AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

55TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Table of Contents

Introduction 3
Background 3
Legislation and Guidelines 4
Submissions 6
  Appellant's submissions 6
  Respondent's submissions 9
Material Facts 9
Analysis 10
  Burden of proof 10
  Substantive matter 11
  Section 865 TCA 1997 12
Conclusion 14
Determination 14
Notification 14
Appeal 15

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 of a claim made by the Appellant for the repayment of Capital Gains Tax ("CGT") in respect of the tax year 2020 ("the relevant year").

2. The Respondent refused the Appellant's claim for repayment in accordance with the provisions of section 865 TCA 1997, as the claim for repayment of CGT for the relevant year was made outside of the statutory four-year period. The amount of tax at issue in this appeal is €12,516.

3. On 22 October 2025, the Appellant duly appealed to the Commission. The Appellant submitted a Notice of Appeal and accompanying documentation in support of his appeal. In addition, in accordance with section 949Q TCA 1997, a Statement of Case was submitted by the Appellant, which built on the Appellant's Notice of Appeal. The Commissioner has received a Statement of Case from the Respondent. In accordance with section 949S TCA 1997, the parties filed their respective Outline of Arguments in this appeal. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal.

4. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.

5. The Appellant indicated in his Statement of Case that had a hearing of the appeal been held, he wished for the appeal to be conducted in private. Hence, when this Determination is published in accordance with section 949AO TCA 1997, it will be published in a manner that does not disclose the identity of the Appellant.

Background

6. In 2020, the Appellant disposed of a property at [redacted] ("the property"). The purchase price of the property was [redacted]

7. On 12 November 2021, the Appellant filed his CGT return for the year 2020 via his Form 11. The return showed an overpayment of tax due to the Appellant which was refunded to the Appellant by the Respondent.

8. However, the Appellant submitted that he subsequently realised that he had incorrectly overlooked the necessary currency conversion from pounds to euro for the purchase price of the property. He submitted that the purchase price was stated as [redacted] euro

rather than [redacted] euro, which was the correct purchase price having regard to euro currency. The Appellant submitted that this resulted in an overpayment of CGT by him in the amount of €12,516.

9. On 27 June 2025, the Appellant's Tax Agent submitted correspondence advising of an error in the Appellant's original CGT return.

10. On 24 July 2025, the Appellant submitted an amended CG1 form to the Respondent, reflecting an overpayment of CGT by the Appellant.

11. On 25 July 2025, a Notice of Amended Assessment for the year 2020 was issued by the Respondent to the Appellant which indicated a "*Credit due*" in the amount of €12,516.

12. On 23 September 2025, the Respondent issued correspondence to the Appellant informing the Appellant that in accordance with section 865(4) TCA 1997, it was precluded from allowing the claim for repayment of CGT for the relevant year.

13. The Respondent submitted that in order for the Appellant's claim to be a valid claim for the repayment of tax, the amended tax return was required to be filed in accordance with Section 959(I) TCA 1997, by 31 of December 2024. As the Appellant did not file the amended return until 24 July 2025, in accordance with Section 865(4) the Respondent was precluded from making the repayment of tax paid.

14. On 22 October 2025, the Appellant duly appealed the decision of the Respondent dated 23 September 2025, to the Commission by submitting his Notice of Appeal.

Legislation and Guidelines

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

16. 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

17. The Commissioner sets out hereunder a summary of the submissions made by the Appellant as set out in his Notice of Appeal, Statement of Case and submissions to the Commission:-

"*The overpayment arose from a genuine and innocent error in my CGT computation on the sale of a property at* [redacted] *Specifically, when declaring the acquisition cost, mistakenly recording* [redacted] *Irish punts as* [redacted] *overlooking the necessary currency conversion to euro. The correct acquisition cost should have been* [redacted]*. This resulted in an overpayment of €12,516 CGT.*

This error was caused by the exceptional and unique circumstances of Ireland's currency transition from punts to euro in 2002 — an event that occurred almost 20 years prior to the sale of the property. It is entirely understandable how a taxpayer, acting in good faith, might inadvertently overlook this detail after such a long passage of time.

I respectfully submit that the overpayment has been clearly demonstrated and was accepted in [the Respondent's] initial review in July 2025. I ask that, in fairness and natural justice, the four-year

statutory limit not be enforced rigidly in this exceptional case, as it would otherwise result in [the Respondent] keeping tax that was not due. This was a genuine and innocent mistake, arising from the once-in-a-generation transition from punts to euro, and I would greatly appreciate your understanding in this matter.

On this basis, I hope that the Appeal Commissioners will allow my appeal and direct that the overpayment of €12,516 be refunded.

……..

In 2020, the Appellant disposed of a property at [redacted] *and filed a Capital Gains Tax (CGT) return using an acquisition cost of* [redacted] *This figure was entered in error. The actual historical purchase price was* [redacted] *Irish punts, and the correct euro-equivalent base cost is* [redacted]

The error arose because the acquisition pre-dated the euro changeover and the punt-to-euro conversion was inadvertently overlooked when preparing the 2020 CGT computation nearly twenty years later. As a result, CGT was overpaid by €13,070.

