



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 years 2015, 2016 and 2017.
2. The oral hearing of this appeal was heard on 20 December 2022.
3. The amount of tax at issue is €15,799.74.

Background

4. Mr ██████████ (hereinafter the "Appellant") is a taxpayer.
5. The Appellant was in receipt of Rent Subsidy payments since 2013 and had not filed any tax returns to the Respondent in relation to same. As a result the Respondent wrote to the Appellant on the following dates as follows:

28 October 2014	A letter reminding the Appellant to complete a Form 12 for 2013 and containing a blank Form 12
16 July 2015	A letter informing the Appellant he had been selected for a PAYE check for 2013.
18 May 2016	A letter stating that the Appellant had not replied to the letter of 16 July 2015 and requesting him to submit his outstanding return(s) and warning that failure to do so may result in further action being taken with regard to his non-compliance.
27 October 2016	A letter stating that the Appellant had not replied to the previous letters issued to him and requiring him to submit outstanding returns immediately and warning that failure to do so may result in further action being taken with regard to his non-compliance.
20 April 2017	A warning letter to the Appellant advising that he is required pursuant to section 879 of the TCA1997 to prepare and deliver a 2015 Return of Income (Form 12) by 31 October 2016, warning that the time for the filing of the Form 12 for 2015 had passed and encouraging the Appellant to review his tax for the years 2013 to 2016.
29 March 2018	A warning letter to the Appellant advising that he is required pursuant to section 879 of the TCA1997 to prepare and deliver a 2016 Return of Income (Form 12) by 31 October 2016, warning that the time for the filing of the Form 12 for 2015 had passed and encouraging the Appellant to review his tax for the years 2014 to 2017.
29 September 2018	A reminder letter to file a Form 12 for 2017.
15 May 2019	A letter stating that because the Appellant had failed to meet his legal requirement to file his returns, his case had been selected for review under the Compliance Code for taxpayers and requesting certain information within 30 days.
5 July 2019	A letter stating that the Respondent had not received a response to the letter of 15 May 2019 and stating that failure to provide a

	full reply within 10 working days would result in estimated assessments being raised.
12 March 2021	A letter stating that the Respondent had not received a response to the letters of 15 May 2019 and 5 July 2019 and stating that Estimated Income Tax Assessments for rental income had been processed for the years 2014 to 2019 inclusive with a liability of €37,440 being due with immediate effect.
14 June 2021	A letter of final demand in the amount of €31,200.00 to be paid within 7 days was issued to the Appellant.
	The Respondent then engaged a debt recovery service which served a Circuit Court Civil Bill on the Appellant on 7 September 2021. A settlement was then reached between the Appellant and the Respondent whereby the Appellant agreed to pay €4,000 per month to the Respondent to pay the outstanding liability.
28 January 2022	A letter reminding the Appellant that his Income Tax return for 2020 had not been filed.

6. The Appellant then engaged the services of a Tax Agent who filed the outstanding tax returns on behalf of the Appellant for the years 2013 to 2021. The tax returns for the tax years 2015, 2016 and 2017 indicated that the Appellant had overpaid tax for the tax years 2015, 2016 and 2017 totalling €15,799.74 as follows:

2015	€1,298.25
2016	€6,091.57
2017	€8,409.92

7. On 12 May 2022 the Respondent issued letters entitled "Self Assessment – Chapter 4 of Part 41A TCA1997 Income Tax for the year ending..." for the years 2015, 2016 and 2017 which stated that the following overpayments had been made and that the overpayments would be dealt with as soon as possible:

2015	€1,298.25
2016	€6,091.57
2017	€8,409.92

8. By letter dated 12 May 2022 the Respondent requested the Appellant to provide his banking details stating that the Respondent make all refunds of Income Tax by Electronic Fund Transmission.
9. By letters dated 13 May 2022 the Respondent disallowed repayment of the overpaid tax for 2015, 2016 and 2017 on the basis that the claims for repayment of tax had not been made within 4 years of the end of the relevant tax year to which the claim related pursuant to section 865 of the TCA1997.
10. The Appellant has appealed the disallowance of the repayment of tax by the Respondent for the tax years 2015, 2016 and 2017 by way of a Notice of Appeal date 27 May 2022 which was submitted to the Commission.

Legislation and Guidelines

11. 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

12. The Appellant submitted the following in support of the within appeal in his Notice of Appeal:

"Revenue demanded tax returns for the years 2014 - 2019 (letter attached).

Revenue instigated legal proceedings to recover tax deductions for the years 2014 - 2019 (copy attached).

This clearly shows the period of 2014 - 2019 is the period Revenue chose to deal with.

Upon making tax returns I received letters dated 12 May 2022 indicating overpayments for the years 2015, 2016 and 2017, the years Revenue demanded tax returns for (copies attached).

On 12 May 2022 Revenue requested my bank details explaining all refunds are made by E.F.T (copy attached).

