



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

223TACD2025

Between

[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 Employer’s PAYE/PRSI/USC, in accordance with the provisions of section 865 TCA 1997, in respect of the year of assessment 2018 (“the relevant year”). The total amount claimed was €31,952.34.
2. On 5 February 2025, 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 year. On 30 May 2025, in accordance with section 949Q TCA 1997, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal. On 28 May 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. The P35 return filing deadline for the year 2018, was 15 February 2019. As the Appellant failed to file a P35 return for the year 2018, on 12 March 2019, the Respondent raised and issued an annual P35 estimate in the amount of €70,000.
5. Prior to this deadline, the Respondent received two cheque payments from the Appellant, totalling the amount of €295.30. As payments totalling the amount of €295.30 had been received from the Appellant, the liability remaining to be paid was in the amount of €69,704.70.
6. The Respondent issued a final demand for the outstanding liability and subsequently, on 7 May 2019, the Respondent initiated enforcement action. This resulted in the following payments being received from the Appellant and updated to the Respondent’s records:
 - €15,742.41 on 4 September 2019;
 - €31,484.82 on 25 November 2019;
 - €15,742.41 on 11 December 2019;
 - €6,735.06 on 28 January 2020;

- Interest of €1,007.35 on 28 January 2020.
7. On 24 September 2024, the Appellant filed the outstanding P35 return for the relevant year, which disclosed a total liability in the amount of €38,047.66 for the relevant year.
 8. The liability declared by the Appellant was less than the payments received by the Respondent, which resulted in a credit in the amount of €31,952.34. The credit amount was claimed by the Appellant as an overpayment when the Appellant's return was filed.
 9. On 7 October 2024, having considered the Appellant's claim, the Respondent refused the Appellant's claim for a repayment of tax paid for the relevant year on the basis that the claim was made outside of the four-year time limit provided by section 865(4) TCA 1997.
 10. Thereafter, on 5 February 2025, 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.

.....

- (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:-

"I wish to appeal the disallowed overpayment/ credit for 2018 of Paye & prsi taxes circa €32,000. I believe the deadline for claiming any overpayment/credit for 2018 was 31/12/2022. The Paye & Prsi amounts that were issued and collected by revenue by attachment were overestimated by 50% and only corrected in September 2024 as noted by revenue;

"As per the attached Disallowed Credit letter, which issued to you on 07/10/2024, a claim for repayment of tax shall not be allowed unless it is made within 4 years after the end of the chargeable period to which it relates. The chargeable period, in this instance is 01/01/2018 -31/12/2018 with an associated deadline within which to claim of 31/12/2022. As your claim for repayment of tax was not made until 24/09/2024, Revenue is precluded from repaying or offsetting the tax. Please note the legislative provision as outlined in the letter. The payments received and allocated to the 2018 P35 period were based on an original P35 Estimate of €69,704.70. This estimate, which was raised as the return had not been filed, was paid in full by 28/01/2020. The P35 return, that was overdue since 15/02/2019, was received and updated to Revenue records on 24/09/2024. This return and associated declared liability has therefore resulted in a credit of €31,952.34. I note your reference to payments made towards arrears of tax however the legislation pertaining to Employer PAYE credits claimed after the specified 4-year timeframe, does not permit refund or offset."

I am currently seeking to enter a phased payment arrangement with revenue in order to bring my taxes up to date, which are currently €132,000 in arrears. Revenue advised me that all outstanding returns needed to be submitted in order to avail of a phased payment arrangement. In doing so, the overpayment for 2018 was identified in October 2024. I ask the question why the overpayment was not credited against my taxes as

revenue insisted that all returns be made that were over 4 years and interest was then charged on all amounts? I cannot afford for revenue to simply take €32,000 and not allocate the amount against taxes owed! The original amount overdue was circa €350,000 which i have paid, exhausting my own personal resources to meet revenue demands over the last 2 years. The amount of €32,000 is paramount for me to enter into a phased payment arrangement with revenue. As a SME, I have been greatly affected by the ending of debt warehousing in 2024, increased costs of doing business and limited working capital supports. As with other SMEs, i am facing the real prospect of insolvency in 2025! I trust you will look favorably on the appeal and look forward to your considered reply

.....

The Appellant submits that the Revenue Commissioners refusal to process a repayment claim for the chargeable period under Section 865(4) of the Tax Consolidation Act 1997 results in unjust enrichment, rendering their decision fundamentally unfair.

The Appellant was unable to file the claim within the four-year limitation period due to exceptional personal circumstances, [REDACTED]. These circumstances caused significant disruption [REDACTED] preventing timely submission of the return.

The retention of the overpaid tax, constitutes an unjust benefit to the State at the Appellant's expense, with no lawful basis for Revenue to retain the funds. Denying the claim solely on the time bar, without regard to the Appellant's hardship or the equities of the case, undermines fairness and proportionality in tax administration.

The Appellant respectfully requests that the Commission allow the repayment claim, as permitting Revenue to retain funds to which it is not entitled perpetuates an injustice.

Alternatively, the Appellant seeks a determination that Section 865(4) should not apply where unjust enrichment and exceptional circumstances are evident."

Respondent's submissions

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

“This matter relates to a credit in Employer PAYE/PRSI/USC for the tax year ended the 31st of December 2018. Revenue has refused to repay the credit, as the P35 return, giving rise to and claiming the credit, was filed on the 24th of September 2024. This is outside the statutory deadline of the 31st of December 2022 by which such a claim must be made.

2.1 Employer PAYE/PRSI/USC for the tax year ended the 31st of December 2018

The P35 return filing deadline for the year 2018, was the 15th of February 2019. Prior to this deadline, two cheque payments, totalling €295.30, were received from the Appellant. The details of these payments were:

- *€15.30 on the 31st of July 2018*
- *€280.00 on the 16th of January 2019.*

As the Appellant had failed to file a P35 return for the year 2018, Revenue raised and issued an annual P35 estimate for €70,000 on the 12th of March 2019.

