



Between

24TACD2024

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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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 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of income tax, in accordance with the provisions of section 865 TCA 1997, in respect of the year of assessment 2012 and 2013. The amount of overpayment of income tax at issue is in the sum of **€3,291.76** for the year **2012** and the sum of **€496.68** for the year **2013**.
2. On 20 May 2021, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has also received a Statement of Case from the Respondent and that has also been considered in this determination.

Background

3. On 9 July 2012, the Appellant registered for income tax. In April 2013, the Appellant [REDACTED] closed their restaurant, due to trading losses.
4. In 2016, the Appellant discovered that P35 returns for the staff of the restaurant had not been returned to the Respondent. With the assistance of her representative, the Appellant filed P35 returns for the years 2012 and 2013. Subsequently, the Appellant discovered that income tax returns for 2012 and 2013 had not been filed with the Respondent.
5. On 20 November 2019, the Appellant submitted paper income tax returns in respect of the years 2012 and 2013, which were received by the Respondent. On 20 December 2019, the Respondent sought further additional information. The Appellant replied to the request for additional information by submitting paper income tax returns in respect of these years which were received by the Respondent on 25 February 2020.
6. On 18 March 2020, a Notice of Assessment in respect of year 2012 issued to the Appellant indicating an overpayment of income tax in the sum of €3,291.76 for the year 2012.
7. On 19 March 2020, the Respondent disapproved the repayment of income tax for the year 2012 in the sum of €3,291.76, on the basis that the claim was made outside of the four year time limit.

8. On 19 March 2020, a Notice of Assessment issued to the Appellant indicating an overpayment of income tax of €496.68 for the year 2013.
9. On 26 March 2020, the Respondent disallowed the repayment of income tax for the year 2013 in the sum of €496.68, on the basis that the claim was made outside of the four year time limit.
10. On 6 October 2020, the Respondent advised the Appellant via MyEnquiries that the repayment of income tax was disallowed, as the claim were made outside of the four year time limit.

Legislation and Guidelines

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

12. Section 865 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's submissions

13. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in her Notice of Appeal and Statement of Case:-

██████████ I opened a restaurant as a sole trader, which I closed in ██████ I had an accountant who was taking care of the payslips, vat, tax etc. At the end of ██████ he told me all the revenue issues were filed and everything was clear.

██████████ I decided to close down since the situation was difficult ██████ ██████ at the time and he did all the paperwork. After the closure I started working straight away in another restaurant, so I had to go to the Revenue Office to change my emergency tax status, it was then for my surprise when they told me that I was still a sole trader

I contacted the accountant and at the first meeting he told me he will do everything, (by that time he had the restaurant laptop (which never returned to me).

Eventually he stopped taking my calls. Every time I went to the Revenue office I asked, 'Is it all good, do I need to pay anything?' and they replied, "you're fine, all clear".

Every year when I went to the Revenue office to do the tax return, they always told me that I don't have anything due to me ,so then I started working with ██████████; where I found out that I was due money from different years.

Again after a long process of sending papers the ██████████ contacted me to tell me the Revenue was asking for some forms or money that I had to pay in order to get my refund.

I went back to the Revenue office and asked again," what do I need to pay?" all the times that I went they said ,"nothing", until someone told me that I need to file the form 11/12,then I found out that my then accountant never filed the forms to close the years.

I spoke with ██████████ and I told them but they kept telling me the same, Revenue was asking for more documentation.

I gave up with them, and because I couldn't afford to pay an accountant to fix it, I went to citizen information, where I met ██████████.

I explained to her all the situation and we went through the papers that I still had from the restaurant and then we sent the forms. She was sending posts and speaking on my behalf to all the queries, all the processes took a while but at one point everything was good with all the information we sent and the Revenue office seemed happy enough.

All this it was a mix of misinformation and lack of communication, not to mention the lack of professionalism of my former accountant that said, everything hurts only me. Even with all the hassle mentioned above, I've tried my best to gather all the documents I have been asked for and get the things right.

Then when I got the confirmation that I was due that money, Revenue told me it is out of the four years period to claim and it wasn't until the last text that nobody ever advised me or told me to appeal or anything similar.

As I said I am not a professional, and in the statement above I've tried to explain everything the best I could, I don't know if I miss any relevant information to get this reviewed, but all the messages I sent to the Revenue online(ROS) are there, even the letters or phone calls.....

Timeline shows that [REDACTED] only knew of the outstanding returns in late 2019, having believed, with good reason that her affairs were in order. She set out to resolve the matter. The outstanding returns were submitted and agreed by March 2020. She only knew a refund was due re 2013 in March 2020 but that there could be a problem - which she did not understand - when her source of help [REDACTED] was closed....."

Respondent's submissions

14. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

- a) [REDACTED] registered for Income Tax on 9/7/2012.
- b) [REDACTED] submitted paper Income Tax Returns in respect of 2012 and 2013 which were received in Revenue on 20/11/19. These were incomplete and Revenue requested additional information on 20/12/2019.
- c) [REDACTED] replied to this request by submitting paper Income Tax Returns in respect of these years which were received in Revenue on 25/2/2020.
- d) A Notice of Assessment in respect of 2012 issued to [REDACTED] on 18/3/2020 indicating an overpayment of €3,291.76.
- e) Revenue disapproved this overpayment on 19/3/2020.
- f) A Notice of Assessment in respect of 2013 issued to [REDACTED] on 19/3/2020 indicating an overpayment of €496.68.
- g) Revenue disallowed this overpayment on 26/3/2020.
- h) Revenue advised [REDACTED] via my enquiry on 6/10/2020 that the overpayments were disallowed as the claims were made outside of the 4-year time limit.

