



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

189TACD2025

Between



Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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 by [REDACTED] (“the Appellant”) regarding the decision by the Revenue Commissioners (“the Respondent”) to refuse the Appellant’s application for repayment of an overpayment of Income Tax in the amount of €3,996.56 for the year 2018. It is this decision that the Appellant is appealing.
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing, the parties having previously given their consent.

Background

3. On 15 November 2024 the Appellant submitted his Income Tax return for the year 2018 to the Respondent declaring an overpayment of €3,996.56 for that year.

4. The Respondent refused the Appellant's claim for repayment of the overpayment of Income Tax on the grounds that the Appellant's Income Tax return for the year 2018 was made after the expiry of four (4) years from the end of the 2018 Income Tax Year.
5. On 30 December 2024 the Appellant submitted his Notice of Appeal to the Commission. An extract of the Notice of Appeal is set out below:

"This appeal relates to a refund in 2018. I was partially alerted to a refund in 2022. Communications in 2022 with my then employer [REDACTED] suggested that a refund was due. This was explained as a significant amount and the employer asked me to check with revenue if my tax credits were correct. But a rebalancing of credits with my spouse did not create any refund. This led me to believe there was no refund due for previous years. Looking at the official paperwork from revenue I see that in 2022 my then employer switched me to a [REDACTED] basis which I believe would have reversed any overpayment due to me at that time.

As I was on [REDACTED] and had not taxable income in 2018 a Form 11 was not filled until November 2024 and this revealed an overpayment of €3996.56.

As the 2022 alteration to my tax credits led me to believe there was no refund for 2018 or 2019 I was unaware of my overpayment until it came to light in November 2024. The reason for this overpayment I believe is related to [REDACTED] not ceasing my tax credits when they [REDACTED].

Is it possible to check if an over payment was alerted to my then employer in 2022?

As I now see that my then employer (2022) put me on a month 1 basis, which I was unaware of, and that this refund never got notified to me on PAYE, Is it possible to get this overpayment refunded now in 2024.

I trust that all the above is in order. I am not a tax expert and offer this explanation as my best understanding of what has occurred.in review

- 1. I was unaware my 2013-2016 employment was not ceased for tax credits*
- 2. I was unaware my 2019-2024 employer put me on a month 1 basis in 2022*
- 3. Amended tax credits were sent to my employer but I did not get that particular notice via My Account about the refund (2022).*

4. *When my credits were checked via a phone call with Revenue in 2022, I do not think that previous years were looked into."*

Legislation and Guidelines

6. The legislation relevant to this appeal is contained at section 865 of the TCA 1997 which is set out in the Appendix for ease of reference.

Submissions

The Appellant's submissions

7. An extract of the Appellant's Statement of Case is set out below:

"Communications in 2022 from Revenue with then employer [REDACTED] suggested that a refund was due. This was explained as a significant amount and the employer asked me to check with Revenue if my tax credits were correct. I contacted revenue and a rebalancing of credits with my spouse did not create any refund. This led me to believe there was no refund due for previous years.

As I was on a back to work scheme and had not taxable income in 2018 a Form 11 was filled in November 2024 and this revealed an overpayment of €3996.56 for 2018.

As the 2022 alteration to my tax credits led me to believe there was no refund for 2018 or 2019 I was unaware of my overpayment until it came to light in November 2024.

As this is more than 4 years since 2018 Revenue are not making the repayment of the overpayment. As there was an overpayment, and not communication with me, but with my then employer, I was not made aware of the facts of the overpayment. My attempts to correct the issue did not remedy the overpayment and I was not informed of this in 2022. Between mine and my spouse's taxes in 2018 we overpaid.

The core point I make is: that information was not provided to me as a PAYE taxpayer - it was supplied to my employer who did not inform me of the pending repayment they could not afford to refund through payroll. The employer asked me to contact Revenue. I did that. Credits on joint assessment were reconfigured and a new cert created. No overpayment was repaid. Lack of provision of information to me as the taxpayer led to me being unaware of the overpayment until 2024.

Is it possible to get this overpayment refunded now?

I attach the various certs and tax documents. .

As part of this appeal I am seeking information relating to tax alterations advised to my then employer [REDACTED] from Revenue.

Any contacts by me by phone with Revenue regarding my and my spouse's credits related to this appeal.

Any other documents related to this case that Revenue holds."

The Respondent's submissions

8. An extract of the Respondent's Statement of Case is set out below::

"The legislation covering this matter is Section 865, subsection 4 of the TCA 1997. 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.

Section 865, subsection 4 states;

"(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."

For the 2018 Income Tax return to be a valid return and any overpayment be available for refund or offset, it would have to be filed within 4 years of the end of the chargeable period i.e. on or before 31 December 2022.

