AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

19TACD2026

Between

[redacted]

Appellant

and

The Office of 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 sections 865(7) and 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought by [redacted] ("the Appellant") against a refusal by the Office of the Revenue Commissioners ("the Respondent") of a claim made by the Appellant. This claim was for a repayment of income tax in the sum of €2,431.78 for the years 2016 and 2017, was refused on the basis that the repayment was sought outside the statutory timeframe.

2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is adjudicated and determined without a hearing.

Background

3. On 8 March 2022, the Appellant filed her income tax returns for the years 2016 and 2017 but was unaware that there were overpayments of tax in the sums of €2,304.78 for 2016 and €127.00 for 2017.

4. On 24 March 2022, the Respondent disallowed the refund claims due to the 4-year statutory limit.

5. On 27 June 2025, following communication between the parties (which the Commissioner has not seen in full), the Respondent wrote two letters to the Appellant to confirm its decision to refuse the repayment of income tax for the years 2016 and 2017. This was refused on the basis that the income tax returns for 2016 and 2017 were filed outside the four-year limit pursuant to section 865 of the TCA 1997.

6. On 17 July 2025, the Appellant submitted a Notice of Appeal to the Commission outlining [redacted] which caused the delay in filing her 2016 and 2017 income tax returns.

7. On 28 August 2025, the Respondent submitted its Statement of Case.

8. On 13 October 2025, the Appellant filed her Statement of Case.

9. On 15 October, the parties were issued a notification in accordance with section 949U of the TCA 1997, stating the Commissioner's intention to adjudicate the appeal without a hearing and given 21 days to object if they so wished. No objections were received.

Legislation and Guidelines

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

11. 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 to 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 tax is 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) ………….

(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.

……………………

(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".

12. Section 959I of the TCA 1997, Obligation to make a return *inter alia* provides:

(1) "Every chargeable person shall as respect a chargeable period prepare and deliver to the Collector General on or before the specified return date for the chargeable period a return in the prescribed form".

Submissions

Appellant's submissions

13. The Commissioner has set out hereunder, a summary of the submissions made by the Appellant in her Notice of Appeal dated 17 July 2025 and Statement of Case received on 13 October 2025:

"I overpaid tax for the period 2016 and 2017.

[redacted]

I did not submit a tax return for these years as I was not aware at time that I was liable and paying tax.

I appointed an agent to address my tax needs for period 2021 and 2022 and he did not advise me of overpayment. His dealings was outside the timeframe. I was still not aware that I had overpaid tax in 20016/2017 until I received correspondence from Revenue informing that I was not eligible for tax rebate this was in July of this year.

[redacted]

Respondent's submissions

14. The Respondent in its Statement of Case dated 28 August 2025 stated:

"1. ……….

2. Outline of relevant facts.

The Appellant is seeking a repayment of taxes overpaid for the year ended 31st December 2016 and year ended 31st December 2017 on the grounds she was unaware of an overpayment for the years in question due to [redacted]

The Revenue Commissioners records indicate that the relevant tax returns were filed on the following dates.

2016 tax return – date received was 8th March 2022.

Amount of tax due for repayment was €2,304.78. Refund disapproved 24th March 2022.

2017 tax return – date received was 8th March 2022.

Amount of tax due for repayment was €127.59. Refund disapproved 24th March 2022.

The burden of proof in such matter's rests with the Appellant. The general principle of "he who asserts must prove" is the civil burden of proof imposing an obligation to sustain an assertion or proposition by positive argument. The default position in tax litigation requires the taxpayer to provide sufficient evidence to reduce or displace a tax assessment.

In accordance with Section 865(1) a valid claim for the repayment of tax is made where a person furnishes a statement or return which is required to delivered by that person and it contains all of the information the Revenue Commissioners reasonably require to determine that a repayment is due.

The Revenue Commissioners submits 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 Revenue Commissioner'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 claims in respect of the tax year of assessment 2016 and 2017 were out of time.

