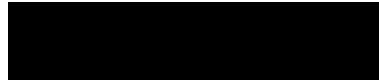




AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

60TACD2026

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”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought by the Appellant against the refusal by the Revenue Commissioners (“the Respondent”) to repay Employer’s Pay As Your Earn (“Employer’s PAYE”) to the Appellant for the periods 1 September 2019 to 31 December 2019 and 1 January 2020 to 31 December 2020 (collectively referred to hereinafter as “the relevant periods”). The Employer’s PAYE credit positions arose as a result of the amounts of Pay Related Social Insurance (“PRSI”) and Universal Social Charge (“USC”) included in the Employer’s PAYE returns being amended downwards as these had previously been overstated. The claims for repayments were refused by the Respondent on the grounds that the Appellant’s amended Employer’s PAYE returns for the relevant periods, giving rise to the credit position, were filed outside the four-year statutory timeframe.
2. The total amount of overpaid Employer’s PRSI at issue in this appeal is €5,885.31.
3. On 1 September 2025, the Appellant submitted its Notice of Appeal, and on 16 October 2025, the Appellant submitted a Statement of Case (“SoC”) which built on its Notice of Appeal. Also on 16 October 2025, the Commission received the Respondent’s SoC.
4. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing. The Appellant has indicated that the information contained in this appeal is private and hence the determination will be redacted prior to its publication in accordance with section 949AO of the TCA 1997.
5. The Commissioner has considered the submissions made by both parties and the relevant legislation in making this determination.

## **Background**

6. The Appellant filed Employer’s PAYE returns for the relevant periods on 10 January 2020 (for the payroll tax period ended 31 December 2019) and 15 January 2021 (for the payroll tax period ended 31 December 2020). The Employer’s PAYE liability computed for the payroll tax period 1 September 2019 to 31 December 2019 was €1,412.69 and this liability was paid in full to the Respondent on 24 January 2020. The Employer’s PAYE liability computed for the payroll tax period from 1 January 2020 to 31 December 2020 was €7,318.30 and this liability was paid in full to the Respondent on 26 January 2021. Copies of these returns were not submitted to the Commission.

7. The Employer's PAYE returns included amounts for PRSI and USC deductions at source from payments the Appellant made to a director of the Appellant (hereinafter referred to as "Director A").
8. At the time of preparing and filing the Employer's PAYE returns, the Appellant was not aware that Director A had turned sixty-six years of age on [REDACTED]. As the Appellant was unaware that Director A's sixty-sixth birthday fell prior to the commencement of the relevant periods, reduced rates of PRSI and USC, applicable to individuals aged sixty-six or over, were not applied by the Appellant in the relevant periods when computing the deductions at source and the Employer's PAYE return position. As the Appellant omitted to make the required changes in its payroll system when Director A turned sixty-six, the Employer's PAYE returns were overstated. The total overstatement amounts have been provided to the Commission. The detailed breakdown of the overstatement under each tax head has not been provided to the Commission.
9. The Appellant submitted to the Commission that it first became aware of the error in the classification of Director A in its payroll system when it received a letter from the Department of Social Protection ("DSP") in [REDACTED] 2025 notifying the Appellant of the correct class of PRSI applicable to Director A. A copy of this letter was not submitted to the Commission.
10. On 29 July 2025, the Appellant filed amended Employer's PAYE returns for the relevant periods. The amended returns reflected the correct rates of deduction applicable to the payments to Director A in the relevant periods. The amended returns resulted in a credit position arising for the Appellant in the amount of €1,409.56 (for the period from 1 September 2019 to 31 December 2019) and €4,475.75 (for the period 1 January 2020 to 31 December 2020). The total Employer's PAYE credit position for the relevant periods amounted to €5,885.31. Copies of the amended Employer PAYE returns have not been provided to the Commission, and therefore the Commissioner does not have information before her regarding the breakdown of the credit positions between PRSI and USC for the relevant periods.
11. On 7 August 2025, the Respondent's Collector General's division issued two letters to the Appellant, one for each of the relevant periods, wherein the Respondent stated that repayment of Employer's PAYE for the relevant periods was refused by the Respondent on the basis that the amended Employer's PAYE returns for those periods had been filed outside the four year time limit set down in legislation. Both refusal letters stated the following:

***"REFUSED – REPAYMENT OF TAX (INCLUDING PRSI) AND/OR USC***

[...]

