



89TACD2022

Between



**Appellant**

-and-

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This appeal to the Tax Appeals Commission (“the Commission”) concerns whether the Appellant made a “valid claim” for the repayment of tax for the year 2011 to the Revenue Commissioners (“the Respondent”) within the time prescribed by section 865 of the Taxes Consolidation Act 1997 (“the TCA 1997”). The Appeal was heard on 28 March 2022.

**Background**

2. In November 2012 the Appellant filed a Form 11 return for the tax year 2011, in which he assessed himself as having a liability of €168.40. In the same year, the Appellant received a gross salary of approximately €124,000 from his employer from which €40,892 was deducted under the PAYE system. It was not in dispute that this latter sum represented an overpayment of tax on the grounds that the Appellant was non-tax resident for this year and only exercised his duties in the State for 15 of 216 days. The parties were agreed that the total income subject to tax under PAYE should have been €8,642.

3. On 30 December 2015, the tax agent for the Appellant filed an amended Form 11 return on the Appellant's behalf for the tax year 2011 for the purpose of making a claim for the repayment of the overpaid tax.
4. The Appellant's tax agent did so by emailing the Respondent's "My Enquiries" address and attaching a PDF version of the amended Form 11 return. The reason he undertook this action, rather than filing an amended Form 11 return through the Respondent's Online Service ("ROS"), also is not in dispute. The Appellant's tax agent explained in evidence that the "Taxpro" software that he used to "health-check" files before uploading to ROS notified him that the amended Form 11 return he intended to submit by that method would not be accepted by ROS because the figure of €40,892 entered under the section headed "*PAYE Tax Deducted/refunded*" was greater than the total income of €8,642 that was entered. To solve this problem, the Appellant's tax agent decided to insert the figure of €8,641.90, ten cent less than his total income, into this section on the amended Form 11 return. In the body of the email to which the amended Form 11 return was attached he sent the following message to the Respondent:-

*"To whom it may concern,*

*Please note that this email is for the attention of [REDACTED].*

*We are unable to fill out client's amended Income Tax return for 2011 on file.*

*Please find attached Form 11 amended for 2011. We have a copy of the ROS message if required"*

5. So much of the factual background described above was not in dispute. What follows however was contested. The Appellant's tax agent gave evidence at hearing that when he filled out the amended Form 11 return on 30 December 2015, he ticked the box entitled "*expression of doubt*" and in the comment box thereunder entered the following statement:-

*"Client is non-resident and only the portion of the salary relating to the work carried out in the RoI is included. Total PAYE deducted is 40,892.83. Only 8,641.90 could be included as can't file return if the PAYE deducted is greater than the gross salary fig."*

6. It must be observed that a copy of the amended Form 11 return containing this statement was not included among the documents submitted in support of the Appellant's appeal prior to the hearing. Nor was the existence of such an amended Form 11 return containing this statement referred to in the statement of case or outline of arguments furnished on the Appellant's behalf. After the hearing, and in accordance with a direction given by the Commissioner, the Appellant's agent provided a copy of the Form 11 return for 2011 in

which the relevant box was ticked and the aforementioned statement was entered in the comment box.

7. The Respondent, by contrast, submitted a copy in advance of the hearing of the amended Form 11 return that it said it had received from the Appellant by email of 30 December 2015. On this version, the expression of doubt box was not ticked and the comment box was empty.
8. The Appellant's agent accepted that, bar the absence of the statement in expression of doubt section, the version of the amended Form 11 return produced by the Respondent in this appeal resembled the document that he had sent to the My Enquiries address. In providing the version that included the same, he speculated in a covering email that:-

*"The return per the Revenue book of evidence does look like the return I uploaded the only difference being the Expression of doubt not being included. I don't know did this pdf document get corrupted on my upload or their download."*

9. What is not in doubt, however, is that on 6 January 2016 the Respondent issued an amended Notice of Assessment for the tax year 2011 which, in ostensible accordance with the contents of the return produced in advance of this appeal, assessed the Appellant as having overpaid PAYE tax by €15,109.64. The Respondent duly repaid the Appellant this amount shortly thereafter.
10. In December 2016 the Appellant's agent again had cause to file an amended Form 11 return on his client's behalf for the purpose of obtaining a repayment of overpaid tax, this time in respect of the tax year 2012. The reason for the overpayment was the same as the year before. At around the same time, on 22 December 2016, the Appellant revived the issue of the repayment due in respect of the tax year 2011 by re-sending to My Enquiries the amended Form 11 submitted the year before. Shortly after this on the same date, he sent another email to My Enquiries that stated the following in relation to both 2011 and 2012:-

