



64TACD2024

Between

██████████

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 €3,323.30 for the 2018 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 24 March 2023, the Appellant filed his income tax return for 2018. On 27 May 2023, the Respondent issued a notice of amended assessment which showed that the Appellant had overpaid tax of €3,323.30 for that year.

4. The Appellant claimed a refund of the overpaid tax. On 3 August 2023, the Respondent refused the refund claim, on the basis that it had been made more than four years after the chargeable period.
5. On 1 September 2023, the Appellant appealed against the Respondent's refusal to the Commission. In his notice of appeal, he stated that his income tax return was filed late due to mismanagement of his affairs by his tax agent.
6. On 28 February 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. Both parties replied to state that they had no objection 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

7. 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

8. The Appellant submitted that:

“The circumstances surrounding this matter involve the mishandling of our case by our designated tax agent based on his provision of incorrect guidance and his reassurances that Revenue deadlines were not applicable in our case...

I left the country some years ago and returned in [REDACTED] with my [wife]. I had not submitted tax returns in Ireland before (I had only ever submitted for tax claims when unused tax credits could be applied) as I assumed for a long time that the PAYE system in Ireland meant tax returns were not expected unless you were self-employed or similar.

When I learned this is not the case, my wife and I were anxious to come into compliance with the Revenue system. We recognised our own lack of experience with the Irish tax system and felt it prudent to hire an experienced tax expert to process the multiple years to be filed, especially if it related to any complexities. We hired a tax agent in August 2022 to prepare and submit our tax returns for the years [REDACTED]-2021. We relied heavily on his expertise and guidance to ensure compliance with all relevant tax regulations. Unfortunately, he was under the wrong impression about the deadlines in effect...

In summary, any financial information that was requested of us by our tax agent was provided to him on 5th September 2022, allowing him to carry out any necessary calculations...

It wasn't until 1st February 2023 before I received any corrected documents. At that point, he only sent through the corrected 2016 return to sign, suggesting that only one year be submitted to see how it would be received by the Revenue before submitting the remaining years. The 2016 return was accepted the following week...

We understand how the Revenue system came to this decision, and we recognise that no error was made by the Revenue here. However, we have also found this situation

distressing. We trusted our tax agent's knowledge of the tax system and followed his professional advice. His assurances led us to believe that there was more time to submit than there actually was. Even he followed his own misinformed understanding of the Revenue submission deadlines, not submitting the 2018 return until three months after the 2022 year's end. It's made worse by the fact that the required paperwork was effectively ready to submit in December 2022. Now, because of our tax agent's mistakes and inactions, my wife and I find ourselves ineligible for the tax overpayment refund. We stand to lose access to a significant amount of money which, for a hard-working couple with ■■■ children under ■■■ years, will be sorely missed.

Considering the circumstances outlined above, we kindly request that the Board reevaluate the decision regarding our 2018 tax overpayment refund. We humbly ask the Board to give leniency in this case based on the recognition that we acted in good faith over the past year, trying to bring ourselves into compliance with the Revenue once we realised our mistake in relation to needing to file yearly tax returns. We thought we were on track by employing our tax agent's services last August. We also genuinely believed we could trust his guidance and expertise and that he would have everything prepared and ready to file in line with the Revenue's requirements. Unfortunately, the misunderstandings/errors he made and the reassurances he provided directly contributed to the late claim outcome, but it will be us who suffer as a result. Given the exceptional nature of this case, we humbly ask for the decision to be overturned, allowing us to recover the calculated tax overpayment of €3,323.30."

9. The Appellant also submitted a timeline of his engagement with his tax agent and copies of emails between him and his agent. A letter from the tax agent dated 22 August 2023 was also provided. This stated that:

"The matter arose during Covid 19 and I myself fell victim to the virus. I was unable to work for some time and required medical attention. This put [my] practice under extreme pressure and held up my workload, as I work as a sole practitioner.

I was reassured in my filing of the Income Tax Return 2018 that all was in order, as there was a general understanding during the Covid period that Revenue had relaxed many of the filing and payment rules and wouldn't adhere strictly to the time limits. I therefore had no reason to be concerned that a time limit would be enforced.

I would respectfully request that leniency be exercised in this case.