*Section 985G(6A) and Section 531AOA(6) of [the TCA 1997] provide that an employer is not entitled to a repayment of tax (including PRSI) and USC respectively unless the return for the relevant income tax month is made within 4 years of the end of the year of assessment in which the income tax month falls. As a result, I am precluded from repaying or giving credit for the tax (including PRSI) and/or USC included in the recently made return(s) [...].*

[...]

*Section 985G(6C) and Section 531AOA(8) of [the TCA 1997] provide that you may, within 30 days after the date of this letter which is issued in accordance with Section 985G(6B) and/or 531AOA(7) of [the TCA 1997], appeal my decision. An appeal may be made by completing and submitting a Notice of Appeal form to the Tax Appeals Commission [...].*

[...].”

### **Legislation and Guidelines**

12. The relevant legislation for the collection and recovery of income tax on certain emoluments (PAYE system) is laid down in Chapter 4 of Part 42 of the TCA 1997.
13. Section 984B of the TCA 1997, Liability for payment of deduction, provides:

*“A person who is required to make any deduction or repayment referred to in this Chapter, or regulations made under this Chapter, shall, in the case of a deduction (whether or not made), be accountable for the amount of the tax, and liable to pay that amount, to the Revenue Commissioners and shall, subject to subsections (6A) and (6B) of section 985G, in the case of a repayment, be entitled, if it has been made, to be paid it, or given credit for it, by the Revenue Commissioners.”*

14. Section 985G of the TCA 1997, Return by employer, provides:

*[...]*

*(3) An employer shall -*

- (a) on or before the return date of an income tax month, make a return to the Revenue Commissioners specifying the total income tax deducted or repaid under this Chapter in respect of that income tax month, and*

- (b) *on or before the due date of an income tax month, pay to the Collector-General the amount of income tax due to be deducted under this Chapter in respect of that income tax month.*

[...]

(6A)

- (a) *Where an employer makes a return under subsection (3)(a) after the expiry of a period of 4 years commencing at the end of the year of assessment in which the income tax month falls, that employer shall not be entitled in the case of a repayment referred to in section 984B to be paid it, or be given credit for it, by the Revenue Commissioners.*

[...]

[...]”

15. Section 531AO of the TCA 1997, Deduction and payment of universal social charge on relevant emoluments, provides:

“(1) *An employer shall be liable in the first instance to pay universal social charge due in respect of any payment of relevant emoluments.*

[...]”

16. Section 531AOA of the TCA 1997, Return by employer, provides the following in relation to repayments of USC to employers:

“(1) *In this section, 'return filing date' means, in relation to an income tax month, the day that is 15 days from the last day of the month.*

(2) *On or before the return filing date for an income tax month, an employer shall make a return to the Revenue Commissioners specifying the total universal social charge deducted or repaid [...].*

[...]

(6)

- (a) *Where an employer makes a return under subsection (2) after the expiry of a period of 4 years commencing at the end of the year of assessment in which the income tax month falls, that employer shall not be entitled in the case of a repayment referred to in Regulation 4 of the Universal*

*Social Charge Regulations 2018 (S.I. No. 510 of 2018) to be paid it, or given credit for it, by the Revenue Commissioners.*

*[...]*

*[...]"*

## **Submissions**

### *Appellant's submissions*

17. The Appellant's stated the following grounds of appeal in its Notice of Appeal:

*"[Director A] turned 66 on [REDACTED] We should have changed [REDACTED] PRSI class from S1 to M1 on that date. We amended the submission on our payroll software for the dates 1st September - 31st December 2019 and for the period 1st January 2020 to 31st Dececmber 2020. We have been told that we can appeal this decision within 30 days of the date of the letter which refused the repayment which was on 7th August 2025" (sic)*

18. The Appellant's SoC stated:

#### ***"Section 3 Outline of Relevant Facts***

*[...]*

*Appeal against amended PRSI class for [Director A] for 2019 and 2020*

*The application was made in 2025*

#### ***Section 4 Statutory Provisions***

*Section 985 G (6A) and Section 531 AOA (6) of [the TCA 1997]*

*[...]*

#### ***Section 6 Supplementary Information***

*We received a letter from the Department of Social Protection in [REDACTED] 2025 informing us that [Director A's] PRSI class should be class M from [REDACTED] onwards and not class S" (emphasis in the original)*

