



104TACD2023

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 "TCA1997") made by the Appellant in respect of the tax year 2017.
2. The oral hearing of this appeal was heard on 23 May 2023.
3. The amount of tax at issue is €19,653.

Background

4. Mrs ██████████ (hereinafter the "Appellant") is a taxpayer who resides in a care home and has executed an enduring power of attorney appointing her daughter Ms ██████████ ██████████ as her attorney (hereinafter the "Appellant's daughter").

5. On 15 November 2022 a Form 11 return for 2017 was filed on behalf of the Appellant which showed an overpayment of tax for the year 2017 in the amount of €19,653.
6. By letter dated 18 November 2022 the Respondent disallowed the repayment of tax claimed on behalf of the Appellant on the basis that the claim for repayment had not been made within 4 years after the end of the chargeable period of 2017.
7. The Appellant has appealed the disallowance of the repayment of tax by the Respondent for the tax year 2017 by way of a Notice of Appeal dated 9 January 2023 which was submitted to the Commission.

Legislation and Guidelines

8. The legislation relevant to the within appeal is as follows:

Section 865 of the TCA1997:

“(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's Submissions

9. The following was submitted in support of the within appeal in the Notice of Appeal which was submitted to the Commission by a Tax Agent:

"We recently filed income tax returns on behalf of our client Mrs ██████████.

Mrs ██████████ who is in a care home and as a result I have been appointed by family to bring her affairs up to date.

Mrs ██████████ received a letter regarding her 2017 return stating that as we were outside the 4 year criteria the refund would not be eligible to be refunded to her.

I am appealing on her behalf as up to this point her financial affairs were not being taken care of and as you can appreciate this is a significant amount €19,653."

10. The following was submitted in support of the within appeal in the Statement of Case which was submitted to the Commission by the Appellant's daughter:

"This claim relates to my mother's tax affairs year ending 2016 and 2017.

My mother is in the advanced stages of dementia and I took over her tax affairs last year from my sister, who I believed had been looking after mam's submissions. I soon discovered no return had been made, so as I'm not au fait with these matters I engaged [Tax Agent name redacted] to compile and process all claims from 2016 forward and submit on her behalf. I understand we are outside the 4 year period but I would welcome the opportunity to plead my mam's case as she is in no position to do so. It is a considerable amount of money and she is in private care. I act in the position of EPA."

11. At the oral hearing of this appeal the Appellant's daughter submitted that the Appellant is in a nursing home and is no longer in a position to look after her own tax affairs. She stated that it had been understood by the Appellant's children that the Appellant's tax affairs were being looked after by another sibling but that unfortunately that sibling had fallen into ill health and the matter of the Appellant's tax affairs had "fallen through the cracks".
12. The Appellant's daughter agreed that the tax return for 2017 the subject matter of this appeal was submitted to the Respondent on 15 January 2022. She also stated that she had understood that this appeal also related to the year 2016. The Commissioner informed the Appellant's daughter that this appeal only related to the year 2017 and that the Commissioner had checked the Commission's case management system in advance of the hearing and that no other appeal in the name of the Appellant exists on the Commission's case management system. The Appellant's daughter stated that she would check with the Tax Agent who submitted this appeal to the Commission as to the situation with the tax year 2016.
13. The Appellant's daughter was coherent and concise in her submissions to the Commissioner and urged the Commissioner to exercise discretion in relation to the repayment of tax for 2017 on the basis that, through no fault of the Appellant's, her tax affairs had "fallen through the cracks" as a result of ill-health and other matters within the Appellant's extended family.

Respondent's Submissions

14. The Respondent submitted that the provisions of section 865 of the TCA1997 mean that a valid claim for the 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, that is to say on or before 31 December 2021.

Material Facts

15. The following material fact is not at issue in the within appeal and the Commissioner accepts same as a material fact:
- (i) The Appellant submitted a claim for repayment of tax for the tax year 2017 to the Respondent on 15 November 2022.

Analysis

16. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in the within appeal.
17. Section 865(2) of the TCA1997 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.
18. Section 865(1)(b)(i) of the TCA1997 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.
19. Section 865(1)(b)(ii) of the TCA1997 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.
20. In relation to a limitation period for a repayment of tax section 865(4) of the TCA1997 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].
21. A repayment of tax was sought on behalf of the Appellant on the basis that amount of tax paid for 2017 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA1997. Section 865(3) of the TCA1997 means the repayment of tax sought under section 865(2) of the TCA1997 is not due unless a valid claim has been

made to the Respondent. Therefore, for the repayment of tax in the amounts of €19,653 for 2017 to be due, the Respondent must have received valid claims.

22. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due on 15 November 2022 following the delivery of the relevant claim to repayment on behalf of the Appellant by way of the submission of the Form 11 return. This was in excess of 4 years from the end of the tax year 2017.
23. Having established that there is a valid claim, the provisions of section 865(4) of the TCA1997 must be applied. As the claims for repayment of tax was made outside the 4 year period specified in section 865(4) of the TCA1997, no valid claim for repayment of tax had been submitted on behalf of the Appellant and the claim for repayment of €19,653 for 2017 was disallowed by the Respondent on 18 November 2023.
24. The use of the word "*shall*" as set out in section 865(4) of the TCA1997, 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 4 year rule might be mitigated.
25. 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 4 year period specified in section 865(4) of the TCA1997.
26. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4 year statutory limitation period. These determinations, may be found on the Commission website.¹
27. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refund was payable by the Respondent.

Determination

28. 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.
29. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the position of the Appellant and the Appellant's daughter. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.

¹ www.taxappeals.ie

30. The Appellant's daughter was correct to check whether the Appellant's legal rights were correctly applied.

31. This appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and in particular, section 949 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 to the High Court within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
26 May 2023