



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

188TACD2025

[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 (“the 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 the amount of €7,127.44, in respect of the year of assessment 2018 (“the relevant year”).
2. On 22 May 2024, the Appellant duly appealed to the Commission by submitting a Notice of Appeal. On 21 August 2024, in accordance with section 949Q TCA 1997, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal and on 20 September 2024, the Respondent submitted its Statement of Case. In accordance with section 949S TCA 1997, on 6 May 2025, the Respondent submitted an Outline of Arguments. Furthermore, in accordance with section 949X TCA 1997, the appeal was listed for hearing.
3. On 29 April 2025, the Appellant contacted the Commission to request that the appeal be determined via a “desk review”. On 2 May 2025, the Respondent indicated that it had no objection to the request. Therefore, the hearing date was vacated and by agreement with the parties, this appeal is determined without a hearing, in accordance with the provisions of section 949U TCA 1997.

Background

4. In 2018, the Appellant was registered for income tax, and the Appellant was required to file an income tax return for the relevant year. The Respondent submitted that the filing deadline for a 2018 income tax return, was 31 October 2019.
5. On 25 May 2023, the Appellant filed, via his agent, his income tax return through the revenue online system (“ROS”), for the relevant year.
6. On 25 May 2023, the Respondent issued a Notice of Assessment for the year ending 31 December 2018 to the Appellant showing a balance of income tax overpaid in the amount of €7,127.44, for the relevant year.
7. On 27 May 2023, the Appellant’s representative contacted the Respondent requesting that the refund due to the Appellant for the relevant year, be issued to the Appellant.
8. On 9 February 2024, the Respondent advised the Appellant that following review the refund would not issue to the Appellant, as the claim for repayment was made outside the 4-year limit imposed by legislation.

9. On 15 April 2024, the Respondent issued a further notice to the Appellant in relation to the relevant year, which advised the Appellant that in accordance with section 865(4) TCA 1997, the Respondent was precluded from repaying the amount of income tax overpaid in the amount of €7,127.44.

10. Thereafter on 22 May 2024, the Appellant duly appealed to the Commission.

Legislation and Guidelines

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

12. Section 865 of the 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 period shall be treated as a valid claim when that information has been furnished by the person, and

(iii)

.....

(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.

(5)

(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.

13. Section 865B TCA 1997, No offset where repayment prohibited, *inter alia* provides:-

(1) In this section—

“Acts” means—

- (a) the statutes relating to the duties of excise and to the management of those duties,*
- (b) the Tax Acts,*
- (c) the Capital Gains Tax Acts,*
- (d) Parts 18A, 18C and 18D,*
- (e) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act,*
- (f) the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act,*
- (g) the Value-Added Tax Consolidation Act 2010 and the enactments amending or extending that Act*
- (h) the Finance (Local Property Tax) Act 2012, and*
 - (i) any instruments made under any of the statutes and enactments specified in paragraphs (a) to (h);]*

“relevant period”, in relation to a repayment, means—

- (a) in the case of corporation tax, the accounting period of the company in respect of which the repayment arises,*
- (b) in the case of income tax, capital gains tax, income levy, universal social charge or domicile levy, the year of assessment in respect of which the repayment arises,*
- (c) in the case of stamp duties, the year of assessment or accounting period, as the case may be, within which falls the event in respect of which the repayment arises,*
- (d) in the case of gift tax or inheritance tax, the year of assessment or accounting period, as the case may be, within which falls the latest of the dates referred to in section 57(3) of the Capital Acquisitions Tax Consolidation Act 2003 and in respect of which the repayment arises,*
- (e) in the case of excise duty, the year of assessment or accounting period, as the case may be, within which falls the act or event in respect of which the repayment arises,*

(f) in the case of value-added tax, the year of assessment or accounting period, as the case may be, within which falls the taxable period in respect of which the repayment arises, and

(g) in the case of local property tax, the year within which the repayment arises;

“repayment” includes a refund;

“tax” means any income tax, corporation tax, capital gains tax, value-added tax, excise duty, stamp duty, gift tax, inheritance tax, income levy, domicile levy, universal social charge or local property tax and includes—

(a) any interest, surcharge or penalty relating to any such tax, duty, levy or charge,

(b) any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, duty, levy or charge,

(c) any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and

(d) any amount paid on account of any such tax, duty, levy or charge or paid in respect of any such tax, duty, levy or charge; “taxable period” has the same meaning as in section 2 of the Value-Added Tax Consolidation Act 2010

(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's submissions

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

*"[The Appellant] had a few difficult years [REDACTED]. [REDACTED]
[REDACTED]. Several factors including Covid lockdown meant that the 2018 income tax return wasn't submitted until May 2023.*

[REDACTED]. The amount paid in preliminary tax for 2018 was €6,552.62.