### *Respondent's submissions*

19. The Respondent's SoC stated:

*"[...]*

## **2. Outline of relevant facts**

*This matter relates to credits in Employer PAYE/PRSI/USC for the December 2019 and December 2020 tax periods. In the case of each period, [the Respondent] has refused to repay the credits arising from amendments to the liabilities which were made by or on behalf of an employer after the relevant statutory deadlines of 31/12/2023 and 31/12/2024 respectively. For ease of reference, the financial transactions in each period have been summarised in separate Tables at Appendix A. The information in these table includes the tax period, the date of each financial transaction, the liability and collection effects of the transaction and the net credit balance on record.*

### **2.1 Employer PAYE/PRSI/USC/LPT - December 2019**

*At 24/01/2020, the liability on record was paid in full. Amendments made to the record on 29/07/2025 have given rise to a credit of €1,409.56. This credit has been refused for repayment or offset. [The Respondent's] decision was communicated to the Appellant by a letter dated 07/08/2025. The financial transactions for this period are set out in Table 2.1 at Appendix A.*

### **2.2 Employer PAYE/PRSI/USC/LPT – December 2020**

*At 26/01/2021, the liability on record was paid in full. Amendments made to the record on 29/07/2025 have given rise to a credit of €4,475.75. This credit has been refused for repayment or offset. [The Respondent's] decision was communicated to the Appellant by a letter dated 07/08/2025. The financial transactions for this period are set out in Table 2.2 at Appendix A.*

*[...]*

## **Appendix A – Summary of financial transactions for Employer PAYE/PRSI/USC/LPT for December 2019 and December 2020.**

**Table 2.1 December 2019 Financial Transactions**

<b>Date Received/ Updated</b>	<b>Transaction Description</b>	<b>Liability Effect</b>	<b>Payments/Offsets</b>	<b>Balance</b>
10/01/2020	Return	€1,412.69		
24/01/2020	Payment(s)		€1,412.69	

29/07/2025	Amended Return(s)	€1,409.56		
		€3.13	€1,412.69	-€1,409.56

**Table 2.2 December 2020 Financial Transactions**

<i>Date Received/ Updated</i>	<i>Transaction Description</i>	<i>Liability Effect</i>	<i>Payments/Offsets</i>	<i>Balance</i>
15/01/2021	Return	€7,318.30		
26/01/2021	Payment(s)		€7,318.30	
29/07/2025	Amended Return(s)	€4,475.75		
		€2,842.55	€7,318.30	-€4,475.75

“(emphasis in the original)”

### **Material Facts**

20. Having considered the documentation and submissions in this appeal, the Commissioner makes the following findings of material fact:

20.1. Director A turned sixty-six years of age on [REDACTED] prior to the commencement of the relevant periods.

20.2. The Appellant received notification from the DSP in [REDACTED] 2025 regarding the correct PRSI classification of Director A as class M instead of class S for PRSI purposes on the basis of the director’s age being over sixty-six.

20.3. On 29 July 2025, the Appellant filed amended Employer’s PAYE returns for the relevant periods. The relevant periods are 1 September 2019 to 31 December 2019 and 1 January 2020 to 31 December 2020.

20.4. The amended Employer’s PAYE returns filed by the Appellant reflected a reduction in the Employer’s PAYE liability, including PRSI and USC, in respect of the payments made by the Appellant to Director A during the relevant periods.

- 20.5. As a result of the amended Employer's PAYE returns filed on 29 July 2025, the Appellant's Employer's PAYE liabilities for the relevant periods were reduced by €1,409.25 (for the period from 1 September 2019 to 31 December 2019) and €4,475.75 (for the period from 1 January 2020 to 31 December 2020). The total Employer's credit position for the relevant periods is €5,885.31.
- 20.6. The Appellant's amended Employer's PAYE return for the period 1 September 2019 to 31 December 2019 was filed on 29 July 2025.
- 20.7. The Appellant's amended Employer's PAYE return for the period 1 January 2020 to 31 December 2020 was filed on 29 July 2025.
- 20.8. The amended Employer's PAYE return for the period 1 September 2019 to 31 December 2019 was filed more than four years after the end of the year of assessment in which this tax period ended.
- 20.9. The amended Employer's PAYE return for the period 1 January 2020 to 31 December 2020 was filed more than four years after the end of the year of assessment in which this tax period ended.
- 20.10. On 7 August 2025, the Respondent refused to issue the repayments of Employer's PAYE to the Appellant for the relevant periods on the basis that the Appellant had filed the amended Employer's PAYE returns outside the statutory four-year time frame.