*"To whom it may concern,*

*Please note that this email is for the attention of the [REDACTED]*

*With regard to the 2011 and 2012 amended Form 11s that were filed please note*

*1.1. For 2011 the actual PAYE tax deducted was €40,892.83. However the ROS system will not allow the Form 11 to be filed unless the PAYE deducted is less than the actual Gross Salary. Therefore the PAYE figure entered on the Form is €8,641, €1 less than the taxable Gross salary of €8,642,2.*

2. For 2012 the actual PAYE tax deducted was €44162.35. However the ROS system will not allow the Form 11 to be filed. ROS system will not allow the Form 11 to be filed unless the PAYE deducted is less than the actual Gross Salary. Therefore the PAYE figure entered on the Form is €26,511, €1 less than the taxable Gross salary of €26,512.”

11. In accordance with the above and the contents of the Form 11 tax returns, amended Notices of Assessment for the tax years 2011 and 2012 issued on 24 February 2017. As regards the tax year 2012, the Appellant was assessed as having made an overpayment, which was duly refunded by the Respondent shortly thereafter. In respect of the tax year 2011, the Appellant was assessed as having made an overpayment of €32,251.83. On 24 April 2017, a refund of the additional overpayment was refused on the grounds that the claim was made outside the four year time limit prescribed in section 865 of the TCA 1997. The Appellant filed a Notice of Appeal in respect of this decision on 5 May 2017.

### **Legislation and Guidelines**

12. 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.”*

13. Section 865(3) TCA 1997 provides that no repayment of income tax shall be allowed 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...”*

14. Section 865(4) TCA 1997 sets the following time limit for the allowing of 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*

15. It was submitted on the Appellant's behalf that he had made a claim for repayment for the tax year 2011 within the four year period. It was therefore a valid claim under section 865 of the TCA 1997.
16. In this regard, the Appellant's agent submitted at hearing, firstly, that all the information needed by the Respondent to establish the full extent of the overpayment was contained in the expression of doubt box on the amended Form 11 return that he filed on 30 December 2015.
17. The Appellant submitted, in the alternative, that even if the Form 11 received by the Respondent was found to be the version that contained no statement in the expression of doubt box, the Respondent still had from 30 December 2015 all the information it required to establish the full extent of the overpayment for the tax year 2011. This was because the Respondent had in its possession not just the information contained on the return, but also the information relating to the actual amount of PAYE deducted by the Appellant's employer from his emoluments earned in 2011. The Respondent, the Appellant's agent submitted, could have established the overpayment by way of a cross-referencing exercise that would have revealed a discrepancy between the deduction of €8,641.90 specified in the amended Form 11 return and the true PAYE deduction. In this regard, the Appellant's agent submitted that the need to cross-reference should have been apparent from what he argued was the inherently unusual nature of PAYE deduction figure that was only ten cents short of the total income earned for that year.

## *Respondent*

18. The Respondent submitted that the Appellant's amended Form 11 return did not set out information sufficient to constitute a valid claim within the four year period prescribed in section 865 of the TCA 1997. The amended Form 11 return the Respondent received did not set out the full extent of the Appellant's PAYE deduction for 2011. The Appellant was correctly assessed on the information provided.
19. The Respondent submitted that the contents of the PAYE return filed by the Appellant's employer for 2011 were not relevant to the determination of this issue. If a taxpayer is to be entitled to repayment under the legislation, he or she must provide the necessary information *on their return*. Moreover, the Respondent submitted that PAYE returns were those of the employer who was an entirely separate taxpayer.

## **Material Facts**

20. The following are the uncontested facts material to this appeal:-

- the Appellant filed a Form 11 tax return in November 2012 for the tax year 2011, wherein he assessed himself as having a liability to tax of €168.40;
- the Appellant made a claim for the repayment of tax overpaid for the tax year 2011 on 30 December 2015. He did so by submitting an amended Form 11 return furnished to the Respondent in a PDF email attachment sent to its My Enquiries address. In the section of the amended Form 11 return entitled "*PAYE Tax Deducted/refunded*" the Respondent entered the sum of €8,641.90 ;
- the Respondent issued an amended Notice of Assessment on 6 January 2016 for the tax year 2011 that assessed the Appellant as having overpaid tax in the amount of €15,109.64;
- in December 2016 the Appellant made a claim by way of amended Form 11 return for the repayment of tax overpaid in respect of the tax year 2012. In so doing, the Appellant's agent encountered the same issue regarding the submission of a return with a deduction greater than the total income. The Appellant's agent submitted further information to the Respondent by way of email to My Enquiries sent on 22 December 2016 regarding the full amount of tax deducted under PAYE from his 2011 and 2012 income;
- the Respondent issued amended Notices of Assessment on 24 February 2017 for the tax years 2011 and 2012. These were based in the information provided in the

