



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

173TACD2024

████████████████████

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 relevant contract tax (“RCT”) in the amount of €14,275.43 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 1 May 2024, the Appellant submitted his 2019 income tax return. The return showed, *inter alia*, that he had overpaid RCT in the amount of €14,275.43. He sought a repayment of the overpaid amount.

4. On 13 June 2024, the Respondent refused to repay the overpaid tax, on the basis that the claim had been made more than four years after the chargeable period. On 28 June 2024, the Appellant appealed against the Respondent's refusal to the Commission.
5. On 6 August 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

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. In written submissions, the Appellant stated that

“When the pandemic hit in late 2019 and early 2020 I wasn't working full time and was receiving the Covid19 payment. I did eventually go back to work even though I had problems with my health and then received notification I had to undergo major surgery

████████████████████.

In █████ 2022 I had █████ surgery which took me 6 months to recover and is still attending hospital to this day.

In █████ 2022 my mother suddenly passed away and then of █████ 2023 my father passed █████. I was grieving the loss of my parents and in January 2024 I had made it my priority to sort my tax affairs which I have now done.

I am just asking for a little bit of leniency when considering the decision for my appeal.

Revenue had taken monies that was owed and feel this is very unfair to withhold monies that is owed to me. I am a hardworking man who has always paid my taxes and the last couple of years have been tough I made sure to get on top of my taxes again and will continue to do this if this can also be taken into account when coming to a decision.”

Respondent

8. In written submissions, the Respondent stated that

“The Appellant submitted his 2019 Income Tax return on 01 May 2024, resulting in an outstanding liability in amount of €3,703.05. The Relevant Contract Tax (RCT), deducted as a withholding tax, has been offset against this liability, to cover the liability in full.

However, the refund of the remaining RCT balance for the year 2019, 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 Notice of Appeal, dated 24 June 2024, the Appellant states as the grounds for an appeal personal extenuating circumstances that delayed getting the due Income Tax Return filed on time and within the four year timeline. Furthermore, the appeal outlines, in details, the nature of personal hardship that the Appellant endured during this time.

While Revenue appreciates the circumstances and sympathises with the Appellant, the legislation precludes us from allowing refunds where the claims were made outside of the four-year limit.

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.

[...]

The chargeable period for the year 2019 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 2019 tax return was filed 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.”

Material Facts

9. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:
 - 9.1. On 1 May 2024, the Appellant submitted his 2019 income tax return. The return showed, *inter alia*, that he had overpaid RCT in the amount of €14,275.43. He sought a repayment of the overpaid amount.
 - 9.2. On 13 June 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.

Analysis

10. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse his 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 for 2019 was submitted outside of the four-year time frame. In his submissions, the Appellant stated that his return was late due to the impact of the Covid-19 pandemic, health difficulties he suffered in 2022, and the unexpected and untimely death of his mother in ██████████ 2022, and of his father in ██████████ 2023. The Commissioner has every sympathy with the Appellant in respect of the very difficult personal circumstances he has faced in recent years.
13. However, the Commissioner’s jurisdiction is limited to considering and applying tax law, and he has no equitable power or wider discretion to disapply statutory provisions on the ground that he sympathises with an appellant’s personal circumstances. In this instance, 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.
14. 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. Therefore, as he is satisfied that the Respondent acted correctly, the Commissioner determines that the appeal is unsuccessful.

Determination

15. 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 RCT in the amount of €14,275.43 for 2019.

16. 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

17. 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

18. 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
11 September 2024