



Between

██████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as appeals against refusals of the Revenue Commissioners (hereinafter “the Respondent”) to allow claims for the repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the “TCA 1997”).

Background

2. The Appellant who is a PAYE employee in the healthcare sector obtained a home loan to purchase her home in 2005.
3. In or around February 2022, the Appellant became aware that she was entitled to a tax relief known as Tax Relief at Source (“TRS”). TRS was a tax relief on the interest a taxpayer paid on a qualifying home loan and operated until 31st December 2020 on home loans drawn down between 1 January 2004 and 31st December 2012.
4. The relief was calculated by reference to the mortgage interest paid in a tax year which was allowable at various percentile amounts which varied between 30% and 15% (the sliding scale was calculated by reference to the number of years from which the home loan

was drawn down and whether the underlying home was a first home purchase or subsequent). Once the TRS was calculated, it was available as a credit to the taxpayer against their mortgage payments or as a credit against their income tax paid in a relevant year of assessment.

5. As the Appellant was entitled to a credit against her income tax paid, she contacted the Respondent on 10th February 2022 and sought to make a retrospective claim for the years 2005 to 2020 inclusive.
6. On 22nd February 2022, the Appellant was advised by the Respondent's TRS Unit that a retrospective claim could only be applied in respect of the years 2018, 2019 and 2020 owing to the "four-year rule" provided under section 865 TCA 1997.
7. This provision of the TCA 1997 ordinarily disallows repayments to tax where the taxpayer has failed to make their claim within four years of the end of the chargeable period to which the claim relates. Hence, while the Appellant received refunds for the years 2018 to 2020, inclusive, she was refused repayments for the years 2005 to 2017 as she had failed to lodge valid claims with the Respondent within the required four-year period.
8. On 2nd June 2022, the Respondent wrote to the Appellant and informed her that TRS for years prior to 2018 could not be claimed retrospectively due to the four-year rule under section 865 TCA 1997.
9. The Appellant who was not satisfied with that decision lodged an appeal with the Commission on 15th June 2022.
10. The Appellant was offered the opportunity to have her case decided without an oral hearing under section 949U TCA 1997. The Appellant did not seek to agree to that option but chose instead to have an oral hearing. The Appellant is entitled to exercise her right to a full oral hearing and as such that was arranged remotely on 8th February 2023.
11. The Appellant presented her appeal and the Respondent was represented by its staff official. In considering this appeal, the Commissioner had the benefit of written and oral submissions made by both parties which are considered below.

Legislation

12. 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

13. The Appellant advised that she was never informed by her financial institution about the availability of TRS on her home mortgage and had assumed that the financial institution had correctly administered her home loan including any available tax reliefs.
14. The Appellant submitted that as she had only returned to Ireland from overseas in [REDACTED] and was not up to date on "tax procedures" in Ireland. She explained that such was her lack of knowledge that she was on "emergency tax" for the first five years of her return to this Country and as such this demonstrated her lack of knowledge of the tax system. Under the system of emergency tax a taxpayer is given a single person's rate band and taxed as a single person at the appropriate rate for the first four weeks of employment and thereafter their full income is taxed at the higher rate of taxation (40%).
15. The Appellant submitted in addition to her lack of knowledge of the tax system, she had suffered a serious of unfortunate events and circumstances which included her [REDACTED]
[REDACTED]
[REDACTED] These events, she submitted, contributed to her not focusing on her tax affairs.
16. In addition, the Appellant stated that she was primary carer for [REDACTED] who recently passed away and was engaged as a frontline worker in the health service often working 12 hour shifts with almost no free time. The Appellant submitted that these additional constraints further detracted from her ability to attend to her taxation affairs.
17. In conclusion, the Appellant requested that the Commission consider the unique and upsetting circumstances of her appeal and in those circumstances allow her claims to repayment of tax for the years 2005 to 2017 inclusive.

