



08TACD2023

Between

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**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 2017. The amount of tax at issue is €2,391.87.
2. On foot of a notification to the Appellant and the Respondent dated 13<sup>th</sup> October 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 advised that he and his wife were jointly assessed to income tax (meaning he and his wife are chargeable to tax on their combined income) since 2017.
4. The Appellant stated that in October 2021, his wife attempted to lodge a tax return for 2017 in order to claim tax relief for medical expenses incurred but that return was rejected owing to an “error” message.

5. The Appellant advised that his wife contacted the Respondent's support team and they advised as the Appellant had previously operated a business that he was required to submit a Form 11 (this is the income tax return required for completion by a "chargeable person" - a "chargeable person" is defined by section 959A TCA 1997 as "a person who is chargeable to tax for that period, whether on that person's own account or on account of some other person") and a Form Med 1 (this is a claim form for medical expense relief) in order to claim tax relief on the medical expenses incurred in 2017.
6. The Appellant submitted as completion of the Form 11 and the Form Med 1 was challenging further assistance was required from the Respondent to enable the forms to be finalised and lodged. The Appellant stated that despite being in contact with the Respondent since October 2021, neither he nor his wife was informed of any time sensitive deadline for submission of the 2017 income tax return.
7. The Appellant advised that shortly after the 2017 return was submitted in March 2022, they were advised by the Respondent that they were entitled to a refund of tax in the sum of €2,291.87 and were asked to provide their bank account details so that the refund could be processed.
8. Subsequently, on 22<sup>nd</sup> March 2022, the Respondent issued a letter entitled "*Late Claim For Repayment of Tax*" to the Appellant stating that the refund of tax in respect of the tax year 2017 could not be repaid as it had been submitted later than four years after the end of the chargeable period in which it arose which was in violation of the provisions of section 865 (4) TCA 1997.
9. A Notice of Appeal dated 7<sup>th</sup> June 2022 against the Respondent's decision was filed with the Commission. As the Respondent did not file an objection with the Commission under section 949L TCA 1997 on the grounds that the appeal was submitted outside the 30 day time period permitted for an appeal, the Commission agreed to determine the matter in accordance with the provisions of section 949L (2) TCA 1997.

## **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."*

Section 949 L TCA 1997

(1) *Where the Revenue Commissioners consider that—*

*(a) an appeal is not a valid appeal, or*

*(B) the appellant has not complied with the requirements of section 949O,*

*they may send to the Appeal Commissioners a written notice of objection to the making of the appeal and that notice shall state the reason for their objection.*

(2) *Where the Revenue Commissioners do not send the notice referred to in subsection (1) to the Appeal Commissioners within 30 days after the date on which the Appeal Commissioners send the notice of appeal to them, the Appeal Commissioners shall not be required to have regard to the objection in deciding whether to accept an appeal.*

(3) *Where the Revenue Commissioners send a notice of objection in accordance with subsection (1), the Appeal Commissioners shall notify such objection to the appellant.*

**Submissions**

*Appellant*

11. The Appellant stated that he thought a 2017 income tax return was previously submitted on his behalf and it was the making of the claim for 2017 medical expenses incurred that he became aware no such return had in fact been lodged.
12. The Appellant advised that when his spouse subsequently completed the 2017 Form 11 in October 2021, she was of the view that it had been submitted when it had in fact not been uploaded to the Respondent. The Appellant advised he only became aware that the return was not received (for a second time) when he contacted the Appellant in January 2022 and they advised that this was the position and further stated that the Appellant was also required to submit a Form Med 1 in order for his medical expense claim to be processed.

