



48TACD2022

Between



**Appellant**

-and-

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal of the refusal of the Appellant's application for the repayment of income tax paid for the years 2008, 2009 and 2010 ("the relevant tax years"). Although the parties are agreed that the Appellant overpaid in the amount of €1,515.36, €76.83 and €842.52 respectively, the issue to be decided is whether a "valid claim" for repayment was made within the time-limit prescribed by section 865(4) TCA 1997.
2. The Appellant filed his Notice of Appeal on 20 March 2019. This appeal is determined under s.949U of the Taxes Consolidation Act 1997 ("TCA 1997").

**Background**

3. The Appellant, through his agent, submitted joint returns for himself and his spouse for the relevant tax years through Revenue's Online Service ("ROS"). Each joint return specified income earned from a [REDACTED] business and, separately, from emoluments accrued from a company directorship. The income in the returns was broken down as follows:-

| Year | Income     | Emolument Income |
|------|------------|------------------|
| 2008 | €13,356.00 | €39,000.00       |
| 2009 | €15,883.00 | €4,601.00        |
| 2010 | €14,042.00 | €24,132.00       |

4. Copies of the returns filed on behalf of the Appellant and his spouse, along with a ROS printout in respect of the year 2008, were provided to the Commissioner by the Respondent. It is apparent therefrom that the Appellant indicated that both sources of income were attributable to “self” – i.e. himself. The alternative option of “spouse” does not appear to have been selected in respect of the income from the [REDACTED] business.
5. Both parties agree that this was a mistake and that the income from the [REDACTED] business for the relevant tax years was earned by the spouse rather than the Appellant. What the parties disagree on is the question of who bears responsibility for the mistake.
6. The errors on the returns came to light at some point in 2018 when the Appellant’s spouse, having ceased to practice as a [REDACTED], investigated her PRSI contribution history and discovered that there was no record of the same. When notified of this, the Respondent issued amended assessments that correctly attributed the income from [REDACTED] to the Appellant’s spouse and remedied the position regarding her PRSI contributions.
7. Another consequence of the amendment assessments however was that the Appellant was notified on 24 January 2019 that he had overpaid income tax for the relevant tax years in the following amounts: €1,515.36 for 2008, €76.83 for 2009 and €842.52 for 2010. The Appellant submitted a claim for the repayment of these sums, which was refused by the Respondent on 27 February 2019 on the grounds that it was made over four years after the end of each chargeable period, contrary to the time-limit prescribed in section 865(4) TCA 1997.

#### **Legislation and Guidelines**

8. Section 865 TCA 1997 is headed “*Repayment of tax*”. Subsection 2 therein provides:-

*“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.”*

9. Section 865(3) TCA 1997 provides that no repayment of income tax shall be made unless a “valid claim” has first been made to the Respondents. Section 865(1)(b)(i)(I) TCA 1997 provides that a valid claim shall have been made where a person files a return that contains:-

*“...all the information which the Revenue Commissioners may reasonably require to enable them determine if and to what extent a repayment of tax is due to the person for that chargeable period...”*

10. Section 865(4) TCA 1997 sets the following time limit on repayments:-

*“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*

11. The Appellant submits that he and his spouse always filed joint returns as a married couple. The assessments issued on foot of these that attributed the totality of the income to his own activity was an error on the part of the Respondent. As such, he contends that

he should be entitled to the repayment of the overpaid income tax for the relevant tax years.

12. The Respondent submits that it could not repay the tax overpaid as the information in the returns specified that all of the income was the Appellant's. As a consequence, the earliest point at which a "valid claim" could be taken to have been made was when the PRSI issue was brought to the Respondent's attention in 2018. This was outside the time-limit prescribed by section 865(4) TCA 1997, which it could not disregard. For this reason it submits the refusals must stand.

### **Material Facts**

13. The material facts found are as follows:-

- the Appellant submitted a joint return for himself and his spouse for the tax years 2008, 2009 and 2010;
- on each of those returns the Appellant specified that the all of the income – i.e. from emoluments from a directorship and from a [REDACTED] business – was earned by him;
- at some stage in 2018 the Appellant's spouse raised the issue of her missing PRSI contributions with the Respondent. This resulted in the Respondent issuing amended assessments, which remedied this problem;
- arising from this, the Appellant also received amended assessments on 24 January 2019 that indicated that he had overpaid income tax for the relevant tax years;
- the Appellant sought the repayment of the overpaid income tax, but this was refused. The Appellant appealed the refusal by lodging a Notice of Appeal with the Tax Appeals Commission on 20 March 2022.

### **Analysis**

14. Section 865 TCA 1997 allows for the repayment of overpaid tax by the Respondent, but specifies a time-limit after which it is prohibited from doing so. The net effect of section 865 TCA 1997 in this respect is that a "valid claim" must be made by a taxpayer no later than four years after the expiry of the end the tax year in which the overpayment occurred. Section 865(1)(b)(i)(I) TCA 1997 provides that a taxpayer will have made a valid claim for the repayment of tax when he or she has filed a return containing all of the information necessary for the Respondent to assess the true extent of the taxpayer's liability.

15. The key question in this appeal is whether the information contained in the returns filed by the Appellant should have led the Respondent to assess the [REDACTED] income for one or more of the relevant tax years as being attributable to his spouse.
16. As the Appellant pointed out, all of the returns for the relevant tax years were joint assessments. However, in each instance it appears that the Appellant's agent, in filling out the joint return, indicated that the [REDACTED] income was earned by "self". He did not select the "spouse" option. This means that the assessments originally made were correct based on the self-assessment information contained in the joint returns provided in respect of the Appellant and his spouse. Under the system of self-assessment it is up to the taxpayer to provide accurate information for the making of an assessment.
17. The consequence of the foregoing is that the Appellant's claim for repayment was not made until 2019, outside the four year time limit-from the end of the relevant tax years specified in section 865(4) TCA 1997. This time-limit governing repayments is mandatory and, in putting it into legislation, the Oireachtas opted to confer the Respondent with no discretion to disregard it in individual circumstances. The mandatory nature of the time-limit applies equally to the Tax Appeals Commission, which is bound to apply this legislation. For this reason, the Appellant's appeal of the Respondent's refusal to make repayment of the income tax overpaid for the relevant years must stand.

### **Determination**

18. The Appellant's situation is unfortunate and worthy of sympathy. He filed his returns in a timely manner, but in so doing made an error that listed the totality of the income as his own when in fact a portion was earned by his wife. The mistake however cannot be attributed to the Respondent, which issued assessments reflecting the information it received on the joint returns submitted on ROS. The legislation is clear in not permitting repayment in respect of claims made after the expiry of four years from the end of the relevant tax year from which the claim arises. In each instance the Appellant's claim, made in 2019, falls outside this period and cannot be allowed.
19. This appeal has been determined in accordance with section 949AL TCA 1997. The determination contains full findings of fact and reasons. 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.

A handwritten signature in black ink, appearing to read 'COHiggins'.

Conor O'Higgins  
Appeal Commissioner  
Date 9<sup>th</sup> March 2022