



41TACD2022

Between

████████████████████

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 tax year 2012. The amount of tax at issue is €3,745.33.

Background

2. The Appellant was registered for income tax self-assessment through the Revenue Online System (hereinafter “ROS”) on 14th November 2012 with an effective date of 1st October 2012. This registration was made in the context of the Appellant becoming a director of a company, ██████████, which was registered for corporation tax on 1st October 2012. At the same time that the Appellant was registered for income tax self-assessment on the ROS system a Tax Agent was registered for the Appellant on the ROS system as being ██████████ ██████████ and a letter dated 14^h November 2012 was issued by the Respondent to the Appellant which notified him of this.

3. On 30th April 2020 the Appellant filed an income tax return for 2012 with the Respondent which said return indicated a balance overpaid of €3,745.33.
4. On 6th May 2020 the Respondent wrote to the Appellant refusing the claim for repayment contained in the tax return for 2012 on the basis that the claim for repayment had not been made within 4 years of the end of the chargeable period pursuant to section 865(4) of the Taxes Consolidation Act 1997 (hereinafter the “TCA 1997”).
5. The Appellant filed a Notice of Appeal against the Respondent’s decision with the Commission on 6th June 2020.
6. The oral hearing of the within appeal was heard on 7th March 2022.

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.”

Section 950 TCA 1997

‘...

“chargeable person” means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person—

(a) whose total income for the chargeable period consists solely of emoluments to which Chapter 4 of Part 42 applies, and for this purpose a person whose total income for the chargeable period, other than emoluments to which that Chapter applies, is deducted in determining the amount of his or her tax-free allowances for the chargeable period by virtue of regulation 10(1)(b) of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), shall be deemed for that chargeable period to be a person whose total income consists solely of emoluments to which that Chapter applies,

(b) who for the chargeable period has been exempted by an inspector from the requirements of section 951 by reason of a notice given under subsection (6) of that section, or

(c) who is chargeable to tax for the chargeable period by reason only of section 237, 238 or 239,

but paragraph (a) shall not apply to a person who is a director or, in the case of a person to whom section 1017 applies, whose spouse is a director (within the meaning of section 116) of a body corporate other than a body corporate which during a period of 3 years ending on the 5th day of April in the chargeable period—

(i) was not entitled to any assets other than cash on hands, or a sum of money on deposit within the meaning of section 895, not exceeding £100,

(ii) did not carry on a trade, business or other activity including the making of investments, and

(iii) did not pay charges on income within the meaning of section 243;'

Section 951 TCA 1997

“(1) Every chargeable person shall as respects a chargeable period prepare and deliver to the appropriate inspector on or before the specified return date for the chargeable period a return in the prescribed form of—

(a) in the case of a chargeable person who is chargeable to income tax or capital gains tax for a chargeable period which is a year of assessment—

(i) all such matters and particulars as would be required to be contained in a statement delivered pursuant to a notice given to the chargeable person by the appropriate inspector under section 877, if the period specified in such notice were the year of assessment which is the chargeable period, and

(ii) where the chargeable person is an individual who is chargeable to income tax or capital gains tax for a chargeable period, in addition to those matters and particulars referred to in subparagraph (i), all such matters and particulars as would be required to be contained in a return for the period delivered to the appropriate inspector pursuant to a notice given to the chargeable person by the appropriate inspector under section 879,

...”

Submissions

Appellant's Submissions:

8. The Appellant stated that to the best of his recollection the Company was registered in 2013 and he was a 50% shareholder in that company. As a result of him becoming a proprietary director in 2013 he understood that he was required to make self-assessment returns to the Respondent as a chargeable person from 2013 onwards. He also thought that his 2012 tax affairs had been treated as if he had remained an employee in 2012 and that he did not need to make a self-assessment income tax return to the Respondent for 2012.
9. The Appellant stated that in either 2013 or 2014 he registered for an account with ROS and noted that there was no option available for him to submit a self-assessment return for 2012. He stated that if there had been an option for him to submit a return for 2012 he would have made the return at that stage. He stated that he filed a paper Form 11 return for the tax year 2013 which he physically submitted to the Respondent sometime in 2014.
10. He stated that in or around 2018 or 2019 he realised that there was an issue with the 2012 return and that once he realised there was a problem he then submitted the return to the Respondent.
11. When asked by the Commissioner to comment in relation to the 4 year rule contained in section 865 of the TCA 1997 the Appellant stated that he was expecting the ROS system to be correct and to indicate that a return for 2012 was outstanding. He stated that he had telephoned the Respondent in or around 2014 seeking a balancing statement which was something that he regularly did every 2 years and that he had not been informed at that point that there was an issue with his 2012 return, although when asked by the Commissioner he confirmed that he did not receive a balancing statement for 2012 by post from the Respondent. He stated that as he did not realise there was a problem in relation to the 2012 return he did not keep records of any calls he had made to the Respondent.
12. The Appellant stated that he is not a tax expert and that, in his view, it is a matter of natural justice that the Respondent should process the repayment for 2012 because the ROS system did not indicate that a return for 2012 was outstanding and he always thought that his 2012 tax affairs were dealt with as if he was a PAYE employee.
13. The Appellant also stated that there had been a problem with the spelling of his first name by the Respondent and that he had telephoned them on at least three occasions seeking