13. The Appellant submitted that completion of the 2017 Form 11 was complicated and he required the assistance of the Respondent in order to complete and upload the return. The Appellant further submitted that the Respondent advised his spouse that if she was having difficulty in completing the return that she could do it in a piecemeal fashion since their online software (ROS) allowed partially completed forms to be saved and retrieved at a later stage.
14. The Appellant submitted that a lot of due diligence was required on his behalf to ensure that the returns being submitted (the Form 11 and Form Med 1) were properly completed. The Appellant advised that he successfully managed to submit the 2017 returns in March 2022 and was pleasantly surprised to discover that he was entitled to a refund for that year.
15. The Appellant advised as he had been in contact with the Respondent since October 2021 that he was disappointed to subsequently discover that his refund was deemed statute barred since neither he nor his wife were informed of any time which limit applied to such refunds. The Appellant submitted that the Respondent had a duty of care to so inform him but it had failed to do so and as such he had not received an "*experience in line with the Respondent's customer service commitment*". The Appellant further advised that he was not advised by the Respondent of its entitlement to make an appeal to the Commission and had to make further contact with the Respondent in order to establish this position.
16. In summation, the Appellant submitted that he should have been informed by the Respondent that a time limit applied to his refund, in particular when he was in contact with the Respondent before that time limit expired and as the Respondent had failed to provide this information, the Commission should allow the claim for repayment of 2017 income tax in the sum of €2,391.87. The Appellant further submitted that had he been aware of the applicable deadline, he would have ensured that the return was submitted before the deadline elapsed.

*Respondent*

17. The Respondent advised that section 865 (4) TCA 1997 specifically advises that a claim for repayment must be made within a period of four years from the end of the chargeable period to which it relates. The Respondent further advised that information contained on its website provides detailed information on the four-year applicable period in which refunds may be made.
18. The Respondent stated that the Appellant was required to file his 2017 Income Tax Return on or before 31<sup>st</sup> October 2018 but only submitted this on 5<sup>th</sup> March 2022.

19. The Respondent submitted as the refund arising was in respect of the tax year 2017 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.
20. In summation, the Respondent submitted while they had every sympathy for the position the Appellant found himself 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**

21. The Commissioner finds the following material facts:-

- 18.1 The Appellant was due a refund of tax in respect of the tax year 2017 in the sum of €2,391.87.
- 18.2 The Appellant did not file his 2017 income tax return until 5<sup>th</sup> March 2022.
- 18.3 The Respondent was first advised of the overpayment of 2017 income tax by the Appellant on 5<sup>th</sup> March 2022.

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

### **Analysis**

22. 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.
23. 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.
24. 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.

25. 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].

26. A repayment of tax was sought on the basis that an amount of tax paid for 2017 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 €2,391.87 to be due, the Respondent must have received a valid claim.

27. 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 2017 income tax return was submitted by the Appellant on 5<sup>th</sup> March 2022.

28. 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 €2,291.87 for the year 2017 was disallowed.

29. 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.

30. 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.

31. 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.<sup>1</sup>

32. 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:-

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

*“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.”*

33. 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.
34. During the course of the appeal, the Appellant submitted that he had not been informed of his statutory right of appeal to the Commission and that his experience in dealing with the Respondent fell below his expectations.
35. In relation to the former, the Appellant was advised that his refund for 2017 was being refused by means of the letter entitled “Late Claim for Repayment of Tax” dated 22<sup>nd</sup> March 2022. On page 1 of that document it states:

*“Section 865(7) Taxes Consolidation Act 1997 provides that you may, within 30 days after the date of this letter, appeal my decision not to repay the amount of tax above. An appeal may be made by completing and submitting a Notice of Appeal form to the Tax Appeals Commission (TAC). The Notice of Appeal form, which can be obtained from the TAC website ([www.taxappeals.ie](http://www.taxappeals.ie)), contains the address to which an appeal is to be sent. You must submit a copy of this letter with the Notice of Appeal. The TAC can be contacted by email at [info@taxappeals.ie](mailto:info@taxappeals.ie).”*

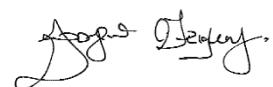
36. In view of the foregoing, the Commissioner views the Appellant’s submission that he was not informed of the appeal process in a timely manner by the Respondent to be without merit and discounts it accordingly.
37. Regarding the latter submission by the Appellant, the jurisdiction of the Commission was set out in the case of *Lee v Revenue Commissioners* [2021] IECA 18. As this jurisdiction does not accommodate the resolution of complaints regarding the Respondent’s customer service charter, the Commissioner is unable to assist the Appellant in this regard. However, the Appellant is advised that the procedure for making complaints and reviewing procedures regarding the Respondent is set out in its leaflet “CS4” which is available on the Respondent’s website.

### **Determination**

38. 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.
39. 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

having particular regard to the offending narrow timeframe. However, the Commissioner has no discretion in these cases due to the application of the four year rule, set out above.

40. 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



Andrew Feighery  
Appeal Commissioner  
15<sup>th</sup> November 2022