



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

63TACD2025

Between



**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## **Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) under sections 865(7) and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of tax for the tax years 2017, 2018 and 2019 on the ground that the Appellant’s claim was made outside the statutory timeframe.
2. On 11 December 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

## **Background**

3. The Respondent submitted that in 2024, the Appellant submitted income tax returns for the tax years 2020, 2021, 2022 and 2023 and received repayments of tax in respect of those tax years. The Appellant then sought to claim repayments of tax in respect of the tax years 2017, 2018 and 2019.
4. On 10 September 2024, the Respondent informed the Appellant that it was set by law that only the last four years could be reviewed for tax purposes. On 21 September 2024, the Respondent informed the Appellant that the Appellant could only claim repayments within the last four years and years prior to 2020 were statute-barred.
5. On 8 October 2024, the Appellant submitted a Notice of Appeal to the Commission, which stated that the date of the decision under appeal was 21 September 2024. The Appellant enclosed a copy of correspondence from the Respondent dated 10 and 21 September 2024. On 18 December 2024, the Respondent sent a written submission to the Commission and enclosed additional documentation: tax credit certificates for the Appellant for the tax years 2017, 2018 and 2019; a previous determination by the Commission; and a copy of section 865 of the TCA 1997. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

## **Legislation and Guidelines**

6. The legislation relevant to this appeal is as follows:
7. Section 865 of the TCA 1997 provides (among other things):

*“(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.*

*...*

*(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.”*

## **Submissions**

### *Appellant*

8. In her Notice of Appeal, the Appellant submitted:

“  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] I received a refund of €2,928.01 on 24/3/2017 and considered my tax affairs to now be in order. Revenue wrote to me 12/07/2024 resulting in refunds to

me for overpayments in the years 2020, 2021, 2022, 2023 and to date for 2024. However, this same issue also covers the years 2017, 2018 and 2019 [REDACTED]

I appealed the decision with revenue and received replied attached.

I would be very grateful for any assistance in recovering the amounts owing for these years having already received refunds for 2016 and 2020 to date, but not 2017 - 2019 inclusive, yet they arose from the one issue [REDACTED]. I was unable to fill in the amounts at Assessment/Decision 1, 2 and 3 above as I cannot access MyGovID for these years as they are archived but estimate that is in the amount of €5,000 for the years in question.”

#### *Respondent*

9. In its Statement of Case, the Respondent submitted (among other things):

*“In this case, the facts are clear, namely that the Appellant did not submit a valid claim for tax relief for years 2017, 2018 and 2019 until outside of the 4-year statutory time period.*

*Prior to the beginning of tax years 2017, 2018 and 2019, the Respondent issued the Appellant with a Tax Credit Certificate which confirmed their tax credit and rate band allocations for each year. For the abovementioned years, the rate band of the Appellant was assigned in full to their payments received from [REDACTED]. As a result, the Appellant was taxed at the 40% higher rate for their income received from the Paymaster General.*

*The Appellant submitted an income tax return in respect of tax year 2020 on 12 August 2024 and the Respondent issued a Statement of Liability for this period on 13 August 2024 confirming a refund due to the Appellant of €1,618.65. The Respondent would note that the Appellant subsequently completed and submitted income tax returns for years 2021, 2022 and 2023 and has received refunds due to them for those periods also.*

*Regarding the years under appeal, the Appellant first contacted the Respondent concerning their record in relation to this matter on 21 August 2024. Following their call to the PAYE Helpline, the Appellant submitted correspondence on the same date and sought to claim refunds due to them for the periods 2017, 2018 and 2019.*

*In this instance, the Respondent communicated to the Appellant that it was unable to process any claim for years 2017, 2018 and 2019 in line with the legislation outlined under Section 865(4) TCA 1997."*

### **Material Facts**

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

- 10.1. In 2024, the Appellant sought to claim a repayment of tax for the tax years 2017, 2018 and 2019.
- 10.2. On 21 September 2024, the Respondent refused the Appellant's claim on the ground that the Appellant's claim was made outside the statutory time limit.
- 10.3. On 8 October 2024, the Appellant submitted a Notice of Appeal to the Commission.

### **Analysis**

11. This appeal relates to the Respondent's refusal of the Appellant's claim for a repayment of tax for the tax years 2017, 2018 and 2019. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to refuse a claim for repayment of tax. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

*"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".*

### **Section 865 TCA 1997**

12. Section 865(2) of the 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. However, 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).

13. In this appeal, the relevant tax years were 2017, 2018 and 2019. Therefore, the claim for a repayment of tax must have been made on or before 31 December 2021, 31 December

2022 and 31 December 2023 respectively. The Appellant has not disputed that she sought to claim a repayment of tax for the tax years 2017, 2018 and 2019 in 2024 and the Commissioner has found this to be a material fact. It is this date that establishes a valid claim for the purposes of section 865(3) of the TCA 1997. Having regard to this date, the Commissioner is satisfied that the Appellant's claim for each of the tax years 2017, 2018 and 2019 fell outside the four year time limit prescribed in section 865(4) of the TCA 1997.

14. The Commissioner acknowledges the Appellant's submission that the repayment which the Appellant sought to claim arose from the same issue in respect of which the Appellant received repayments for the tax years 2020, 2021, 2022 and 2023. However, the use of the word "shall" 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 four year rule might be mitigated. The legislation does not afford the Commissioner any discretion to disapply the rule.
15. 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 website<sup>1</sup>.
16. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the circumstances outlined on appeal. The Appellant was entitled to check whether the Respondent's refusal of her claim for a repayment of income tax was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

### **Determination**

17. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the Appellant's claim for a repayment of tax for the tax years 2017, 2018 and 2019, under section 865(4) of the TCA 1997.
18. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

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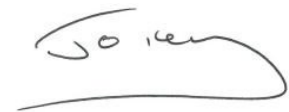
<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

## Notification

19. 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

20. 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.



Jo Kenny  
Appeal Commissioner  
19 February 2025