



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

162TACD2024

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ██████████ (“the Appellant”) pursuant to section 865(7) of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) against the refusal by the Revenue Commissioners (“the Respondent”) to refund an overpayment of income tax in the amount of €597.96 for the 2019 tax year, on the ground 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 determined without a hearing.

Background

3. On 20 February 2024, the Appellant submitted her Form 11 income tax return for the tax year 2019. The return showed that she had overpaid tax of €597.96. The Appellant sought a repayment of the overpaid tax.
4. On 15 April 2024, the Respondent refused to repay the overpaid tax, on the basis that it had been made more than four years after the chargeable period. On 1 May 2024, the Appellant appealed against the Respondent’s refusal to the Commission.

5. On 28 June 2024, the Commission notified the parties that the Commissioner considered the appeal suitable for determination without an oral hearing, pursuant to section 949U of the TCA 1997. They were informed that they could object to the Commissioner proceeding without an oral hearing within 21 days of the notice, and that they could also submit any additional documentation that they wished the Commissioner to consider within 21 days. Neither party objected to the appeal being determined without an oral hearing. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation and Guidelines

6. Section 865 of the TCA 1997 provides *inter alia* that

“(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.

[...]

(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.”

Submissions

Appellant

7. The Appellant submitted that she made numerous attempts to file her 2019 return online but without success. She stated that she got a new computer at Christmas 2023 and thought that this would solve the issue. She attempted to file her return on 29 December 2023 but continued to encounter problems. She contacted the Respondent by telephone and spoke to four of its officers who attempted to help her. She was eventually told that she would have to submit her return in paper format, which resulted in the delay in its submission.

Respondent

8. The Respondent submitted the Appellant contacted its helpline on 29 December 2023 seeking assistance in filing her income tax return for 2019. The hard copy return was subsequently filed on 20 February 2024. Consequently, the request for a refund of the overpaid tax was made outside of the four-year time period set out in section 865 of the TCA 1997, and the Respondent was precluded from granting the request.

Material Facts

9. Having read the documentation submitted by the parties, the Commissioner makes the following finding of material fact:
 - 9.1. The Appellant filed her 2019 income tax return on 20 February 2024. The return showed an overpayment of tax in the amount of €597.96.
 - 9.2. The Respondent refused the Appellant's request for repayment of the overpaid amount on the ground that it was made outside of the prescribed time period.

Analysis

10. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse her claim for a refund of tax. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 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.*"

11. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. However, section 865(4) states *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). In this appeal, the relevant tax year was 2019 and therefore the repayment claim had to be made by 31 December 2023.
12. It is not in dispute that the Appellant’s return was submitted on 20 February 2024, i.e. outside of the four-year time frame. In her submissions, the Appellant stated that she had technical difficulties submitting the return online before the deadline, and that consequently she had to submit a paper return which led to the delay. While the Commissioner sympathises with the Appellant in this regard, he is satisfied that the responsibility for submitting a return on time, and making a request for repayment within the statutory timeframe, rests on the taxpayer.
13. The Commissioner is satisfied that the requirement under section 865(4) that a claim for repayment of tax be made within a specified timeframe is mandatory and that no discretion is allowed to the Respondent, or to the Commission on appeal, to disapply it. Consequently, as the Appellant’s request for a repayment of overpaid tax for 2019 was made after 31 December 2023, the Commissioner is satisfied that the Respondent was correct to refuse the claim for a refund, as section 865 does not allow the Respondent, or the Commission on appeal, to take into account any mitigating circumstances for the failure to comply with the mandated timeframe. Consequently, as he is satisfied that the Respondent acted correctly, the Commissioner determines that the appeal is unsuccessful.

Determination

14. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant’s application for a refund of income tax in the amount of €597.96 for 2019.
15. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 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

16. 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

17. 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.



Simon Noone
Appeal Commissioner
14 August 2024