



**01TACD2020**

**BETWEEN/**

**Appellant**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a claim pursuant to s.865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax year of assessment 2012.
2. By notice dated 14 March 2018, the Appellant was informed that income tax had been overpaid in respect of the tax year of assessment 2012 in the amount €3,600.08. The Appellant sought repayment of the tax however the Respondent declined to process the repayment on the basis that a valid claim for repayment had not been made within the four-year limitation period in accordance with s.865(4) TCA 1997. The Appellant duly appealed to the Tax Appeals Commission.
3. On agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of s.949U TCA 1997.



## Background

4. In December 2017 the Appellant completed the relevant income tax return in respect of the years 2012 to 2016 inclusive. The returns were processed by the Respondent in March 2018 and notices of assessment issued to the Appellant shortly thereafter. The notice of assessment for the year 2012 indicated that an overpayment of tax in the amount €3,600.08 had arisen for the year 2012. The Respondent notified the Appellant on 21 March 2018 that s.865 TCA 1997 precluded them from making the repayment, as the claim was not made within four years after the end of the chargeable period to which the claim relates. The Appellant submitted a notice of appeal which was received by the Tax Appeals Commission on 18 April 2018 seeking repayment of the tax overpaid.

## Legislation

### s.865 TCA 1997 - Repayment of Tax

...

*(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.]*

*[(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.*

*(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).]*

*(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**

5. The Appellant submits that his tax returns were overlooked during the period 2013 to 2015 as his focus was elsewhere at the time due to his elderly parent's ill-health. The Appellant further submits that he was not aware of the four-year time limit on making a claim for repayment of overpaid tax.
6. The Respondent 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 related in accordance with s.865 TCA 1997. The Respondent submits therefore that the Appellant's claim for the year 2012 was out of time as it was received in December 2017, and that the refund could not be processed.

## **Analysis and findings**

7. The facts in this appeal are not in dispute. Both parties accepted that the repayment claim regarding the tax year 2012 was not made within four years after the end of the chargeable period to which the claims related. The Respondent submitted that the Appellant's claim for repayment was thus out of time in accordance with s.865(4) TCA 1997 which provides; '*... 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]*

8. In my view, 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.
9. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations, numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 25TACD2018, 29TACD2018, 03TACD2019, 14TACD2019 and 20TACD2019 can be found on the Commission website at [www.taxappeals.ie](http://www.taxappeals.ie).

### **Conclusion**

10. Pursuant to the wording of s.865 TCA 1997, and in particular the use of the word "*shall*" per subsection 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside of the four-year period. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax year of assessment 2012, is out of time in accordance with the provisions of section 865(4) TCA 1997.
11. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**5 DECEMBER 2019**

