*(7) Notice under this section shall not be given in relation to a return and a self assessment after a Revenue officer has started to make enquiries under section 959Z in relation to the return or self assessment or after he or she has commenced an audit or other investigation which relates to the tax affairs of the person to whom the return or self assessment relates for the chargeable period involved.*

## **Submissions**

### *Appellant*

10. The Appellant's Tax Agent made the following submissions on the Appellant's behalf:-

- (i) For over ten years, the Appellant has suffered from [REDACTED] [REDACTED] and it is for this reason that he neglected to file his tax returns for the years 2010 to 2015 inclusive. The Appellant is a [REDACTED] to over 15

██████ and always remained on “emergency tax”, as he felt it better to overpay his taxes than underpay. He also has a small farm holding. The Appellant was caring for his elderly parents, who later passed away, and as a result, neglected to file his tax returns. In 2019, he paid the sum of €12,999.07 to resolve the liabilities as set out in the estimated assessments for tax that issued from the Respondent. He did this in the knowledge that he did not owe that sum to the Respondent, but that he wanted the Respondent to cease issuing reminders and/or demands. In total, he has overpaid nearly €42,000 all of which it seems is subject to a four year rule for repayment.

- (ii) The Respondent submitted a file to the Director of Public Prosecutions (“DPP”) in relation to the Appellant’s failure to file tax returns for the periods at issue. However, on receipt by the Respondent of medical certificates and payment of liabilities as set out in the estimated assessments for tax, no prosecution proceeded.
- (iii) The four year rule should not apply to the circumstances of the Appellant, as the payment was made in error in 2019 and it is on the basis of that error, that the repayment of the sum of €12,999.07 should be allowed. The payment was made under duress given the demands made by the Respondent. In addition, at that time the Appellant was suffering from ██████ and unable to deal with his affairs.

#### *Respondent*

11. The Respondent’s representative made the following submissions on behalf of the Respondent:

- (i) In the absence of tax returns being filed by the Appellant for the years 2010 to 2015 inclusive, the Respondent raised estimated assessments for tax. This was as a result of the Appellant’s continued failure to file income tax returns despite numerous reminders and warning letters being issued by the Respondent. There is an obligation on the Appellant to file tax returns.
- (ii) On 27 February 2018, the Respondent issued a 21 day warning letter to file outstanding returns. Thereafter, on 14 June 2018, the Respondent issued estimated assessments for tax to the Appellant.
- (iii) On 27 November 2011, the Respondent issued a demand for outstanding liabilities. On 8 January 2019, the Appellant made payment of the outstanding liabilities in the sum of €12,999.07.

- (iv) In May 2020, returns were filed by the Appellant and the Respondent issued Notices of Amended Assessment of the years 2010 to 2015 inclusive. A refund did not issue to the Appellant following the filing of the Appellant's tax returns, as the claim was made outside the four year time period provided for under section 865 TCA 1997.
- (v) The letter dated 25 November 2020 has an error, in that it should also have referenced the years 2014 and 2015.

### **Material Facts**

12. The Commissioner made the following material findings of fact:-

- (i) The Appellant failed to file income tax returns for the years 2010, 2011, 2012, 2014 and 2015.
- (ii) On 20 June 2017 and 14 August 2017, the Respondent issued a Notification of Revenue Enquiry seeking information relating to income tax returns for 2010 to 2015 inclusive, in addition to payment including any statutory interest.
- (iii) On 27 February 2018, the Respondent issued a 21 day warning letter seeking that the Appellant file outstanding income tax returns.
- (iv) On 14 June 2018, the Respondent raised estimated assessments for tax for the years 2010, 2011, 2012, 2014 and 2015, assessing liabilities in the sum of €12,999.07.
- (v) On 27 November 2018, the Respondent issued to the Appellant a demand for outstanding liabilities.
- (vi) On 8 January 2019, the Appellant made payment to the Respondent in the sum of €12,999.07 and directed that the amount of payment be allocated to the outstanding liabilities demanded by the Respondent on 27 November 2018.
- (vii) On 20 May 2020, the Appellant filed his tax returns for the years 2010, 2011, 2012, 2014 and 2015.
- (viii) On 20 May 2020, the Respondent issued Notices of Amended Assessment for the years 2010, 2011, 2012, 2014 and 2015.
- (ix) On 21 May 2020, the Respondent disallowed the Appellant's claim for repayment of tax for the years 2010, 2011, 2012, 2014 and 2015.

