



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

193TACD2024

Between

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction	3
Background.....	3
Legislation and Guidelines	4
Submissions	6
Appellant	6
Respondent.....	7
Material Facts	8
Analysis	8
Section 865 TCA 1997	9
Section 865B TCA 1997	9
Determination	10
Notification	10
Appeal	11

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ██████████ (“the Appellant”) under sections 865(7) and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of claims made by the Appellant for a repayment of income tax in the amount of €4,288.73 for the year 2018 and €265.58 for the year 2019, on the ground that the Appellant’s claims for a repayment of overpaid income tax for the years 2018 and 2019 were made outside the statutory timeframe.
2. On 3 September 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties has objected or requested a hearing. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. The Respondent submitted that on 30 May 2024, the Appellant filed income tax returns for the years 2017, 2018 and 2019. The income tax returns indicated that the Appellant had overpaid income tax in the amount of €840.89 for the year 2017; in the amount of €5,560.25 for the year 2018; and in the amount of €265.58 for the year 2019.
4. On 6 June 2024, the Respondent wrote to the Appellant to inform her of its decisions to refuse the Appellant’s claims for a repayment of income tax for the years 2017, 2018 and 2019 on the ground that the Appellant’s income tax returns for the years 2017, 2018 and 2019 were filed outside the four year time limit imposed by legislation.
5. On 12 June 2024, the Appellant submitted a Notice of Appeal (with enclosures) to the Commission.
6. On 19 July 2024, the Respondent submitted a Statement of Case. In its Statement of Case, the Respondent submitted that further information had been received which resulted in the following: the Appellant had a liability of €956.51 for the year 2017 and the overpaid income tax was reduced to €4,288.73 for the year 2018. The Respondent stated that: “*an amended Notice of Assessment for the years 2017 and 2018 issued to the Appellant on 03/07/2024*”.
7. On 19 August 2024, the Appellant submitted a Statement of Case. In her Statement of Case, the Appellant included the Respondent’s account of the amended notice of

assessment and did not dispute any aspect of that account or of the amended notice of assessment.

8. In circumstances where the amended notice of assessment indicated no overpaid income tax for the year 2017 and a lower amount of overpaid income tax for the year 2018, the Commissioner considers it appropriate to proceed on the basis that this appeal relates to the Respondent's refusal of the Appellant's claims for a repayment of overpaid income tax in the amount of €4,288.73 for the year 2018 and €265.58 for the year 2019.
9. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation and Guidelines

10. The legislation relevant to this appeal is as follows:

11. Section 865 of the TCA 1997 provides (among other things):

“(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.

...

(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.”*

12. Section 865B of the TCA 1997 provides (among other things):

“(2) Subject to subsections (3) and (4), where a repayment of any tax cannot be made to a person by virtue of the operation of—

(a) section 865,

(b) section 105B of the Finance Act 2001,

(c) section 99 of the Value-Added Tax Consolidation Act 2010,

(d) section 159A of the Stamp Duties Consolidation Act 1999,

(e) section 57 of the Capital Acquisitions Tax Consolidation Act 2003, or

(f) any other provision of any of the Acts,

then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person.

(3) Where a repayment of tax cannot be made to a person in respect of a relevant period, it may be set against the amount of tax to which paragraph (a) of subsection (4) applies which is due and payable by the person in the circumstances set out in paragraph (b) of that subsection.

(4) (a) The amount of tax to which this paragraph applies is the amount, or so much of the amount, of tax that is due and payable by the person in respect of the relevant period as does not exceed the amount of the repayment that cannot be made to the person in respect of that relevant period.

(b) The circumstances set out in this paragraph are where tax is due and payable in respect of the relevant period by virtue of an assessment that is made or amended, or any other action that is taken for the recovery of tax, at a time that is 4 years or more after the end of the relevant period.

(5) No tax shall be set against any other amount of tax except as is provided for by the Acts.”

Submissions

Appellant

13. In her Notice of Appeal, the Appellant submitted:

“From 2017 to 2020 I was reliant on my tax Agent - [REDACTED] to handle all my CRO and Revenue returns as I was a director of a company [REDACTED]. It failed as a business and I was left in significant financial debt. I could not afford the liquidation costs, so was advised by the tax agent that the only returns needed to make were to the CRO annual returns for what was effectively “a dormant and non -reading company”.

The tax agent advised that these filings were necessary to avoid an audit. I was neither informed nor aware that an income tax return needed to be filed, nor that a refund was due.

The business ceased trading [REDACTED]. It was only recently, when I was unable to claim health expenses as a PAYE worker since 2020, that I realized the required income tax return for 2017-2019 had not been filed.

Upon discovering this, I contacted Revenue on 12/02/2024 and was informed that the tax agent failed to deregister me for income tax on 01/01/2019. I submitted a deregistration TRCN1 to the Revenue Business Section but did not receive any response (see attached email for evidence).

When the business failed, I was left with a personal debt [REDACTED]. I have been repaying this debt and dealing with the creditors [REDACTED]

[REDACTED]. My financial situation remains precarious, and with the support of MABS, I narrowly avoided losing my home.

In light of these circumstances, I kindly request a review of the decision and a refund of the overpaid tax. The failure to claim the refund within the specified period was due to the negligence of my tax agent, not any deliberate action on my part. The financial hardship I have faced makes the recovery of this overpaid tax critical.”

14. In her Statement of Case, the Appellant reiterated the points made in her Notice of Appeal and also submitted the following:

“My Tax agent [REDACTED] submitted 2017, 2018 and 2019 Income Tax returns on my behalf, on 30 May 2024. The return for the year 2017 indicated the overpaid tax in amount of €840.89, the return for the year 2018 indicated overpaid tax in amount of €5,560.25. and the return for the year 2019 indicated overpaid tax in amount of €265.58.

