



26TACD2022

Between

[REDACTED]

Appellant

and

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 “TCA 1997”) made by the Appellant in respect of the years of assessment 2008 to 2016 inclusive. The amount of tax at issue is €27,625.49.
2. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the TCA 1997.

Background

3. The Appellant is, for the purposes of the within appeal, a Commissioner for Oaths and was registered for income tax self-assessment in 2004. The Appellant has filed his income tax returns from fees for his work as a Commissioner for Oaths in each of his income tax returns since registering for income tax self-assessment and on 29th March 2021 the Appellant wrote to the Respondent querying whether Commissioner for Oaths fees are taxable. On

27th April 2021 the Respondent wrote to the Appellant informing him that Commissioner for Oaths fees are not taxable. In this correspondence the Respondent also informed the Appellant that any refunds prior to 2017 were statute barred as a result of the provisions of section 865 of the TCA 1997.

4. On foot of the correspondence from the Appellant, the Respondent amended the Income Tax returns submitted by the Appellant for the years 2017, 2018 and 2019 to reflect the non-taxation for the Commissioner for Oaths fees submitted therein. The Respondent has issued refunds to the Appellant for the years 2017, 2018 and 2019. The Appellant has submitted an income tax return for 2020 without any income from fees for his work as a Commissioner for Oaths.
5. By letter dated 5th July 2021 the Respondent wrote to the Appellant informing him that refunds for all other periods from 2008 to 2016 inclusive were disallowed by the Respondent. The basis of the Appellant's disallowance of the Appellant's claim was a valid claim for repayment had not been made within the four-year limitation period set out in section 865(4) of the TCA 1997.
6. The Appellant filed a Notice of Appeal dated 23rd July 2021 against the Respondent's decision with the Commission.

Legislation and Guidelines

7. The legislation relevant to this appeal is as follows:

Section 865 of the TCA 1997:

“(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:

8. The Appellant submitted the following in support of his appeal:

"For the years in question I have been submitting Commissioner for Oaths fee received as a taxable item on my tax returns.

Following my inquiry the office of the Revenue Commissioners confirmed that such fees are not taxable."

Respondent's Submissions:

9. The Respondent submits that it a claim for the repayment of tax under the TCA 1997 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. The Respondent's position is that as the claim was made by the Appellant in March 2021, no valid claim for repayment for the years 2008 to 2016 inclusive was made by the Appellant within the four year limitation period set out in section 865(4) of the TCA 1997 and a result the repayment claim in respect of the years 2008 to 2016 inclusive was out of time.

Material Facts

10. The following material fact is at issue in this Appeal:

- i. The Appellant incorrectly returned fees for work as a Commissioner for Oaths as taxable income in his income tax returns to the Respondent for the years 2008 to 2016 inclusive.

11. The Commissioner has examined the material facts at issue.

The Appellant incorrectly returned fees for work as a Commissioner for Oaths as taxable income in his income tax returns to the Respondent for the years 2008 to 2016 inclusive:

12. This material fact is not at issue between the Parties. The Commissioner accepts that the Appellant returned fees for work as a Commissioner for Oaths as taxable income in his income tax returns to the Respondent for the years 2008 to 2016 inclusive Therefore this material fact is accepted.

13. Therefore the following are the material facts which the Commissioner has accepted:

- i. The Appellant incorrectly returned fees for work as a Commissioner for Oaths as taxable income in his income tax returns to the Respondent for the years 2008 to 2016 inclusive.

Analysis

14. 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. 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.

15. Section 865(1)(b)(i) of the 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 them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.

16. Section 865(1)(b)(ii) of the TCA 1997 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.
17. In relation to a limitation period for a repayment of tax section 865(4) of the 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].
18. The Appellant sought a repayment of tax on the basis that an amount of tax paid for the years 2008 to 2016 inclusive was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) of the TCA 1997 means the repayment of tax sought by the Appellants under section 865(2) of the 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 €27,625.49 to be due, the Respondent must have received a valid claim from the Appellant.
19. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant, following the delivery of the relevant claim to repayment, only when the inquiry to the Respondent was made by the Appellant in March 2021.
20. 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) of the TCA 1997, the claim for repayment in the amount of €27,625.49 for the year 2015 was disallowed.
21. The use of the word 'shall' as set out in section 865(4) of the 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.
22. 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) of the TCA 1997.

23. Previous determinations of the Tax Appeals 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.¹

24. 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.”

25. 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

26. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the relevant refund was payable.

27. It is understandable that the Appellant will be disappointed with the outcome of his appeal. The Appellant has found himself in an unfortunate situation and the Commissioner has every sympathy with his position. However, the Commissioner has no discretion in these cases due to the application of the four year rule, set out above. The Appellant was correct to check to see whether his legal rights were correctly applied.

28. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949U 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 TCA 1997.



Clare O'Driscoll
Appeal Commissioner
9th February 2022

¹ www.taxappeals.ie