Revenue are not refunding the money due to [the Appellant] as the return was submitted outside of the four years. My understanding that this rule applies to amended income tax returns and not original returns.

.....

We believe the money should be refunded as it was a preliminary tax payment generated for VAT and Employer PAYE/PRSI refunds." (sic)

Respondent's submissions

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

"The Appellant's grounds for appeal as set out in their Notice of Appeal are that:

Several factors, including Covid lockdowns, meant that the 2018 income tax return was not submitted until May 2023.

Their understanding of the 4-year rule imposed by legislation is that it applies to amended income tax returns and not original returns.

The tax year under appeal is 2018 and the chargeable period is 1 January 2018 to 31 December 2018. The 4-year limit imposed by Section 865 for this chargeable period ends on 31 December 2022. The return was filed on Revenue's Online Service on 25 May 2023 and it calculated that the Appellant had an overpayment of tax in the amount of €7,127.44.

The Respondent submits that as the return was filed outside of the 4-year limit imposed by legislation, the Respondent is precluded from either refund or offset of the overpayment.

The Respondent notes that the Appellant's representative suggested that Section 865 only applies to amended returns and not original returns. This is not the case, Section 865 refers to "a claim for repayment of tax" and in this case the claim for repayment of tax was the filing of the 2018 Income Tax return by the Appellant which was outside the 4-year limit imposed by legislation.

It is noted in the Appellant's Statement of Case that they are requesting that the refunds be allowed on the basis that they originally were in relation to overpayments of VAT and PREM that were offset to 2018 Preliminary Tax. The amounts offset were;

€1,037.14 from VAT period 1 July to 31 August 2018

€2,485.48 from PREM period 1 January to 31 December 2018

€3,000.00 from VAT period 1 September to 31 October 2018

These overpayments arose when the Appellant filed the respective VAT and PREM returns. They were available at that time for refund or offset and, at the Appellant's request, they were all offset against 2018 Preliminary Income Tax. These overpayments have already been processed and cannot be revisited."

Material Facts

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

- 16.1. In 2018, the Appellant was registered for income tax, and he was required to file an income tax return for the relevant year.
- 16.2. The filing deadline for filing a 2018 income tax return was, 31 October 2019.
- 16.3. On 25 May 2023, the Appellant filed, via his agent, his income tax return through the ROS, for the relevant year.
- 16.4. On 25 May 2023, the Respondent issued a Notice of Assessment for the year ending 31 December 2018, to the Appellant, showing a balance of income tax overpaid in the amount of €7,127.44, for the relevant year.
- 16.5. On 27 May 2023, the Appellant's representative contacted the Respondent requesting that the refund due to the Appellant for the relevant year, be issued to the Appellant.
- 16.6. On 9 February 2024, the Respondent advised the Appellant that following review the refund would not issue to the Appellant, as the claim for repayment was made outside the 4-year limit imposed by legislation.
- 16.7. On 15 April 2024, the Respondent issued a further notice to the Appellant in relation to the relevant year which advised the Appellant that in accordance with section 865(4) TCA 1997, the Respondent was precluded from repaying the income tax to the Appellant.
- 16.8. On 22 May 2024, the Appellant duly appealed to the Commission.
- 16.9. The submission of the Appellant's income tax return on 25 May 2023, was regarded as a valid claim for the purposes of section 865(3) TCA 1997.
- 16.10. As a repayment of tax was claimed outside the relevant time limit prescribed pursuant to section 865(4) TCA 1997, no offset of tax liabilities in the sum of €7,127.44, for the relevant year, was permitted in accordance with section 865B TCA 1997.