In July 2025, following correspondence through MyEnquiries, [the Respondent]:

- Accepted that an overpayment had occurred;

- Issued a revised assessment reflecting the corrected acquisition cost; and

- Indicated that a refund would be processed, notwithstanding the four-year rule.

Shortly thereafter, [the Respondent] reversed this position and declined to issue the refund on the basis of section 865(4) TCA 1997. At no point has [the Respondent] disputed the existence of the overpayment or the accuracy of the revised CGT liability.

The Appellant submits that the tax originally paid was not due, that the overpayment has been clearly established, and that [the Respondent] initially exercised discretion before later declining to do so.

The amended assessment issued by [the Respondent] on 25 July 2025 shows a "Credit Due" of €12,516.00, confirming explicitly that the tax originally paid was not due.

……..

…the Appellant submits that the present appeal is not a standard late repayment case. The Appellant does not ask the Commission to waive or disapply section 865(4).

Rather, the issue concerns [the Respondent's] reliance on that provision after issuing a revised assessment, which formally ascertained that the Appellant's 2020 CGT liability had been overstated and that tax had been overpaid.

…….the central question in this appeal is whether [the Respondent] may retain tax which, by their own amended assessment, was never properly due

……..

This appeal does not concern a standard late claim for repayment.

4.2 The Appellant is not asking the Commission to waive, disapply, or override the four-year time limit in section 865(4).

4.3 [the Respondent] independently reviewed the matter, accepted that the original CGT assessment was incorrect, issued an amended assessment, and formally recorded that a credit was due.

4.4 The issue for determination is whether, in those circumstances, [the Respondent] may rely on section 865(4) to retain tax which their own amended assessment confirms was not due.

…….

5.1 Section 865(4) limits the making of claims by taxpayers outside the four-year period.

5.2 It does not expressly authorise [the Respondent] to retain tax once [the Respondent] has amended an assessment and determined that the tax originally charged was excessive.

5.3 By issuing an amended assessment showing a credit due, [the Respondent] has superseded the original assessment and formally ascertained that the tax previously charged exceeded the amount properly due.

5.4 In those circumstances, the overpaid tax cannot properly be characterised as tax that "was due" within the meaning of section 865.

5.5 The Appellant submits that section 865(4) cannot be relied upon to justify retention of tax which [the Respondent] has already determined, by amended assessment, was not properly chargeable."

Respondent's submissions

18. 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 an Individual registered for Capital Gains Tax within the meaning of Section 959A of TCA 1997.*
>
> *The Appellant filed their 2020 Capital Gains Tax return via their Form 11 which was received 12 November 2021; this showed an overpayment of tax due to the Appellant which was refunded to the Appellant.*
>
> *On 27 June 2025 the Appellant's Tax Agent submitted correspondence advising of an error in the original Capital Gains return; this was followed by an amended CG1 form received 24 July 2025; resulting in an overpayment of tax due to the Appellant.*
>
> *However, Section 865(4) Taxes Consolidation Act 1997 provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within 4 years after the end of that chargeable period.*
>
> *Correspondence issued to the Appellant on 23 September 2025 advising them that the [the Respondent] was precluded from repaying the tax refund claimed as it was not made within the relevant 4-year period set out in Section 865(4) of Taxes Consolidation Act 1997. [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] 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 years of assessment 2020 is out of time.*
>
> *In order for the Appellant's claim to be a valid claim for the repayment of tax, the amended tax return required to be filed in accordance with Section 959(I) must have been filed by 31st of December 2024 (4 years). As the Appellant did not file the amended return until 24 July 2025 the repayment shall not be allowed in accordance with Section 865(4) and is statute barred*."

Material Facts

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

19.1. In 2020, the Appellant disposed of a property at [redacted] ("the property").

19.2. The purchase price of the property was [redacted]

19.3. On 12 November 2021, the Appellant filed his 2020 Form 11 CGT return. The return showed an overpayment of tax due to the Appellant, which was refunded to the Appellant by the Respondent.

19.4. In his CGT return, the Appellant overlooked the necessary currency conversion from pounds to euro for the purchase price of the property, such that in the return he stated that the purchase price was [redacted] rather than [redacted] which was the correct purchase price in euro currency.

19.5. The Appellant submitted that this resulted in an overpayment of an amount of CGT in the sum of €12,516.

19.6. On 27 June 2025, the Appellant's Tax Agent submitted correspondence advising of an error in the Appellant's original CGT return.

19.7. On 24 July 2025, the Appellant's Tax Agent submitted an amended CG1 form to the Respondent. The result of this was an overpayment of tax due to the Appellant.

19.8. On 25 July 2025, a Notice of Amended Assessment for the year 2020 issued to the Appellant which indicated a "*Credit due*" in the amount of €12,516.

