



Between:

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. These matters come before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against the refusal of the Revenue Commissioners (hereinafter “the Respondent”) of claims 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 years of assessment 2014, 2015, 2016 and 2017. The amount of tax at issue is €18,718.97.
2. On foot of a notification to the Parties dated 4 November 2022 and their agreement with same this appeal has been determined without an oral hearing pursuant to section 949U of the TCA 1997.

Background

3. [REDACTED]
[REDACTED]
[REDACTED].

4. Form 11 tax returns were submitted on behalf of the Appellant by the Committee to the Respondent on 22 August 2022 for the tax years 2014, 2015, 2016 and 2017 all of which indicated amounts of tax had been overpaid by the Appellant totalling €18,718.97. The amounts overpaid were as follows:

2014	€1,419.24
2015	€5,606.64
2016	€4,206.09
2017	€7,487.00

5. The Respondent disallowed the claimed repayments for 2014, 2015, 2016 and 2017 as the Form 11 returns were filed outside of the 4 year limitation period set out in section 865(4) of the TCA1997.
6. A Notice of Appeal was lodged with the Commission on 2 September 2022.

Legislation and Guidelines

7. 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

[REDACTED]

Respondent's Submissions:

9. The Respondent submits that a claim for the repayment of tax under the TCA 1997 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. The Respondent's position is that as the claims were made outside the relevant 4 year periods, no valid claims for repayment were made within the 4 year limitation period set out in section 865(4) of the TCA 1997 and as a result the repayment claims in respect of 2014, 2015, 2017 and 2017 were out of time.

Material Facts

10. The following material fact is not at issue between the Parties in these appeals and is accepted by the Commissioner:
- i. Form 11 returns were submitted on behalf of the Appellant for the years 2014, 2015, 2016 and 2017 to the Respondent on 22 August 2022.

Analysis

11. As with all appeals before the Commission 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.”

12. The Commissioner has considered the submissions made and documentation submitted on behalf of both Parties in these appeals.
13. 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.
14. 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.
15. 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.
16. 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].

17. A repayment of tax was sought by the Appellant on the basis that amounts of tax paid for 2014, 2015, 2016 and 2017 were 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 €1,419.24 for the tax year 2014, €5,606.64 for the tax year 2015, €4,206.09 for the tax year 2016 and €7,487.00 for the tax year 2017 to be due, the Respondent must have received a valid claim.
18. The Respondent had all the information which they required to enable them determine if and to what extent repayments of tax were due on 22 August 2022 following the delivery of the relevant claims to repayment by way of the submission of Form 11 returns. This was in excess of 7 years from the end of the tax year 2014, 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.
19. 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 were made outside the 4 year period specified in section 865(4) of the TCA1997, no valid claim for repayment of tax had been submitted by the Appellant and the claims for repayment in the amount of €1,419.24 for the tax year 2014, €5,606.64 for the tax year 2015, €4,206.09 for the tax year 2016 and €7,487.00 for the tax year 2017 were disallowed by the Respondent.
20. 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.
21. [REDACTED]
22. 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
23. 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.

¹ www.taxappeals.ie

Determination

24. For the reasons set out above, the Commissioner determines that this appeal has failed and that it has not been shown that the relevant refunds were payable.
25. It is understandable that there will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.
26. 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
27 February 2023