



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

72TACD2024

**[REDACTED]**

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## **Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against the refusal of the Revenue Commissioners (hereinafter "the Respondent") of a claim for the repayment of Relevant Contract Tax (hereinafter "RCT") pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the "TCA 1997") made by the Appellant on 21 April 2023 in respect of the tax year 2018.
2. The amount of tax at issue is €28,006.30.

## **Background**

3. ██████████ (hereinafter the "Appellant") is a UK registered limited company which was first registered in the State for RCT with effect from 1 October 2018 and was issued with an Irish tax reference number. The Appellant carried out construction works in the State to which RCT applied from 2018 onwards.
4. By correspondence dated 18 December 2020, the Appellant submitted a Tax Repayment Claim Form (Form IC3) bearing a stamp dated 2 May 2019 from Her (as it was then) Majesty's Revenue and Customs (hereinafter "HMRC") which omitted the Appellant's Irish tax registration number.
5. By correspondence of the same date the Respondent sought clarification from the Appellant as to whether it held an Irish tax reference number and in response, the Appellant stated that it did not. This was incorrect as the Appellant had, in fact, been issued with an Irish tax reference number when it first registered for RCT in 2018. The Respondent advised the Appellant that it needed to obtain an Irish tax reference number in order for a claim for repayment to be processed.
6. During the course of 2020 and 2021 correspondence between the parties, to include the Appellant's tax agent ensued.
7. On 21 April 2023, the Appellant submitted Tax Repayment Claim Form (Form IC3) to the Respondent for the years 2018, 2020 and 2021 which was stamped by HMRC on 15 February 2022. The Respondent processed the repayment claims for 2020 and 2021 and repayments were issued to the Appellant.
8. By way of letter dated 21 September 2023, the Respondent disallowed the Appellant's claim for repayment of RCT for 2018 on the basis that the claim had not been made within

4 years of the end of the relevant tax year to which the claim related pursuant to section 865 of the TCA1997.

9. The Appellant has appealed the disallowance of the repayment of RCT by the Respondent for the tax year 2018 by way of a Notice of Appeal dated 26 September 2023 which was submitted to the Commission.

### **Legislation and Guidelines**

10. The legislation relevant to this appeal is as follows:

#### Section 865 of the TCA1997:

*“(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.*

*(3A)(a)Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of Part 41A), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person’s emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person’s liability for that year.*

*(b)A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).*

*(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.*

*...*

*(7) Where any person is aggrieved by a decision of the Revenue Commissioners on a claim to repayment by that person, in so far as that decision is made by reference to any provision of this section, the person may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision."*

## **Submissions**

### *Appellant*

11. The Appellant submitted the following in support of this appeal in its Notice of Appeal:

*"Regarding the 2018 tax repayments, I wanted to mention that our Contractor filled out and submitted the necessary forms, but we did not yet have an RCT account set up with you to receive their payments at that time. By the time we got our RCT account sorted, the money had already been sent back to the Contractor's accounts. They did not notify us of this, so we wrongly assumed that they did not know how to properly complete the forms. We spent a lot of time exchanging emails between us trying to determine where the issue was as we did not received the payments to RCT account. Our Contractor hired a local advisor to assist with the process. We also contacted you to find out the problem, and how to correctly fill out the related forms. Right around this time, the pandemic started, with lockdowns, which significantly slowed response times from all parties, including our local HMRC office that needed to certify our UK tax payments. We have sent the forms to HMRC in order to be stamped, after few months*

*without any response, I've sent them a letter to find out what happened and I been informed that the forms has been lost. They advise to resend the forms, which we did, and I have received the forms stamped after 10-11 months. Has been sent in February 2022, received as a gift before Christmas last year 2022. We also tried to hire an advisor in Dublin, but they declined to get involved, I sent a proof to [REDACTED], who was very helpful during this process. The pandemic period caused the most inconvenience for us, as we likely could have sorted this out in a timely manner without issues under normal circumstances. I would greatly appreciate if you would consider this letter regarding getting the 2018 repayments. Please let me know if you need any clarification or have additional questions.”*

12. The Appellant submitted the following in support of this appeal in section 3 of its Statement of Case entitled “Outline of Relevant Facts”:

*“Regarding the 2018 tax repayments, I wanted to mention that our Contractor filled out and submitted the necessary forms, but we did not yet have an RCT account set up with you to receive their payments at that time.*

*By the time we got our RCT account sorted, the money had already been sent back to the Contractor's accounts. They did not notify us of this, so we wrongly assumed that they did not know how to properly complete the forms. We spent a lot of time exchanging emails between us trying to determine where the issue was as we did not received the payments to RCT account.*

*Right around this time, the pandemic started, with lockdowns, which significantly slowed response times from all parties, including our local HMRC office that needed to certify our UK tax payments. We have sent the forms to HMRC in order to be stamped, after few months without any response, I've sent them a letter to find out what happened and I been informed that the forms has been lost. They advise to resend the forms, which we did, and I have received the forms stamped after 10-11 months. Has been sent in February 2022, received as a gift before Christmas last year 2022.*

*The pandemic period caused the most inconvenience for us, as we likely could have sorted this out in a timely manner without issues under normal circumstances.*

*We acted in good faith to claim the tax reimbursement from 2018 and have followed up diligently since then to obtain the refund owed to our company. We ask that the Appeal Commissioners consider these facts and assist us in finally obtaining the 2018 tax repayment.”*

13. The Appellant submitted the following in support of this appeal in section 5 of its Statement of Case entitled “Case Law”:

*“Regarding relevant case law to support this appeal, I do not have specific legal precedents to cite at this time.*