As payments totalling €295.30 had been received from the Appellant, the liability remaining to be paid was €69,704.70.

The Appellant did not engage and remained in default of his statutory obligations to file returns and pay the outstanding liability.

Revenue issued a final demand for the outstanding liability and subsequently initiated enforcement action on the 7th of May 2019. This resulted in the following payments being received and updated to Revenue records:

- *€15,742.41 on the 4th of September 2019*
- *€31,484.82 on the 25th of November 2019*
- *€15,742.41 on the 11th of December 2019*
- *€6,735.06 on the 28th of January 2020*
- *Interest of €1,007.35 on the 28th of January 2020*

However, the Appellant did not file the outstanding P35 return for the year 2018 until the 24th of September 2024. The Appellant filed this return as he wished to avail of the debt warehouse scheme. This scheme was a concessionary scheme which allowed a taxpayer to defer payment of some eligible tax liabilities and to the benefit of 0%

interest on these deferred liabilities. However, to qualify for inclusion in the scheme a taxpayer was obliged to file all outstanding tax returns.

The P35 return for the year ended the 31st of December 2018 filed on the 24th of September 2024 disclosed a total liability of €38,047.66. The liability declared was less than the payments received which resulted in a credit of €31,952.34. This credit was claimed as an overpayment when the return was filed.

Revenue issued a 'Late Claim for Repayment of Tax' letter to the appellant on the 7th of October 2024. This letter outlined that in accordance with Section 865 (4) Taxes Consolidation Act 1997, a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within four years after the end of the chargeable period"

Material Facts

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

- 14.1. The P35 return filing deadline for the year 2018, was 15 February 2019.
- 14.2. Prior to this deadline, the Respondent received two cheque payments from the Appellant, totalling the amount of €295.30.
- 14.3. On 12 March 2019, the Respondent raised and issued an annual P35 estimate in the amount of €70,000.
- 14.4. As payments totalling the amount of €295.30 had been received from the Appellant, the liability remaining to be paid was in the amount of €69,704.70.
- 14.5. The Respondent issued a final demand for the outstanding liability and subsequently, on 7 May 2019, the Respondent initiated enforcement action.
- 14.6. This resulted in the following payments being received from the Appellant and updated to the Respondent's records:
 - €15,742.41 on 4 September 2019;
 - €31,484.82 on 25 November 2019;
 - €15,742.41 on 11 December 2019;
 - €6,735.06 on 28 January 2020;
 - Interest of €1,007.35 on 28 January 2020.

- 14.7. On 24 September 2024, the Appellant filed the outstanding P35 return for the relevant year, which disclosed a total liability in the amount of €38,047.66 for the relevant year.
- 14.8. The liability declared by the Appellant was less than the payments received by the Respondent, which resulted in a credit in the amount of €31,952.34.
- 14.9. The credit amount was claimed by the Appellant as an overpayment when the Appellant's return was filed.
- 14.10. On 7 October 2024, having considered the Appellant's claim, the Respondent refused the Appellant's claim for a repayment of tax paid for the relevant year on the basis that the claim was made outside of the four-year time limit provided by section 865(4) TCA 1997.
- 14.11. On 5 February 2025, the Appellant appealed to the Commission.

Analysis

The burden of proof

15. 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".

16. 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..."

17. 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

18. The Appellant has been denied by the Respondent a repayment of tax paid, 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.
19. The Commissioner notes that the Appellant submitted that he was unable to file his P35 return for the relevant year within the limitation period due to exceptional personal circumstances, namely [REDACTED]. Moreover, the Commissioner notes that the Appellant submitted that this resulted in significant disruption, [REDACTED] preventing the timely submission of the P35 return.
20. 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).
21. 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.
22. 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 outstanding P35 return on 24 September 2024 for the relevant year, was regarded as a valid claim for the purposes of section 865(3) TCA 1997.
23. 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].

24. The Commissioner notes the Respondent’s submission that correspondence dated 7 October 2024, issued to the Appellant refusing the Appellant’s claim for a repayment of tax paid for the relevant year. As the Appellant’s claim for a repayment of tax related to the tax year 2018, the Commissioner is satisfied that a valid claim for a repayment of tax must have been made on or before 31 December 2022 for the relevant year. The Commissioner has found as a material fact in this appeal that a valid claim was not made until 24 September 2024, when the Appellant filed the P35 return.
25. 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 €31,952.34 for the relevant year, was disallowed.
26. 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.
27. 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.
28. Furthermore, the Commissioner notes the Appellant’s references to unfairness and the Appellant’s submission that the Respondent’s decision “*results in unjust enrichment, rendering their decision fundamentally unfair*” and that “*[s]ection 865(4) should not apply where unjust enrichment and exceptional circumstances are evident*”. As stated, the wording of section 865(4) TCA 1997 does not provide for extenuating circumstances in which the four-year rule might be mitigated. Moreover, the Commissioner has no supervisory 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*

¹ www.taxappeals.ie

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.

.....”

29. The Commissioner has noted the personal circumstances as outlined by the Appellant. However, the Commissioner has no discretion in terms of the legislative provisions and must apply the law as it stands.

Conclusion

30. 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.
31. The Commissioner determines that a repayment of tax was not available to the Appellant in relation to 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.

Determination

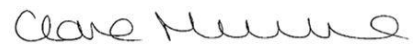
32. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(4) TCA 1997.
33. The Commissioner appreciates this decision will be disappointing 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.
34. 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

35. 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

36. 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
8 August 2025