



36TACD2022

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 year of assessment 2013. The amount of tax at issue is €5,975.80.

Background

2. The Appellant married in 2012. On 25th October 2018 the Appellant, through his Tax Agent, submitted a return to the Respondent for 2013 which showed a balance of tax overpaid for the period of €5,975.80.
3. The Respondent disallowed the refund claimed relying on section 865 of the TCA 1997.
4. The Appellant filed an Appeal against the Respondent’s decision with the Commission on 23rd November 2018.

5. The oral hearing of the within appeal was heard on 22nd February 2022 at which the Commissioner did not hear direct evidence and at which the Commissioner heard submissions on behalf of both Parties.

Legislation and Guidelines

6. 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:

7. The Appellant's Tax Agent submitted the following in support of this appeal:

"██████████ was married in 2012 and 2013 was the first year a joint assessment was filed - resulting in a refund due of €5,975.80 - see assessment issued on ROS.

Back in 2010 and 2011 ██████████ was a Director of a Limited Company that fell victim of the recession. Two debtors of the Limited Company refused to pay large outstanding debts. As a result the Limited Company became insolvent and was advised by Revenue to liquidate. At that time ██████████ was advised that the unpaid taxes of the Limited Company would die with the liquidation. However, Revenue have subsequently held ██████████ personally liable for P.35 liabilities unpaid by the Company in 2010 and 2011. This liability is €5.5k.

The income tax refund refund [sic] for 2013 is €5.9k.

██████████ is not looking for repayment of the €5.9k but just to have it offset against the €5.5k form [sic] 2010 and 2011. It seems very strange that a refund from 2013 would not be allowed to be offset against a liability form [sic] 2010 and 2011 - regardless of any small print or technicalities.

In the interest of fairness I would plead with you to allow the offset of the refund in this circumstance."

Respondent's Submissions:

8. The Respondent submits that 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 October 2018, no valid claim for repayment for the year 2013 was made by the Appellant within the four year limitation period set out in section 865(4) of the TCA 199 and as a result the repayment claim in respect of the year 2013 was out of time.

Material Facts

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

[9.1] The Appellant's self-assessment Form 11 for 2013 was filed with the Respondent on 25th October 2018.

10. The material fact at issue is not in dispute between the Parties. The Commissioner accepts that the Appellant's self-assessment Form 11 for 2013 was filed with the Respondent on 25th October 2018. Therefore this material fact is accepted.

Analysis

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. 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.
12. 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 to determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
13. 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.
14. 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].

15. The Appellant sought a repayment of tax on the basis that an amount of tax paid for the year 2013 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 Appellant 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 €5,975.80 to be due, the Respondent must have received a valid claim from the Appellant.
16. 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 on 25th October 2018.
17. 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 €5,975.80 for the year 2013 was disallowed.
18. 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.
19. 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.
20. 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
21. 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.”

¹ www.taxappeals.ie

22. 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 949AK 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
23rd February 2022