As the Appellant filed their 2018 Income Tax return on 15 November 2024 and as this is clearly outside of the 4-year limit imposed by Section 865 of the Acts, Revenue are precluded from allowing refund or offset of the overpaid tax in the total amount of

€3,996.56.”

Material Facts

9. Having read the documentation submitted, the Appeal Commissioner (“the Commissioner”) makes the following findings of material facts:
 - 9.1. on 15 November 2024 the Appellant submitted his Income Tax return for the year 2018 to the Respondent declaring an overpayment of €3,996.56;
 - 9.2. the Respondent refused the Appellant’s claim for repayment of the overpayment on the grounds that the Appellant’s Income Tax return for the year 2018 was made after the expiry of four (4) years from the end of the 2018 Income Tax Year;
 - 9.3. on 30 December 2024 the Appellant submitted his Notice of Appeal to the Commission.

Analysis

10. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997. In this regard, the jurisdiction of a Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 (“*Lee*”) wherein Murray J. stated at paragraph 20:

“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation”.

11. The Commissioner refers further to *Lee*, wherein Murray, J. stated at paragraph 76:

“The jurisdiction of the Appeal Commissioners is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry.

Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid."

12. The Commissioner also refers to the judgment of *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

" Applying the rationale of the jurisprudence summarised and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions ..."

13. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, ("*Menolly*") wherein 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".

14. The Commissioner also refers to paragraph 12 of the case of *Menolly*, wherein Charleton, J. stated:

"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..."

15. The Commissioner refers to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, ("*Doorley*"), in which Kennedy, C.J. at page 766 stated:

“The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”

16. Further the Commissioner refers to *Doorley* at page 765 where Kennedy C.J, stated:

“The duty of the Court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms on the alleged subject of taxation”.

17. Further the Commissioner refers to *Doorley* in which Kennedy, C.J. at page 765 stated:

“For no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to acts of parliament so far as they can be applied without violating the proper character of taxing acts to which I have referred.”

18. The Commissioner has also had regard to the High Court judgment of *Coleman v Revenue Commissioners* [2014] IEHC 662, at paragraph 30 where Donnelly, J. stated:

“On the basis of the decision in Doorley, the Appeal Commissioner was obliged to give effect to the clear and express terms of the legislation in considering the artist’s exemption from income tax. The liability to income tax having been established, that exemption must be brought within the letter of the Act of 1997 and the Guidelines made thereunder as interpreted by the established canons of construction. There was no basis in law for adopting any other approach to the interpretation of the Act and the Statutes.”

19. All material submitted to the Commission has been assessed by the Commissioner before making this determination.
20. Section 865(2) of the TCA 1997 provides *inter alia* that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person.
21. Section 865(3) of the TCA 1997 provides *inter alia* that a repayment of tax is not due to the claimant unless a valid claim has been made to the Respondent.

22. Section 865(4)(c)(ii) 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 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.
23. The material facts of this appeal are that the Appellant submitted his return for the 2018 Income Tax year and his claim for repayment of the overpayment of Income Tax in the 2018 Income Tax year on 15 November 2024. This was after the expiry of four years from the end of the relevant chargeable period (2018) as provided for in section 865(4) of the TCA 1997.
24. The Commissioner has assessed the above provisions and finds that the legislation at section 865(4) of the TCA 1997 uses the word “*shall*” and accordingly it is stated that the application of the four year rule is mandatory and that there is no leeway and/or discretion as to its application.
25. The Commissioner having assessed the circumstances and the material facts of the appeal finds that the claim for repayment of the overpayment of Income Tax for the 2018 Income Tax year was made after the expiry of four years from the end of the 2018 Income Tax year. The Commissioner finds that further to the provisions of section 865(4) of the TCA 1997 the Respondent cannot make any repayment to the Appellant in respect of any overpayment of Income Tax for the 2018 Income Tax year.
26. The Commissioner has assessed all matters in this appeal and finds that for the reasons set out above that the Respondent was entitled to refuse the Appellant’s request for a repayment of Income Tax paid by him for the year 2018.
27. The Commissioner finds that she has no discretion to direct that repayments be made or credits be allocated to the Appellant where the claim for repayment was made after the expiry of four years from the end of the relevant taxable period as specified at section 865(4) of the TCA 1997.
28. The Commissioner refers to the provisions of section 949AL(1) of the TCA 1997 which provides:

In relation to an appeal against an appealable matter, other than—

(a) an assessment, or

(b) a matter referred to in section 949AK(3),

the Appeal Commissioners shall, if they consider that the decision, determination or

other matter, as the case may be, ought to be varied, determine that the decision, determination or other matter be varied, even if such variation is not to the advantage of the appellant; otherwise they shall determine that the decision, determination or other matter stand.

and the Commissioner finds that the decision by the Respondent to refuse the Appellant's claim for a repayment of the overpayment of Income Tax made by the Appellant for the 2018 Income Tax year shall stand.

