



57TACD2024

Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal of the decision of the Revenue Commissioners (“the Respondent”) of 31 March 2023 to refuse the Appellant’s claim for the repayment of tax overpaid for the year 2018 in the amount of €2,900.06. The reason given for refusal was that the Appellant’s income tax return for 2018 was submitted on 15 February 2023, with the effect that the claim for repayment was made outside of the four year time-limit prescribed by section 865(4) of the Taxes Consolidation Act 1997 (“the TCA 1997”).
2. The appeal of this decision is determined, with the consent of both parties, without a hearing pursuant to section 949U of the TCA 1997.

Background

3. The essential facts in this matter were not in dispute. On 15 February 2023 the Appellant filed a late income tax return for the year 2018 through Revenue Online Services (“ROS”).
4. In his Notice of Appeal submitted to the Tax Appeals Commission (“the Commission”), the Appellant stated that his income tax return for this year was submitted late on account of his suffering from post-traumatic stress disorder (“PTSD”). In this regard, the Appellant

attached medical documentation from April 2023, which records that he has been diagnosed with PTSD. The Appellant's symptoms include hypervigilance, avoidant behaviour, anxiety, fatigue and insomnia of a moderate to severe nature. The documentation further records that the Appellant has been undergoing therapy in relation to his PTSD since January 2023. The Appellant indicated in his Notice of Appeal that the treatment received has had a positive effect on his symptoms.

5. The Appellant stated that at some stage in 2022 he left his financial records with his accountant. It was only as a consequence of this that the oversight regarding the filing of his return for 2018 came to his attention.
6. The consequent filing of the Appellant's income tax return for the year 2018 resulted in the Appellant being assessed as having overpaid tax for the year 2018 in the amount of €2,900.06.
7. The Respondent issued a decision refusing to make repayment of this sum on 31 March 2023, with the reason given being the four-year time limit on repayment imposed by section 865(4) of the TCA 1997. The Appellant exercised his right under section 856(7) of the TCA 1997 to appeal this decision by way of the delivery of a Notice of Appeal to the Commission on 14 April 2023.

Legislation and Guidelines

8. Section 865 of the TCA 1997 is headed "Repayment of tax". Subsection 2 therein provides:-

"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."

9. Section 865(3) TCA 1997 provides that no repayment of income tax shall be made unless a "valid claim" has first been made to the Respondents. Section 865(1)(b) TCA 1997 provides, in so far as relevant, that:-

"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 tax is 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,

10. Section 865(4) TCA 1997 sets the following time-limit on repayments:-

“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—

[...]

(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

11. The Appellant asked that the Commissioner exercise discretion in his favour by allowing his claim for repayment. He submitted that the exercise of discretion in this manner was warranted on the grounds of his personal circumstances, specifically his history of illness in the form of PTSD, which hindered his timely filing of a return.

Respondent

12. The Respondent submitted that the Appellant's claim for repayment was not made until 15 February 2015, this being the date on which he filed his income tax return for 2018. Section 865(4) of the TCA 1997 requires that repayments not be made where a person makes their claim more than four years after the end of the tax period to which the claim relates. The time limit in this instance expired on 31 December 2022 and, as such, it was barred from making repayment on the grounds that the claim was out of time.

Material Facts

13. The facts material to the determination of this appeal were as follows:-

- the Appellant filed an income tax return for the year 2018 on 15 February 2023;
- the Appellant was assessed as having overpaid tax for 2015 in the amount of €2,900.06;
- the Respondent refused to repay the amount of tax overpaid on 31 March 2023;

Analysis

14. The Appellant in this case has appealed, pursuant to section 865(7) of the TCA 1997, the refusal of the Respondent to make repayment. The Respondent based this refusal on section 865(4) of the TCA 1997, which prohibits the repayment of overpaid tax where the chargeable person makes their claim more than four years after the end of the tax year to which the claim relates.

15. There was no dispute that the Appellant's claim was in fact made outside the time-limit specified in section 865(4) of the TCA 1997. Rather, the submissions of the Appellant in support of his appeal focused on the exercise of discretion by the Commissioner in his favour in circumstances where the timing of his claim for repayment, made by way of the late delivery of his income tax return for 2018, was a consequence of his illness. However, the function of the Commissioner in the hearing of any tax appeal is limited to interpreting

the meaning of the relevant legislation passed by the Oireachtas and thereafter enacted and then applying that legislation to the particular facts arising in the appeal. The Commissioner has no jurisdiction to consider questions relating to the fairness of legislation as it applies in an individual case (in this regard see the judgment of the Court of Appeal in *Lee v Revenue Commissioner [2021] IECA 18*, which the Commissioner is bound by law to follow). For good or ill, the Oireachtas has decided that claims for the repayment of tax made more than four years after the end of the chargeable period to which the claim relates must not be allowed. This being so, and notwithstanding the personal sympathy the Commissioner has for the Appellant given the difficulties described in his appeal documents and accompanying medical material, it must be held that the decision of the Respondent to refuse repayment was correct and therefore stands affirmed.

Determination

16. It is determined that the Appellant's claim for the repayment of income tax assessed as having been overpaid for the year 2018, in the amount of €2,900.06, was out of time and must be refused having regard to the time-limit prescribed by section 865(4) of the TCA 1997. The Commissioner recognises that the outcome of the appeal will be disappointing to the Appellant and wishes to re-iterate his expression of sympathy regarding the challenges that he has faced over the last number of years, which it is clear he has made significant efforts to overcome.
17. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL 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.



Conor O'Higgins
Appeal Commissioner
20 February 2023