



Between

████████████████████

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**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”). The Appellant submitted separate appeals for the year of assessment 2016 in the sum of €3,962.07 and €3,869.05 for the year of assessment 2017. Both of these appeals were received by the Commission on 29<sup>th</sup> June 2022 and were allocated appeal reference numbers ██████████. As the facts under appeal for both 2016 and 2017 were similar in nature, it was agreed that both years under appeal would be determined together under the reference ██████████
2. On foot of a notification to the Appellant and the Respondent dated 19<sup>th</sup> January 2023 and the Appellant’s and Respondent’s agreement with same this appeal has been determined without an oral hearing pursuant to section 949U TCA 1997.

**Background**

3. The Appellant was registered for income tax in 2007 as he was in receipt of rental and PAYE income. A 2016 income tax return issued to the Appellant from the Respondent on

17<sup>th</sup> March 2017 and for 2017, the return was issued on 31<sup>st</sup> March 2018. The due date for filing of the 2016 income tax return was 31<sup>st</sup> October 2017 and for the 2017 income tax return was 31<sup>st</sup> October 2018. As the Appellant did not submit these returns the Respondent issued reminders to the Appellant on 1<sup>st</sup> February 2018 (for the 2016 return) and 15<sup>th</sup> February 2019 (for the 2017 return).

4. The Appellant contacted the Respondent in November 2021 and stated that he was having difficulties in submitting his returns for 2016 and 2017 on ROS (the Respondent's online system which facilitates the uploading of tax returns). Subsequent correspondence exchanged between the Appellant and the Respondent which resolved the Appellant's difficulties with ROS in December 2021. However, it was not until 5<sup>th</sup> March 2022 that the Appellant uploaded his income tax returns for 2016 and 2017.
5. Those returns showed refunds of €3,962.07 for 2016 and €3,869.05 for 2017 due to the Appellant. However, as the returns were submitted more than four years after the end of the year of assessment in which they were due, the Respondent issued identical notices on 22<sup>nd</sup> June 2022. These notices were entitled "Late Claim for Repayment of Tax" and stated that the Appellant's refunds for the years 2016 and 2017 were being refused as they were not submitted within the timeframe prescribed by statute.
6. The Notices of Appeal dated 29<sup>th</sup> June 2022 against the Respondent's decision were filed with the Commission.

## **Legislation**

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 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*

8. The Appellant advised that he was suffering from acute depression following the breakup of his marriage of over 30 years and was deeply involved in maintaining harmony and stability with his ■■■ children. The Appellant advised that his former wife required constant medical attention over the years and as such the wellbeing of his children fell disproportionately on his shoulders.
9. The Appellant further advised that his son died from Sudden Adult Death Syndrome in April 2011 and this had an understandable devastating effect on the whole family. The Appellant submitted following the break-up of his marriage and the loss of his son he had difficulty in attending to normal day to day affairs and in particular attending to written tasks.
10. The Appellant advised following reminders issued by the Respondent that it was not until late 2021 when he began to attend to his outstanding tax returns and managed to submit the 2016 and 2017 Income Tax returns on 5<sup>th</sup> March 2022.
11. The Appellant submitted as he had paid his income tax through the PAYE system, he had no reason to suspect that he was overpaying his tax liability by such a large amount and was surprised by the large refunds due to him.
12. The Appellant requested that the Commission consider the unique and upsetting circumstances of his appeal and in those circumstances allow his claims to repayment of tax for the years 2016 and 2017.

### *Respondent*

13. The Respondent advised that despite reminders issuing to the Appellant that it was not until 5<sup>th</sup> March 2022 that the Appellant submitted his outstanding income tax returns for 2016 and 2017.
14. The Respondent stated that there was no dispute that the refunds were owed to the Appellant but owing to the lapse of time between the date the refunds arose and the date the Appellant submitted his claims, it was unable to refund the tax to the Appellant.
15. The Respondent submitted as the refunds arising were in respect of the tax year 2016 and 2017, that 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.

16. In summation, the Respondent submitted while they had every sympathy for the position the Appellant found himself in and the unfortunate and tragic circumstances he 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**

17. The Commissioner finds the following material facts:-

- 17.1 The Appellant was due a refund of tax in respect of the tax year 2016 in the sum of €3,962.07 and for 2017 in the sum of €3,869.05.
- 17.2 The Appellant did not seek repayment of the 2016 and 2017 overpayments until 5<sup>th</sup> March 2022.
- 17.3 The Respondent was first advised of the overpayment of 2016 income tax and the 2017 income tax by the Appellant on 5<sup>th</sup> March 2022.

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

### **Analysis**

18. Section 865(2) of the 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) of the TCA 1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.

19. Section 865(1) (b) (i) of the 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.

20. Section 865(1) (b) (ii) of the 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.

21. 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].
22. A repayment of tax was sought on the basis that an amount of tax paid for 2016 and 2017 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) of the TCA 1997 means the repayment of tax sought under section 865(2) of the TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayments of tax in the amounts of €3,962.07 and €3,869.05 to be due, the Respondent must have received a valid claim.
23. 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 5<sup>th</sup> March 2022.
24. Having established that there are valid claims, the provisions of section 865(4) of the TCA 1997 must be applied. As the claims for repayment of tax were made outside the four-year period specified in section 865(4) of the TCA 1997, the claim for repayment in the amount of €3,962.07 for the year 2016 and €3,869.05 for 2017 were disallowed.
25. The use of the word ‘shall’ as set out in section 865(4) of the 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.
26. 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) of the TCA 1997.
27. 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>
28. 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:-

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

*“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.”*

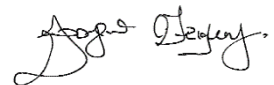
29. The burden of proof has not been discharged to satisfy the Commissioner that the refunds are payable by the Respondent pursuant to section 865 TCA 1997.

### **Determination**

30. 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.

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

32. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949U 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 TCA 1997



Andrew Feighery  
Appeal Commissioner  
9<sup>th</sup> March 2023