



Between

47TACD2023

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

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 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against the refusal by the Revenue Commissioners (“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 2016. The amount of tax at issue is in the sum of €8,335.87.
2. The Appellant’s 2016 Income Tax return was filed by his Agent through the Revenue Online System (“ROS”) on the 16 December 2021, which resulted in tax being overpaid for the period in the sum of €8,335.87. On 21 December 2021, a refund was refused by the Respondent, advising that under section 865 TCA 1997, the Respondent was precluded from repaying the tax.
3. On 12 January 2022, the Appellant duly appealed to the Commission. The appeal proceeded by way of an oral hearing on 10 January 2023. The Appellant was present at

the hearing of the appeal and represented by [REDACTED], Tax Agent. The Respondent was represented by [REDACTED] and [REDACTED].

Background

4. On 25 September 2019, a compliance intervention was initiated by the Respondent which related to the Appellant's tax for the years 2015 to 2019 inclusive. The Respondent issued correspondence to the Appellant requesting details of assets and a request to complete income tax forms for the years under review.
5. On 14 November 2019, the Appellant's Agent submitted a form TR1 with a request to register the Appellant for income tax, backdated with effect from 1 January 2015. On 9 January 2020, the Respondent issued to the Appellant's Agent confirmation of income tax registration, with effect from 1 January 2015.
6. On 6 February 2020, the Respondent issued correspondence to the Appellant noting that he had not yet filed the returns or returned the information requested as part of the compliance intervention. On 10 February 2020, the Appellant's Agent submitted income tax returns for 2015, 2017 and 2018 together with supporting documentation. In addition, the Appellant's Agent requested clarification on income figures per the Appellant's P45 for the year 2016.
7. On 13 February 2020, the Respondent issued correspondence to the Appellant advising that PAYE income on record for 2016 was submitted via P45 and P35L submissions made by the Appellant's employer.
8. On 25 February 2020, the Appellant's Agent responded stating that he would request clarity from the Appellant on the P45 amounts and would revert to the Respondent in relation to this matter.
9. On 14 April 2020, the Appellant's Agent corresponded with the Respondent to state that he could not track where the PAYE employment figures arose from, as they did not reconcile with payments received by the Appellant.
10. On 12 May 2020, the Appellant's Agent requested a telephone call from the Respondent. However, the Respondent's caseworker advised that due to the Covid-19 pandemic, she was working remotely and was not in a position to take telephone calls. The Appellant's Agent was requested to contact the Respondent via the My Enquiries portal.
11. On 13 May 2020, the Appellant's Agent raised a My Enquiries query and attached previous correspondence that issued to the Respondent dated 25 February and 14 April 2020.

12. On 18 May 2020, the Appellant's Agent wrote to the Respondent indicating that he had found an explanation to the difference in records for 2016, and which reconciled the amounts on the Appellant's P45 forms, to the figures the Respondent had on record for his employment. Further, the Appellant's Agent enclosed copies of two P45 forms relating to the tax year 2016.
13. On 5 May 2021, the Respondent wrote to the Appellant to advise that the PAYE compliance intervention was closed and further, that based on the information provided, there is no change to the liability.
14. On 16 December 2021, the Appellant's 2016 Income Tax return was filed using the ROS. Also on 16 December 2021, the Respondent issued a Notice of Assessment for year ending 31 December 2016 to the Appellant, showing a balance of tax overpaid for the period of €8,335.87
15. On 21 December 2021, the Respondent issued a notice to the Appellant entitled "Late claim for repayment of tax", relating to the 2016 tax year, advising that, under Section 865(4) of the Taxes Consolidation Acts 1997, the Respondent was precluded from repaying that tax.

Legislation and Guidelines

16. The legislation relevant to this appeal is as follows:-

17. 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

18. The Appellant's Agent made the following submissions on behalf of the Appellant. A summary of those submissions is set out hereunder:-

- (i) When preparing the figures for 2016 the Appellant's Agent noticed a large discrepancy between the figures prepopulated by Revenue on ROS and the figures provided by the Appellant from his P45 form. The Respondent had the incorrect PAYE Employment Income figures on ROS for 2016. The taxpayer should be in a position to rely on the figures pre populated into ROS.
- (ii) Correspondence issued from the Appellant to the Respondent on six occasions between February and May 2020, but the Respondent did not respond to the clarifications raised. In fact, no response to the query has ever been furnished to the Appellant. The clarifications were in relation to what appeared to be a double calculation of the figures in the Appellant's P45 and P35 forms, submitted directly to the Respondent by the Appellant's employer. The Appellant's employer was no longer trading at that time and clarifications from the Respondent were required.
- (iii) The Appellant had a legitimate expectation that the Respondent would answer the queries raised in a timely manner to enable him to prepare and submit an accurate tax return. The Respondent has breached its own code of compliance and customer charter in relation to its failure to respond to the Appellant. The taxpayer should be able to expect a timely response to a My Enquiries query raised with the Respondent. Reference was made to the decision of *Glencar Exploration p.l.c. v Mayo County Council (No. 2)* [2001] IESC 64, [2002] 1 IR 84.

