



77TACD2022

Between



Appellant

and

THE 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 year of assessment 2010. The amount of tax at issue is €1,843.04.
2. On foot of a notification to the Appellant and the Respondent dated 13th January 2022 and the Appellant’s and Respondent’s agreement with same this appeal has been determined without an oral hearing pursuant to section 949U of the TCA 1997.

Background

3. The Appellant is a PAYE taxpayer. She was in receipt of the Department of Employment Affairs and Social Protection (“DEASP”) illness benefit (“illness benefit”) in 2010 in the amount of €5,814.60.
4. The Appellant paid the illness benefit sums she received in 2010 over to her employer. The normal treatment where an employee pays over illness benefit received to their employer is that the employer does not include the amount of the illness benefit received by the employee in the calculation of the employee’s taxable pay (as the Respondent will have reduced down the amount of the employee’s tax credits by the amount of the illness benefit received).
5. However, in this particular instance, the Appellant’s employer erroneously did not amend the Appellant’s payroll figures to reflect the correct treatment and this had the

effect of the Appellant being over-assessed to income tax in 2010 by the amount of illness benefit received in 2010. This resulted in a deemed underpayment of income tax by the Appellant for 2010 in the sum of €1,843.04.

6. In order to collect the deemed underpayment, the Respondent reduced the Appellant's tax credits by an amount of €460.76 for each of the subsequent tax years, 2014, 2015, 2016 and 2017.
7. In 2021, the Appellant became aware of her employer's error which resulted in her being over-assessed to income tax for 2010 and she sought repayment of the amount of tax overpaid in 2010 in the sum of €1,843.04.
8. The Appellant engaged in email correspondence with the Respondent and was advised by an email from the Respondent dated 22nd October 2021 that the refund for 2010 was 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 four-year limitation period set out in section 865(4) of the TCA 1997.
9. A Notice of Appeal dated 28th October 2021 against the Respondent's decision was filed with the Commission.

Legislation

10. 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

11. The Appellant advised in early 2021 she was undertaking a review of her tax affairs to establish the quantum of monies she owed the Respondent in respect of Covid related payments she received.
12. As part of the review, she established that the Respondent had reduced down her tax credits for the inclusive period 2014 to 2017 in respect of a deemed underpayment of tax relating to 2010.
13. The Appellant advised that she was very ill in 2010 and was out of work in January to September of that year. Her employer, who made full salary payments to her during the period of sick leave, advised her to apply for illness benefit which she subsequently did and was granted. Upon receipt of the full illness benefit sums received, the Appellant transferred the full amount she received in respect of illness benefit in one lump sum to her employer's bank account when she subsequently returned to work.
14. Owing to an error on her employer's behalf, the employer's P35 (yearly return of all employees' wages and salaries) for 2010 was not corrected to reflect the fact that the Appellant had refunded them the amount of illness benefit she received in 2010. The practical effect of this error was that the Respondent was not notified of the refund and acting on the knowledge that the Appellant had received the full amount of illness benefit in addition to her full salary, they issued an assessment for 2010 seeking the sum of €1,843.04 (which represented the tax due on the deemed receipt of the illness benefit) from the Appellant..
15. When the Appellant contacted the Respondent regarding the error in 2021, the Respondent requested the Appellant to furnish proof of the payment of monies back to her employer and to obtain confirmation of the amount of illness benefit she received in 2010 so that they could review the position.
16. The Appellant produced a letter from her employer confirming that she had repaid the entire amount of illness benefit received by her to them in 2010 and detailed the subsequent error by which the employer failed to amend the 2010 P35. Additionally, the Appellant furnished the Respondent with a letter from the DEASP confirming the amount of illness benefit received by her in 2010.
17. The Respondent reviewed this documentation and advised the Appellant that her claim for repayment of the overpaid tax in 2010 could not be repaid as it was outside the four-year limit and was "statue barred".

