



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

193TACD2025

Between



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 and Universal Social Charge (“USC”), in accordance with the provisions of section 865 TCA 1997, in respect of the years of assessment [REDACTED] inclusive (“the relevant years”). The total amount claimed was €58,450.
2. On 9 December 2024, the Appellant duly appealed to the Commission by submitting a Notice of Appeal and the decision of the Respondent to refuse his claim for a repayment of tax paid for the relevant years. On 16 January 2025, 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 27 January 2025, the Respondent submitted its Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.
3. By agreement with the parties, this appeal is determined without a hearing, in accordance with the provisions of section 949U TCA 1997.

Background

4. Since [REDACTED] the Appellant has been tax resident in the United Kingdom (“UK”). Prior to that, the Appellant was tax resident in the State.
5. The Appellant was in receipt of a pension from [REDACTED]. Both Income Tax and USC was applied to the Appellant’s pension payments for the relevant years.
6. On 2 December 2024, the Agent for the Appellant wrote to the Respondent enclosing a Form IC2, details of the Appellant’s pension, including calculations regarding Income Tax and USC suffered by the Appellant between [REDACTED] inclusive, and a certificate of residency from HM Revenue and Customs (“HMRC”) certifying that the Appellant was a UK resident from [REDACTED]. The Appellant claimed a refund of tax which he stated was incorrectly paid on his pension income for the relevant years.
7. The Respondent submitted that its records indicated that the amount of Income Tax and USC suffered by the Appellant for the relevant years was as follows:

Year	Tax	USC
[REDACTED]	€10,720.52	€1,225.86

■■■■	€10,779.51	€1,016.18
■■■■	€10,775.80	€806.54
■■■■	€10,919.47	€657.12
■■■■	€10,891.94	€657.23
Total	€54,087.24	€4,362.93

8. On 2 December 2024, having considered the Appellant's claim, the Respondent refused the Appellant's claim for a repayment of tax paid for the relevant years on the basis that the claim was made outside of the four-year time limit provided by section 865(4) TCA 1997.
9. Thereafter, on 9 December 2024, the Appellant duly appealed to the Commission.

Legislation and Guidelines

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

11. 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.*

Submissions

Appellant's submissions

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] is currently 86 years old and is retired. He is a UK domiciled individual and was Irish tax resident up until the [REDACTED] tax year, after which he returned to live permanently in the UK.

Since his retirement, [the Appellant] has been receiving income from an occupational pension scheme from which Irish PAYE taxes have been deducted at source.

Under Article 17 of the UK/Ireland Double Tax Treaty, our client's pension income should have been taxed in the UK from the [REDACTED] tax year onwards, which is when he became UK tax resident.

We are therefore seeking to reclaim the Irish PAYE taxes that have been incorrectly deducted at source from [REDACTED] (inclusive). We have submitted a reclaim for the years [REDACTED] which are within Revenue's normal four-year time limit for claiming refunds. We attach a copy of our correspondence from Revenue wherein they have directed us to make a Tax Appeal. We do not have notices of assessment for these years that we are claiming for.

Our client requires this refund so that he can discharge his UK tax liabilities on this income. HMRC are seeking to raise assessments on our client's pension income for the years [REDACTED] - the total tax liability for all years is £59,522. We attach a copy of our correspondence from HMRC.

[REDACTED]
[REDACTED]
[REDACTED]

If our client's appeal for a refund is unsuccessful, he will ultimately have to pay tax on the same income in both the UK and Ireland. Considering our client's circumstances we believe this would be extremely unfair. This is a distressing time for our client and his family, and we want to ensure he is treated in the fairest possible way. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

.....

HMRC have raised assessments in the UK for the income tax due on [the Appellant's] Pension - the total tax liability for all years is £59,522 plus interest (which is accruing daily). We attach a copy of the correspondence from HMRC (Appendix 1)

[The Appellant] is seeking to reclaim the Irish PAYE taxes that have been incorrectly deducted at source from [REDACTED]. We understand Revenue have accepted our reclaim for [REDACTED] as this is within the statutory four-year time limit for claiming refunds, and therefore these years are not the subject of this appeal.