- (iv) For the taxpayer to knowingly file a return with the incorrect figures is an offence pursuant to section 1077 E & F TCA 1997. It is better for the taxpayer to access the correct information and be late than to file a false return. Without clarification of the taxable figure, the Appellant was not in a position to determine if there would be a refund to protect.
- (v) Further, the Respondent provided extensions to many taxpayers during the covid-19 pandemic and it is unfair that the Appellant has not been afforded the same leniency in terms of timelines. The Appellant has an expectation that he would be treated fairly by the Respondent.
- (vi) The Appellant wants to establish that he has done nothing wrong and has paid all of his taxes.

Respondent

19. The Respondent's representative made the following submissions on behalf of the Respondent. A summary of those submissions is set out hereunder:-

- (i) A compliance intervention was initiated, which is a risk based assessment and which sought details from the Appellant of all assets. A request was made to complete income tax forms for the years under review namely, 2015 to 2019 inclusive.
- (ii) Initially, there was no response from the Appellant and following reminders issuing to the Appellant, the returns for the years 2015, 2017, 2018 and 2019 were filed by the Appellant's Agent in February 2020. The Appellant's Agent sought clarification on certain calculations for 2016.
- (iii) It is acknowledged that the Respondent should have responded to the Appellant's correspondence of May 2020. However, April and May 2020 were difficult times for the Respondent having regard to the covid-19 pandemic and that staff were working in a remote environment. However, the onus is on the taxpayer who is best placed to know his own tax affairs to file returns on time. This is the basis of self-assessment and it is not the role of the Respondent to conduct cross checks and verifications relating to P45 forms.
- (iv) The Appellant's Agent should have filed a best estimate return within the prescribed time period and as a result, there would have been no penalties imposed on the Appellant. Reference was made to the Respondent's Tax and Duty Manual 38-01-04A.

- (v) The compliance intervention was closed in advance of the Appellant filing a return for 2016, as the Respondent had satisfied itself in terms of risk.
- (vi) The lack of response had no bearing on the Appellant's ability to file a return within the four year period prescribed under section 865 TCA 1997. The return was not filed until December 2021, some considerable time after the correspondence issued to the Respondent in May 2020.
- (vii) Any extensions that were provided to taxpayers during the covid-19 pandemic, were done so on a concession basis on request and only related to returns for the year 2019, which did not apply to the Appellant's circumstances.

Material Facts

20. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:

- (i) When the compliance intervention was initiated by the Respondent, the Appellant was not registered for income tax for the years 2015 to 2019 inclusive.
- (ii) On 14 November 2019, the Appellant's Agent submitted a form TR1 to the Respondent with a request to register the Appellant for income tax, backdated with effect from 1 January 2015
- (iii) The Appellant was registered for income tax by the Respondent in January 2020, with effect from 1 January 2015.
- (iv) On 10 February 2020, the Appellant's Agent submitted income tax returns for 2015, 2017 and 2018.
- (v) On 16 December 2021, the Appellant's 2016 Income Tax return was filed using the ROS. On the same date, the Respondent issued a Notice of Assessment for year ending 31 December 2016 to the Appellant, showing a balance of tax overpaid for the period in the sum of €8,335.87
- (vi) On 21 December 2021, the Respondent issued a notice to the Appellant entitled "Late claim for repayment of tax", relating to the 2016 tax year, advising that, under Section 865(4) of the Taxes Consolidation Acts 1997, the Respondent was precluded from repaying that tax.
- (vii) The Respondent failed to respond to the Appellant's correspondence in relation to income figures for the 2016 return.

- (viii) The timeframe for the Appellant to file his 2016 Tax return was not “paused” while waiting for a response from the Respondent.

Analysis

21. 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 para. 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”.

