

Year	Assessment Date	Underpayment Amount €	Relevant Appeal
2013	5 th August 2020	328.20	767/20
2014	31 st January 2020	796.22	692/20
2014	5 th August 2020	1,218.42	768/20
2015	31 st January 2020	651.90	691/20
2015	5 th August 2020	995.30	769/20

4. By letters dated 31st January 2020 (for appeals 691/20 and 692/20) and 6th August 2020 (for appeals 767/20, 768/20 and 769/20) the Respondent wrote to the Executor of the Appellant's estate informing him that the claimed refunds for 2013, 2014 and 2015 were disallowed by the Respondent. The basis of the Respondent's disallowance of the claim was that a valid claim for repayment had not been made within the 4 year limitation period set out in section 865(4) of the TCA 1997.
5. Notices of Appeal dated 6th July 2020 for appeal 691/20, 8th July 2020 for appeal 692/20 and 5th August 2020 for appeals 767/20, 768/20 and 769/20 against the Respondent's decisions were filed with the Commission.
6. The total amount of tax appealed under the five appeals herein is €3,990.04.

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 following was submitted on behalf of the Appellant in support of the within appeals:

“The late [REDACTED] died of end stage dementia and was a [REDACTED] at the date of his demise. Accordingly, he did not have capacity to oversee his tax affairs in respect of the chargeable period under review. Administration of his Estate was protracted and complicated by reason of his status as a [REDACTED]. In light of the [REDACTED] I should be obliged if you would allow an Appeal against the Decision to refuse repayment of the overpayment of tax.... A copy of the Death Certificate is attached to vouch end stage dementia as a cause of death.”

Respondent's Submissions:

9. 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 claims were made outside the relevant 4 year periods, no valid claims for repayment were made within the 4 year limitation period set out in section 865(4) of the TCA 1997 and as a result the repayment claims in respect of 2013, 2014 and 2015 were out of time.
10. In relation to the Appellant's status as a [REDACTED] the Respondent submitted that there is no exception available to persons who are [REDACTED] in relation to the 4 year limitation period set out in section 865 of the TCA 1997. In relation to the possibility that the Appellant may be due tax relief pursuant to section 189(a) of the TCA 1997 the Respondent submits that this section of the TCA 1997 relates to payments in respect of personal injuries made “... to or in respect of an individual who is permanently and totally incapacitated by reason of mental or physical infirmity from maintaining himself or herself...” and does not relate to the 4 year limitation period set out in section 865 of the TCA 1997.
11. The Respondent further submitted that on 8th October 2014 [REDACTED] completed claim forms 54 for the years 2010 to 2013 inclusive and that Deposit Interest Retention Tax which had been paid on the Appellant's behalf during those periods was duly refunded. The Respondent further submitted that the Appellant's assessment for 2013 was subsequently amended in August 2020 to reflect dividend income and withholding tax not previously declared and that the additional refund was not refunded by virtue of the 4 year limitation period set out in section 865 of the TCA 1997.

Material Facts

12. The following material facts are not at issue between the Parties in the within appeals and are accepted by the Commissioner:
 - 12.1 The Appellant died on 26th May 2017 and returns in relation to the Appellant for 2013, 2014 and 2015 were submitted as set out at paragraph 3 *supra*.

Analysis

13. 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.
14. 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.
15. 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.
16. 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].
17. A repayment of tax was sought on the basis that an amount of tax paid for 2013, 2014 and 2015 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 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 €3,990.04 to be due, the Respondent must have received a valid claim.
18. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due, following the delivery of the relevant claim to repayment, only when the inquiry to the Respondent was made by the Appellant on:
 - 18.1 31st January 2020 for appeals 691/20 and 692/20 which relate to 2015 and 2014 respectively;
 - 18.2 5th August 2020 for appeals 767/20, 768/20 and 769/20 which relate to 2013, 2014 and 2015 respectively.
19. 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 repayments of tax were made outside the 4 year

period specified in section 865(4) of the TCA 1997, the claims for repayment in the amount of €3990.04 for the years 2013, 2014 and 2015 were disallowed.

20. 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 4 year rule might be mitigated.
21. 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 4 year period specified in section 865(4) of the TCA 1997.
22. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4 year statutory limitation period. These determinations, may be found on the Commission website.¹
23. In relation to the fact that ██████████ was a ██████████ at the time of his demise, whilst the Commissioner has every sympathy with this situation, the fact of ██████████ ██████████ does not alter the fact that section 865 of the TCA 1997 does not provide for extenuating circumstances in which the 4 year rule might be mitigated. The fact of the ██████████ means that there was ██████████ acting on ██████████ behalf which should have ensured that his tax affairs were in order and up to date.
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 burden of proof has not been discharged 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 within appeal has failed and that it has not been shown that the relevant refunds were payable.
27. It is understandable that there will be disappointment with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.

¹ www.taxappeals.ie

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
21st March 2022