*Revenue have however refused our claim for a refund of tax deducted in [REDACTED]
[REDACTED]. We attach a copy of our correspondence with Revenue as evidence (Appendix 2). The total amount of tax that we are seeking to reclaim is €58,450 (a summary is included in Appendix 3).*

.....

Given [the Appellant's] circumstances; [REDACTED] and the fact that Irish taxes should never have been paid on this income in the first instance, we believe it would be grossly unfair for the Revenue to refuse a refund of historic taxes paid to them incorrectly. This is a distressing time for our client and his family, and we want to ensure he is treated fairly."

Respondent's submissions

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

"The Appellant is a UK resident individual, aged 87 who has been UK tax resident since [REDACTED], and prior to that time was resident in the State. The Appellant was in receipt of a pension from [REDACTED] and Income Tax and the Universal Social Charge (USC) was operated on these payments.

All pensions are taxable sources of income in Ireland. However, if a taxpayer is tax resident in a country that has a Double Taxation Agreement with Ireland, then the taxpayer may be able to claim an exemption or repayment of Irish tax on the Irish pension. Article 17 of the UK/Ireland Double Taxation Agreement pertaining to Pensions states: Subject to the provisions of paragraphs (1) and (2) of Article 18, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State. As such, where the taxpayer is resident in the UK and in receipt of an Irish pension, the pension is taxable in the UK and an exemption to Irish tax can be sought. In order to obtain same, a Form IC2 (Tax Repayment/Exemption Claim Form for Pension/Annuities) must be completed and submitted to Revenue.

On 2nd December 2024, the agent for the Appellant submitted a letter to Revenue with a Form IC2 enclosed, along with details of the Appellant's pension from [REDACTED] including calculations regarding Income Tax, namely Pay As You Earn (PAYE) and USC suffered between [REDACTED] inclusive and a Certificate of residency from HMRC certifying that the Appellant was a resident of the UK in accordance with Article 4 of the Convention in force between the UK and Ireland from [REDACTED]. Therein it was stated: "[the Appellant] wishes to reclaim the Irish tax he has incorrectly paid on his pension income for the tax years [REDACTED]. Please note that we have already submitted a reclaim for years [REDACTED].

[The Appellant] has been resident in the UK from [REDACTED]. As per the UK-ROI double tax agreement, his pension income was therefore subject to UK tax from the beginning of the [REDACTED] tax year onwards.

Since this tax should never have been paid to the Revenue in the first instance, we would kindly request that it is refunded. This refund is very important to our client as HMRC are raising assessments for the UK tax due on this pension income. If [the Appellant] is not refunded this tax, he will be left in the very unfair position of having to pay tax in both jurisdictions on the same income". (See Appendix 1).

Revenue records indicate that the amount of tax and USC suffered between [REDACTED] inclusive is as per the below:

Year	Tax	USC
[REDACTED]	€10,720.52	€1,225.86

██████	€10,779.51	€1,016.18
██████	€10,775.80	€806.54
██████	€10,919.47	€657.12
██████	€10,891.94	€657.23
Total	€54,087.24	€4,362.93

As this is outside the four-year limit imposed by Section 865, Revenue refused the associated refunds. It is this decision that the Appellant is appealing.

In their Notice of Appeal received by TAC on 9th December 2024, the agent for the Appellant stated that their client requires this refund so that he can discharge his UK tax liabilities on this income as HMRC are seeking to raise assessments on their client's pension income for the years 5 April 2016 to 2022 – the total tax liability for all years is £59,522.

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.

.....”

Material Facts

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

- 13.1. ██████, the Appellant has been tax resident in the United Kingdom (“UK”).
- 13.2. ██████, the Appellant was tax resident in the State.
- 13.3. The Appellant was in receipt of a pension from ██████
- 13.4. Both Income Tax and USC was applied to the Appellant's pension payments for the relevant years.
- 13.5. On 2 December 2024, the Agent for the Appellant wrote to the Respondent enclosing a Form IC2, details of the Appellant's pension, including calculations regarding Income Tax and USC suffered between ██████ inclusive, and

a certificate of residency from HM Revenue and Customs (“HMRC”) certifying that the Appellant was a UK resident from [REDACTED]. The Appellant claimed a refund of tax which he stated was incorrectly paid on his pension income for the relevant years.