Doctrine of Legitimate Expectation

22. The Commissioner notes the Appellant’s arguments in relation the Doctrine of Legitimate Expectation and alleged unfairness on the part of the Respondent. The Commissioner notes the evidence of the Appellant that the Respondent failed to respond to queries raised by the Appellant’s Agent in May 2020 and that as a result of the Respondent’s failure to engage with the Appellant in relation to his income tax return for 2016, the time period for seeking any refund of tax paid expired. Further, the Appellant asserts that the Respondent extended time for the filing of returns during the Covid-19 pandemic and it is treating the Appellant unfairly by not affording the Appellant similar treatment in terms of his tax returns.

23. The Commissioner has no doubt that the Respondent’s failure to respond to the Appellant and engage with the Appellant in relation to his queries was wholly unsatisfactory and likely not to be in compliance with its customer service standards and charter. The Commissioner notes that the Respondent’s representative conceded at the hearing of the appeal that the Respondent should have received a response to the queries raised by the Appellant.

24. Nevertheless, it is important to state that the scope of the jurisdiction of an Appeal Commissioner is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. It is discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 (“the Lee

decision”), *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.

25. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.

Section 865 TCA 1997

26. This appeal relates to the question of the repayment of tax under section 865 TCA 1997. The Appellant has been denied a repayment of tax by the Respondent on the grounds that he 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.

27. The Commissioner has considered the submissions of the Appellant’s representative such that the Appellant’s return for 2016 was not filed until 16 December 2021, as queries were raised with the Respondent in relation to the figures submitted by the Appellant’s employer and which the Respondent failed to respond to. The Commissioner has also considered the submissions of the Respondent such that, whilst it was unsatisfactory that a response did not issue to the Appellant in a timely manner, the Appellant’s Agent should have been aware of the provisions of section 865 TCA 1997. The Respondent states that the Appellant’s Agent took no further steps after May 2020, until it filed the return for 2016 in December 2021.

28. The Appellant argues that without clarification of the taxable figure, the Appellant was not in a position to determine if there would be a refund to protect. The Respondent argues that the Appellant and his Agent had access to the original P45 forms provided by this employer, which should have been sufficient to file a return on a best estimate basis within the requisite timeframe, to ensure that the Appellant was not precluded from any refund available to him, as a result of the provisions of section 865 TCA 1997.

29. The Respondent submitted that some concessions in the form of an extension to deadlines, were afforded to taxpayers on request, as a result of the covid-19 pandemic,

but it related to returns for the year 2019, and therefore did not apply to the Appellant's circumstances.

30. Section 865(2) 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) TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.
31. 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 it to determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
32. Section 865(1)(b)(ii) TCA 1997 provides that where all the information which the Respondent may reasonably require to enable it 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.
33. 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]. As the Appellant's claim for repayment relates to the tax year 2016, a valid claim for repayment must have been made on or before 31 December 2020.
34. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means the repayment of tax sought by the Appellant under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent.
35. The Respondent had all the information which it required to enable it to determine if and to what extent a repayment of tax was due to the Appellant, following the filing of the Appellant's income tax return for 2016 using ROS on 16 December 2021. In deciding if the Appellant is entitled to repayment of tax, and 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 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 €8,335.87 for the year 2016 was disallowed by the Respondent.

36. 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.
37. 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.
38. The Commissioner is satisfied that the obligation to provide accurate and complete returns rests on the taxpayer and not the Respondent, which is reflected in the conditions governing repayment prescribed in section 865 of the TCA 1997. Whilst there may have been a presumption by the Appellant that the timeframe for filing was “paused” until the Appellant received a response from the Respondent in relation to the clarifications raised, regardless of the understanding assumed by the Appellant, the Commissioner cannot take into account any mitigating circumstances for the failure to comply with the provisions of section 865 TCA 1997.
39. Moreover, whilst there may have been concessional extensions granted to filing deadlines for the years 2019 and 2020 as alluded to by the Respondent, , the Commissioner does not have jurisdiction to consider the manner in which the Respondent operates a non-statutory or extra-statutory concession, and the Appellant cannot succeed in this appeal based on an argument that such a concession was refused by the Respondent in an inequitable or unfair manner or in a manner which resulted in an unexpected taxation position.
40. As aforementioned, in an appeal before the Commission, the burden of proof rests on the Appellant. The Commissioner is satisfied that the Appellant has not discharged the burden of proof to satisfy the Commissioner that the refund is payable by the Respondent pursuant to section 865 of the TCA 1997.

Determination

41. 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 is payable.

¹ www.taxappeals.ie

42. 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 the Appellant finds himself in. However, the Commissioner has no discretion in these cases due to the application of the four year rule, set out above

43. This appeal is hereby determined in accordance with Part 40A of the TCA1997 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
18 January 2023