for the mistake to be corrected. He stated that he thinks that this may have been the source of the issue.

14. In relation to [REDACTED] being registered on the Respondent's system as his Tax Agent for income tax, the Appellant stated that he was never aware that a Tax Agent had been registered as acting for him and that as far as he was aware [REDACTED] had only assisted with the registration and set up of the Company. He stated that he did not receive the letter dated 14th November 2012 from the Respondent which confirmed [REDACTED] [REDACTED] as being registered as his Tax Agent for income tax.

Respondent's Submissions:

15. The Respondent submitted that:

- 15.1 The Appellant was registered for income tax through ROS on 14th November 2012 with an effective date of 1st October 2012;
- 15.2 The Appellant was notified by letter dated 14th November 2012 that the Respondent had been advised that [REDACTED] were acting on his behalf in taxation matters;
- 15.3 The Appellant was a director and shareholder of the Company which was registered for Corporation Tax from 1st October 2012;
- 15.4 A Form 11 for 2012 was issued in respect of the Appellant in or around 19th January 2013;
- 15.5 A tax return for 2012 in relation to the Appellant was submitted through the ROS system on 17th February 2020.

16. The Respondent submitted the following legal arguments:

- 16.1 The Appellant was registered as a "chargeable person" pursuant to section 950(1) of the TCA 1997 with effect from 1st October 2012. Therefore the Appellant was obliged to file a tax return for 2012 in accordance with section 951 of the TCA 1997 which was applicable to the tax year 2012;
- 16.2 The Appellant filed his tax return for 2012 on 17th February 2020. It is accepted by the Respondent that this tax return is a "valid claim" pursuant to section 865(1)(b) of the TCA 1997;
- 16.3 Section 865(4)(c) of the TCA 1997 provides that a claim to repayment shall not be allowed unless a claim has been made within 4 years of the end of the chargeable period to which the claim relates. The Appellant is seeking a

repayment for 2012 on foot of a tax return made in February 2020. Therefore the claim to repayment is outside the time limit provided by section 865(4)(c) of the TCA 1997.

Material Facts

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

- 17.1 The Appellant was registered as a chargeable person on 14th November 2012 with effect from 1st October 2012;
- 17.2 The Appellant submitted his tax return for 2012 to the Respondent on 17^h February 2020;
- 17.3 The Appellant was unable to submit his tax return for 2012 on the ROS system;
- 17.4 The misspelling of the Appellant's name by the Appellant was a contributing factor to the Appellant being unable to submit his tax return for 2012 on the ROS system.

18. The Commissioner has examined the material facts at issue:

The Appellant was registered as a chargeable person on 14th November 2012 with effect from 1st October 2012:

19. In his submissions to the Commissioner the Appellant stated that he thought that the Company was registered in 2013 and also that he thought he was registered as a chargeable person in 2013. He stated that he was unaware that he had been registered as a chargeable person in 2012. The Appellant has not submitted any documentation to the Commissioner in relation to this material fact and has not submitted any documentation to the Commissioner in support of the within appeal.

20. On the other hand the Respondent has submitted that the Appellant was registered for self-assessed income tax as a chargeable person through ROS on 14th November 2012 with effect from 1st October 2012.

21. At the oral hearing of the within appeal the Appellant was very unsure as to when he was registered for self-assessed income tax and stated that he thought that the Company was registered in 2013. As with any taxation appeal, the burden of proof rests with the Appellant who must prove on the balance of probabilities that the disputed tax is not payable as set out by Charleton J. in *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49. The Appellant has not submitted any evidence or documentation which supports his contention that the Company was registered in 2013.