- 13.6. The Respondent submitted that its records indicated that the amount of Income Tax and USC suffered by the Appellant for the relevant years was as follows:

Year	Tax	USC
[REDACTED]	€10,720.52	€1,225.86
[REDACTED]	€10,779.51	€1,016.18
[REDACTED]	€10,775.80	€806.54
[REDACTED]	€10,919.47	€657.12
[REDACTED]	€10,891.94	€657.23
Total	€54,087.24	€4,362.93

- 13.7. On 2 December 2012, having considered the Appellant’s claim, the Respondent refused the Appellant’s claim for a repayment of tax paid by the Appellant for the relevant years, on the basis that the claim was made outside of the four-year time limit provided by section 865(4) TCA 1997.

- 13.8. On 9 December 2024, the Appellant duly appealed to the Commission.

Analysis

The burden of proof

14. 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”.

15. The Commissioner also considers it useful herein, to set out paragraph 12 of the judgment of Charleton 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..."

16. The Appellant's appeal relates to a refusal by the Respondent to permit a claim for a repayment of tax pursuant to section 865 TCA 1997, made by the Appellant in respect of the relevant years, as the claim was made outside of the four-year time limit prescribed under section 865(4) TCA 1997.

Section 865 TCA 1997

17. The Appellant has been denied a repayment of tax paid by the Respondent, on the grounds that he did not meet the criteria as outlined in section 865(4) TCA 1997, such that a claim for a repayment of tax for the chargeable period was not made within four years after the end of the chargeable period.
18. The Commissioner notes that the Appellant's Agent submitted that the Appellant was seeking to claim a repayment of Irish tax that have been incorrectly deducted at source since [REDACTED], but that the Respondent refused the claim for a repayment of tax deducted, which the Appellant's Agent submitted was in the amount of €58,450. The Commissioner notes that the Appellant received a repayment of tax paid for the years [REDACTED] inclusive. Moreover, the Commissioner notes the Appellant's difficult personal health circumstances and the submission that it would be *"grossly unfair for the Revenue to refuse a refund of historic taxes paid to them incorrectly. This is a distressing time for our client and his family, and we want to ensure he is treated fairly"*.
19. 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).
20. 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.
21. 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 claim was regarded as a valid claim for the purposes of section 865(3) TCA 1997.

22. 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].
23. The Commissioner notes the Respondent's submission that correspondence dated 2 December 2024, issued to the Appellant refusing the Appellant's claim for a repayment of tax paid for the relevant years. As the Appellant's claim for a repayment of tax related to the tax years [REDACTED], the Commissioner is satisfied that a valid claim for a repayment of tax must have been made on or before [REDACTED] [REDACTED] for the relevant years.
24. Having regard to those dates, the Commissioner is satisfied that the Appellant's claim for a repayment of tax falls outside of the 4-year time limit prescribed in section 865(4) TCA 1997. As the claim for a repayment of tax was made by the Appellant outside the four-year period specified in section 865(4) TCA 1997, the claim for a repayment of tax in the amount of €58,450 for the relevant years, was disallowed.
25. The Commissioner is satisfied that 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 a repayment be made, or credits allocated to the Appellant where the claim for a repayment of tax falls 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. Furthermore, the Commissioner notes the Appellant's references to unfairness and the Appellant's submission that it would be "*grossly unfair for the Revenue to refuse a refund of historic taxes paid to them incorrectly.* However, the Commissioner has no supervisory

¹ www.taxappeals.ie

jurisdiction over the Respondent and does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent. The Commissioner's jurisdiction was set out clearly in the decision of *Lee v The Revenue Commissioners* [2021] IECA 18, where in the Court of Appeal, Mr Justice Murray stated that:

"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... 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.

....."

28. The Commissioner has noted the personal circumstances of the Appellant, in particular his current health. However, the Commissioner has no discretion in terms of the legislative provisions and must apply the law as it stands.

Conclusion

29. 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.
30. The Commissioner determines that a repayment of tax was not available to the Appellant in relation to tax overpaid in respect of the relevant years, as a valid claim for repayment was not made within the four-year statutory period contained in section 865(4) TCA 1997.

Determination

31. 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.
32. 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.

33. 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

34. 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

35. 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
4 June 2025