



36TACD2024

Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal of the decision of the Revenue Commissioners (“the Respondent”) to refuse to repay €2,652.03 of tax overpaid by the Appellant for the year 2015. The reason given for the refusal was that the Appellant’s income tax return for 2015 was submitted on 7 April 2022, with the effect that the claim for repayment was made outside of the four year time-limit prescribed by section 865(4) of the Taxes Consolidation Act 1997 (“the TCA 1997”).
2. The appeal of this decision is determined, with the consent of both parties, without a hearing pursuant to section 949U of the TCA 1997.

Background

3. The Appellant was a person registered for income tax between the years 2015 – 2020.
4. On 7 April 2022 the Appellant filed an income tax return for the year 2015. As a consequence of this filing the Appellant was assessed as having overpaid tax for that year in the amount €2,652.03.

5. The Respondent refused to refund this overpayment to the Appellant on the grounds that the filing of the income tax return, which it said constituted the making of a “claim” for repayment, occurred more than four years after the end of the chargeable period to which it related . As such, the Respondent held that it was prohibited by section 865(4) of the TCA 1997 from making repayment.
6. In the grounds section of his Notice of Appeal, the Appellant stated that his appeal was not out of time on the grounds that he had applied for repayment in respect of 2015 within time, and before the filing of the return for 2015 on 7 April 2022. This, he said, was done by engaging with a private entity called “██████████”.
7. The Respondent delivered its Statement of Case on 23 March 2023, wherein it asserted that the Appellant did not submit a return for 2015 until 7 April 2022. It is worth observing that the Appellant was directed on six occasions to provide a Statement of Case elaborating on the factual background to his appeal. Despite these directions, he declined to do so and, in particular, offered no contrary account to that of the Respondent regarding the date of the delivery of his income tax return.

Legislation and Guidelines

8. Section 865 of the TCA 1997 is headed “Repayment of tax”. Subsection 2 therein provides:-

“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.”

9. Section 865(3) TCA 1997 provides that no repayment of income tax shall be made unless a “valid claim” has first been made to the Respondents. Section 865(1)(b) TCA 1997 provides, in so far as relevant, that:-

“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—

(1)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 tax is 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 period shall be treated as a valid claim when that information has been furnished by the person,

10. Section 865(4) TCA 1997 sets the following time-limit on repayments:-

“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—

[...]

(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.”

Submissions

Appellant

11. The Appellant submitted that a claim constituting a valid claim for the purposes obtaining repayment of tax overpaid for 2015 was made through [REDACTED] The Appellant

further submitted that it was unjust that he should not receive repayment in circumstances where he had no history of the non-payment or underpayment of tax and it was not in dispute that he had paid more than was due for 2015. Accordingly, the claim for repayment should be allowed.

Respondent

12. The Respondent submitted that the Appellant's claim for repayment was not submitted until the filing of his income tax return for 2015 on 7 April 2022. Section 865(4) of the TCA 1997 requires that repayments not be made where a person makes their claim more than four years after the end of the tax period to which the claim relates. The time limit in this instance expired on 31 December 2019 and, as such, it was barred from making repayment on the grounds that the claim was out of time.

Material Facts

13. The facts material to the determination of this appeal were as follows:-

- the Appellant was a person registered for income tax since 2015;
- the Appellant filed an income tax return for the year 2015 on 7 April 2022;
- the Appellant was assessed as having overpaid tax for 2015 in the amount of €2,652.03;
- the Respondent refused to repay the amount of tax overpaid.

Analysis

14. At the outset of this section of the determination it is necessary to state that the burden of proof lies with the Appellant. That this is so is clear from the judgment in *Menolly Homes v Revenue Commissioners* [2010] IEHC 49 where, at paragraph 22, Charleton J held:-

“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.”

15. The Appellant in this case asserted in the grounds section of his Notice of Appeal that he made his claim for repayment through [REDACTED]. However, he did not allege in the same section of this document that his claim was made by the filing of an income tax return, as required by section 865(1)(b) of the TCA 1997. Notwithstanding the assertion of the Respondent in its Statement of Case that the first time a return for 2015 was filed

was 7 April 2022 and the Commission's numerous directions, the Appellant did not deliver a Statement of Case of his own. Accordingly, the Commissioner finds as a fact material to the determination of the issues in this appeal that the first and only income tax return filed by the Appellant in relation 2015 was that of 7 April 2022.

16. In order for the Appellant to have submitted a "valid claim" entitling him to repayment of tax overpaid for 2015, he needed to submit a return for that year prior to the end of 2019 that contained the information necessary for the Respondent to establish his overpayment. This was not done, with the return not being filed, and thus the claim not being made, until after the expiry of this mandatory time-limit.
17. In *Lee v Revenue Commissioners [2021] IECA 18*, the Court of Appeal made clear that it is the function of the Commission to determine by reference to applicable legislation the correct amount of tax owed. As section 865(4) of the TCA 1997 expressly prohibits repayment in respect of claims made more than four years late, the Commissioner finds that the decision of the Respondent to refuse to repay was correct in law and must stand affirmed. The Commissioner has no power to disapply this legislation for reasons of fairness or equity.

Determination

18. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

19. 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

20. 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.

A handwritten signature in black ink, appearing to read 'COHiggins', written in a cursive style.

Conor O'Higgins
Appeal Commissioner
01 December 2023