## **Analysis**

### *The burden of proof*

21. The appropriate starting point for the analysis of the issues in this case 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 ("*Menolly Homes*"), 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"*.

22. In paragraph 12 of his judgment in *Menolly Homes*, Charleton J. stated:

*"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 [...]."*

23. In *Lee v Revenue Commissioners* [2021] IECA 18 ("Lee"), the Court of Appeal made clear that the function of the Appeal Commissioner is to determine by reference to applicable legislation the correct amount of tax owed. Murray J. stated at paragraph 76:

*"The jurisdiction of the Appeal Commissioners [...] is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA."*

24. More recently, the Court of Appeal has affirmed this position in the case of *JSS & Others v Tax Appeals Commissioner* [2025] IECA 96. In that case, at paragraph 34, McDonald J. stated:

*"[...] the taxpayer bears the burden of demonstrating that a tax assessment is wrong."*

25. In *Hanrahan v The Revenue Commissioners* [2024] IECA 113 ("Hanrahan"), the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. In that case, the joint judgment of Donnelly J. and Butler J. stated:

*"97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake. [...]"*

*98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; [...]. Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation [...]."*

#### *Claim for repayment of Employer's PAYE (including PRSI and USC)*

26. The Commissioner has considered the submissions from both parties and the legislation and regulations relevant to the appeal. The facts of this appeal are not in dispute. Therefore, the Commissioner is satisfied that she must consider the legislation that is applicable to claims for repayment of Employer's PAYE, where such claims arose from

the filing of amended Employer's PAYE returns to correct errors made unwittingly in the original Employer's PAYE returns.

27. Section 985G(3) of the TCA 1997 sets down the requirement for an employer to file Employer's PAYE returns on a calendar month basis, within a specified time limit after the end of that calendar month. The Commissioner understands that the deadline for filing Employer's PAYE returns may be varied to be based on periods other than calendar months, for example calendar quarters or calendar years, depending on the facts, including the quantum of the Employer's PAYE liability, and in those situations where the Respondent notifies the employer accordingly in advance. In this case, the Appellant has submitted to the Commission that it filed a quarterly Employer's PAYE return for the period 1 September 2019 to 31 December 2019, and an annual Employer's PAYE return for the period 1 January 2020 to 31 December 2020. The Appellant has not submitted to the Commission the basis for its Employer's PAYE returns being filed other than on a calendar monthly basis. The Respondent did not raise this point in its SoC. Therefore, the Commissioner is satisfied that the Employer's PAYE returns in the context of this appeal were made on a basis other than a calendar monthly basis following the relevant agreement with the Respondent, and so the matter of the tax periods covered by the Employer's PAYE returns in this case are not under dispute in this appeal. The Commissioner therefore does not address this matter any further in this determination.

28. Section 985G(6A)(a) of the TCA 1997 provides for a time limit in respect of claims for repayment of Employer's PAYE (including PRSI) as follows:

*"Where an employer makes a return under subsection (3)(a) after the expiry of a period of 4 years commencing at the end of the year of assessment in which the income tax month falls, that employer shall not be entitled in the case of a repayment referred to in section 984B to be paid it, or be given credit for it, by the Revenue Commissioners."*

(emphasis added)

29. The Commissioner notes, for the sake of completeness, that section 38A(1) of the Social Welfare Consolidation Act 2025 provides for a time limit for claims for return of PRSI contributions overpaid as follows:

*"[...] an application [...] for the return of contributions shall be made -*

*(a) within 4 years of the last day of the contribution year in respect of which the contributions concerned were paid, and*

(b) *in such manner as the Minister or the Collector General, as appropriate, may from time to time determine.”*

30. Section 531AOA(6)(a) of the TCA 1997 provides for claims for repayments of the USC element of Employer’s PAYE as follows:

*“Where an employer makes a return under subsection (2) after the expiry of a period of 4 years commencing at the end of the year of assessment in which the income tax month falls, that employer shall not be entitled in the case of a repayment [...].”*

(emphasis added)

