



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

**Between**

165TACD2024

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**Appellant**

and

**The 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 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of corporation tax (“CT”), in accordance with the provisions of section 865 TCA 1997, in for the period [REDACTED] 2017 (“the relevant period”), in the sum of **€4,547.00**.
2. On **1 April 2024**, the Appellant duly appealed to the Commission. This appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**.
3. The Appellant submitted a Notice of Appeal which the Commissioner has considered in this Determination. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this Determination.

## Background

4. On **15 March 2024**, the Appellant filed her outstanding CT return for the relevant period, which resulted in an overpayment of CT in the sum of **€4,547.00**, for the relevant period.
5. On **22 March 2024**, the Respondent wrote to the Appellant to inform her that the Respondent was precluded from making a repayment of CT for the relevant period, as the claim was not made within the relevant 4 year period prescribed by legislation.
6. The Appellant submitted that previously she operated a [REDACTED] business, initially as a sole trader, and then [REDACTED] as a limited company. [REDACTED]  
[REDACTED]. The Appellant stated that she had engaged an Agent to complete her CT returns and it was only when she commenced voluntary strike off of the company, that there was a query in relation to the relevant period and a CT return was requested by the Respondent.
7. The Respondent submitted that in order for this Appellant’s CT return to be a valid return and any overpayment be available for refund or offset, the return must be filed within 4 years of the end of the chargeable period, which was on or before **31 July 2021**. The Appellant did not file the CT return until **15 March 2024**, outside of the four year statutory period.

## Legislation and Guidelines

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

9. Section 865 TCA 1997, Repayment of Tax, *inter alia* provides:-

*“(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 –*

*(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)....*

.....

*(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.*
- (5) .....
- (6).....
- (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*

10. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in her Notice of Appeal:-

██  
██  
██  
██  
██

[REDACTED]

[REDACTED]

*I then subsequently with some help from the call centre filled a nil return for that month in the middle of March of this year. It was on one of these revenue help calls that I was told that I overpaid tax of €4,500 at that time. This was the first I knew about this overpayment. I gave all my bank details for the repayment to be made.*

*I received a letter [REDACTED] to say I can't get the repayment as I didn't apply within 4 years. However I didn't know about the over payment until the [REDACTED] 2024 when I was going through the letter of no objection. I didn't receive any communication about it before now.*

*Can you please reconsider the repayment in light of this. [REDACTED]*

*Respondent's submissions*

11. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

[REDACTED]. *The return indicated that they had overpaid their tax in the amount of €4,547.00. This refund was refused by Revenue as the Corporation 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 Notice of Appeal, [REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED].

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;

.....

For this Corporation Tax return to be a valid return and any overpayment be available for refund or offset, it would have to be filed within 4 years of the end of the chargeable period i.e. on or before 31 July 2021.

As the Appellant filed their return for the period 1 [REDACTED] 2017 on 15 March 2024 and as this is clearly outside of the 4- year limit imposed by Section 865 of the Acts, Revenue is precluded from allowing refund or offset of the overpaid tax in the total amount of €4,547.00.”

## Material Facts

12. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 12.1. On **15 March 2024**, the Appellant filed her outstanding CT return for the relevant period, which resulted in an overpayment of income tax in the sum of **€4,547.00**, for the relevant period.
- 12.2. On **22 March 2024**, the Respondent wrote to the Appellant to inform her that the Respondent was precluded from making a repayment of CT for the relevant period, as the claim was not made within the relevant 4 year period prescribed by legislation.
- 12.3. The Appellant’s claim for a repayment of CT was made on **15 March 2024**, outside of the four year period prescribed by legislation.
- 12.4. In order for the Appellant’s claim to be a valid claim for the repayment of CT, the Appellant’s CT return for the relevant period was required to be filed on or before **31 July 2021**.

## **Analysis**

13. The Appellant's appeal relates to a refusal by the Respondent to permit a claim for a repayment of CT pursuant to section 865(4) TCA 1997, made by the Appellant in respect of the year of the relevant period, in the sum of **€4,547.00**.
14. 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, at paragraph 22, Charleton J. states 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"*.

15. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgment of Charleton J. in *Menolly Homes*, wherein he states that:

*"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..."*

## **Section 865 TCA 1997**

16. The Appellant has been denied a repayment of CT by the Respondent on the grounds that the Appellant does not meet the criteria outlined in section 865(4) TCA 1997, namely that a claim for repayment of tax for the chargeable period was not made within four years after the end of the chargeable period.
17. The Commissioner has considered the Appellant's submissions as set out in the Notice of Appeal. In addition, the Commissioner has considered the Respondent's submissions as set out in its Statement of Case, in relation to the repayment claim.
18. Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section includes income tax, corporation tax and capital gains tax. It also covers: any interest, surcharge or penalty relating to the tax, levy or charge; any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to the Respondent; and amounts paid on account of tax (for example, payments in excess of liability).



19. Section 865(2) TCA 1997 provides that a person who has paid tax which is not due, or which, but for an error or mistake in the person's return, would not have been due, is entitled to repayment of that tax.
20. Section 865(3) TCA 1997 provides that a repayment of tax referred to in section 865(2) TCA 1997 is not due unless a valid claim to repayment has been made. A return or statement which a person is required to deliver under the Acts and which contains all the information that the Respondent may reasonably require to determine if and to what extent a repayment is due, is regarded as a valid claim. The Commissioner is satisfied that the Appellant's filing of the CT return for the relevant period, on **15 March 2024**, was a valid claim for the purposes of section 865(3) TCA 1997.
21. In relation to a limitation period for a repayment of tax, section 865(4) TCA 1997 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].
22. As the Appellant's claim for repayment of CT relates to the relevant period namely [REDACTED] **2017**, a valid claim for repayment must have been made on or before [REDACTED] **2021**, for the relevant period at issue. The Appellant filed CT returns on **15 March 2024** and as set out above, it is this date that establishes a valid claim for the purposes of section 865(3) TCA 1997. Having regard to this date, the Commissioner is satisfied that the claim falls outside of the 4 year time limit prescribed in section 865(4) TCA 1997.
23. As the claim for repayment of CT by the Appellant was made outside the four year period specified in section 865(4) TCA 1997, the claim for repayment was disallowed. The Commissioner notes that on **22 March 2024**, correspondence issued from the Respondent to the Appellant informing the Appellant that the repayment of CT was disallowed under section 865 TCA 1997.
24. The use of the word "**shall**" in section 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. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the four year period specified in section 865(4) TCA 1997.

25. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website<sup>1</sup>.
26. 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. The Commissioner determines that a repayment is not available to the Appellant in relation to tax overpaid in respect of the relevant period, as a valid claim for repayment was not made within the four year statutory period contained in section 865(4) TCA 1997.
27. The Commissioner has every sympathy for the Appellant's situation. Unfortunately, the Commissioner has no discretion to assist in these circumstances due to the four year rule prescribed by legislation. Hence, the appeal is denied.

### **Determination**

28. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed and the Appellant has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(4) TCA 1997.
29. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
30. This Appeal is determined in accordance with Part 40A 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) TCA 1997.

### **Notification**

31. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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.

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

## Appeal

32. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine  
Appeal Commissioner  
16 August 2024