



Between

87TACD2024

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of income tax, in accordance with the provisions of section 865 TCA 1997, in respect of the year of assessment **2018**, in the sum **€1,730.08**, the year of assessment **2019** in the sum of **€1,815.00**, the year of assessment **2020**, in the sum of **€1,349.26** and the year of assessment **2021**, in the sum of **€19.00**.
2. On **18 November 2023**, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**.
3. The Appellant submitted a Notice of Appeal which the Commissioner has considered in this determination. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this determination.

Background

4. The Appellant submitted that in **2018**, the Appellant registered for income tax, because the Appellant created a small company for [REDACTED]. The Appellant submitted that the company was only active during a few months in 2021, it never made a profit and has since ceased trading.
5. The Appellant submitted that in **2023**, the Appellant applied to the Respondent for a rent tax credit for 2022 and was informed by the Respondent that the Appellant had to file income tax returns.
6. On **30 August 2023**, the Appellant filed income tax returns through the Revenue Online System (“ROS”). The Respondent submitted that the returns indicated that the Appellant had a liability in the amount of €596.12 and the Appellant paid the sum of €1,000 to discharge the liability.
7. Subsequently, on **31 August 2023**, the Appellant received a notification from the Respondent stating that the Appellant owed the sum of €3,333.19 in unpaid income tax for the periods of 2018, 2019 and 2020.

8. On **20 October 2023**, the Respondent amended the return to include tax credits which the Appellant was entitled to, but had been omitted, and which placed the Appellant in a refund position.
9. On **7 November 2023**, the Respondent wrote to the Appellant to inform him that the Respondent is precluded from making a repayment of income tax for the year 2018, as the claim was not made within the relevant 4 year period. The Respondent submitted that the refund was refused, as the income tax return for 2018, was filed outside of the time limit imposed by legislation.
10. The Respondent submitted that the chargeable period is 1 January 2018 to the 31 December 2018 and in order for the Respondent to consider a refund of tax overpaid for the tax year 2018, a completed income tax return should have been submitted on or before the **31 December 2022**.
11. The Respondent submitted that it did refund/offset the amount of €1,000 paid in error when the Appellant believed there was a liability. The Respondent submitted that the amounts relating to the years 2019, 2020 and 2021 have been refunded, as the claims were made within the four year time limit.
12. In his appeal, dated **26 November 2023**, the Appellant stated that the process was unfair and that the Appellant did not understand the process.

Legislation and Guidelines

13. The legislation relevant to this appeal is as follows:-

14. Section 865 TCA 1997, Repayment of Tax, *inter alia* provides:-

“(1)...

(b) *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 taxes 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 shall be treated as a valid claim when that information has been furnished by the person, and

(iii)....

.....

(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

(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.

(5)

(6).....

(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's submissions

15. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in his Notice of Appeal:-

"In 2018 I set up myself as Income Tax Payer because I created a small company for doing [REDACTED] but that company was only active during a few months in 2021 and I never got any profit. All returns for that company are presented, It is totally inactive now.

During all those periods I was working as an employee for different companies so I understood that my taxes were being deducted directly from my payslip and there was nothing else I had to do.

Then, when this year 2023 I applied for the Rental Tax Credit of 2022, from the Revenue they informed me that I had to do the tax return, I did, and then I got the notification (attached) saying that I had to pay 3,333.19 EUR immediately. Only in August of this year 2023 I was informed that I owed 3,333.19 EUR for Income taxes unpaid plus fees for the periods of 2018, 2019, 2020 and 2021.

I asked for the reasons why, but instead of any explanations I got a threatening letter forcing me to pay within 7 days or I would be taken to court and potentially prosecuted for it.

I obviously paid immediately the amount requested, and then on the 23rd of October I received four Notices of Amended Assessment (all attached) one of each year informing me that I am owed all the amounts stated above in this form.

I then contacted the revenue asking them what all this meant (I haven't gotten an answer to this query I placed in ROS)

Finally I got this LATE CLAIM FOR REPAYMENT OF TAX (also attached) stating that I cannot claim the tax overpayment for the period of 2018 because it is more than four years ago. This is quite unfair as I was informed of this all very recently. I haven't received a letter referring to 2019, 2020 and 2021 (am I being paid those overpayments?)

Someone should have informed me earlier that I had to present the Income Tax each year, I never did before in the 13 years that I am in Ireland so I didn't do this time either, and also Revenue should have calculated the taxes correctly instead of threatening me with a very mean letter.

