



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

166TACD2025

Between



Appellant

and

THE REVENUE COMMISSIONERS

Respondent

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 claims for the repayment of income tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the "TCA 1997") made by the Appellant on 6 February 2025 in respect of the tax years 2014, 2016 and 2020.
2. The amount of tax at issue is €6,877.29.

Background

3. [REDACTED] (hereinafter the "Appellant") is a taxpayer who on 6 February 2025 who filed tax returns for the years 2014, 2016 and 2020 (hereinafter the "Returns") with the Respondent. The Returns indicated that the Appellant had overpaid income tax for:
 - 3.1. 2014 in the amount of €6,729.29;
 - 3.2. 2016 in the amount of €118.00; and
 - 3.3. 2020 in the amount of €30.00.
4. By way of letters dated 6 and 7 February 2025, the Respondent disallowed repayments of the overpaid tax for 2014, 2016 and 2020 on the basis that the claim for repayment of income tax had not been made within 4 years of the end of the relevant tax year to which the claim related pursuant to the provisions of section 865 of the TCA 1997.
5. The Appellant has appealed the disallowance of the repayment of tax by the Respondent for the tax years 2014, 2016 and 2020 by way of a Notice of Appeal which was submitted to the Commission on 15 February 2025.
6. On 11 March 2025, the Commission wrote to the parties indicating the Commissioner's intention to determine this appeal without the holding of an oral hearing pursuant to the provisions of section 949U of the TCA 1997 and allowed the parties 21 days to indicate their disagreement with same. Neither party has objected to this course of action. As a result this appeal has been determined pursuant to the provisions of section 949U of the TCA 1997.

Legislation and Guidelines

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's submissions

8. The Appellant submitted the following in support of this appeal in his Notice of Appeal and in section 3 of his Statement of Case entitled "*Outline of Relevant Facts*":

"The reason for my appeal is lack of knowledge as I did not complete Form 11 in the given year due to lack of income of the company due to lack of sales of the [REDACTED] and lack of money. In 2014, I only earned income from the bar where I worked €22,333.00.

In 2016 it was the same situation, I had an income from the bar only € 12,958.00 and my company had no income due to the lack of sales of the [REDACTED].

In 2020 there was the same situation where I only had income from work at [Name Redacted] €7,192.00.

At the end of 2024, I received a notice to terminate the house rental, then I started applying for help from the government (Help to Buy) to buy a new house. I received an answer from revenue that I had to fill out form 11 for the period 2014-2020, then my drama started again because I had no money to pay the accountant. With tears in my eyes, I begged a revenue employee on the phone to help me fill out form 11, then I found out that I had an overpayment of tax. I am begging you to consider my appeal positively because I need this money to apply for a mortgage . If I do not collect the appropriate amount, I will be homeless, so I am begging once again for a positive consideration of my appeal."

Respondent's submissions

9. The Respondent submitted that the provisions of section 865 of the TCA 1997 mean that a valid claim for the 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.
10. As the Appellant's claims for the repayment of income tax for the tax years 2014, 2016 and 2020 were submitted on 6 February 2025, the Respondent submitted that the provisions of section 865 of the TCA 1997 do not permit the Respondent and / or the Commissioner, to allow a repayment outside of the 4 year time limit. The Respondent submitted that the provisions of section 865 of the TCA 1997 mean that the Commissioner does not have any discretion or leeway where valid claims for repayment of tax are made outside of the 4-year period provided for.

Material Facts

11. The following material fact is not at issue in this appeal and the Commissioner accepts the following as a material fact:
12. The Appellant submitted tax returns for the tax years 2014, 2016 and 2020 to the Respondent on 6 February 2025 which indicated the Appellant had overpaid income tax for:
 - 12.1. 2014 in the amount of €6,729.29;
 - 12.2. 2016 in the amount of €118.00; and
 - 12.3. 2020 in the amount of €30.00.

Analysis

13. As with all appeals before the Commission 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."

14. The Commissioner has considered the submissions made and documentation submitted on behalf of both parties in this appeal.

15. 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.
16. 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 to determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
17. 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.
18. 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].
19. A repayment of tax was sought by the Appellant for the years 2014, 2016 and 2020 on the basis that the amounts of tax of €6,729.29 for 2014, €118.00 for 2016 and €30.00 for 2020 were not due.
20. 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 amounts of €6,729.29 for the tax year 2014, €118.00 for the tax year 2016 and €30.00 for the tax year 2020 to be due, the Respondent must have received a valid claim.
21. The Respondent had all the information which they required to enable them to determine if and to what extent repayments of tax were due on 6 February 2025 following the delivery of the relevant claims to repayment by the Appellant by way of the submission of tax returns. This was in excess of 4 years from the end of the tax years 2014, 2016 and 2020.
22. 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 4-year

period specified in section 865(4) of the TCA 1997, no valid claims for repayment of tax had been submitted by the Appellant and the claims for repayment in the amounts of €6,729.29 for the tax year 2014, €118.00 for the tax year 2016 and €30.00 for the tax year 2020 were disallowed by the Respondent.

23. 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 4-year rule might be mitigated.
24. 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 4-year period specified in section 865(4) of the TCA 1997.
25. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4-year statutory limitation period. These determinations, may be found on the Commission website.¹
26. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refunds of income tax in the amount of amounts of €6,729.29 for the tax year 2014, €118.00 for the tax year 2016 and €30.00 for the tax year 2020 were payable by the Respondent.

Determination

27. For the reasons set out above, the Commissioner determines that this appeal has failed and that it has not been shown that the relevant refund was payable. Therefore, the decisions of the Respondent of 6 and 7 February 2025 disallowing repayments of the overpaid tax for the years 2014, 2016 and 2020 shall stand.
28. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation, and the Commissioner has every sympathy with the Appellant’s position. However, the Commissioner has no discretion in these cases due to the application of the 4-year rule, set out above.
29. This appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular, sections 949AL and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

¹ www.taxappeals.ie

Notification

30. 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

31. 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.



Clare O'Driscoll
Appeal Commissioner
15 April 2025