



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

109TACD2026

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 (“TCA 1997”) brought on behalf of the Appellant against a refusal by the Respondent dated 3 March 2026, of a claim made by the Appellant for the repayment of income tax in respect of the tax year 2021 (“the relevant year”). The tax at issue is in the amount of €456.16.
2. The Respondent refused the Appellant’s claim for repayment of income tax in accordance with the provisions of section 865 TCA 1997, as the claim for repayment of income tax for the relevant year was made outside of the statutory four-year period.
3. On 2 April 2026, the Appellant duly appealed to the Commission. The Appellant submitted a Notice of Appeal and accompanying documentation in support of her appeal. In addition, in accordance with section 949Q TCA 1997, a Statement of Case was submitted by the Appellant and the Respondent. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal.
4. On 18 May 2026, the Commission notified the parties that the Commissioner intends to adjudicate on the appeal without a hearing, in accordance with section 949U TCA 1997. As no objection was received from the parties within the prescribed 21 days, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.

Background

5. On 2 March 2026, the Appellant filed her Form 11 Income Tax return with the Respondent for the relevant year. This resulted in an overpayment of income tax in the amount of €456.16.
6. The Appellant submitted that the delay in submitting her claim was due to exceptional circumstances related to the COVID-19 pandemic. She stated that during that time, there was significant disruption both personally and professionally which impacted her ability to properly manage her tax affairs. In addition, the Appellant stated that she relied on her accountant to manage her tax matters, and unfortunately, the claim was not submitted within the required timeframe.
7. The Respondent submitted that as the return was filed more than 4 years after the end of the relevant year, the overpayment is statute barred and the repayment cannot be made.

8. On 3 March 2026, the Respondent replied to the Appellant and confirmed that as the deadline to submit a claim for the relevant year had passed, it was precluded from allowing the claim for repayment of income tax for the relevant year, in accordance with section 865(4) TCA 1997.
9. On 6 March 2026, the Appellant duly appealed the decision of the Respondent dated 3 March 2026, to the Commission by submitting her Notice of Appeal.

Legislation and Guidelines

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

11. Section 865 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

12. The Commissioner sets out hereunder a summary of the submissions made by the Appellant as set out in her Notice of Appeal and Statement of Case:-

"I wish to appeal the decision to refuse my late claim for repayment of income tax for the period 01/01/2021 to 31/12/2021.

The delay in submitting my claim was due to exceptional circumstances related to the COVID-19 pandemic. During that time, there was significant disruption both personally and professionally, which impacted my ability to properly manage my tax affairs.

Additionally, I relied on my accountant to handle my tax matters, and unfortunately, this claim was not submitted within the required timeframe. I acted in good faith and was under the impression that all necessary obligations had been fulfilled.

I respectfully request that these exceptional circumstances be taken into consideration. The pandemic created unprecedented challenges, and the delay was not intentional but resulted from factors outside of my direct control.

I would be grateful if you could review my case and reconsider your decision in light of the above."

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:-

"The Form 11 Income Tax return for the year ended 31 December 2021 was submitted to [the Respondent] on 02 March 2026. This resulted in an overpayment of €456.16. As the return was filed more than 4 years after the end of the 2021 tax year, the overpayment is statute barred and the repayment cannot be made.

In accordance with Section 865(1)(a) a "valid claim" shall be construed in accordance with paragraph (b).

Per Section 865(1)(b) a valid claim to the repayment of tax arises when a person furnishes a return as required to be delivered in accordance with any provision of the Tax Acts. In this case as a chargeable person the Appellant was required to file a Form 11 Income Tax return for the period ended 31 December 2021.

Per Subsection 865(4) a 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.

[The Respondent] submit that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim relates. [The Respondent's] position is that no valid claim for repayment had been made by the Appellant within the four-year limitation period per s.865(4) TCA 1997 and that as a result, the repayment claim in respect of the tax year of assessment 2021 was out of time."