On 17 May 2022 I received a letter from Revenue indicating that Revenue was accepting tax returns back to 2013 (copy attached).

My grounds for appeal are:

- 1) Revenue clearly set the timeframe 2014 - 2019.*
- 2) Revenue are willing to prosecute timeframe 2014 - 2019 in court*
- 3) Revenue clearly indicated tax refunds for the years 2015, 2016 and 2017.*
- 4) The attached letters are clear proof of the facts*
- 5) At no time during these proceedings did Revenue indicate the '4 Year Rule' would be applied.*
- 6) Upon discovering tax refunds were due to me for 2015, 2016, 2017 Revenue decided to change the timeframe they dictated and introduced the '4 Year Rule'. Revenue cannot change the timeframe midstream to suit themselves.*

Taking the above undisputable fact into consideration it seems unfair and indeed unjustifiable to deny me the refunds due.”

13. The Appellant submitted the following in support of the within appeal in his Statement of Case:

“Revenue required tax returns.

Revenue set the period these returns required for.

Tax returns submitted.

Upon completion of returns a refund was due for some years.

Revenue sent letters detailing these refunds (previously submitted).

Revenue sent letters on a number of occasions outlining the refunds due and requesting bank details in order to make these refunds.

It was clear from reading these letters Revenue agreed refunds were due and undertook to make same.

However ten days later Revenue again sent letters, each one dated the day before the letters that stated a refund was to be made, invoking the "four year rule" and stating the promised refund would not be made.

It is not clear why the predated letters arrived ten days later.

Revenue as a reputable state body should honor [sic] their agreement to make these refunds and not renege on their agreement by invoking "the fine print" stance to refuse to meet their agreements.

All documents referred to were submitted with the appeal."

14. At the oral hearing of this appeal the Appellant submitted that the letters dated 12 May 2022 which he received from the Respondent entitled "Self-Assessment – Chapter 4 of Part 41A TCA1997" which noted overpayments of income tax by the Appellant of €1,298.25 in 2015, €6,091.57 in 2016 and €8,409.92 in 2017 are letters of undertaking by the Respondent to repay the balances to him. He stated that a letter of undertaking is a promissory note and that the Respondent should stand over the contents of these letters. The Appellant did not advance any legal basis for this claim despite the Commissioner inviting him to do so.
15. The Appellant also submitted that the letter dated 12 May 2022 from the Respondent requesting his bank details is supportive of his claim that the Respondent gave an undertaking to repay the overpaid taxes given by the Respondent in the three letters dated 12 May 2022.
16. The Appellant submitted that the October 2021 settlement agreement which he made with the Respondent in respect of the debt collection action which the Respondent had taken against the Appellant and the payments which he made on foot thereof mean that October 2021 is the date from which the 4 year rule contained in section 865 of the TCA1997 should run and that he is at least entitled to receive the repayment amount for 2017.

Respondent's Submissions

17. 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.

Material Facts

18. The following material fact is not at issue in the within appeal and the Commissioner accepts same:

- (i) The Appellant submitted a claim for repayment of tax for the tax years 2015, 2016 and 2017 to the Respondent in March 2022.

19. The following material facts are at issue in the within appeal:

- (i) The letters of 12 May 2022 are letters of undertaking on the part of the Respondent to repay overpayments of income tax made by the Appellant;
- (ii) October 2021 is the date on which the Appellant submitted a claim for repayment to the Respondent.

The letters of 12 May 2022 are letters of undertaking on the part of the Respondent to repay overpayments of income tax made by the Appellant:

20. The Commissioner has considered the Appellant's submission that the letters of 12 May 2022 issued by the Respondent and confirming the amounts of overpayment for 2015, 2016 and 2017 are letters of undertaking which amount to promissory notes. The Commissioner invited the Appellant to make submissions in relation to the law on which he was relying in relation to this submission. In response the Appellant stated that he did not have any law on which he was relying and stated that he is in business and that he has to stand over any undertakings which he gives no matter the circumstances.

21. The Commissioner enquired with the Respondent as to the circumstances of these letters and how they were generated. In response, the Respondent stated that these letters were automatically generated by the Respondent's system on foot of the submission of the returns for 2015, 2016 and 2017 by the Appellant.

22. The Commissioner noted the wording of the letters which state:

"Dear Sir/Madam

I acknowledge receipt of your income tax return and self assessment for the year ending... Details of your Self Assessment are set out as follows:

Amount of income or profits arising for this period

Amount of income tax chargeable for this period

Amount of USC chargeable for this period for self

Amount of PRSI chargeable for this period for self

Amount of tax overpaid for this period

Amount of surcharge due under S 1084 because of:

- *Late filing of this return or*
- *Of non-compliance with LPT requirements*

Amount of tax paid directly to the Collector General for this period

Balance of tax overpaid for this period

This overpayment will be dealt with as soon as possible.