18. The Appellant submitted that as the payroll was operated and reported to the Respondent by her employer correctly, it was the Respondent who had made the error in reducing her tax credits in respect of a deemed underpayment of tax in 2010 and as a result of this error, the issue of statute-barring should not apply.
19. The Appellant further submitted that as she passed on the full amount of illness benefit received by her in 2010 to her employer that the Respondent was incorrect in seeking to tax her in respect of the illness benefit received and to do so resulted in "double taxation".
20. The Appellant submitted while at "face value" the overpaid tax arising from the reduction in her tax credits for the tax years 2014, 2015 and 2016 fell outside the "4 year limit", as the reduction to her tax credits continued into 2017, the four year rule should be ignored for the years 2014, 2015 and 2016. In making this submission, the Appellant advised that if the 2014, 2015 and 2016 refunds were "bunched up" into 2017, then they could be repaid as 2017 was within the 4 year limitation period.
21. In the alternative, the Appellant submitted that the 2017 overpaid tax should be refunded as it was within the four year rule.
22. The Appellant submitted that as the Respondent never contacted her prior to reducing her tax credits in the years 2014 to 2017 inclusive that this represented a fundamental unfairness as she had "no opportunity to pre-empt the reductions at that time".
23. The Appellant advised that she like "most employees" found her notice of tax credits complicated and that she generally accepted them as correct. She further advised that when she received her tax credits for the years 2014 to 2017 she merely "glanced at them and filed them away".
24. In summation, the Appellant submitted that she was entitled to a full refund of the overpaid tax as it arose entirely from an error caused by the Respondent and the delay in her discovering the error arose from the trust that she had placed in the Respondent and the documentation they had furnished her with.

Respondent

25. The Respondent advised that the Appellant only noticed the 2010 error in 2021 and first contacted them about the matter on the 4th February 2021.
26. The Respondent submitted that as the refund arising owing to the error arose in 2010 that they could not make the refund to the Appellant as it was outside the four-year period permitted by section 865 (4) TCA 1997.
27. In summation, the Respondent submitted while they had every sympathy for the position the Appellant found herself in as a result of a valid claim not being made within the statutory timeframe and as there was no discretion provided in the relevant legislation, then the Appellant's claim could not succeed.

Material Facts

28. The Commissioner finds the following material facts:-
 - (i) The Appellant received the sum of €5,814.60 in respect of illness benefit in the tax year 2010.
 - (ii) The Appellant paid over the full amount of illness benefit received by her to her employer.
 - (iii) Owing to an error, the Appellant was taxed on the amount of illness benefit received by her in 2010.

- (iv) The amount of tax arising on the deemed retention of the illness benefit received by the Appellant in 2010 was €1,843.04.
- (v) The 2010 underpayment of tax in the sum of €1,843.04 was collected by the Respondent by reducing down the amount of the Appellant's tax credits for each of the years 2014, 2015, 2016 and 2017 by the amount of €460.76 in each of those years.
- (vi) The Respondent was first advised of the error and consequent overpayment of 2010 income tax by the Appellant on the 4th February 2021.

29. These material facts are not at issue between the parties and the Commissioner accepts them.

Analysis

- 30. While the Appellant submitted that it was the Respondent who was responsible for the error regarding the refund of illness benefit sums, the Commissioner finds this argument without merit as a review of the submissions provided establishes that the error was caused by the Appellant's employer and not by the Respondent.
- 31. The Commissioner also find the Appellant's comments regarding the Respondent's alleged failure to contact her regarding the reduction of her 2014 to 2017 tax credits to be without merit given that she was provided with tax credit certificates for each of the specified years which identified the reductions arising from the 2010 deemed underpayment but rather than review these in detail, the Appellant by her own evidence, glanced at them before filing them away.
- 32. In addition, the Commissioner notes the Appellant's submission regarding the 2017 claim still being within the timeframe provided by Statue but regrettably advises the Appellant that as the taxation giving rise to the appeal is in respect of the tax year 2010 and not 2017, the Appellant's argument must fail.
- 33. 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.
- 34. 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.
- 35. 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.
- 36. 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].

37. A repayment of tax was sought on the basis that an amount of tax paid for 2010 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 €1,843.04 to be due, the Respondent must have received a valid claim.
38. 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 the 4th February 2021.
39. 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 was made outside the four-year period specified in section 865(4) of the TCA 1997, the claim for repayment in the amount of €1,843.04 for the year 2010 was disallowed.
40. 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.
41. 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.
42. 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.¹
43. 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."*
44. 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

45. 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 refund was payable.
46. 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 four year rule, set out above.
47. 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.

¹ www.taxappeals.ie

Andrew Feighery
Appeal Commissioner
10th May 2022