



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

168TACD2024

Between

██████████

**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”) brought by ██████████ (“the Appellant”) under sections 865(7) and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for the repayment of income tax in the amount of €1,698.52 for the tax year 2018, on the ground that the Appellant’s claim for a repayment of overpaid income tax for the year 2018 was made outside the statutory timeframe.
2. This appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

## **Background**

3. The Respondent submitted that on 22 January 2024, the Appellant filed an income tax return for 2018 through the Revenue Online System (“ROS”). The income tax return indicated that the Appellant had overpaid income tax in the amount of €1,698.52.
4. On 23 February 2024, the Respondent wrote to the Appellant to inform him of its decision to refuse the Appellant’s claim for a repayment of income tax for the year 2018, on the ground that the income tax return for 2018 was filed outside the four year time limit imposed by legislation.
5. On 22 March 2024, the Appellant’s representative submitted a Notice of Appeal to the Commission. In that Notice of Appeal, the Appellant’s representative requested that the decision of the Respondent be reversed and she enclosed a letter from the Appellant.
6. On 11 April 2024, the Respondent wrote to the Appellant’s representative and confirmed its position. The Respondent stated that as the Appellant’s return was filed on 22 January 2024, which was outside the four year time limit imposed by legislation, it was precluded from refunding or offsetting the tax overpayment.
7. On 23 May 2024, the Respondent submitted a Statement of Case and on 11 July 2024, the Appellant’s representative submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

## **Legislation and Guidelines**

8. The legislation relevant to this appeal is as follows:
9. Section 865 of the TCA 1997 provides (among other things):

*“(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.*

...

*(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.”*

10. Section 865B of the TCA 1997 provides (among other things):

*“(2) Subject to subsections (3) and (4), where a repayment of any tax cannot be made to a person by virtue of the operation of—*

*(a) section 865,*

*(b) section 105B of the Finance Act 2001,*

*(c) section 99 of the Value-Added Tax Consolidation Act 2010,*

*(d) section 159A of the Stamp Duties Consolidation Act 1999,*

(e) section 57 of the Capital Acquisitions Tax Consolidation Act 2003, or

(f) any other provision of any of the Acts,

*then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person.*

(3) *Where a repayment of tax cannot be made to a person in respect of a relevant period, it may be set against the amount of tax to which paragraph (a) of subsection (4) applies which is due and payable by the person in the circumstances set out in paragraph (b) of that subsection.*

(4) (a) *The amount of tax to which this paragraph applies is the amount, or so much of the amount, of tax that is due and payable by the person in respect of the relevant period as does not exceed the amount of the repayment that cannot be made to the person in respect of that relevant period.*

(b) *The circumstances set out in this paragraph are where tax is due and payable in respect of the relevant period by virtue of an assessment that is made or amended, or any other action that is taken for the recovery of tax, at a time that is 4 years or more after the end of the relevant period.*

(5) *No tax shall be set against any other amount of tax except as is provided for by the Acts.”*

## **Submissions**

### *Appellant*

11. In the Appellant's Notice of Appeal, the Appellant's representative submitted (in summary):

*“My client has forwarded the attached written correspondence explaining his personal circumstances which affected his personal and business over the last few years. We would appreciate if you would reverse the decision to enable the repayable amount of tax to be offset against the other taxes that are due at the minute, we are working on his file to get his tax affairs up to date and help my client overcome the financial burdens that he is having to overcome at this moment in time.”*

12. In the letter enclosed with the Appellant's Notice of Appeal, the Appellant submitted:

*“I wish to make an appeal to have a rebate of tax due to me from my 2018 tax return, offset against other tax now due by me to Revenue. I am advised by [REDACTED]”*

[REDACTED] that this cannot be done due to the 4 year rule. I wish to appeal this decision. A set of unusual and serious circumstances prevented me from submitting my returns from 2019. [REDACTED]

[REDACTED]

*These are the reasons I didn't make tax returns for 4 years. I have now managed to get my returns up to date (within a few days). I feel strongly that Revenue should allow the offset of tax from 2018 especially as I will be in a position to pay tax going forward once I get tax clearance and will not be a burden on the state. This refund will greatly help me get over these difficulties."*

13. In his Statement of Case, the Appellant reiterated the submissions made in the letter enclosed with his Notice of Appeal.