Payments made to Revenue that have not yet been debited from your bank account are not reflected in the Balance above.

Yours faithfully,"

23. The Commissioner has considered the Appellant's submissions, the contents of the letters and the Respondent's submissions and finds that the letters of 12 May 2022 do not amount to letters of undertaking on the part of the Respondent. The letters of 12 May 2022 were generated by the Respondent's system on foot of the submission of a Self Assessment Income Tax return in the form of a Form 11 for each of the years 2015, 2016 and 2017 and are an acknowledgement of the contents of same. The letters state that "*This overpayment will be dealt within as soon as possible*" and do not make any assurances or give any undertaking that the amount overpaid will be refunded to the Appellant. Nothing more is stated in the letters and the Commissioner does not accept that the contents of these letters amount to an undertaking on the part of the Respondent to repay the overpayments of income tax made by the Appellant.

24. The Commissioner has also considered the impact of the letter of 12 May 2022 from the Respondent to the Appellant seeking the Appellant bank details on whether all four letters of 12 May 2022 when combined together amount to an undertaking on the part of the Respondent. That letter stated as follows:

"Dear Sir/Madam,

Revenue now make all refunds of Income Tax to registered customers by Electronic Fund Transfer (EFT) to a Bank account nominated by the customer. The account must

be in a bank within the Single Euro Payments Area (SEPA) and must be in the SEPA format. The account details are set out below.

*Bank details **may now be** input/amended on Revenue On0Line Service (ROS) in respect of Income Tax Refunds.*

To date we do not appear to have received your account details. Please furnish these details by return, so that, any pending or future refund of Income Tax can be made by EFT to your account without delay.

On completion of the required details please return this form to the address shown above.

Of you require any further information or assistance please contact this Office.

Yours faithfully,"

25. The Commissioner accepts the Respondent's submission that this letter was generated automatically by the Respondent's system and notes that the contents of this letter do not make any reference to there being a refund or refunds owing to the Appellant. The Commissioner finds that the four letters dated 12 May 2022 from the Respondent to the Appellant when taken together do not amount to an undertaking on the part of the Respondent to repay the overpayments of income tax made by the Appellant.

26. Therefore this material fact is not accepted.

October 2021 is the date on which the Appellant submitted a claim for repayment to the Respondent:

27. The Appellant submitted that because he reached a settlement with the Respondent in relation to the debt recovery Circuit Court proceedings which had been issued against him by the Respondent, the date of the settlement should be taken to be the date on which he submitted a claim for repayment to the Respondent. That date was October 2021 and therefore, the Appellant submitted, he is at least entitled to a repayment in relation to the year 2017.

28. The Respondent submitted the email correspondence between its' debt collection agent and the Appellant in relation to the October 2021 settlement. The Appellant did not submit any documentation in relation to this settlement. The October 2021 settlement reached between the Appellant and the Respondent did not involve, or refer to, the submission of returns by the Appellant for the years 2015, 2016 and 2017. Those returns were submitted by the Appellant in March 2022. The Appellant has not submitted any documentation

which tends to establish that he made a claim for repayment for 2015, 2016 or 2017 to the Respondent in October 2021.

29. In appeals before an Appeal Commissioner the burden of proof rests on the Appellant who must prove on the balance of probabilities that the contested tax is not payable. This is confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49 by Charleton J at paragraph 22:-

“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 Commissioner as to whether the taxpayer has shown that the relevant tax is not payable.”

30. As a result of the above the Commissioner finds that the Appellant has not succeed in establishing that October 2021 is the date on which the Appellant submitted a claim for repayment to the Respondent.

31. Therefore this material fact is not accepted.

32. For clarity the Commissioner restates that the following material fact is accepted in this appeal:

- (i) The Appellant submitted a claim for repayment of tax for the tax years 2015, 2016 and 2017 to the Respondent in March 2022.

Analysis

33. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in the within appeal.

34. 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.

35. 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.

36. 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.

37. 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].
38. A repayment of tax was sought by the Appellant on the basis that amount of tax paid for 2015, 2016 and 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 €1,298.25 for 2015, €6,091.57 for 2016 and €8,409.92 for 2017 to be due, the Respondent must have received valid claims.
39. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due in March 2022 following the delivery of the relevant claim to repayment by the Appellant by way of the submission of the Form 12 return. This was in excess of 6 years from the end of the tax year 2015, in excess of 5 years from the end of the tax year 2016 and in excess of 4 years from the end of the tax year 2017.
40. 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 claims for repayment of tax had been submitted by the Appellant and the claims for repayment in the amount of in the amounts of €1,298.25 for 2015, €6,091.57 for 2016 and €8,409.92 for 2017 were disallowed by the Respondent.
41. 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.
42. 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.

43. 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

44. 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

45. 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.

46. 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 Appellant's position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.

47. 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 within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
09 January 2023

¹ www.taxappeals.ie