22. Section 950 of the TCA 1997 applied to the Appellant's 2012 return¹ and defines a chargeable person as follows:

“chargeable person” means, as respects a chargeable period, a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person but, as respects income tax, does not include a person—

(a) whose total income for the chargeable period consists solely of emoluments to which Chapter 4 of Part 42 applies, and for this purpose a person whose total income for the chargeable period, other than emoluments to which that Chapter applies, is deducted in determining the amount of his or her tax-free allowances for the chargeable period by virtue of regulation 10(1)(b) of the Income Tax (Employments) Regulations, 1960 (S.I. No. 28 of 1960), shall be deemed for that chargeable period to be a person whose total income consists solely of emoluments to which that Chapter applies,

(b) who for the chargeable period has been exempted by an inspector from the requirements of section 951 by reason of a notice given under subsection (6) of that section, or

(c) who is chargeable to tax for the chargeable period by reason only of section 237, 238 or 239,

but paragraph (a) shall not apply to a person who is a director or, in the case of a person to whom section 1017 applies, whose spouse is a director (within the meaning of section 116) of a body corporate other than a body corporate which during a period of 3 years ending on the 5th day of April in the chargeable period—

(i) was not entitled to any assets other than cash on hands, or a sum of money on deposit within the meaning of section 895, not exceeding £100,

(ii) did not carry on a trade, business or other activity including the making of investments, and

(iii) did not pay charges on income within the meaning of section 243;’

23. In addition the Commissioner takes note of the letter of 14th November 2012 which the Respondent has submitted which confirmed the fact that [REDACTED] had advised the Respondent that they would be acting as the Appellant's tax agent in respect of income tax. The Appellant submitted to the Commissioner that he did not know that [REDACTED]

¹ Section 950 TCA 1997 was deleted by section 129(2) of the Finance Act 2012 but continued to apply to tax years prior to 2013.

██████ were registered as his tax agent and that he thought that they had only acted in setting up and registering the Company.

24. Having considered all of the above, the Commissioner finds that the Appellant was registered as a chargeable person on 14th November 2012 with effect from 1st October 2012. Therefore this material fact is accepted.

The Appellant submitted his tax return for 2012 to the Respondent on 17th February 2020:

25. This material fact is accepted by both Parties and the Commissioner also accepts this as a material fact.

The Appellant was unable to submit his tax return for 2012 on the ROS system:

26. The Appellant has submitted that he was unable to submit his tax return for 2012 on the ROS system. The Commissioner has considered this claim and has considered the submissions made by the Appellant in relation to same. The Appellant stated that he telephoned the Respondent some time in 2013 or 2014 and that he was not told that there was any issue with his 2012 return. The Appellant has not submitted any evidence or documentation which supports his claim that he was unable to make the return for 2012 on the ROS system. When asked by the Commissioner the Appellant was not able to state precisely when he called the Respondent nor was he able to give details of any other actions which he took to submit the 2012 return to the Respondent.

27. Having considered all of the evidence and submissions the Commissioner finds that the Appellant has not met the burden of proof to establish that he was unable to submit his tax return for 2012 on the ROS system. Therefore this material fact is not accepted.

The misspelling of the Appellant's name by the Appellant was a contributing factor to the Appellant being unable to submit his tax return for 2012 on the ROS system.

28. During the oral hearing of this appeal the Appellant stated that there had been a problem with the spelling of his first name by the Respondent and that he had telephoned them on at least three occasions seeking for the mistake to be corrected. He stated that he thinks that this may have been the source of the issue.

29. On examination of the Notice of Assessment issued to the Appellant for 2012 and the letter issued by the Respondent to the Appellant on the 14th November 2012 the Appellant's first name is spelled ██████████ however the correct spelling of the Appellant's first name is ██████████. Whilst the Commissioner accepts that there has been a misspelling of the Appellant's first name, no evidence has been submitted to the Commissioner to support

the claim that this was the source of any issue for the Appellant in respect of his dealings with the Respondent in relation to the submission of his 2012 return. The Commissioner does not accept that the misspelling of the Appellant's name had any influence on his dealings with the Respondent and his ability to submit his return for 2012. Therefore this material fact is not accepted.

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

30.1 The Appellant was registered as a chargeable person on 14th November 2012 with effect from 1st October 2012;

30.2 The Appellant submitted his tax return for 2012 to the Respondent on 17^h February 2020.

Analysis

31. 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.

32. 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.

33. 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.

34. 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].

35. The Appellant sought a repayment of tax on the basis that an amount of tax paid for the year 2012 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 €3,745.33 to be due, the Respondent must have received a valid claim from the Appellant.

36. 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 February 2020.
37. 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 €3,745.33 for the year 2012 was disallowed.
38. 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.
39. 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.
40. 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.²
41. 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.”

42. 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

43. 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.

² www.taxappeals.ie

44. 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.
45. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AL 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 March 2022