*However, I believe the merits of the case and sequence of events I have outlined show that I have made a valid effort over several years to properly claim and receive reimbursement for taxes withheld from my company under the RCT tax repayment in 2018.*

*While delays occurred due to administrative issues like establishing the required RCT account and obtaining certified forms during the pandemic, I acted in accordance with Revenue guidelines and procedures throughout the process.*

*The approval of the initial appeal seems to support that my company has followed appropriate and lawful steps to retrieve the tax refunds owed based on work completed in Ireland during the timeframe in question.*

*Should the Commissioners require citing specific legislation or legal cases to justify the reimbursement, I would respectfully request your guidance on the relevant regulations and precedents that can be applied to support my company's compliant efforts to claim the 2018 tax refunds.”*

14. At the oral hearing of this appeal the Appellant submitted that it had begun work in Ireland in 2018. It was submitted that the Appellant had engaged the services of a person to assist with the claim for repayment of RCT and that in 2020 an attempt had been made to submit a claim for repayment. It was submitted that in 2020 the claim for repayment had been unsuccessful due to a lack of a tax reference number which, as far as the Appellant was aware, had not yet been issued by the Respondent.
15. The Appellant stated that delays in receiving the requisite stamped form from HMRC occurred and that the forms were received in December 2022. The receipt of the forms in December 2022, the Appellant submitted, resulted in the claim for repayment of RCT for 2018 being submitted in 2023. The Appellant acknowledged that the claims for repayment for 2020 and 2021 had been processed and repaid by the Respondent.
16. The Appellant stated that, as it is a UK based company, it had not been aware of the 4 year rule for the repayment of tax contained in section 865 of the TCA 1997. It submitted that, as the delays were not of its making, the Commissioner should exercise discretion and allow the repayment of RCT in the amount of €28,006.30 for the year 2018.

## *Respondent*

17. The Respondent submitted that it acknowledged that the Appellant is registered for RCT and that the claims for repayment of RCT submitted by the Appellant for 2020 and 2021 had been correctly claimed, processed and repaid to the Appellant in 2023.
18. The Respondent submitted that the provisions of section 865 of the TCA 1997 mean that 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.
19. As the Appellant's claim for the repayment of RCT for the tax year 2018 was submitted in April 2023, the Respondent submitted that the provisions of section 865 of the TCA 1997 do not permit the Respondent and / or the Commissioner, to allow a repayment outside of the 4 year time period which expired on 31 December 2022. The Respondent submitted that the provisions of section 865 of the TCA 1997 mean that the Commissioner does not have any discretion or leeway where valid claims for repayment of tax are made outside of the 4 year period provided for.

## **Material Facts**

20. The following material fact is not at issue in this appeal and the Commissioner accepts the following as a material fact:
  - 20.1. The Appellant submitted a claim for repayment of RCT for the tax year 2018 to the Respondent in April 2023.

## **Analysis**

21. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*
22. The Commissioner has considered the submissions made and documentation submitted on behalf of both parties in this appeal.
23. Section 865(2) of the TCA1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. Section 865(3) of the TCA



1997 provides that a repayment of tax is not due unless a valid claim has been made to the Respondent.

24. Section 865(1)(b)(i) of the TCA1997 provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where all the information which the Respondent may reasonably require to enable them determine if and to what extent a repayment of tax is due is contained in the return furnished by the person.
25. Section 865(1)(b)(ii) of the TCA1997 provides that where all the information which the Respondent may reasonably require to enable them to determine if and to what extent a repayment of tax is due is not contained in the return furnished by the person, a claim for repayment of tax shall be treated as a valid claim when that information has been furnished by the person.
26. In relation to a limitation period for a repayment of tax section 865(4) of the TCA1997 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].
27. A repayment of tax was sought by the Appellant on the basis that the amount of RCT paid for 2018 was not due. The entitlement to a repayment of tax arises under section 865(2) of the TCA1997. Section 865(3) of the TCA1997 means the repayment of tax sought under section 865(2) of the TCA1997 is not due unless a valid claim has been made to the Respondent. Therefore, for the repayment of tax in the amounts of €28,006.30 for the tax year 2018 to be due, the Respondent must have received a valid claim.
28. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due in April 2023 following the delivery of the relevant claim to repayment by the Appellant by way of the submission of the Tax Repayment Claim Form (Form IC3). This was in excess of 4 years from the end of the tax year 2018.
29. Having established that there is a valid claim, the provisions of section 865(4) of the TCA1997 must be applied. As the claim for repayment of tax was made outside the 4 year period specified in section 865(4) of the TCA1997, no valid claim for repayment of tax had been submitted by the Appellant and the claim for repayment in the amount of €28,006.30 for the tax year 2016 was disallowed by the Respondent.
30. The use of the word “*shall*” as set out in section 865(4) of the TCA1997, 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 4 year rule might be mitigated.

31. The Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the 4 year period specified in section 865(4) of the TCA1997.
32. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4 year statutory limitation period. These determinations, may be found on the Commission website.<sup>1</sup>
33. As a result of the above, the Commissioner finds that the burden of proof has not been discharged to satisfy the Commissioner that the refund of RCT in the amount of €28,006.30 was payable by the Respondent.

### **Determination**

34. For the reasons set out above, the Commissioner determines that this appeal has failed and that it has not been shown that the relevant refund was payable.
35. It is understandable the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the Appellant's position. However, the Commissioner has no discretion in these cases due to the application of the 4 year rule, set out above.
36. This appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 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**

37. 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

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

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**

38. 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.



Clare O'Driscoll  
Appeal Commissioner  
22 April 2024