



69TACD2023

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 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 “TCA 1997”) made by the Appellant in respect of the year of assessment 2014. The amount of tax at issue is €3,879.55.
2. On foot of a notification to the Appellant and the Respondent dated 20<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 of the TCA 1997.

**Background**

3. The Appellant advised that he retired from his employment in 2013 and received his pension in 2014. Upon receipt of his pension in 2014, the Appellant advised that he received a lump sum and the portion of that lump sum paid for “spouses and children” had tax deducted at source in the sum of €3,879.55.

4. The Appellant submitted that he was not advised of his entitlement to claim a refund of this portion of tax deducted from his pension payment by his employer when he retired and only became aware of the position in 2022. Armed with this knowledge, the Appellant submitted a claim for repayment of the tax deducted in 2014 to the Respondent on 26<sup>th</sup> August 2022.
5. On 21<sup>st</sup> September 2022, the Respondent replied to the Appellant's claim and advised that the claim for the spouses and children deduction from the Appellant's retirement lump sum in 2014 was required to be made under the provisions of the TCA 1997 by 31<sup>st</sup> December 2018. The Respondent advised within that correspondence as the claim was not made within that timeframe, then it could not refund the repayment.
6. The Appellant submitted additional correspondence to the Respondent stating that it was unfair that his claim for repayment was being refused as he only became aware of his entitlement to a refund in 2022 and submitted his claim at the earliest opportunity thereafter.
7. In response to that correspondence, the Respondent replied on 8<sup>th</sup> November 2022 and advised:

*"Section 865(4) TCA 1997 states that all claims for repayment of tax made on or after 1 January 2005 may only be allowed within 4 years. Therefore, I am unable deal with any claims that relate to the tax year 2018 as tax years prior to 2018 are statute barred. I hope you can appreciate that Revenue must deal with all applications fairly and impartially on the basis of the law as it is written. As Section 865(4) makes no provision granting Revenue any discretion in the application of its provisions, Revenue has no authority to make an exception and, therefore, a claim for a refund in 2014 remains Statute Barred".*

8. A Notice of Appeal dated 4<sup>th</sup> November 2022 against the Respondent's decision was filed with the Commission.

## **Legislation**

9. 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*

10. The Appellant stated that the tax was deducted at source by his employer in 2014 and he was not informed at that stage of his right to seek repayment of that tax from the Respondent.
11. The Appellant advised that it was not until 2022 that he became aware of his entitlement to seek repayment of this tax and as soon as he became aware, he submitted his claim for repayment at the earliest opportunity.
12. The Appellant submitted that as he was not informed by his employer of his entitlement to seek a repayment of tax that it was unfair that he was now precluded from obtaining the refund which was not in dispute. The Appellant submitted that this position was aggravated by virtue of him submitting his claim for repayment as soon as he discovered his entitlement.
13. In summation, the Appellant submitted that he only became aware of his entitlement to seek repayment of tax deducted at source for 2014 in 2022 and given this position the Commission should allow the claim for repayment of 2014 income tax.

### *Respondent*

14. The Respondent advised that the Appellant first contacted them about the 2014 repayment on 26<sup>th</sup> August 2022.
15. The Respondent stated that there was no dispute that the refund was owed to the Appellant but owing to the lapse of time between the date the refund arose and the date the Appellant submitted his claim, it was unable to refund the tax to the Appellant.
16. The Respondent submitted as the refund arising was in respect of the tax year 2014 that they could not make the refund to the Appellant as it was outside the four-year period permitted by section 865 (4) TCA 1997.
17. In summation, the Respondent submitted while they had every sympathy for the position the Appellant found himself in 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 claim could not succeed.

### **Material Facts**

18. The Commissioner finds the following material facts:-

- 18.1 The Appellant was due a refund of tax in respect of the tax year 2014 in the sum of €3,879.55.
- 18.2 The Appellant did not seek repayment of the 2014 overpayment until 26<sup>th</sup> August 2022.
- 18.3 The Respondent was first advised of the overpayment of 2014 income tax by the Appellant on 26<sup>th</sup> August 2022.

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

### **Analysis**

- 19. 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.
- 20. 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.
- 21. 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.
- 22. 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].

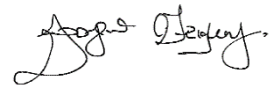
23. A repayment of tax was sought on the basis that an amount of tax paid for 2014 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA 1997. Section 865(3) of the TCA 1997 means the repayment of tax sought under section 865(2) of the TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amount of €3,879.55 to be due, the Respondent must have received a valid claim.
24. 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 26<sup>th</sup> August 2022.
25. 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 was made outside the four-year period specified in section 865(4) of the TCA 1997, the claim for repayment in the amount of €3,879.55 for the year 2014 was disallowed.
26. 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.
27. 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.
28. Previous determinations of the Tax Appeals 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>
29. 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.”*
30. The burden of proof has not been discharged to satisfy the Commissioner that the refund is payable by the Respondent pursuant to section 865 of the TCA 1997.

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

## **Determination**

31. 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.
32. 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.
33. 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