31. Pursuant to the legislation in the TCA 1997, as referred to above, the time limits for claiming a repayment of Employer’s PAYE (including PRSI and USC) in this case are:

31.1. Employer’s PAYE tax periods ending in the calendar year 2019: 31 December 2023; and

31.2. Employer’s PAYE tax periods ending in the calendar year 2020: 31 December 2024.

32. On 29 July 2025, the Appellant filed amended Employer’s PAYE returns for the relevant periods. It is this date (29 July 2025) that establishes when the claims for repayment of Employer’s PAYE were made. Having regard to this date, the Commissioner is satisfied that the Appellant’s claim for a repayment of Employer’s PAYE for the relevant periods, fell outside the four-year time limit prescribed in sections 985G(6A)(a) and 531AOA(6)(a) of the TCA 1997.

33. The Commissioner notes the Appellant’s submission that the Appellant was unaware of its overpayment of Employer’s PAYE (due to the age of Director A) until it received correspondence from the DSP in [REDACTED] 2025 regarding the correct classification of Director A for PRSI purposes. Furthermore, the Appellant stated that the DSP letter arrived more than four years after the end of the relevant periods. Nonetheless, the use of the words “*shall not*” in sections 985G(6A)(a) and 531AOA(6)(a) of the TCA 1997 indicates the statutory time limit is mandatory and there is no discretion in the application of this time limit. Neither of these provisions include wording which provides for exceptions or exclusions from the four-year time limit in any circumstances. The Commissioner is satisfied that neither of the provisions afford the Commissioner discretion to disapply the four-year time limit.

34. Therefore, the Commissioner does not have discretion to direct the repayments of the overpaid Employer’s PAYE in this case, where the claims for the repayments were made

more than four years after the end of the calendar years in which the relevant periods ended.

35. Previous determinations of the Commission have addressed the matter of claims for repayments in the context of the statutory time limits. These determinations can be found on the Commission's website.<sup>1</sup>
36. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy her that, on the balance of probabilities, the Employer's PAYE credit position in this case is repayable to the Appellant.

#### *Jurisdiction of the Appeal Commissioner*

37. Finally, the Commissioner notes the Appellant's submission that it was not aware that Director A had turned sixty-six on [REDACTED] until it received the letter from the DSP on the matter of the PRSI classification of Director A.
38. In the case of *Lee*, as referred to above, at paragraph 20, Murray J. stated:

*"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. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation."*

39. In *Lee*, Murray J. continued at paragraph 76:

*"[...] 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."*

40. The Commissioner notes that the error leading to the overpayment of Employer's PAYE by the Appellant was not deliberate on its part. Furthermore, the Commissioner notes that the Appellant amended its Employer's PAYE returns when it became aware of the issue. However, the Commissioner is satisfied that she does not have any equitable jurisdiction to consider these matters, or to set aside the decisions of the Respondent in this case where she has found that those decisions were made by the Respondent in accordance with the relevant legislation.

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<sup>1</sup> <https://www.taxappeals.ie/en/determinations>

### *Conclusion*

41. 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 not correct.
42. The Commissioner has considered the legislation which imposes a statutory four-year time limit in the context of repayments of Employer's PAYE (including PRSI and USC). The Commissioner finds that the Respondent's refusal to repay the Appellant's credit positions for Employer's PAYE in the relevant periods was correct in law as it was made in accordance with the time limit set down in the relevant legislation governing repayment of Employer's PAYE (including PRSI and USC).
43. While empathising with the circumstances of the Appellant, the Commissioner notes that the legislation does not provide for any exceptions to the application of the four-year time limit in the context of the Appellant first becoming aware of the error in its Employer's PAYE returns after the statutory time limit had elapsed.

### **Determination**

44. As such and for the reasons set out above, the Commissioner determines that the appeal must be denied. Therefore, the decisions of the Respondent, both dated 7 August 2025, refusing to issue repayments of Employer's PAYE for the relevant periods, shall stand.
45. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Appellant was entitled to check whether the Respondent's refusal to repay Employer's PAYE for the relevant periods was correct and was prudent to do so in all the circumstances. However, as noted above, the legislation does not afford the Commissioner any discretion in this matter.
46. This Appeal is determined in accordance with Part 40A of the TCA 1997 and, in particular, section 949AL and 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.

### **Notification**

47. 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**

48. 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.



Suzanne Carter  
Appeal Commissioner  
27 March 2026