



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

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151TACD2024

**Appellant**

and

**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 [REDACTED] (“the Appellant”) regarding the decision by the Revenue Commissioners (“the Respondent”) refusing the Appellant’s claim for a refund of repayment of income tax (“Income Tax”) made by the Appellant for the taxable period from 1 January 2019 to 31 December 2019 (“2019 Income Tax Year”). The Respondent submits that the Appellant is not entitled to a refund of Income Tax for the 2019 Income Tax Year as the repayment claim was made by the Appellant after the expiry of four years after the end of the relevant taxable year and that four years is the maximum time period permitted by legislation as provided for at section 865 of the TCA 1997 within which a claim for repayment can be made.
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 [REDACTED] February 2024 returns for Income Tax for the years 2019-2023 were filed on behalf of the Appellant by the Appellant’s agent.
4. On [REDACTED] February 2024 the Respondent issued an acknowledgement of receipt of the Income Tax return and self-assessment for the Appellant for the 2019 Income Tax Return Year (“Acknowledgement of Self-Assessment for 2019 Income Tax Year”). The Acknowledgement of Self-Assessment for 2019 Income Tax Year stated there was an overpayment of Income Tax for the Appellant for the 2019 Income Tax Year in the amount of €3,764.33.
5. On [REDACTED] February 2024 the Appellant filed [REDACTED] Notice of Appeal with the Commission. The grounds of appeal in the Notice of Appeal are:

*“I have been refused repayment of overpayment of tax for the chargeable period 01/01/2019 to 31/12/2019 (Notice number [REDACTED]).*

*The overpayment of tax was a result of working for a year at the [REDACTED], [REDACTED]. I finished there in [REDACTED] 2019 and from there moved to the UK for employment. Unfortunately, at the time, I did not realise there was an overpayment of tax.*

*My current accountants ( [REDACTED] ) were aware of this overpayment of tax but they did not submit before the end of 2023 claiming they were unaware of the 4 year rule.*

*Thank you for taking the time to consider my appeal. Please do not hesitate to contact me at your convenience should you have any questions or require any documentation”.*

6. On 2 May 2024 the Appellant submitted his Statement of Case to the Commission.
7. On 3 May 2024 the Respondent filed its Statement of Case with the Commission.

### **Legislation**

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

Section 865 of the Taxes Consolidation Act 1997.

### **Submissions**

*The Appellant’s Submissions:*

9. The Commissioner sets out hereunder an extract of the Appellant’s submissions:

*“I have been refused repayment of overpayment of tax for the chargeable period 01/01/2019 to 31/12/2019 (Notice number [REDACTED]).*

*Unfortunately, at the time, I did not realise there was an overpayment of tax.”*

*The Respondent’s submissions:*

10. The Commissioner sets out hereunder an extract of the Respondent’s submissions from its Statement of Case:

*“The Appellant filed their 2019 Income Tax return through ROS on the [REDACTED] February 2024. The return indicated that they had overpaid their tax in the amount of €3,764.33.*

*However, this refund was refused by Revenue as the Income Tax return was filed outside the four-year time limit as imposed by legislation. It is this decision that the Appellant is appealing.*

*In their appeal, dated 10th March 2024, the Appellant states that their accountants were unaware of the four year rule.*

*The legislation covering this matter is Section 865, subsection 4 of the TCA 1997. A valid claim for the 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.*

*Section 865, subsection 4 states;*

*“(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.”*

*The chargeable period in this instance is 1st January 2019 to the 31st December 2019. Therefore, in order that Revenue could consider a refund of tax overpaid for the 2019 tax year, a completed return would have to have been submitted on or before the 31st December 2023.*

*As the 2018 tax return was filed outside of the 4-year limit imposed by Section 865 of the Acts, Revenue are precluded from allowing refund or offset of the overpaid tax.”*

## **Material Facts**

11. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
12. On ■ February 2024 returns for Income Tax for the years 2019-2023 were filed on behalf of the Appellant by the Appellant’s agent.
13. On ■ February 2024 the Respondent issued an Acknowledgement of Self-Assessment for the 2019 Income Tax Year which stated there was an overpayment of Income Tax for the Appellant for the 2019 Income Tax Year in the amount of €3,764.33.
14. On 26 February 2024 the Appellant filed ■ Notice of Appeal with the Commission appealing the refusal by the Respondent to make a repayment to the Appellant of the overpayment of Income Tax made by ■ for the 2019 Income Tax Year.

