



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

55TACD2022

Between



Appellant

and

Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) of the refusal of the Appellant’s application to the Revenue Commissioners (“the Respondent”) for the repayment of income tax overpaid for the year 2015 in the amount of €1,571.47. The net issue to be determined is whether a “valid claim” was made within the time-limit prescribed by section 865(4) of the Taxes Consolidation Act 1997 (“TCA 1997”).
2. The Appellant filed his Notice of Appeal on 27 May 2021. The hearing of the appeal took place on 8 March 2022.

Background

3. The facts in this matter are not in dispute. At the beginning of 2015, the Appellant set up a self-employed consultancy business, having previously been a pay as you earn (PAYE) taxpayer. In setting up his own business, the Appellant duly registered for VAT. In the event, however, he returned to work as a PAYE employee in April 2015, having ceased to operate the consultancy business. He did so without having earned any income from his business during its brief period of existence.

4. The Appellant did not file self-assessment returns on time for the year 2015. On 2 February 2017 the Respondent sent correspondence to the Appellant requesting that he do so. However, this request was not complied with by the Appellant. On 4 March 2021 the Respondent notified the Appellant that he had overpaid PAYE tax and informed him that in order to obtain repayment he was required to file his annual return for 2015, along with VAT three returns marked nil for the period January 2015 to April 2015. The Appellant duly sent these returns on 8 April 2021 and, as consequence, was notified that he had overpaid tax for the years 2015, 2017, 2018 and 2020 in the total amount of €5,091.40.
5. It appears that the Appellant successfully claimed repayment of the sums overpaid for 2017, 2018 and 2020. However in respect of the sum for 2015, €1,571.47, the Appellant's application was refused on the grounds that a valid claim was not made within four years of the end of the relevant tax year, namely 31 December 2019. The Respondent was informed that repayment would be contrary to section 865(4) of the TCA 1997. This is the decision under appeal.

Legislation and Guidelines

6. Section 865 of the 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."

7. Section 865(3)7 of the 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) of the 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..."

8. Section 865(4) of the 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

9. The Appellant accepted at the hearing that he had made an error by not filing an annual return for the year 2015. He submitted, however, that the Respondent should have notified him sooner than March 2021 that he had overpaid tax. He acknowledged that his claim fell outside the time-limit for repayment specified in section 865(4) TCA 1997, but submitted that the Commissioner should exercise his discretion in the circumstances of the case to allow the appeal.
10. The Respondent submitted that the Appellant's claim could not be allowed because the four-year time-limit is mandatory in nature. A “valid claim” can only be made upon the filing of an annual return containing the information necessary to establish a taxpayer's true liability. The Appellant did not file until April 2021 and, as such, his claim was made in excess of four years after the end of the tax year 2015. Thus, payment was prohibited.

Material Facts

11. The material facts are as follows:-

- the Appellant started a consultancy business and registered for VAT at the beginning of 2015;
- the Appellant obtained employment in April 2015, as a consequence of which he ceased to operate his consultancy business without having earned any income from the same;

- the Appellant did not file an annual return for the year 2015 on time. The Appellant ultimately did so on 8 April 2021;
- the Appellant overpaid tax for the years 2015, 2017, 2018 and 2020. The overpayment for 2015 was €1,571.47.

Analysis

12. Section 865 of the TCA 1997 permits the repayment of overpaid tax by the Respondent, but provides for 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 of 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.
13. There is no dispute in this case that the return for the tax year 2015 was not made within this period. It is clear from the use of the word “shall” in section 865(4) of the TCA 1997 that in legislating the Oireachtas intended to create a mandatory time-limit that the Respondent has no discretion to disregard in individual cases. The mandatory nature of this provision also applies to the Commissioner in determining this appeal.
14. Under the self-assessment system, it is incumbent on a taxpayer to provide the information necessary to establish a liability. Where a taxpayer fails to provide this information in a return one consequence can be the overpayment of tax, whether it be tax paid under the PAYE or self-assessment systems. This is what occurred in the Appellant’s case. As with the Respondent, the Commission is bound to apply the condition for repayment prescribed by section 865(4) of the TCA 1997 that the Appellant make a valid claim within time by filing a return.

Determination

15. The Commissioner notes that the Appellant is worthy of sympathy in that the business he started that required him to file a return lasted only for a few months. The Appellant as a result did not earn any income from his new business. The Commissioner determines that because the claim was made by way of the filing of a return over four years after the end of the tax year 2015, the Respondent’s decision must stand. The Appellant has therefore failed in his appeal to the Commission. The Appellant was correct to seek to establish with the Tax Appeals Commission whether he might be entitled to repayment.

16. 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', written in a cursive style.

Conor O'Higgins
Appeal Commissioner
Date 14th March 2022