



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

243TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction	3
Background.....	3
Legislation and Guidelines	4
Submissions	8
<i>Appellant's submissions</i>	8
<i>Respondent's submissions</i>	8
Material Facts	8
Analysis	9
<i>The burden of proof</i>	9
<i>Section 865 of the TCA 1997</i>	10
<i>Jurisdiction of an Appeal Commissioner</i>	10
<i>Conclusion</i>	11
Determination	12
Notification	12
Appeal	12

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 [REDACTED] (“the Appellant”) against the refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for repayment of income tax for the tax years 2017, 2018 and 2019 (“the relevant years”) on the grounds that the Appellant’s claim for repayment was made outside the statutory timeframe.
2. On 18 April 2025, the Appellant submitted a Notice of Appeal providing details of [REDACTED] serious health condition and the negative impact this has had on the ability to complete the income tax returns for the relevant years. The Appellant stated that the error in each of the income tax returns for the relevant years was discovered during the preparation of the Appellant’s income tax return for 2023 and was notified by the Appellant to the Respondent without delay.
3. On 3 July 2025, the Appellant submitted a Statement of Case. On 15 July 2025, the Respondent’s Statement of Case was received. The Commissioner has considered all submissions made by both parties and the relevant legislation in making this determination.
4. In accordance with the provisions of section 949U of the TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing.

Background

5. The Appellant filed income tax returns for the tax years 2017 to 2022.
6. On 5 November 2024, the Appellant notified the Respondent via the Respondent’s MyEnquiries of an error in each of the income tax returns for the relevant years, whereby the rental income had been overstated in each income tax return.
7. On 16 December 2024, the Respondent replied to the Appellant via MyEnquiries confirming that it had amended the Appellant’s Notices of Assessment for the tax years 2020 to 2022. The Respondent stated that for the tax years prior to 2020, the Appellant’s Notices of Assessment could not be amended because these years were “statute barred”.
8. On 29 December 2024, the Appellant replied to the Respondent via MyEnquiries to state that [REDACTED] was aware that the relevant tax years were statute barred, but that [REDACTED] was requesting that the amendments be allowed and income tax refunds made, due to exceptional circumstances namely, [REDACTED] medical issues.

9. On 24 March 2025, the Respondent replied to the Appellant via MyEnquiries stating:-
- “While our office sympathises with your circumstances unfortunately under section 865 of the TCA 1997 there are no mitigating circumstances and under legislation Revenue cannot issue a refund outside the 4 year time period.”*
10. On 10 April 2025, the Appellant replied to the Respondent via MyEnquiries acknowledging the repayment of income tax for the tax years 2020 to 2022 and stating the intention to appeal the Respondent’s decision to refuse a repayment of income tax for the relevant years.
11. On 14 April 2025, the Respondent replied via MyEnquiries providing the Commission’s contact details.
12. The Appellant’s Notice of Appeal stated the amount of the income overstated in each of the relevant tax years was as follows:-
- Tax year 2017: €13,200
 - Tax year 2018: €13,376
 - Tax year 2019: €13,912
13. The Appellant provided additional detail on ■ serious health condition and difficult personal circumstances in the Statement of Case. In that document the Appellant submitted that ■ was appealing the application of the statutory four-year time limit in sections 959V and 865(4) of the TCA 1997 for refunds of income tax overpaid on the basis of the “principles of natural justice” in the context of the Appellant not being a lawyer, being ■ years of age and suffering from a serious ■ health condition.
14. In its Statement of Case, the Respondent stated that it refused the Appellant’s claim for repayment of income tax for the relevant years as the request to amend the Notices of Assessment was made outside the statutory four-year time limit applicable under section 959V of the TCA 1997 and consequently, the claim for the refunds was not allowed pursuant to section 865(4) of the TCA 1997.

Legislation and Guidelines

15. The legislation relevant to this appeal is contained in sections 959V and 865 of the TCA 1997.
16. Section 959V of the TCA 1997, entitled “Amendment by chargeable person of return and of self assessment in return”, provides:-

- “(1) Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.*
- (2) Where a return is amended in accordance with subsection (1), the chargeable person shall as part of that notice amend the self-assessment for the chargeable period at the same time.*
- (2A) A return and self assessment may be amended under this section only where such an amendment –*
- (a) arises from an allowances, credit, deduction or relief due under the Acts,*
 - (b) is necessary to correct either an error or mistake, or*
 - (c) is necessary to comply with any other provision of the Acts,*
- and notice of an amendment under this section shall specify whether paragraph (a), (b) or (c) applies.*

[...]

- (6)(a) [...] notice under this section in relation to a return and a self assessment may only be given within a period of 4 years after the end of the chargeable period to which the return relates.*

[...]

[...]”

17. Section 865 of the TCA 1997, entitled “Repayment of tax”, provides:-

- “(1) (a) In this section [...]–*

[...]

*“**valid claim**” shall be construed in accordance with paragraph (b).*

- (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) *[...]*
- (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.*
- (2A) *Where a chargeable person (within the meaning of Part 41A) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due it shall not constitute a*

valid claim for the purposes of subsection (3) unless the return and self assessment for the period to which the claim relates is amended, in accordance with section 959V, to correct the error or mistake

[...]