Form 11 returns for each year, submitted on 30 December 2016 and December 2017 respectively, and in the email of 22 December 2016.

21. The key material fact to be determined is whether the Appellant's amended Form 11 return submitted on 30 December 2015 contained the aforementioned statement in the comment box in the "*Expression of Doubt*" section. The Appellant's tax agent has speculated that in preparing or sending the amended Form 11 return to the Respondent, it may have been "corrupted" such that the statement which he described in oral evidence to the Commissioner and which he provided for the first time after the hearing of the appeal came to be omitted. By his own account however he could not tell whether this suspected corruption happened "*on their upload or my download*".
22. As Charleton J. found in ***Menolly Homes Ltd v Appeals Commissioner & Anor [2010] IEHC 49***, the burden of proof in all tax appeals rests on the taxpayer. It is therefore incumbent on the Appellant to provide evidence proving that he "furnished" this version of the amended Form 11 return containing the statement outlining the full extent of the PAYE tax deducted from his 2011 income. On his own evidence, this is something that he cannot do and, in any event, the evidence of the Respondent is clear that the version attached to the email to My Enquiries was that provided to the Commission in advance of the appeal. This version contained no statement. Consequently, the Commissioner finds as a material fact that the amended Form 11 return actually filed with the Respondent on 30 December 2015 did not contain a statement in the "expression of doubt" box that specified the full amount of €40,892.83 deducted in respect of his PAYE income for that year.

### **Analysis**

23. In view of the above findings of fact, the issue to be determined by the Commissioner is whether the amended Form 11 return filed on 30 December 2015, which specified the PAYE tax deducted for the tax year 2011 as being €8,641.90, contained "*...all of the information*" reasonably required by the Respondent to determine the full extent of the overpayment by the Appellant.
24. The Appellant's agent argued that whether or not the amended Form 11 return for 2011 stated that the actual amount of PAYE tax deducted was €40,892, the Respondent could and should have found him entitled to the additional repayment based on the supposedly anomalous nature of other information therein. The Commissioner cannot agree with this submission. It is an express condition under section 865(1)(b)(i)(I) of the TCA that a taxpayer seeking repayment provide "*all the information*" that the Respondent reasonably requires to establish whether an overpayment has occurred and, if so, its extent. Not only

this, but the information must also be provided "*in the statement or return*" furnished by the taxpayer.

25. The Commissioner finds that it is not an answer to these mandatory requirements to state that the Respondent had elsewhere in its possession other separate PAYE records relating to the Appellant for the year 2011, which were inconsistent with the contents of the amended Form 11 return furnished. The obligation to provide accurate and complete returns rests on the taxpayer, which is reflected in the conditions governing repayment prescribed in section 865 of the TCA 1997. The legislation does not provide for any duty on the Respondent to engage in the kind of cross-referencing exercise suggested by the Appellant's agent. The Commissioner does not agree with the submission made on behalf of the Appellant that the contents of the amended Form 11 return submitted were inherently unusual or anomalous. It is clear from wording of the legislation that the Respondent is entitled to expect that the details as provided reflect the true position and do not overstate the taxpayer's liability by way of understatement of the PAYE tax deducted. The Commissioner finds that the Respondent did not have available to it, within the meaning of section 865(1)(b)(i)(l) of the TCA 1997, all of the information it reasonably required to establish the entitlement to and extent of the repayment now claimed by the Appellant. For this reason, the decision of the Respondent to refuse repayment must stand.

### **Determination**

26. 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. The Appellant's claim for repayment was not made until after the expiry of this period and, consequently, the Appellant is not entitled to repayment of the amount overpaid in respect of the tax year 2011, as assessed on 24 February 2017.
27. This appeal has been determined in accordance with section 949AK 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.



Conor O'Higgins  
Appeal Commissioner  
25<sup>th</sup> April 2022

**The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997**