In order for the Appellants claim to be a valid claim for the repayment of tax the 2016 tax returns required to be filed in accordance with Section 959(I) [sic] *must have been filed by 31st December 2020 (4 years). In order for the Appellants claim to be a valid claim for the repayment of tax the 2017 tax returns required to be filed in accordance with Section 959(I)*[sic] *must have been filed by 31st December 2021 (4 years).*

As the Appellant did not file both returns until 8th March 2022, the repayments shall not be allowed in accordance with Section 865(4) and are statute barred.

3. Relevant case law.

Tax Appeal Commission Determinations.

18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 2TACD2017, 8TACD2017, 11TACD2017, 26TACD2017 11TACD2017, 26TACD2017, 9TACD2018, 12TAC2018, 16TACD2018, 19TACD2018, 25TACD2018,

29TACD2018, 3TACD2019, 4TACD2019, 20TACD2019,69TACD2019, 70TACD2019, 01TACD2020

In each of the above listed cases the Tax Appeal Commission has determined that "the use of the word 'shall' per s.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. In short, I do not consider that I have the authority or jurisdiction to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997".

Material Facts

15. Having read the documentation submitted, and having read the submissions of the parties, the Commissioner makes the following findings of material fact:

    15.1. On 8 March 2022, the Appellant filed her 2016 and 2017 income tax returns.

    15.2. On 24 March 2022, refund claims were disallowed by the Respondent in the sums of €2,304.78 for 2016 and €127.00 for 2017.

    15.3. On 27 June 2025, the Respondent refused a repayment of the overpaid income tax on the basis that the Appellant had filed her income tax returns for 2016 and 2017 claiming tax refunds outside the four-year statutory limit.

    15.4. On 17 July 2025, the Appellant submitted a Notice of Appeal to the Commission outlining [redacted] which resulted in the filing delay.

Analysis

16. At the outset, it is important to understand that in an appeal before the Commission, the burden of proof rests on the Appellant, being the taxpayer, who must prove on the balance of probabilities that the Respondent was incorrect to refuse a claim for income tax overpaid by the Appellant in the sum of €2,431.78 for the years 2016 and 2017.

17. This legal proposition is well established in case law and was outlined in the case of *Menolly Homes Ltd v Appeal Commissioners and Another* [2010] IEHC 49 *("Menolly Homes")*. At paragraph 22, Mr. Justice Charleton held 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".

18. The Commissioner also refers to paragraph 12 of Charleton J.'s judgment in *Menolly Homes*, wherein he stated:

> *"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation."*

19. The Commission is a statutory body, and it can only lawfully operate within the confines of the legislation. The Commissioner refers to the Court of Appeal case of *Lee v The Revenue Commissioners* [2021] IECA 18, (*"Lee"*) wherein Mr. Justice Murray 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. 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".*

20. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where that tax is not due from that person. However, section 865(4) of the TCA 1997 provides, *inter alia* 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).

21. In this appeal, the relevant tax years were 2016 and 2017. Therefore, the claim for a repayment of income tax must have been made on or before 31 December 2020 for the 2016 tax year and on or before 31 December 2021 for the 2017 tax year. The Appellant has not disputed that she filed her income tax returns for 2016 and 2017 on 8 March 2022. It is this date that establishes whether or not claims are valid for the purposes of section 865(3) of the TCA 1997.

22. Therefore, the Commissioner is satisfied, having regard to the 2016 and 2017 income tax returns' filing date of 8 March 2022, that the Appellant's claim fell outside the four-year time limit provided for in section 865(4) of the TCA 1997.

23. 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 allow for extenuating personal circumstances in which the four-year rule might be mitigated and therefore the Commissioner does not have any discretion to disapply the rule.

24. The Commissioner has considerable sympathy for the Appellant in this instance and acknowledges [redacted] resulting in the delay of the filing of the Appellant's 2016 and 2017 income tax returns.

25. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Appellant was entitled to check whether the Respondent's refusal of this claim for repayment of income tax was correct. However, as noted above the legislation does not afford the Commissioner any discretion on this matter.

Determination

26. For the reasons set out herein, the Commissioner determines that the Appellant has not succeeded in demonstrating that the Respondent was incorrect to refuse the Appellant's claim for a repayment of income tax in the amount of €2,431.78 under section 865(4) of the TCA 1997.

27. 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.

Notification

28. 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.

29. 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

30. 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.

Róisín Jordan
Appeal Commissioner
8 January 2026