(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

18. The Appellant submitted that while an error was made in each of the income tax returns for the relevant years, the errors were made inadvertently, attributable to the Appellant's deteriorating health [REDACTED] and notified to the Respondent without delay once the errors came to light.
19. The Appellant submitted that the four-year time limit specified in sections 959V and 865(4) of the TCA 1997 should not apply in this case under the principles of natural justice and, in particular, due to the Appellant not being a lawyer, being [REDACTED] years of age and suffering from a serious [REDACTED] health condition.

Respondent's submissions

20. The Respondent submitted that, as the Appellant notified the Respondent of amendments to the income tax returns for the relevant years more than four years after the end of each of those tax years, the income tax returns and self-assessment for the relevant years cannot be amended as stated in section 959V(6)(a) of the TCA 1997.
21. The Respondent further submitted that the claim for repayment of income tax overpaid for the relevant years is not allowed under section 865(4) of the TCA 1997.
22. While acknowledging the Appellant's personal circumstances, the Respondent submitted that the legislation does not allow for extenuating circumstances under which the provisions of section 865 of the TCA 1997 may be mitigated.

Material Facts

23. Having considered the documentation and submissions in this appeal, the Commissioner makes the following findings of material fact:-
 - 23.1. The Appellant filed income tax returns for each of the relevant years.
 - 23.2. In November 2024, the Appellant notified the Respondent of an error in [REDACTED] income tax returns for the relevant years whereby the taxable income in [REDACTED] income tax returns had been overstated in the amounts of €13,200 (2017), €13,376 (2018) and €13,912 (2019).
 - 23.3. The Appellant's notification to the Respondent in November 2024 was made more than four years after the end of each of the relevant years.

23.4. The Respondent refused to amend the Appellant's Notices of Assessment for the relevant years on the basis that the proposed amendments to the Appellant's income tax returns were notified to the Respondent more than four years after the end of each of the relevant years.

23.5. The Respondent refused a repayment of income tax for the relevant years.

Analysis

The burden of proof

24. 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 ("*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".

25. The Commissioner considers it useful to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, where he 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 [...]."

26. In *Lee v Revenue Commissioners* [2021] IECA 18 and [2021] IECA 114 ("*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."

27. In *JSS & Others v Tax Appeals Commissioner* [2025] IECA 96 the Court of Appeal reaffirmed the burden of proof in cases before the Commission rests on the appellant. In that case McDonald J. stated at paragraph 46:-

“The appellants bear the burden of proof on their appeals against the tax assessments in issue.”

Section 865 of the TCA 1997

28. 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 a statutory time limit to this entitlement, stating 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.”

29. Pursuant to section 865(4) of the TCA 1997, the time limits for claiming a repayment of income tax overpaid for the relevant tax years in this appeal are therefore as follows:-

- Tax year 2017: 31 December 2021
- Tax year 2018: 31 December 2022
- Tax year 2019: 31 December 2023

30. On 5 November 2024, the Appellant claimed overpaid income tax for the relevant years. It is this latter date (5 November 2024) that establishes a valid claim for the purposes of section 865(3) of the TCA 1997. Having regard to this date, the Commissioner is satisfied that the Appellant’s claim for a repayment of income tax for the relevant years, fell outside the four-year time limit prescribed in section 865(4) of the TCA 1997.

31. The Commissioner notes the Appellant’s submission that, due to declining [REDACTED] health, [REDACTED] did not become aware that [REDACTED] had overpaid income tax for the relevant years until 2024. Nonetheless, the use of the word “shall” in section 865(4) of the TCA 1997 indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for any circumstances in which the four-year rule might be mitigated. The legislation does not afford the Commissioner any discretion to disapply the rule.

Jurisdiction of an Appeal Commissioner

32. Finally, the Commissioner notes the Appellant’s references to the disapplication of the legislative provisions based on the principles of natural justice. In particular, the Appellant is seeking a derogation from the statutory four-year time limit under the principles of natural justice and specifically, on the ground that the Appellant is not a lawyer, is [REDACTED] years of age and is suffering from a serious [REDACTED] health condition.

33. 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.”

34. 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.”

35. 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.

Conclusion

36. The Commissioner has considered the relevant legislation in this case and in particular the application of the statutory four-year time limit under section 865(4) of the TCA 1997. 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 personal circumstances.

37. 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.

38. Section 865(4) of the TCA 1997 expressly prohibits repayment in respect of claims made more than four years after the end of the tax year. The Commissioner finds that the decision of the Respondent to refuse to repay income tax for the relevant years was correct in law.

39. The Commissioner finds that there are no exceptions to the application of the statutory four-year time limit in section 865(4) of the TCA 1997 under the principles of natural justice or for any of the personal circumstances put forward by the Appellant in this case.

40. Previous determinations of the Commission have addressed the matter of repayment in the context of the statutory four-year period. These determinations may be found on the Commission's website.¹

Determination

41. As such and for the reasons set out above, the Commissioner determines that the appeal must be denied. Therefore, the decision of the Respondent of 16 December 2024 shall stand.
42. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the Appellant's difficult personal circumstances and the significant effort required from the Appellant [REDACTED] to undertake this appeal. The Appellant was entitled to check whether the Respondent's refusal of [REDACTED] claim for a repayment of income tax for the relevant years 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.
43. 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

44. 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

45. 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

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

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 'Suzanne Carter'.

Suzanne Carter
Appeal Commissioner
7 October 2025