



Between

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] [REDACTED] (“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 refund an overpayment of income tax in the amount of €393 for the year 2015 and €80.18 for the year 2016, 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, this appeal is determined without a hearing.

3. The Appellant submitted his Form 11 income tax returns for 2015 and 2016 to the Respondent on 7 March 2022, and overpaid €473.18 in total. The Appellant sought a repayment of the overpaid sums. On 8 March 2022, the Respondent refused the refund, on the ground that the claim was statute-barred under section 865(4) of the TCA 1997.

4. On 29 March 2022 the Appellant appealed the refusal to the Commission. On 5 August 2022, the Commission notified the parties that the Commissioner intended to adjudicate on the appeal without an oral hearing, and invited the parties to notify the Commission within 21 days if they did not agree to the appeal proceeding without a hearing.
5. No objection was received from either party. 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

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:

“My claim for repayment is outside the 4 year time limit .I am appealing the decision to refuse repayment on the basis of hardship and my unawareness of any time limit .I was forced to cease trade in 2016 with substantial debt owed to a supplier [REDACTED] [REDACTED] . I spent the next years negotiating a repayment schedule with my supplier which I am adhering to. I also have mortgage payments and 3 children under 10 .With the intention of getting my affairs up to date I had 2 years outstanding tax returns filed a number of weeks ago .This is how the overpayment ... arises .Given my difficult financial situation a repayment would be very welcome.”

Respondent

8. The Respondent submitted that:

“On 2nd February 2017, [the Respondent] sent a request to the Appellant to file the outstanding 2015 Income tax return. On 1st February 2018, [the Respondent] sent a request to the Appellant to file the outstanding 2016 Income tax return. The Appellant did not deliver the returns for the periods ended 31st December 2015 and 31st December 2016 until the 7th March 2022. In order to be within the 4 year time limit, the returns should have been filed by 31st December 2019 for the 2015 tax period and 31st December 2020 for the 2016 tax period.

[...]

As the Appellant did not file the returns until 7th March 2022 the repayments shall not be allowed in accordance with Section 865(4) and are statute barred.”

Material Facts

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

9.1. The Appellant submitted Form 11 income tax return for the tax years ending 31 December 2015 and 31 December 2016 on 7 March 2022.

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. It is not entirely clear which tax years this appeal concerns. In the Notice of Appeal, the Appellant referenced 2016 but stated that he was seeking repayment of €393, which was the amount overpaid in 2015. In his Statement of Case, the Appellant referenced 2015 rather than 2016. He submitted a refusal letter from the Respondent in relation to 2016. In its Statement of Case, the Respondent has addressed both 2015 and 2016. For the avoidance of doubt, the Commissioner interprets the appeal to concern both 2015 and 2016.
13. The Appellant has accepted that his income tax returns were filed late, and has stated that he is appealing the refusal to refund the overpaid tax on the basis that he was unaware that a time limit for repayment exists, and that he has experienced financial difficulties. The Respondent has stated that it notified the Appellant in 2017 and 2018 to file his tax returns, but that he did not do so until 2022.
14. 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. In this instance, the relevant timeframe is four years after the end of the chargeable period. Therefore, the Appellant was obliged to claim for a refund for the tax year 2015 by 31 December 2019, and for the tax year 2016 by 31 December 2020.
15. The Appellant submitted his income tax returns for both years on 7 March 2022, and sought a refund thereafter. Therefore, the Commissioner is satisfied that the request for a repayment was not made in accordance with section 865(4). The Commissioner appreciates that the Appellant has encountered financial difficulties in recent years. However, the Commissioner is satisfied that the Respondent was correct to refuse the

claim for a refund, 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 appreciates that this is frustrating and disappointing for the Appellant, who was entitled to exercise his right to an appeal to the Commission of the Respondent's refusal of his claim.

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 total amount of €473.18 for the tax years 2015 and 2016.
17. The appeal is hereby determined in accordance with sections 949U and 949AL of 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.



Appeal Commissioner
9th of September 2022