My client is entitled to this refund and has been granted refunds for other years

He would be seriously prejudiced if a strict time limit were imposed during the Covid period, when latitude was granted to taxpayers and there was no reason to believe that this would not be the case in this instance.

In all circumstances my client wishes to plead leniency on this occasion.”

Respondent

10. The Respondent submitted that:

“The Appellant filed their 2018 Income Tax return on the 24th March 2023. The return indicated that they had overpaid their tax in the amount of €6,397.71. In their return they had failed to include a PAYE refund of €3,074.41 that they received in respect of the 2018 tax year. Revenue amended their return to include this refund which resulted in reducing their tax overpayment to €3,323.30.

However, this refund 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 their appeal, the Appellant states that they were trying to file their 2018 return in 2022 but due to mishandling of their case by their tax agent their return was not filed until March 2023. In their correspondence attached to their appeal, the Appellant states that their agent had assured them that due to filing extensions provided by Revenue due to the Covid pandemic, that the refund would issue.

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....

For the 2018 Income 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. before the 31st December 2022.

As the Appellant filed their 2018 Income Tax returns on the 24th March 2023 and as this is clearly outside of the 4-year limit imposed by Section 865 of the Acts, Revenue are precluded from allowing refund or offset of the overpaid tax in the total amount of €3,323.30.

The filing deadline extensions allowed by Revenue due to Covid related solely to returns that had their original filing date during the pandemic and did not apply to

returns that had a filing date prior to the pandemic. Specifically, the filing deadlines for the 2019 and 2020 Form 11 tax returns were extended; however, this appeal relates to the 2018 Form 11.”

Material Facts

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

- 11.1. The Appellant filed his income tax return for the 2018 tax year on 24 March 2023.
- 11.2. The Respondent issued a notice of amended assessment on 27 May 2023 which showed that the Appellant had overpaid income tax in 2018 in the amount of €3,323.30.
- 11.3. The Appellant claimed for a refund of the overpaid tax. On 3 August 2023, the Respondent refused his claim on the basis that it was made more than four years after the end of the chargeable period.

Analysis

12. 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.*”
13. 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 2018 and therefore the repayment claim had to be made by 31 December 2022.
14. The Appellant accepts that his income tax return for 2018 was submitted outside of the four-year period prescribed by section 865, and he has submitted that this was due to mismanagement of his affairs by his tax agent. The Commissioner has considered the email correspondence between the Appellant and his agent, as submitted by the Appellant, and agrees that this correspondence shows that he was in contact with his

agent prior to the end of 2022. His agent has also submitted a letter on the Appellant's behalf.

15. The Commissioner has considerable sympathy for the Appellant in this instance. He accepts that the Appellant contacted his agent before the end of 2022, and it is clear from the email correspondence between them that there was a significant degree of interaction before the agent submitted the Appellant's income tax return. The Commissioner appreciates that the Appellant feels aggrieved that his application for a refund was refused.
16. Nevertheless, 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. The claim for a refund had to have been made by 31 December 2022, but was not made until after the income tax return for 2018 was filed on 24 March 2023.
17. Consequently, 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. Both the Appellant and his agent have referenced the disruption caused by the Covid 19 pandemic. However, the Oireachtas did not extend the timeframe for the making of a repayment claim for 2018 on foot of the pandemic.
18. The Commissioner's role is confined to considering whether the Respondent's refusal of the Appellant's claim was correct in law, and he has no equitable jurisdiction or power to disapply the clear provisions of section 865. Furthermore, the Commissioner appreciates that the Appellant is unhappy with the service provided by his agent. However, the Commissioner's jurisdiction is limited to considering "the assessment and the charge", as stated by Murray J at paragraph 64 of the Court of Appeal's judgment in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner has no equitable jurisdiction or broader power to consider the wider circumstances surrounding the failure to submit the tax return and claim in time, including the relationship between the Appellant and his agent.
19. In conclusion, the Commissioner appreciates that this determination will be frustrating and disappointing for the Appellant, who was entitled to exercise his right to an appeal to the Commission of the Respondent's refusal of his claim. However, the Commissioner is satisfied that the Respondent's decision was correct in law, and therefore the appeal is unsuccessful.

Determination

20. 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 €3,323.30 for 2018.
21. 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

22. 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

23. 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
20 March 2024