



151TACD2020

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 years of assessment 2012 and 2013.
2. The Appellant sought repayment of the tax overpayments for 2012 and 2013. However, by notices dated 6 March 2019, the Respondent declined to process the repayments 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. The Appellant is seeking a repayment of taxes overpaid for the tax years 2012 and 2013 on the grounds that the relevant income tax returns were originally filed by him sometime in 2014. The Respondent submits that the Appellant has not provided any evidence to show that the returns had been submitted in 2014.
5. The Respondent issued filing reminder notices to the Appellant to file his Income Tax return for the tax years 2012 and 2013 on 10 April 2014 and 20 March 2015 respectively.
6. The Respondent's records indicate that the relevant returns for 2012 and 2013 were not filed until 16 October 2018. The returns were processed by the Respondent and on 6 March 2019 the Respondent notified the Appellant that s.865 TCA 1997 precluded them from making the repayments arising, as the claims were not made within four years after the end of the chargeable period to which the claims relate.
7. The Appellant submitted a notice of appeal which was received by the Tax Appeals Commission on 26 March 2019 seeking repayment of the tax overpaid for 2012 and 2013.
8. The quantum of repayment sought for 2012 and 2013 was not disclosed by either party.

Legislation

s.865 TCA 1997 - Repayment of Tax

(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 –

(1) 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

.....

(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

Appellant Submission

The Appellant in his Notice of Appeal stated:

"When I was self-employed, I sent off all my forms for both 2012 and 2013 in 2014 as I went back to being an employee.

I didn't know that Revenue had not received them until I contacted Revenue to sort out my tax for being married.

I got a letter to say I had to submit my returns in order to get my tax back.

I feel it is very unfair that I am not getting the money I overpaid back as I was unaware that Revenue hadn't received the forms, I sent in back in 2014.

Please can you reconsider as I feel this was not my fault."

Respondent Submission

The Respondent in its Statement of Case stated:

"Outline of Relevant Facts

The Appellant is seeking a repayment of taxes overpaid for the years ended 31 December 2012 and 2013 on the grounds that the relevant income tax returns were originally filed in 2014.

The Revenue Commissioners records indicate that the relevant tax returns were filed on the following date;

2012 tax return – date received 16 October 2018

2013 tax return – date received 16 October 2018



There is no record of these returns having originally been filed during 2014 or at any other time before 16 October 2018. The Appellant has not provided proof that these returns were filed at that time or within 4 years of the end of the chargeable periods.

The burden of proof in such matters 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.

Furthermore, filing reminder notices issued to the Appellant as follows (copies attached)

2012 tax return – reminder letter issued 10 April 2014

2013 tax return – reminder letter issued 20 March 2015

The Appellant was therefore made aware that the returns were still outstanding in 2015.

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 be delivered by that person and it contains all of the information the Revenue Commissioners reasonably require to determine that a repayment is due.

As the Appellant was a chargeable person for years 2012 and 2013 he was required to file an income tax return for these years in accordance with Section 959I.

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 years of assessment 2012 and 2013 were out of time.

In order for the Appellants claim to be a valid claim for the repayment of tax the tax returns required to be filed in accordance with Section 959(I) must have been filed by 31 December 2016 and 31 December 2017 respectively (4 years). As the



Appellant did not file the returns until October 2018 the repayment shall not be allowed in accordance with Section 865(4) and is statute barred."

Analysis and findings

9. Both parties accept that an overpayment of income tax arose for the tax years 2012 and 2013. The Appellant has not provided any evidence to show, as he asserted, that the tax returns identifying these overpayments had been submitted in 2014. The Respondent has shown evidence of sending reminders to the Appellant to submit his returns. The returns for both years were submitted on 16 October 2018.
10. Section 865(2) provides that a person is entitled to a repayment of tax paid where an amount of the tax paid is not due from that person. Section 865(3) provides that a repayment of tax is not due unless a valid claim has been made to the Revenue Commissioners. Section 865(1)(b)(i) provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where 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 is contained in the return furnished by the person.
11. As regards a limitation period for a repayment of tax under section 865, subsection (4) 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].
12. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the years of assessment 2012 and 2013 was not due. The entitlement to a repayment of tax arises under section 865(2). Section 865(3) means that the repayment of tax sought by the Appellant under section 865(2) is not due unless a valid claim has been made to the Revenue Commissioners. Therefore, for the repayments of tax for 2012 and 2013 to be due, the Appellant must have made a valid claim to the Revenue Commissioners. As regards when a valid claim was made by the Appellant for the years of assessment 2012 and 2013, the Revenue Commissioners submit that all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant followed the delivery of the return on 16 October 2018.





13. In deciding if the Appellant is entitled to a repayment of tax, and having established that there is a valid claim, the provisions of section 865(4) are applied. The Appellant has not provided any evidence to show that a valid claim was made in 2014.
14. As the claim for repayment of tax by the Appellant was made when he filed his tax returns for 2012 and 2013, outside the four-year period specified in section 865(4), the claim for repayment for the years 2012 and 2013 by the Appellant is not allowed.
15. The use of the word 'shall' in section 865(4), indicates an absence of discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances in which the four-year period might be mitigated. In the circumstances, I do not consider that I have the authority to direct that a repayment be made to the Appellant where a claim for repayment of tax was made outside the four-year period specified in section 865(4).
16. 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, 20TACD2019, 01TACD2020, 17TACD2020, 103TACD2020 and 132TACD2020 can be found on the Commission website at www.taxappeals.ie.

Conclusion

17. 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 claims on behalf of the Appellant for the tax years of assessment 2012 and 2013, are out of time in accordance with the provisions of section 865(4) TCA 1997.
18. This Appeal is hereby determined in accordance with s.949AL TCA 1997.



PAUL CUMMINS
APPEAL COMMISSIONER

17 JULY 2020