29. The Commissioner acknowledges that the Appellant was within his rights to appeal the Respondent's decision and to have clarity on his legal rights.

Determination

30. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful. The Commissioner also finds further to the provisions of section 949AL(1) of the TCA 1997 that the decision of the Respondent to refuse the Appellant's request for repayment of the overpayment of income tax for the year 2018 shall stand.
31. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL(1) 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.

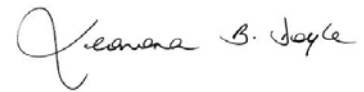
Notification

32. 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

33. 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 cursive script, reading "Leonora B. Doyle".

Leonora B. Doyle
Appeal Commissioner
26 May 2025

APPENDIX

Section 865 of the TCA 1997 - Repayment of tax

(1) (a) In this section and section 865A—

“Acts” means the Tax Acts, the Capital Gains Tax Acts, Part 4A, Part 18A, Part 18C, Part 18D, Part 22A and Part 22B and instruments made thereunder;

“chargeable period” has the meaning assigned to it by section 321;

“correlative adjustment” means an adjustment of profits under the terms of arrangements entered into by virtue of section 826(1);

“tax” means any income tax, corporation tax, capital gains tax, income levy, domicile levy, universal social charge, residential zoned land tax or vacant homes tax or IIR top-up tax, UTPR top-up tax or domestic top-up tax (each within the meaning of Part 4A) and includes—

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

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

(iii) 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

(iv) any amount paid on account of any such tax, levy or charge or paid in respect of any such tax, levy or charge;

“valid claim” shall be construed in accordance with paragraph (b).

(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 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, and

(iii) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.

(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.

(2A) Where a chargeable person (within the meaning of Part 41A) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due it shall not constitute a valid claim for the purposes of subsection (3) unless the return and self assessment for the period to which the claim relates is amended, in accordance with section 959V, to correct the error or mistake.

(2B) Where a chargeable person (within the meaning of section 950) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due and the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013 it shall not constitute a valid claim for the purposes of subsection (3) unless the person's return for the accounting period or year of assessment, as the case may be, to which the claim relates is amended in accordance

with section 959V to correct the error or mistake, and for this purpose section 959V shall apply to such an amendment as if—

(a) subsections (2) and (4) of that section were deleted,

(b) references in that section to “return and a self assessment”, “return and the self assessment” and “return or self assessment” were references to “return”, and

(c) references in that section to section 959Z were references to section 956.

(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.

(5) Where a person would, on due claim, be entitled to a repayment of tax for any chargeable period under any provision of the Acts other than this section, and –

(a) that provision provides for a shorter period, within which the claim for repayment is to be made, which ends before the relevant period referred to in subsection (4), then this section shall apply as if that shorter period were the period referred to in subsection (4), and

(b) that provision provides for a longer period, within which the claim for repayment is to be made, which ends after the relevant period referred to in subsection (4), then that provision shall apply as if the longer period were the period referred to in subsection (4).

(6) Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not –

(a) repay an amount of tax paid to them, or

(b) pay interest in respect of an amount of tax paid to them.

(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.

(8) Where the Revenue Commissioners make a repayment of tax referred to in subsection (2), they may if they so determine repay any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution.

(9) Nothing in this section shall prevent the Revenue Commissioners from examining a claim subsequent to any repayment having been made and—

(a) making or amending an assessment, as the case may be, under—

(i) Chapter 5 of Part 41A,

(ii) section 954 or 955, as appropriate, where the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013, or

(iii) section 960Q,

or

(b)making a determination under section 960Q, in the case of persons who are not chargeable persons.

(10)(a)In this subsection—

“successor company” has the meaning assigned to it by section 638A(1);

“transferor company” has the meaning assigned to it by section 638A(1).

(b)Where a transferor company is a person to whom subsection (2) applies, this section shall apply as if any thing done pursuant to it or required to be done pursuant to it by or for such a person or a chargeable person, as the case may be, were, as appropriate—

(i)a thing done pursuant to it, or

(ii)a thing required to be done pursuant to it,

by or for a successor company.

(c)Where there is more than one successor company, any repayment of tax to be made under this section shall, as necessary, be apportioned on a just and reasonable basis.

(d)The amount of any repayment of tax or part repayment of tax to be made to a successor company or successor companies shall not exceed the total amount that would have been made to a transferor company but for the application of this subsection.