



Between

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against a refusal of the Revenue Commissioners (hereinafter “the Respondent”) to allow claims for repayment of tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter “TCA 1997”).
2. In accordance with the provisions of section 949U TCA 1997, this appeal is determined without a hearing. Both parties agreed to this adjudication format in accordance with section 949U TCA 1997.

Background

3. The Appellant who is the executor of her late husband’s will filed income tax returns for the tax years 2016, 2017 and 2018 on behalf of his Estate in July 2023. Based on the figures included on those submitted returns, refunds of tax in the sums of €587.78 for 2016, €518.89 for 2017 and €506.61 for 2018 arose.
4. On 7th July 2023, the Respondent issued the Appellant with three separate documents entitled “Late Claim for Repayment of Tax”. These documents advised the Appellant that

as the claims for repayment were received more than four years after the end of the chargeable period to which they related, the Respondent was unable to repay the tax refunds sought by the Appellant under the provisions of section 865 (4) TCA 1997.

5. Those documents also advised the Appellant of her right of appeal to the Commission under section 865 (7) TCA 1997.
6. On 1st August 2023, the Appellant exercised this right and submitted the Notice of Appeal to 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 stated that her late husband worked hard and paid taxation his entire working life through the PAYE system without interruption. She further advised that although he retired in 2009, her husband continued to file his income tax returns annually.
9. The Appellant further advised that in 2015, her husband became very unwell and as a result, his mental and physical health declined. Following his serious ill health, the Appellant advised that she cared for her husband at home without receiving any support or assistance in so doing.
10. The Appellant stated that she was also in ill health but she continued to look after her gravely ill husband until his unfortunate passing in September 2022. The Appellant stated that the focus for the last years of her and her husband's life together was from day to day.

She further advised that both she and her husband had contracted Covid-19 which resulted in her husband being admitted to hospital before being transferred to the hospice.

11. The Appellant submitted that her husband did not choose to ignore his taxation affairs during his periods of ill health, but unfortunately was not physically or mentally able to undertake these tasks as he had done previously. The Appellant submitted that she wished to appeal the Respondent's decision to refuse the repayment of taxation "*as it was an unavoidable consequence of ill health that meant the claim for repayment was outside of the 4 years*".
12. In those circumstances, the Appellant requested the Commission to allow the appeal and direct the Respondent to repay the sums of €587.78, €518.89, and €506.61 for the tax years 2016, 2017 and 2018 respectively.

Respondent

13. The Respondent expressed empathy with the Appellant's circumstances. However, the Respondent stated while there was no dispute that the refunds were owed to the Appellant's Estate, it was unable to repay the amounts sought for the years under appeal owing to the lapse of time between the date the refunds arose and the date the Appellant submitted the claims.
14. The Respondent submitted as the refunds arising were in respect of the tax years 2016, 2017 and 2018, it could not make the refund to the Appellant's Estate as the claim was submitted outside the four-year period required under section 865 (4) TCA 1997.
15. In summation, the Respondent submitted while they had every sympathy for the position the Appellant finds herself 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 appeal could not succeed.

Material Facts

16. The Commissioner finds the following material facts:-
 - 16.1 The Appellant's husband's Estate was due refunds of taxation for the years of assessment 2016, 2017 and 2018 in the sums of €587.78, €518.89 and €506.61 respectively.
 - 16.2 The Executor did not seek those repayments until she submitted the income tax returns for the years 2016, 2017 and 2018 in July 2023.

16.3 The Respondent was first advised of the refunds arising for the tax years 2016, 2017 and 2018 in July 2023.

16.4 The Respondent did not issue the refund for the years 2016, 2017 and 2018 as those claims were not submitted within the four-year timeframe stipulated under section 865 (4) TCA 1997.

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

Analysis

17. Section 865(2) TCA 1997 provides that a person is entitled to a repayment of tax 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.

18. Section 865(1) (b) (i) 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.

19. Section 865(1) (b) (ii) 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.

20. 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].

21. A repayment of tax was sought on the basis that amounts of taxation paid for 2016, 2017 and 2018 were not due. The entitlement to a repayment of tax arises under section 865(2) TCA 1997. Section 865(3) TCA 1997 means the repayment of tax sought under section 865(2) TCA 1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax for the years 2016, 2017 and 2018 to be due, the Respondent must have received a valid claim.

22. 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 claims to repayment, only when the inquiry to the Respondent was made by the Appellant in July 2023.
23. Having established that there is a valid claim, the provisions of section 865(4) TCA 1997 must be applied. As the claims for repayment of tax was made outside the four-year period specified in section 865(4) TCA 1997, the claims for repayment for the years 2016, 2017 and 2018 were disallowed.
24. 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.
25. The Commissioner has no authority or discretion to direct that repayments be made or credits allocated to the Appellant where the claims for repayment fall outside the four-year period specified in section 865(4) TCA 1997.
26. 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.
27. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof in appeals seeking repayments of tax under section 865 TCA 1997 is 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.”*
28. The burden of proof has not been discharged to satisfy the Commissioner that the refunds for the years 2016, 2017 and 2018 are payable by the Respondent pursuant to section 865 TCA 1997.

Determination

29. 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. The Commissioner appreciates that the Appellant will be disappointed with this determination

¹ www.taxappeals.ie

but she was correct to seek legal clarity on her appeal. The Commissioner expresses his condolences on the loss of the Appellant's husband.

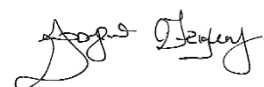
30. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

Notification

31. 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

32. 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.



Andrew Feighery
Appeal Commissioner
19th December 2023.