



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

200TACD2025



**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**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 a claim 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 22 February 2025 in respect of the tax year 2019.
2. The amount of tax at issue is €840.98.

## Background

3. [REDACTED] (hereinafter the "Appellant") is a taxpayer who on 22 February 2025 filed a tax return for the year 2019 with the Respondent. The return indicated that the Appellant had overpaid income tax for 2019 in the amount of €840.98.
4. By way of a letter dated 4 March 2025, the Respondent disallowed repayment of the overpaid tax for 2019 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 year 2019 by way of a Notice of Appeal which was submitted to the Commission on 24 March 2025.
6. On 12 May 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 Grounds of Appeal in their Notice of Appeal:

*“I worked as an employee and I was looking for self-employed work to increase my income. I couldn’t find any and I didn’t close the year off as self-employed because I didn’t know how to close it.*

*I wasn’t familiar with the ROS application.”*

9. The Appellant submitted the following in section 3 of their Statement of Case entitled “Outline of Relevant Facts”:

#### *“Background*

- The appellant is a self-employed individual operating in [insert type of business].[sic]*
- The appellant filed their Form 11 for the 2019 tax year on 20 February 2025.*
- A claim for repayment of overpaid taxes for the 2019 tax year was included in this filing.*
- Revenue refused the claim on the grounds that it was made outside the statutory four-year time limit as set out in Section 865(4) of the Taxes Consolidation Act 1997.*

#### *Grounds for Appeal*

- The appellant acknowledges that Section 865(4) of the Taxes Consolidation Act 1997 imposes a strict four-year time limit for repayment claims.*
- However, the appellant contends that the delay in filing the Form 11 for 2019 was due to exceptional circumstances, including:*

- Lack of awareness of the four-year time limit for tax repayment claims.*
- Significant disruptions caused by the COVID-19 pandemic, which impacted the appellant’s ability to focus on tax compliance and filing obligations.*

#### *Extenuating Circumstances*

*•The appellant submits that the COVID-19 pandemic created unprecedented challenges, including:*

*•Business disruptions and financial uncertainty, which diverted attention from tax compliance.*

*•Limited access to professional tax advice during the pandemic period.*

*•The appellant also notes that they were unaware of the strict four-year time limit for repayment claims and acted promptly to file the Form 11 for 2019 as soon as they became aware of their obligations.”*

10. The Appellant submitted the following in section 4 of their Statement of Case entitled “Statutory Provisions”:

*“Legal Arguments*

*•The appellant understands that Section 865(4) of the Taxes Consolidation Act 1997 uses the word "shall," indicating that the four-year time limit is mandatory and leaves no discretion for Revenue or the Tax Appeals Commission to allow claims made outside this period.*

*•However, the appellant respectfully submits that the exceptional circumstances of the COVID-19 pandemic and the lack of awareness of the time limit warrant consideration of the equitable factors in this case.*

*Request for Consideration*

*•The appellant respectfully requests that the Tax Appeals Commission review the case and consider whether the refusal of the claim was appropriate in light of the exceptional circumstances outlined above.*

*•The appellant also requests that the Commission take into account the appellant’s good faith efforts to comply with their tax obligations once they became aware of the requirements.*

*•The appellant appreciates the opportunity to present this case and is willing to provide any additional information or documentation that may assist the Commission in its deliberations.”*

### *Respondent's submissions*

11. 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.
12. As the Appellant's claim for the repayment of income tax for the tax year 2019 was submitted on 22 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**

13. The following material fact is not at issue in this appeal and the Commissioner accepts the following as a material fact:
  - 13.1. The Appellant submitted a tax return for the tax year 2019 to the Respondent on 22 February 2025 which indicated the Appellant had overpaid income tax for 2019 in the amount of €840.98.

### **Analysis**

14. 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 (hereinafter "*Menolly Homes*"), 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."*

15. The Commissioner has considered the submissions made and documentation submitted on behalf of both parties in this appeal.
16. 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.

17. 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.
18. 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.
19. 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].
20. A repayment of tax was sought by the Appellant for the year 2019 on the basis that the amount of tax of €840.98 for 2019 was not due.
21. 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 amount of €840.98 for the tax year 2019 to be due, the Respondent must have received a valid claim.
22. 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 22 February 2025 following the delivery of the relevant claim to repayment by the Appellant by way of the submission of a tax return. This was in excess of 4 years from the end of the tax year 2019.
23. 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 claim for repayment of tax had been submitted by the Appellant and the claim for repayment the amount of €840.98 for the tax year 2019 was disallowed by the Respondent.
24. 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.



25. 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.
26. 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.<sup>1</sup>
27. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refund of income tax in the amount of €840.98 for the tax year 2019 was payable by the Respondent.
28. The Commissioner further notes that in the Appellant's Statement of Case it is submitted that *"...the exceptional circumstances of the COVID-19 pandemic and the lack of awareness of the time limit warrant consideration of the equitable factors in this case."*
29. In *Cape Brandy Syndicate v Inland Revenue Commissioners* [1921] 1 K.B. 64 at page 71, Rowlatt J set out principles for interpreting taxation legislation on the basis that the statute must clearly impose the obligation.
- "... in a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."* (emphasis added)
30. This was reiterated by Charleton J in *Menolly Homes* when he stated at paragraph 12 of his judgment:
- "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..."*
31. The jurisdiction of an Appeal Commissioner is set out at section 6 of the Finance (Tax Appeals) Act 2015.
32. As a result of the above, in considering this appeal, the Commissioner is restricted to considering and interpreting the provisions of section 865 of the TCA 1997 as they apply to the facts of the Appellant's appeal. The Commissioner is not permitted to allow considerations of equity to influence her determination.

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

## Determination

33. 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 decision of the Respondent of 4 March 2025 disallowing repayments of the overpaid tax for the year 2019 shall stand.
34. 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.
35. 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.

## Notification

36. 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

37. 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  
10 June 2025