



**Between**

141TACD2023

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**Appellant**

and

The Revenue Commissioners

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of income tax, in accordance with the provisions of section 865 TCA 1997, in respect of the years of assessment, 2016 and 2017. The amount of overpayment of income tax at issue is in the sums of €3,032.18 and €761.84, respectively.
2. On 21 November 2022, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

**Background**

3. On the 3 November 2022, the Appellant filed her 2016 and 2017 income tax returns through the Revenue Online System (“ROS”). The returns indicated that the Appellant

had overpaid income tax in respect of the years 2016 and 2017, in the amounts of €3,032.18 and €761.84, respectively.

4. The Respondent submits that a refund of the overpayment of income tax for the years 2016 and 2017 was refused by the Respondent, in circumstances where the Appellant filed her income tax returns for the years 2016 and 2017, outside the four-year time limit prescribed by legislation.
5. The Appellant is 71 years old and had been residing in ██████████ up to 2018. The Appellant is appealing the late claim for repayment of income tax for the years 2016 and 2017, on the basis that the Appellant experienced difficulties with organising the records for years 2016 and 2017, post relocation back to Ireland.
6. Further the Appellant states that there was also a delay in filing the returns for 2016 and 2017, due to the lockdown guidelines imposed during the Covid-19 pandemic. The Appellant submits that recently she engaged the help of another individual to put the records together to formulate her income tax returns for these years and that all tax returns are filed up to and including 2021. In addition, all tax liabilities owed have been paid in full.

### **Legislation and Guidelines**

7. The legislation relevant to this appeal is as follows:-
8. Section 865 of the TCA 1997, Repayment of Tax, *inter alia* provides:-

*“(1)...*

*(b) For the purposes of subsection (3) –*

*(i) Where a person furnishes a statement or return which is required to be delivered by the person in accordance with any provision of the acts for a chargeable period, such a statement or return shall be treated as a valid claim in relation to a repayment of tax where –*

*(I) 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 is contained in the statement or return, and*

*(II) the repayment treated as claimed, if due -*

*(A) would arise out of the assessment to tax, made at the time the statement or return was furnished, on foot of the statement or return, or*

*(B) would have arisen out of the assessment to tax, that would have been made at the time the statement or return was furnished, on foot of the statement or return if an assessment to tax had been made at that time.*

*ii) Where all information which the revenue commissioners may reasonably require, to enable them determine if and to what extent a repayment of taxes due to a person for a chargeable period, is not contained in such a statement or return as is referred to in subparagraph (i), a claim to repayment of tax by that person for that chargeable shall be treated as a valid claim when that information has been furnished by the person, and*

*(iii)....”*

*(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.*

*(6).....*

*(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 Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

- 9.1. The Appellant is aged 71 years and was residing in [REDACTED] up to 2018.
- 9.2. The Appellant is appealing the late claim for repayment of income tax for the years 2016 and 2017, on the basis of the Appellant experiencing difficulties in organising the records for these years, post relocation back to Ireland.
- 9.3. In addition, there was also a delay in filing the returns for 2016 and 2017, due to the lockdown guidelines imposed during the Covid-19 pandemic. The Appellant only recently procured the help of another individual to put the records together to formulate the income tax returns for these years.
- 9.4. All tax returns are filed up to and including 2021 and all tax liabilities owed have been paid in full.

### *Respondent's submissions*

10. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

- 10.1. The appeal relates to repayments of overpaid income tax for the years 2016 and 2017, disallowed under section 865 TCA 1997 because the claims were made outside the 4 year limit.
- 10.2. On 3 November 2022, the Appellant filed her 2016 and 2017 income tax returns through the ROS. The returns indicated that the Appellant had overpaid income tax in respect of 2016 and 2017, in the amounts of €3,032.18 and €761.84, respectively.
- 10.3. The refunds were refused as the income tax returns were filed outside the four-year time limit prescribed by legislation.
- 10.4. The chargeable periods in this instance are as follows:

- (i) 1 January 2016 to 31 December 2016 for the 2016 tax year and in order that the Respondent could consider a refund of tax overpaid this year, a completed return would have to have been submitted on or before the 31 December 2020.
- (ii) 1 January 2017 to 31 December 2017 for the 2017 tax year and in order that the Respondent could consider a refund of tax overpaid this year, a completed return would have to have been submitted on or before the 31 December 2021.