However, these refunds were refused by Revenue as the Income Tax returns were filed outside the four-year time limit as imposed by legislation. It is this decision that I am appealing, as the tax agent failed to advise or act accordingly on my behalf.

Following the submission of the returns, it was established that the tax agent did not include an income from Department of Social Protection (DSP), received in the years 2017 and 2018, [REDACTED], as per information received from DSP.

Revenue has amended the returns for the years 2017 and 2018 to include this additional income, in line with Part 41A TCA 1997. This intervention has resulted in a liability of €956.51, for the year 2017. And the overpayment for the year 2018 has been reduced to €4,288.73. An amended Notice of Assessment for the years 2017 and 2018 issued to me on 03/07/2024.

As the 2018 and 2019 tax returns were filed outside of the 4-year limit imposed by Section 865 of the Acts, Revenue is precluded from allowing refund or offset of the overpaid tax.

...”

Respondent

15. In its Statement of Case, the Respondent submitted (among other things):

“The chargeable period in this instance is 1st January 2018 to the 31st December 2018. Therefore, in order that Revenue could consider a refund of tax overpaid for the 2018 tax year, a completed return would have to have been submitted on or before the 31st December 2022.

The chargeable period in this instance is 1st January 2019 to the 31st December 2019. Therefore, in order that Revenue could consider a refund of tax overpaid for the 2019 tax year, a completed return would have to have been submitted on or before the 31st December 2023.

As the 2018 and 2019 tax returns were filed outside of the 4-year limit imposed by section 865 of the Acts, Revenue is precluded from allowing refund or offset of the overpaid tax.”

Material Facts

16. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
 - 16.1. On 30 May 2024, the Appellant (through her tax agent) filed income tax returns for the tax years 2017, 2018 and 2019.
 - 16.2. The income tax returns indicated that the Appellant had overpaid income tax in the amount of €840.89 for the year 2017; in the amount of €5,560.25 for the year 2018; and in the amount of €265.58 for the year 2019.
 - 16.3. On 6 June 2024, the Respondent refused a repayment of the overpaid income tax on the ground that the Appellant had filed her income tax returns for 2017, 2018 and 2019 outside the four year statutory time limit.
 - 16.4. On 12 June 2024, the Appellant submitted a Notice of Appeal.
 - 16.5. On 3 July 2024, an amended notice of assessment was issued to the Appellant, on foot of further information received by the Respondent, which resulted in the following: the Appellant had a liability of €956.51 for the year 2017 and she overpaid income tax in the amount of €4,288.73 for the year 2018.

Analysis

17. This appeal relates to the Respondent’s refusal of the Appellant’s claims for a repayment of overpaid income tax for the tax years 2018 and 2019. The Commissioner is confined to considering whether the Respondent’s decisions were in accordance with the applicable legislation.
18. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to refuse a claim for repayment of the amount of income tax overpaid by the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

“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”.

Section 865 TCA 1997

19. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where that tax is not due from that person. However, 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).
20. In this appeal, the relevant tax years were 2018 and 2019. Therefore, the claim for a repayment of income tax must have been made on or before 31 December 2022 and 31 December 2023 respectively. The Appellant has not disputed that she filed her income tax returns for 2018 and 2019 on 30 May 2024, through her tax agent. It is this date that establishes a valid claim for the purposes of section 865(3) of the TCA 1997. Having regard to this date, the Commissioner is satisfied that the Appellant’s claim fell outside the four year time limit prescribed in section 865(4) of the TCA 1997.
21. The Commissioner acknowledges the Appellant’s submission that the failure to claim a repayment within the specified period was due to her tax agent and that the Appellant relied on her tax agent. However, the use of the word “shall” 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, such as the Appellant’s reliance on a third party. The legislation does not afford the Commissioner discretion to disapply the rule.
22. 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.

Section 865B TCA 1997

23. In its Statement of Case, the Respondent stated that it was precluded from allowing offset of the overpaid tax. For completeness, the Commissioner has therefore considered the application of section 865B of the TCA 1997. Section 865B(2) of the TCA 1997 provides that where a repayment of tax cannot be made because a claim for repayment was made outside the time limit provided for under section 865(4) of the TCA 1997, repayment

¹ www.taxappeals.ie

cannot be offset against any other tax due. Section 865B(5) of the TCA 1997 confirms that there is no right of offset outside that already provided under tax legislation.

24. Section 865B(4)(b) of the TCA 1997 contains an exception to the general rule regarding offsets. It applies where tax is due and payable for a tax year or accounting period, by virtue of action taken by the Respondent, to assess or recover tax at a time that is four years or more after the end of the year or period involved. In such a case, an amount of tax which cannot be repaid because of the application of a time limit, but which relates to the same tax year or accounting period as the tax liability the Respondent is pursuing, is available for offset.
25. The Commissioner notes that the amended notice of assessment found the Appellant to have a liability of €956.51 for the year 2017. As the overpaid income tax for the tax years 2018 and 2019 does not relate to the tax year 2017, section 865B(4) of the TCA 1997 would not apply on the facts of this appeal. Consequently, the Commissioner is satisfied that the income tax overpaid in 2018 and 2019 is not available for offset.
26. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the financial and family circumstances outlined on appeal. The Appellant was entitled to check whether the Respondent's refusal of her claims for a repayment of income tax was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

Determination

27. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the Appellant's claims for a repayment of income tax in the amount of €4,288.73 for the year 2018 and €265.58 for the year 2019, under section 865(4) of the TCA 1997.
28. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.


Notification

29. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via

digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

30. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Jo Kenny
Appeal Commissioner
2 October 2024