



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

176TACD2024

██████████

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 €10,993 for the tax year 2014, 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. In March 2024, the Appellant filed his income tax return for 2014. On 7 March 2024, the Respondent issued a notice of amended assessment for 2014 showing an overpayment of income tax in the amount of €10,993.

4. The Appellant sought a repayment of the overpaid amount. On 8 March 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.
5. On 5 April 2024, the Appellant appealed against the Respondent's refusal to the Commission. On 8 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 *inter alia* that

“Please could this appeal for 2014 be reviewed in context of my overall income tax affairs since 2011 to date... I have recently overpaid tax for the years 2012/2013/2014 to the total value of €42,415.37 approx. (note I have not yet received a Notice of Amended Assessment for 2012, which revenue have confirmed will be issued). I am only appealing 2014 now, as the only correspondence I have regarding 2013 is the Notice of Amended Assessment stating the balance of overpaid tax is €15,632.64, which I agree with, and as mentioned for 2012 I am waiting to receive the Notice of Amended Assessment confirming the balance of overpaid tax to be approximately €15,789.73.

Please also consider the personal element of this appeal, for this period. At the end of 2010 the company I worked for closed down as a result of the collapse of the industry in recession. In 2011 social welfare encouraged me to register for [REDACTED] and on completion was registered as self-employed with Revenue. Ultimately, during the period 2011-2015 I was unemployed, became homeless and lost all my possessions, resulting in serious mental health issues. In 2015 when I had found a way forward by bringing in [REDACTED] work to a friend [REDACTED] in return for permanent employment, I was played by this person who for numerous years tried to get me out the picture by attempting to make me unemployed, so as not to honour our agreement. The strain of going to work everyday knowing I could be let go for anything resulted in further mental health issues and upon addressing these issues of repeated bullying with the company, I was unlawfully made redundant [REDACTED].

I have followed advice from Revenue on getting back on track by filing returns for all outstanding years with the view there would be a refund for these years which could be used to pay the outstanding amount for the remaining years.

Without this refund, starting with 2014, I cannot make the outstanding payments, and desperately want to personally put all of this in the past and move forward, gaining employment and contributing to society and the country. Your assistance in reviewing

this appeal in context of the overall situation and already overpaid tax to the value of €42,415.37 which I can use to pay the remaining outstanding amount, would make all the difference to me.”

Respondent

8. The Respondent submitted that

“The appellant registered for IT in 2011. He filed returns for 2016, 2018 & 2019. He did not file returns for 2015 and 2017 despite numerous requests. Inspectors’ estimates were raised for 2015 & 2017 based on profit filed by the appellant for 2016 as this was in line with payments received per reported 46Gs. Inspectors Estimates also raised for 2011 to 2014 inclusive. The estimates for 2012 to 2014 were based on the income as declared on the 2016 46G and the 2011 estimate was based on Dept of Social Welfare payments received.

Upon receipt of final demands and an attachment order placed on his bank account, the appellant filed F11s in March 2024 for 2013, 2014, 2015 & 2017 and began to engage with Revenue.

Refunds are claimed for 2013 & 2014 but the repayment claim is refused it is outside the 4-year time limit.”

Material Facts

9. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:

9.1. In March 2024, the Appellant submitted his income tax return for 2014. On 7 March 2024, the Respondent issued a notice of amended assessment for 2014 showing an overpayment of income tax in the amount of €10,993.

9.2. The Appellant sought a repayment of the overpaid amount. On 8 March 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.

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 2014, and therefore the repayment claim had to be made by 31 December 2018.
12. It is not in dispute that the Appellant’s return for 2014 was submitted outside of the four-year time frame. At the request of the Commissioner, the Respondent submitted a detailed timeline of its engagement with the Appellant regarding his tax returns, beginning in June 2019. In his submissions, the Appellant has set out the very difficult personal circumstances he encountered since 2011. The Commissioner has every sympathy with the Appellant in respect of the 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 2014 was made after 31 December 2018, 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.
15. Finally, for the avoidance of doubt, while the Appellant has referred to contended overpayments by him in 2012 and 2013 as well, this appeal and determination concerns the 2014 tax year only.

Determination

16. 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 €10,993 for 2014.
17. 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

18. 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

19. 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
12 September 2024