*Respondent*

14. In its Statement of Case, the Respondent submitted:

*"For the 2018 Income Tax return to be a valid return and any overpayment to 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 December 2022. As the Appellant filed their income tax returns on 22 January 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 €1,698.52."*

15. In neither the Notice of Appeal nor the Statement of Case did the Appellant or his representative dispute that the Appellant filed his income tax return for 2018 in 2024.

### **Material Facts**

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

16.1. On 22 January 2024, the Appellant filed an income tax return for the 2018 tax year.

16.2. The income tax return indicated that he had overpaid income tax for 2018 in the amount of €1,698.52.

16.3. On 23 February 2024, the Respondent refused a repayment of the overpaid income tax on the ground that the Appellant had filed his income tax return for 2018, outside the four year statutory time limit.

### **Analysis**

17. This appeal relates to the Respondent's refusal of the Appellant's claim for a repayment of overpaid income tax for the tax year 2018 and his request that the overpaid income tax be offset against other liabilities. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.

18. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to refuse to repay and offset the overpaid tax. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [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".*

#### *Section 865 TCA 1997*

19. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where that tax is not due from that person. However, section 865(4) of the 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).

20. In this appeal, the relevant tax year was 2018. Therefore, the claim for a repayment must have been made on or before 31 December 2022. The Appellant has not disputed that he filed his income tax return for 2018 on 22 January 2024. It is this date that establishes a valid claim for the purposes of section 865(3) of the TCA 1997. Having regard to this date, the Commissioner is satisfied that the Appellant's claim for a repayment of income tax fell outside the four year time limit prescribed in section 865(4) of the TCA 1997.
21. The use of the word "shall" in section 865(4) of the 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 legislation does not afford the Commissioner any discretion to disapply the rule.
22. 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>.

*Section 865B TCA 1997*

23. Section 865B(2) of the TCA 1997 provides that where a repayment of tax cannot be made because a claim for repayment was made outside the time limit provided for under section 865(4) of the TCA 1997, repayment cannot be offset against any other tax due. Section 865B(5) of the TCA 1997 confirms that there is no right of offset outside that already provided under tax legislation.
24. Section 865B(4)(b) of the TCA 1997 contains an exception to the general rule regarding offsets. It applies where tax is due and payable for a tax year or accounting period, by virtue of action taken by the Respondent, to assess or recover tax at a time that is four years or more after the end of the year or period involved. In such a case, an amount of tax which cannot be repaid because of the application of a time limit, but which relates to the same tax year or accounting period as the tax liability Revenue is pursuing, is available for offset.
25. As noted above, in an appeal before the Commission, the burden of proof rests on the Appellant. The Appellant has not disputed that he filed his income tax return for 2018 on 22 January 2024. In the letter enclosed with the Appellant's Notice of Appeal, the Appellant requested an offset of the tax in overpaid in 2018 "against other tax now due". However, neither the Appellant nor his representative has suggested or shown that there are taxes now due and payable in respect of 2018 by virtue of action taken by the

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



Respondent to assess or recover tax four years or more after the relevant period. Accordingly, section 865B(4) of the TCA 1997 does not apply on the facts of this appeal.

26. It follows that the Commissioner is satisfied that the income tax overpaid in 2018 is not available for offset. Section 865B(2) of the TCA 1997 does not permit tax overpaid to be offset against tax liabilities where a repayment claim in respect of the tax overpaid would not be available.
27. The Commissioner appreciates that this decision will be disappointing for the Appellant and acknowledges the difficult personal and business circumstances which the Appellant outlined on appeal. The Appellant was entitled to check whether the Respondent's refusal was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

### **Determination**

28. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to apply the provisions of sections 865 and 865B of the TCA 1997 in relation to the overpaid income tax in the amount of €1,698.52.
29. This Appeal is determined in accordance with 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**

30. 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**

31. 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.

A handwritten signature in black ink that reads "Jo Kenny". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

Jo Kenny  
Appeal Commissioner  
28 August 2024