19.9. On 23 September 2025, the Respondent issued correspondence to the Appellant informing the Appellant that in accordance with section 865(4) TCA 1997, it was precluded from allowing the claim for repayment of CGT for the relevant year.

19.10. The Respondent submitted that in order for the Appellant's claim to be a valid claim for the repayment of tax, the amended tax return must have been filed by 31 December 2024.

19.11. On 22 October 2025, the Appellant duly appealed the decision of the Respondent dated 23 September 2025, to the Commission by submitting his Notice of Appeal.

Analysis

Burden of proof

20. 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".*

21. 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…"

Substantive matter

22. The Appellant has been denied a repayment of CGT on the grounds that the Appellant's claim for the repayment of tax for the relevant year was not made in accordance with section 865(4) TCA 1997. Hence, the Appellant's claim for a repayment of CGT which would have been due to him, was denied by the Respondent as the claim for a repayment of CGT for the relevant year was not made within four years after the end of the chargeable period.

23. The Commissioner notes that the Appellant submitted that this appeal "*does not concern a standard late claim for repayment*" nor is the Appellant "*asking the Commission to waive, disapply, or override the four-year time limit in section 865(4)".* The Commissioner observes that the Appellant argued that the Respondent reviewed the Appellant's return, accepted that the CGT assessment was incorrect, issued an amended assessment and recorded that a credit was due to the Appellant. The Appellant stated that section 865(4) TCA 1997 does not "*expressly authorise [the Respondent] to retain tax once [the Respondent] has amended an assessment and determined that the tax originally charged was excessive"* and that *"[b]y issuing an amended assessment showing a credit due, [the Respondent] has superseded the original assessment and formally ascertained that the tax previously charged exceeded the amount properly due".* The Appellant submitted that section 865(4) TCA 1997 cannot be relied upon by the Respondent to justify retention of tax which it had already determined by an amended assessment, was not properly chargeable.

24. The Commissioner understands that it was the filing of the Appellant's amended return for CGT for the relevant year on 24 July 2025, that triggered the Respondent to issue the amended assessment of the relevant year on 25 July 2025. It is a material fact in this appeal that the amended assessment reflected a credit balance in the sum of €12,516. The Commissioner is satisfied that an assessment reflects the tax due for a tax year and hence, the amended assessment in this appeal, upon correction by the Appellant of his CGT return, reflected a credit balance of €12,516, being the amount of tax overpaid by the Appellant for the relevant year due to the miscalculation in the original return filed by the Appellant for the relevant year.

25. The Commissioner is satisfied that an assessment to tax is a separate matter to any entitlement to have an amount of tax repaid, if an overpayment occurred by a taxpayer. The rules regarding repayment of overpaid tax are dealt with by section 865 TCA 1997. The amended assessment reflects the Appellant's tax affairs, being the calculations for the relevant year. Where an overpayment of tax is disclosed in a return, the Respondent must then consider whether that overpayment of tax is capable of being repaid having regard to the particular legislative provisions governing the repayment of tax to a taxpayer. The Commissioner will now set out those provisions applicable to the tax in this appeal, namely CGT, and whether the Appellant was correct in its application of the statute.

Section 865 TCA 1997

26. 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).

27. 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.

28. 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 made a claim for the relevant year on 24 July 2025, when the Appellant

filed his amended CGT return for the relevant year, and that this was a valid claim for the purposes of section 865(3) TCA 1997.

29. 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].

30. The Commissioner notes that on 23 September 2025, the Respondent issued correspondence to the Appellant informing the Appellant that in accordance with section 865(4) TCA 1997, it was precluded from allowing the claim for repayment of CGT for the relevant year. As the Appellant's claim for a repayment of CGT related to the tax year 2020, the Commissioner is satisfied that a valid claim for a repayment of tax must have been made on or before 31 December 2024 for the relevant year. The Commissioner has found as a material fact in this appeal that a valid claim was not made until 24 July 2025, when the Appellant filed his CGT return for the relevant year.

31. 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.

32. 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.

33. Furthermore, the legislation is specific in that the time limit relates to the chargeable period for which the claim relates. Thus, the Appellant's argument, that the issuing of an amended assessment showing a credit due, the Respondent had "*superseded the original assessment and formally ascertained that the tax previously charged exceeded the amount properly due*", is misplaced. The entitlement to the claim relates to the four-year period "*after the end of the chargeable period to which the claim relates*". As set out, in circumstances where the claim relates to the relevant year 2020, a clam must have been made on or before 31 December 2024.

34. 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[1].

Conclusion

35. 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.

36. 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

37. 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 in respect of the Appellant's claim for the relevant year. Therefore, the decision of the Respondent dated 23 September 2025, denying the claim shall stand.

38. The Commissioner appreciates this decision will be disappointing for the Appellant. The Appellant was correct to appeal to have clarity on the position.

39. 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

40. 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.

[1] www.taxappeals.ie

Appeal

41. 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
19 March 2026