Material Facts

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

- 14.1. On 2 March 2026, the Appellant filed her Form 11 Income Tax return with the Respondent for the relevant year.
- 14.2. This resulted in an overpayment of income tax in the amount of €456.16.
- 14.3. The Appellant submitted that the delay in submitting her claim was due to exceptional circumstances related to the COVID-19 pandemic. She stated that during that time, there was significant disruption both personally and professionally which impacted her ability to properly manage her tax affairs.
- 14.4. The Appellant stated that she relied on her accountant to manage her tax matters, and unfortunately, the claim was not submitted within the required timeframe.
- 14.5. On 3 March 2026, the Respondent replied to the Appellant and confirmed that as the deadline to submit a claim for the relevant year had passed, it was precluded from allowing the claim for repayment of income tax for the relevant year, in accordance with section 865(4) TCA 1997.
- 14.6. On 6 March 2026, the Appellant duly appealed the decision of the Respondent dated 3 March 2026, to the Commission by submitting her Notice of Appeal.

Analysis

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 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".

16. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated 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..."

Section 865 TCA 1997

17. The Appellant has been denied a repayment of income tax on the grounds that the Appellant's claim for repayment for the relevant year was not made in accordance with the statutory time limit pursuant to section 865(4) TCA 1997. The Appellant's claim for a repayment of income tax which would have been due to her, was denied by the Respondent as the claim for a repayment of income tax for the relevant year was not made within four years after the end of the chargeable period.
18. The Commissioner notes that the Appellant submitted that *"[t]he delay in submitting my claim was due to exceptional circumstances related to the COVID-19 pandemic. During that time, there was significant disruption both personally and professionally, which impacted my ability to properly manage my tax affairs. Additionally, I relied on my accountant to handle my tax matters, and unfortunately, this claim was not submitted within the required timeframe. I acted in good faith and was under the impression that all necessary obligations had been fulfilled."*
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 on 2 March 2026, the Appellant filed her Form 11 Income Tax return with the Respondent for the relevant year and that it was this date that established the date upon which the Appellant made a valid claim for the repayment of income tax.
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 that on 3 March 2026, the Respondent issued correspondence to the Appellant informing the Appellant that it was precluded from allowing the claim for repayment of income tax for the relevant year. As the Appellant’s claim for a repayment of income tax related to the tax year 2021, the Commissioner is satisfied that a valid claim for a repayment of tax must have been made on or before 31 December 2025 for the relevant year. The Commissioner has found as a material fact in this appeal that a valid claim was not made until 2 March 2026, when the Appellant filed her Form 11 Income Tax return with the Respondent for the relevant year.
24. Having regard to those dates, the Commissioner is satisfied that the Appellant’s claim for a repayment of tax falls outside of the four-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 for the relevant year, 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.

Jurisdiction of an Appeal Commissioner

27. The Commissioner notes the Appellant requests the disapplication of the legislative provisions based on exceptional circumstances. The Appellant submitted that *“I respectfully request that these exceptional circumstances be taken into consideration. The pandemic created unprecedented challenges, and the delay was not intentional but resulted from factors outside of my direct control.”*
28. 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 does not have jurisdiction to set aside a decision of the Respondent based on alleged unfairness, breach of legitimate expectation or disproportionality, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. This comes within the jurisdiction and remit of the Courts.
29. 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.

.....”

30. The Commissioner empathises with the Appellant’s personal circumstances outlined in her appeal and appreciates that this decision will undoubtedly be disappointing for the Appellant. However, the Commissioner has no discretion in terms of the legislative provisions and must apply the law as it stands.

¹ www.taxappeals.ie

Conclusion

31. 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.
32. 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

33. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(4) TCA 1997 in respect of the Appellant's claim for the relevant year.
34. Therefore, the decision of the Respondent dated 3 March 2026, denying the claim shall stand.
35. The Commissioner appreciates this decision will be disappointing for the Appellant. The Appellant was correct to appeal to have clarity on the position.
36. This Appeal is determined in accordance with Part 40A 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) TCA 1997.

Notification

37. 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

38. 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.

A handwritten signature in black ink, appearing to read "Claire Millrine". The signature is written in a cursive, flowing style.

Claire Millrine
Appeal Commissioner
12 August 2026