



59TACD2022

Between

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against the refusal of the Revenue Commissioners (“the Respondent”) of a claim for the repayment of tax pursuant to section 865 of the TCA 1997, made by the Appellant in respect of the year of assessment for 2014. The amount of tax at issue is in the sum of €1,013.74.
2. In accordance with the provisions of section 949U TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. On 08 January 2021, the Appellant submitted Form 11 Income Tax return for 2011. Thereafter, a Notice of self-assessment for the year ending 31 December 2014 issued, which showed an overpayment of tax in the sum of €1,013.74.
4. On 18 January 2021, the Respondent wrote to the Appellant advising her of a late claim of repayment of tax for the year 2014. The correspondence explained that “*Section 865(4)*”

of the TCA 1997 provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within four years of the end of that chargeable period”.

5. The Appellant contends that while she was a full time, permanent PAYE Employee in 2013/2014, there were workplace grievances that prevented her from filing for the year 2014. It is on that basis that she seeks a refund of the overpayment of tax for 2014, in the sum of €1,013.74 and duly appealed to the Commission on 28 February 2020.

Legislation and Guidelines

6. The legislation relevant to this appeal is as follows:
7. Section 865 of the TCA 1997 is headed “*Repayment of tax*”.
8. Subsection (1)(b)(i) and (1)(b)(ii) therein provides:-

(b)For the purposes of subsection (3)—

(i) where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the Acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where—

(I) 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 is contained in the statement or return, and

(II) the repayment treated as claimed, if due—

(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or

(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time,

(ii) where all information which the Revenue Commissioners may reasonably require, to enable them determine if and to what extent a repayment of tax is due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable period shall be treated as a valid claim when that information has been furnished by the person,

9. Subsection 2 therein provides:-

(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....

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

(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).

11. Section 865(4) of the TCA 1997 sets the following time limit for repayments and provides:-

(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. ...

12. Section 865(7) of the TCA 1997 sets out the appeals mechanism in relation to decisions of the Respondent on a claim to repayment by that person and provides:-

(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

13. The Appellant submitted the following in support of her appeal:

"I was a full time, permanent PAYE Employee.....who in 2013/2014 ended up having an industrial relations grievance with my then employer....which resulted in me getting ill and being on Sick Leave for nearly a year from 2013 until 2014.....2014 was a very traumatic and difficult year for me where my confidence was at an all-time low and my health was poor so was not in any position to file a tax return for this year. I hope that you give my case due consideration.... I was owed tax so am hoping that I will get this tax back as could do with it at present".

Respondent

14. The Respondent submits the Appellant was registered for Income Tax in November 2014 and on 08 January 2021, a Form 11 tax return for 2014 was filed electronically. Thereafter, on 08 January 2021, a notice of self-assessment for the year ending 31 December 2014 issued, showing an overpayment of €1,013.74.

15. On 18 January 2021, the Respondent corresponded with the Appellant advising her of the late claim of repayment of tax for the year 2014. The correspondence explained that "Section 865(4) of the TCA 1997 provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within four years of the end of that chargeable period".

16. The Respondent submits the claim for repayment for 2014 was made on 08 January 2021, which is outside the relevant 4 year period. Consequently, the Respondent is precluded

from issuing the repayment to the Appellant, despite the Appellant's argument that she did not file the income tax return for 2014 until 2021, due to ill health.

Material Facts

17. The Commissioner finds the following material facts:

- (i) On 08 January 2021, the Appellant filed her Income Tax Return for 2014 with the Respondent.
- (ii) A Notice of self-assessment for the year ending 31 December 2014 issued on 08 January 2021, showing an overpayment of €1,013.74.
- (iii) The Appellant sought a repayment of the overpaid income tax, but this was refused by the Respondent. The Appellant appealed the refusal by lodging a Notice of Appeal with the Commission on 12 February 2021.

Analysis

18. Section 865 of the 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 of the TCA 1997 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.

19. 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.

20. 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.

21. 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.

22. 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”.

23. The Appellant is seeking a repayment of tax on the basis of an overpayment of tax for the year 2014. This was established on 08 January 2021, when a Notice self-assessment issued for the year ending 31 December 2014. However, by correspondence dated 18 January 2021, the Respondent informed the Appellant that it is precluded from making the repayment and in that regard, relies on section 865 of the TCA 1997.
24. 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 €1,013.74 to be due, the Respondent must have received a valid claim from the Appellant. Section 865(4) of the TCA 1997 sets the time limits for making such a claim.
25. The Commissioner notes the difficult circumstances of the Appellant during 2013 and 2014, and her submission that ill health caused her to omit to file a return for 2014. However, 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.
26. The consequence of the foregoing is that the Commissioner has no authority or discretion to direct that repayment be made to the Appellant, where the claim for repayment falls outside the four year period specified in section 865(4) of the TCA 1997. The mandatory nature of the time-limit applies equally to the Commission, which is bound to apply this legislation. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period.
27. In an appeal to the Tax Appeals Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that the disputed tax is not payable. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

28. 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

29. For the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the relevant refund is payable.

30. The Commissioner appreciates this decision will be disappointing for the Appellant. The Appellant has found herself in an unfortunate situation, but the Commissioner has no discretion in these cases due to the application of the four year rule, as set out above.

31. This appeal is hereby determined in accordance with the statutory provisions of the TCA 1997. This determination contains full findings of fact and reason 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.



Claire Millrine
Appeal Commissioner
30/03/2022