### **Material Facts**

11. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 11.1. The Appellant is 71 years old and had been residing in [REDACTED] up to 2018.
- 11.2. On 3 November 2022, the Appellant filed her 2016 and 2017 income tax returns through the ROS.
- 11.3. The returns indicated that the Appellant had overpaid income tax in the amounts of €3,032.18 and €761.84 in respect of the years 2016 and 2017.
- 11.4. The Respondent has refused a refund of the overpayment of income tax for the years 2016 and 2017, in the amounts of €3,032.18 and €761.84.
- 11.5. The Appellant had difficulty organising the records for the years 2016 and 2017, post relocation back to Ireland.
- 11.6. The Covid-19 pandemic contributed to the Appellant's delay in submitting her income tax returns.
- 11.7. The Appellant engaged the help of another individual to put the records together to formulate her income tax returns for these years.

### **Analysis**

12. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated

*“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.*

13. The Appellant’s appeal relates to a refusal by the Respondent to permit a claim for a repayment of income tax pursuant to section 865 TCA 1997, made by the Appellant in respect of the year **2016 and 2017**, in the sum of **€3,032.18** and **€761.84**, respectively, as the claim was made outside of the four year time limit prescribed in **section 865(4) TCA 1997**.

### **Section 865 TCA 1997**

14. The Appellant has been denied a repayment of tax by the Respondent on the grounds that the Appellant does not meet the criteria as outlined by section 865(4) TCA 1997, namely that a claim for repayment of tax for the chargeable period was not made within four years after the end of the chargeable period.
15. The Commissioner has considered the Appellant’s submissions such that the Appellant is 71 years old and had been residing in [REDACTED] up to 2018. The Commissioner notes that the Appellant is appealing the late claim for repayment of income tax for the years 2016 and 2017, on the basis of difficulties experienced by the Appellant organising the records for the years 2016 and 2017, post relocation back to Ireland. Further, the Appellant states that there was also a delay in filing the returns for 2016 and 2017, due to the lockdown guidelines imposed during the Covid-19 pandemic. The Appellant submits that recently, she engaged the help of another individual to put the records together to formulate her income tax returns for these years and that all tax returns are filed up to and including 2021, and all tax liabilities owed have been paid in full.
16. Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section includes income tax and capital gains tax. It also covers: any interest, surcharge or penalty relating to the tax, levy or charge; any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to the Respondent; and amounts paid on account of tax (for example, payments in excess of liability).
17. Section 865(2) TCA 1997 provides that a person who has paid tax which is not due, or which but for an error or mistake in the person’s return would not have been due, is entitled to repayment of that tax.

18. Section 865(3) TCA 1997 provides that a repayment of tax referred to in section 865(2) TCA 1997 is not due unless a valid claim to repayment has been made. A return or statement which a person is required to deliver under the Acts and which contains all the information that the Respondent may reasonably require to determine if and to what extent a repayment is due, is regarded as a valid claim. The Commissioner is satisfied that the Appellant's submission of her income tax returns on ROS on **3 November 2022**, is regarded as a valid claim for the purposes of section 865(3) TCA 1997.
19. In relation to a limitation period for a repayment of tax, section 865(4) 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].
20. As the Appellant's claim for repayment relates to the tax years **2016 and 2017**, a valid claim for repayment must have been made on or before **31 December 2020 and 31 December 2021**, for the years at issue. The Appellant filed her income tax returns on **3 November 2022** and as set out above, it is this date that establishes a valid claim for the purposes of section 865(3) TCA 1997. Having regard to this date, the Commissioner is satisfied that the claim falls outside of the 4 year time limit prescribed in section 865(4) TCA 1997.
21. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayment in the amount of **€3,032.18** and **€761.84**, was disallowed.
22. 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. 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.
23. 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 website<sup>1</sup>.

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

24. The Commissioner has every sympathy for the Appellant's situation. Unfortunately, the Commissioner has no discretion to assist in these circumstances due to the four year rule prescribed by legislation. Hence, the appeal is denied.

**Determination**

25. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865 TCA 1997.

26. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.

27. This appeal is hereby determined in accordance with Part 40A TCA 1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason 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.



Claire Millrine  
Appeal Commissioner  
05 September 2023