## Analysis

13. This appeal relates to the question of the repayment of tax under section 865 TCA 1997.  
The Appellant has been denied a repayment of tax by the Respondent on the grounds that he does not meet the criteria as outlined by section 865(4) TCA 1997, namely that a claim for repayment of tax for the chargeable period was not made within four years after the end of the chargeable period. The Appellant made an application for the repayment of tax in 2020, following payment being made on 8 January 2019, to the Respondent in the sum of €12,999.07 for the years 2010 to 2015 inclusive.
14. It is not in dispute that the Appellant did not file his income tax returns for the years 2010 to 2015 inclusive. However, he cites personal circumstances as the reasons why he neglected to file his returns for the years at issue. He relies on a letter from his treating clinician in support of this contention. On 14 June 2018, in the absence of returns being filed by the Appellant for the years 2010 to 2015 inclusive, the Respondent raised estimated assessments for tax, in the sum of €12,999.07, in accordance with section 959Y(1)(a) TCA 1997. Thereafter on 8 January 2019, Appellant paid the sum of €12,999.07, as set out in the notices of estimation for tax, to discharge said liabilities. On 20 May 2020, the Appellant filed his tax returns for the years at issue and the Respondent issued Notices of Amended Assessment for the years 2010 to 2015 inclusive. Thereafter, the Appellant made a claim for a repayment of tax, which was refused by the Respondent, as it was not made in accordance with section 865(4) TCA 1997.
15. Section 865(2) 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. Section 865(3) TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
16. Section 865(1)(b)(i) TCA 1997 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 it to determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
17. Section 865(1)(b)(ii) TCA 1997 provides that where all the information which the Respondent may reasonably require to enable it 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.



18. In relation to a limitation period for a repayment of tax, section 865(4) TCA 1997 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]. As the Appellant’s claim for repayment relates to the tax years 2010 to 2015 inclusive, a valid claim for repayment must have been made on or before 31 December 2014, 31 December 2015, 31 December 2016, 31 December 2018 and 31 December 2019 for years at issue.
19. The Appellant sought a repayment of tax on the basis that an amount of tax paid for the years 2010 to 2015 inclusive was not due. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means the repayment of tax sought by the Appellant under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €12,999.07 to be due, the Respondent must have received a valid claim from the Appellant.
20. The Respondent had all the information which it required to enable them determine if and to what extent a repayment of tax was due to the Appellant, following the filing of the Appellant’s income tax returns on 20 May 2020. In deciding if the Appellant is entitled to repayment of tax, and having established that there is a valid claim, the provisions of section 865(4) of the TCA 1997 must be applied. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayment in the amount of €12,999.07 for the years 2010 to 2015 inclusive was disallowed.
21. The use of the word “shall” as set out in section 865(4) TCA 1997, 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 four-year rule might be mitigated. 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 four year period specified in section 865(4) TCA 1997.
22. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website<sup>1</sup>.
23. The Commissioner notes the Appellant’s arguments as to the unfairness of the treatment of his tax affairs and that he made payment under duress. In that regard, the Commissioner

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

has considered the correspondence from the Appellant's treating clinician. However, the scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 ("the Lee decision"), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

24. For completeness, reference has been made to section 959V TCA 1997 which provides that a person may amend a return and self-assessment seeking repayment by giving notice in writing to the Respondent. A chargeable person may only amend their return and self-assessment, to claim an allowance, credit, deduction or relief due under the Acts, to correct an error or a mistake or to comply with another provision of the Acts. The notice of amendment of the return and self-assessment must give the reason for the amendment. However, any notice to amend a return can only be given within 4 years after the end of the chargeable period. Whilst the Appellant argues that the payment was made in error, in order for the Appellant to be in a position to avail of the provisions of section 959V TCA 1997, any notice to amend must have been made within the prescribed time period in section 959V(6)(a) TCA 1997 namely, 4 years after the end of the chargeable period to which the return relates, which did not occur.
25. In an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

*"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”.*

26. The Appellant has not discharged the burden of proof to satisfy the Commissioner that the refund is payable by the Respondent pursuant to section 865 of the TCA 1997

#### **Determination**

27. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that he is entitled to a repayment of tax in accordance with the provisions of section 865 TCA 1997. There is no discretion as regards the application of section 865 TCA 1997 and the Respondent was correct in its approach to the repayment claim for the years 2010 to 2015 inclusive.

28. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether his legal rights were correctly applied.

29. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. 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.



Claire Millrine  
Appeal Commissioner  
1 September 2022