██████████ is appealing against Revenue’s disapproval of the overpayment claims in respect of 2012 and 2013.”

Material Facts

15. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 15.1. On 9 July 2012, the Appellant registered for income tax.
- 15.2. On 20 November 2019, the Appellant submitted paper income tax returns in respect of the years 2012 and 2013, which were received by the Respondent.
- 15.3. On 18 March 2020, a Notice of Assessment in respect of the year 2012 issued to the Appellant indicating an overpayment of income tax for the year 2012, in the sum of €3,291.76.
- 15.4. On 19 March 2020, the Respondent disallowed the repayment of income tax for the year 2012, in the sum of €3,291.76.
- 15.5. On 19 March 2020, a Notice of Assessment in respect of the year 2013 issued to the Appellant indicating an overpayment of income tax for the year 2013, in the sum of €496.68.
- 15.6. On 26 March 2020, the Respondent disallowed the repayment of income tax for the year 2013, in the sum of €496.68.
- 15.7. On 6 October 2020, the Respondent advised the Appellant via its MyEnquiries portal that the overpayments of income tax were disallowed as the claims for repayment were made outside of the four year time limit.

Analysis

16. The Appellant’s appeal relates to a refusal by the Respondent to permit a claim for a repayment of income tax pursuant to section 865 TCA 1997, made by the Appellant in respect of the years **2012 and 2013**, in the sum of **€3,291.76** and **€496.68** respectively, as the claim was made outside of the four year time limit prescribed in **section 865(4) TCA 1997**.

17. 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 paragraph 22, Charleton J. states 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”.

18. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute...”

Section 865 TCA 1997

19. The Appellant has been denied a repayment of income tax by the Respondent on the grounds that the Appellant does not meet the criteria as outlined by section 865(4) TCA 1997, namely that a claim for repayment of income tax for the chargeable period was not made within four years after the end of the chargeable period.

20. The Commissioner has considered the Appellant’s submissions, including the Appellant’s timeline which greatly assisted the Commissioner in her consideration of the issue. The Commissioner notes that the Appellant and her husband were operators of a restaurant that ceased trading in 2013. The Commissioner notes that the Appellant understood that her tax affairs were in order, but subsequently discovered that it was not the case. The Appellant submits that she has done her best to gather her documents to put her tax affairs in order. However, due to *“a mix of misinformation and lack of communication, not to mention the lack of professionalism of my former accountant”*, the Appellant only became aware of the outstanding income tax returns in 2019 and that a refund may be due to her. The Appellant submits that a *“taxpayer cannot look for a refund when he/she has no reason to believe that one is due through no fault of his/her own”*.

21. Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section includes income tax and capital gains tax. It also covers: any interest, surcharge or penalty relating to the tax, levy or charge; any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to the Respondent; and amounts paid on account of tax (for example, payments in excess of liability).

22. Section 865(2) TCA 1997 provides that a person who has paid tax which is not due, or which but for an error or mistake in the person's return would not have been due, is entitled to repayment of that tax.
23. Section 865(3) TCA 1997 provides that a repayment of tax referred to in section 865(2) TCA 1997 is not due unless a valid claim to repayment has been made. A return or statement which a person is required to deliver under the Acts and which contains all the information that the Respondent may reasonably require to determine if and to what extent a repayment is due, is regarded as a valid claim. The Commissioner is satisfied that the Appellant's submission of a paper income tax return for the years 2012 and 2013 on **20 November 2019**, is regarded as a valid claim for the purposes of section 865(3) TCA 1997.
24. 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].
25. As the Appellant's claim for repayment of income tax relates to the tax years **2012 and 2013**, a valid claim for repayment must have been made on or before **31 December 2016 and 31 December 2017**, for the years at issue. The Appellant filed a paper income tax return on 20 November 2019 and as set out above, it is this date that establishes a valid claim for the purposes of section 865(3) TCA 1997. Having regard to this date, the Commissioner is satisfied that the claim falls outside of the 4 year time limit prescribed in section 865(4) TCA 1997.
26. The Commissioner notes the Appellant's submission that the "*4-year period in which tax refunds may be paid should start from the date she knew there was a refund - and that was March 2020. A taxpayer cannot look for a refund when he/she has no reason to believe that one is due through no fault of his/her own*". Unfortunately for the Appellant, this is not what is provided for in section 865(4) TCA 1997.
27. As the Appellant's claim for repayment of income tax was made outside of the four year period specified in section 865(4) TCA 1997, the claim for repayment in the amounts of **€3291.76** for the year **2012** and the sum of **€496.68** for the year **2013** were disallowed. The Commissioner notes that correspondence issued on 6 October 2020 from the Respondent, informing the Appellant that repayment of income tax was disallowed under section 865(4) TCA 1997.

28. 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.
29. 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.
30. The Commissioner has every sympathy for the Appellant’s situation. Unfortunately, the Commissioner has no discretion to assist in these circumstances due to the four year rule prescribed by legislation. Hence, the appeal is denied.

Determination

31. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(4) TCA 1997.
32. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
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, as required under section 949AJ (6) TCA 1997.

Notification

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

¹ www.taxappeals.ie

Appeal

35. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
04 December 2023