## Analysis

15. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, wherein 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”.*

16. The Commissioner also refers to paragraph 12 of the High Court case of *Menolly Homes*, wherein 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...”*

17. The Commission is a statutory entity and it can only lawfully operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee v The Revenue Commissioners* [2021] IECA 18, wherein 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. 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. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have*

*acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.”*

18. The Commissioner refers to the legislation relevant to this appeal:

*Section 865 of the TCA 1997:*

*(1) (a) In this section and section 865A—*

*“Acts” means the Tax Acts, the Capital Gains Tax Acts, Part 4A, Part 18A, Part 18C, Part 18D, Part 22A and Part 22B and instruments made thereunder;*

*“chargeable period” has the meaning assigned to it by section 321;*

*“tax” means any income tax, corporation tax, capital gains tax, income levy, domicile levy, [universal social charge, residential zoned land tax or vacant homes tax or IIR top-up tax, UTPR top-up tax or domestic top-up tax (each within the meaning of Part 4A) and includes—*

*(i) any interest, surcharge or penalty relating to any such tax, levy or charge,*

*(ii) any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, levy or charge,*

*(iii) any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and*

*(iv) any amount paid on account of any such tax, levy or charge or paid in respect of any such tax, levy or charge;*

*“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 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) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.*

*(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.*

*(2B) Where a chargeable person (within the meaning of section 950) 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 and the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013 it shall not constitute a valid claim for the purposes of subsection (3) unless the person's return for the accounting period or year of assessment, as the case may be, to which the claim relates is amended in accordance*



*with section 959V to correct the error or mistake, and for this purpose section 959V shall apply to such an amendment as if—*

*(a) subsections (2) and (4) of that section were deleted,*

*(b) references in that section to “return and a self assessment”, “return and the self assessment” and “return or self assessment” were references to “return”, and*

*(c) references in that section to section 959Z were references to section 956.*

*(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.*

*(b) that provision provides for a longer period, within which the claim for repayment is to be made, which ends after the relevant period referred to in subsection (4), then that provision shall apply as if the longer period were the period referred to in subsection (4).*

*(6) Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not –*

*(a) repay an amount of tax paid to them, or*

*(b) pay interest in respect of an amount of tax paid to them.*

*(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.*

19. The Commissioner refers to the provisions of section 865(2) of the TCA 1997 which provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person.
20. The Commissioner refers to the provisions of section 865(3) of the TCA 1997 which provides that a repayment of tax is not due to the claimant unless a valid claim has been made to the Respondent.
21. The Commissioner refers to the provisions of section 865(1)(b)(i) of the TCA 1997 which 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 Respondent 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.
22. The Commissioner refers to the provisions of section 865(1)(b)(ii) of the TCA 1997 which provides that where all the information which the Respondent may reasonably require to enable it to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the applicant, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the applicant.
23. The Commissioner notes that it is a Material Fact that the Appellant did file a return for the 2019 Income Tax Year in February 2024 and that ■ did make a claim for repayment of the overpayment made by ■ in the 2019 Income Tax Year in February 2024.

24. The Commissioner refers to the provisions of section 865(4) of the TCA1997 which provides that “...a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made- (ii)in relation to any chargeable period beginning on or after 1 January 2003, within 4 years.”
25. The Commissioner has assessed the above provisions and finds that the legislation provides that the word “shall” means that the application of the four year rule is mandatory and that there is no leeway and/or discretion. The Commissioner having assessed the circumstances of the appeal and the Material Facts finds that the claim for repayment of the overpayment of Income Tax for the 2019 Income Tax Year was made after the expiry of four years from the end of the 2019 Income Tax Year and that the provisions of section 865(4) of the TCA 1997 mandates and dictates that the Respondent cannot give any repayment to the Appellant in respect of any overpayment of Income Tax for the 2019 Income Tax Year.
26. The Commissioner states that it has no discretion to direct that repayments be made or credits allocated to the Appellant where the claim for repayment was made after the expiry of four years from the end of the relevant taxable period as specified at section 865(4) of the TCA 1997.
27. The Commissioner has assessed all matters in this appeal and finds that the Appellant has not established on the balance of probabilities that the Respondent erred in not making a repayment to the Appellant of the overpayment of Income Tax for the 2019 Income Tax Year. Accordingly, for the reasons set out above the Commissioner finds that the Appellant’s appeal is unsuccessful.
28. Having assessed all the material, documentation and submissions furnished by the parties and the prevailing legislation, the Commissioner finds that the Appellant has not established on the balance of probabilities that the Respondent erred in its decision that it cannot give a repayment to the Appellant of the overpayment made by the Appellant in respect of Income Tax for the 2019 Income Tax Year. Accordingly, the Commissioner finds that further to the provisions of section 949 AL(1) (b) of the TCA 1997 the decision by the Respondent refusing the Appellant’s claim for a refund of repayment of Income Tax made by the Appellant for the 2019 Income Tax Year shall stand.

### **Determination**

29. The Commissioner for the reasons set out above finds that the Appellant has not been successful in his appeal and the grounds of appeal in the Notice of Appeal are denied.

30. The Commissioner acknowledges that the Appellant was within ■ rights to seek an appeal of the Respondent's decision to refuse to make a repayment to ■ of the overpayment of Income Tax for the 2019 Income Tax Year. The Commissioner understands that the Appellant may be disappointed with the outcome of ■ appeal.
31. This Appeal is determined in accordance with the provisions of 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**

32. 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**

33. 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.



Leonora B. Doyle  
Appeal Commissioner  
12 August 2024