Respondent

18. The Respondent expressed empathy with the Appellant's circumstances. However, the Respondent stated while there was no dispute that the refunds were owed to the Appellant, it was unable to repay the amounts sought for the years 2005 to 2017 owing to the lapse of time between the date the refunds arose and the date the Appellant submitted her claims.
19. The Respondent submitted as the refunds arising were in respect of the tax years 2005 to 2017 inclusive, they could not make the refunds to the Appellant as the claims were submitted 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 herself in and the unfortunate and tragic circumstances she encountered, 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 claims could not succeed.

Material Facts

21. The Commissioner finds the following material facts:-

- 21.1 The Appellant was due refunds of tax arising from TRS claims for the tax years 2005 to 2020 inclusive.
- 21.2 The Appellant did not seek repayment of the TRS claims until 10th February 2022.
- 21.3 The Respondent was first advised of the TRS claims for the years 2005 to 2020 by the Appellant on 10th February 2022.
- 21.4 As the claims for the 2018 to 2020 claims were received within the four-year timeframe stipulated under section 865 TCA 1997, the Respondent issued those repayments.
- 21.5 However as the repayments for the years 2005 to 2017 inclusive were not made within that four-year timeframe, the Respondent did not issue the repayments for those years.

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

Analysis

22. Section 865(2) TCA 1997 provides that a person is entitled to a repayment of tax 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) 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) 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 2005 to 2017 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) TCA 1997 means the repayment of tax sought under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayments of tax for the years 2005 to 2017 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 inquiry to the Respondent was made by the Appellant on 10th February 2022.
28. Having established that there are valid claims, the provisions of section 865(4) TCA 1997 must be applied. As the claims for repayment of tax were made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayments for the years 2005 to 2017 were disallowed.

29. The use of the word 'shall' as set out in section 865(4) 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) TCA 1997.
31. Previous determinations of the 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 website¹.
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:-
- "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 refunds for the years 2005 to 2017 are payable by the Respondent pursuant to section 865 TCA 1997.
34. At the conclusion of the appeal hearing, the Commissioner delivered an *ex-tempore* determination and advised the Appellant that while he had every sympathy with her position, he had no discretion in these cases due to the application of the four-year rule, as set out above. The Commissioner acknowledges and also expresses with empathy for the challenges that the Appellant has suffered in her personal life. The Commissioner hopes that the Appellant finds herself in a more positive position in her personal life at this juncture.
35. The Appellant presented as an intelligent educated individual at the hearing. The Commissioner notes for completeness that at the hearing the Appellant asked the Commissioner why the Commission listed the matter for hearing given the lack of discretion afforded to the Commission in relation to repayment claims received outside the four-year time period.
36. The Commissioner explained that it was correct for the taxpayer's to exercise their right of appeal in order to seek clarity and legal certainty. The Commissioner explained that at a hearing, matters relating to time limits and potential submission of documents that may not

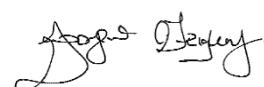
¹ www.taxappeals.ie

have come to light in the written correspondence and which could assist an Appellant may present. Hence, it is important that any Appellant is afforded their right to a hearing. In addition many Appellants benefit with the explanation about the four-year rule and its statutory origin. Furthermore, Appellants are entitled to be provided with reasons as to why their appeal succeeded or failed in accordance with due process rights as was held in *Bassano v Battista* [2007] EWCA civ 370 (at para 28):

“The duty to give reasons is a function of due process and therefore justice, both at common law and under Article 6 of the Human Rights Convention. Justice will not be done if it is not apparent to the parties why one has lost and the other has won. Fairness requires that the parties, especially the losing party, should be left in no doubt why they have won or lost.”

Determination

37. 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 refunds are payable. The Commissioner appreciates that the Appellant will be disappointed with this determination but she was correct to seek legal clarity on her appeal.
38. This Appeal is determined in accordance with Part 40A TCA 1997. 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 42 days of receipt in accordance with the provisions set out in the TCA 1997



Andrew Feighery
Appeal Commissioner
1st August 2023