Analysis

The burden of proof

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. stated:

"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 judgment of Charlton 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..."

19. 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 relevant year, in the amount of €7,127.44, as the claim was made outside of the four-year time limit prescribed under section 865(4) TCA 1997.
20. The Commissioner intends firstly to deal with the provisions relating to the repayment of income tax, in accordance with section 865 TCA 1997 and the four-year time limit, as it was applicable to the Appellant's appeal and will thereafter, consider the application of section 865B TCA 1997 to the Appellant's appeal herein.

Section 865 TCA 1997

21. The Appellant has been denied a repayment of income tax by the Respondent on the grounds that he 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.
22. The Commissioner notes that the Appellant's submission that the Appellant had difficult years, was in financial difficulty [REDACTED] in 2019, and that several factors, including the Covid pandemic, contributed to the Appellant's income tax return for the relevant years not being submitted until May 2023. Moreover, the Commissioner notes the Appellant's argument that the four-year rule does not apply to his circumstances as it *"applies to amended income tax returns and not original returns."*
23. 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).

24. 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.
25. 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 his income tax return on 25 May 2023, was regarded as a valid claim for the purposes of section 865(3) TCA 1997.
26. 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].
27. The Commissioner notes the Respondent's submission that correspondence dated 15 April 2024, refusing a refund of income tax paid for the relevant year issued to the Appellant, on foot of the income tax return being made by the Appellant. As the Appellant's claim for repayment relates to the tax year 2018, the Commissioner is satisfied that a valid claim for repayment must have been made on or before 31 December 2022 for the relevant year.
28. The Appellant filed his income tax return for the aforementioned year on 25 May 2023, and as set out above it was this date that established 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. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) TCA 1997, the claim for repayment in the amount of €7,127.44 for the relevant year, was disallowed.
29. The Commissioner notes the Appellant's argument that the four-year rule "*applies to amended income tax returns and not original returns*". The Commissioner is satisfied that the words in section 865(4) TCA 1997 are clear and their meaning self-evident, such that the words are capable of being interpreted having regard to their plain and ordinary

meaning. There is an abundance of jurisprudence to support this approach to the interpretation of tax legislation, in particular the judgment of Mr. Justice McDonald in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“*Perrigo*”) wherein he stated at paragraph 74 that:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd. v The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail....”

30. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other judgments. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*.
31. Section 865(4) TCA 1997 states that “....a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made..” the Commissioner is satisfied that this section relates to “a claim” for repayment and does not distinguish “a claim”, as posited by the Appellant. Moreover, 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.

32. 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

33. Section 865B TCA 1997 provides that, where a repayment of tax cannot be made to a person because a claim is lodged outside of the relevant time limit as provided for in section 865(4) TCA 1997, offset against any other tax liabilities of the person is prohibited. Section 865B TCA 1997 also confirms that there is no right of offset outside of that already provided for under the tax codes. Section 865B TCA 1997 provides that the rules apply to these taxes regardless of when the tax is or was paid.
34. Section 865B(4)(b) 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. Having regard to the facts of this appeal, the application of section 865B(4) TCA 1997 does not arise herein, as it was the Appellant who filed his tax returns on 25 May 2023, rather than any action of the Respondent.
35. Where a repayment of tax is claimed outside the relevant time limit, the Respondent cannot offset the tax involved against any other tax liability of the taxpayer as no repayment is due to the taxpayer.

Conclusion

36. As set out above, 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. The Commissioner determines that a repayment was not available to the Appellant in relation to income tax overpaid in respect of the relevant year, as a valid claim for repayment was not made within the four-year statutory period contained in section 865(4) TCA 1997.
37. Additionally, in accordance with section 865B(2) TCA 1997, the Commissioner has no option but to determine that the tax overpaid arising in respect of the relevant year, is not available for offset against any outstanding tax liabilities. Section 865B(2) TCA 1997 does not permit tax overpaid to be offset against tax liabilities, in circumstances where a repayment claim in respect of the tax overpaid would not be available.

¹ www.taxappeals.ie

Determination

38. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(4) TCA 1997.
39. 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.
40. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

Notification

41. 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.

Appeal

42. 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
23 May 2025