I am not rich so this money is really useful for me now that Christmas is coming so I can be able to visit my family". (sic)

Respondent's submissions

16. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

"The Appellant filed their 2018 Income Tax return through ROS on the 30th August 2023. The return indicated that they had a liability in the amount of €596.12. The Appellant paid €1000 to cover this liability. On the 20th October 2023, Revenue amended the return to include tax credits which the appellant was entitled to but had omitted from the original. This placed the appellant in a refund position.

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. Revenue did however refund/offset the €1000 paid in error when the Appellant believed they had a liability. The original appeal also included the years 2019, 2020 and 2021. These have been refunded as they were within the four year time limit.

In their appeal, dated 26th November 2023, the Appellant states that they believe the process to be unfair and that they did not understand the process.

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 in this instance is 1st January 2018 to the 31st December 2018. Therefore, in order that Revenue could consider a refund of tax overpaid for the 2018 tax year, a completed return would have to have been submitted on or before the 31st December 2022.

As the 2018 tax return was filed 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."

Material Facts

17. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 17.1. In 2018, the Appellant registered for income tax, because the Appellant created a small company for [REDACTED].
- 17.2. In 2023, the Appellant applied to the Respondent for a rent tax credit for 2022 and was informed by the Respondent that the Appellant had to file income tax returns.
- 17.3. On 30 August 2023, the Appellant filed income tax returns through the ROS.
- 17.4. The income tax returns indicated that the Appellant had a liability in the amount of €596.12.
- 17.5. The Appellant paid the sum of €1,000 to discharge the liability in the sum of €596.12.
- 17.6. On 31 August 2023, the Appellant received a notification stating that the Appellant owed the sum of €3,333.19 in unpaid income tax for the periods of 2018, 2019 and 2020.
- 17.7. On 20 October 2023, the Respondent amended the return to include tax credits which the Appellant was entitled to, but had omitted. This placed the Appellant in a refund position.
- 17.8. The Respondent refunded/offset the amount of €1,000 paid in error when the Appellant believed there was a liability.
- 17.9. On 7 November 2023, the Respondent wrote to the Appellant to inform the Appellant that the Respondent is precluded from making a repayment of income tax for the year 2018, as the claim was not made within the relevant 4 year period.

17.10. The information required by the Respondent for a valid claim for repayment to be made in relation to the year 2018, was not furnished to the Respondent until after 31 December 2022.

17.11. The amounts relating to the years 2019, 2020 and 2021 have been refunded as the claims are within the four year time limit.

Analysis

18. The Appellant's appeal relates to a refusal by the Respondent to permit a claim for a repayment of income tax pursuant to section 865(4) TCA 1997, made by the Appellant in respect of the year of assessment **2018**, in the sum **€1,730.08**, the year of assessment **2019** in the sum of **€1,815.00**, the year of assessment **2020**, in the sum of **€1,349.26** and the year of assessment **2021**, in the sum of **€19.00**. The Commissioner notes that the Respondent has since repaid the sums relating to the years 2019, 2020 and 2021, as the claim for repayment was made within the four year time limit, in accordance with section 865(4) TCA 1997.

19. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. states 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".

20. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgment of Charleton J. in *Menolly Homes*, wherein he states that:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

Section 865 TCA 1997

21. The Appellant has been denied a repayment of income tax by the Respondent on the grounds that the Appellant does not meet the criteria outlined in section 865(4) TCA 1997,

namely that a claim for repayment of tax for the chargeable period was not made within four years after the end of the chargeable period.

22. The Commissioner has considered the Appellant's submissions as set out in the Notice of Appeal. In addition, the Commissioner has considered the Respondent's submissions as set out in its Statement of Case, in relation to the repayment claim.
23. Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section includes income tax and capital gains tax. It also covers: any interest, surcharge or penalty relating to the tax, levy or charge; any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to the Respondent; and amounts paid on account of tax (for example, payments in excess of liability).
24. Section 865(2) TCA 1997 provides that a person who has paid tax which is not due, or which but for an error or mistake in the person's return would not have been due, is entitled to repayment of that tax.
25. Section 865(3) TCA 1997 provides that a repayment of tax referred to in section 865(2) TCA 1997 is not due unless a valid claim to repayment has been made. A return or statement which a person is required to deliver under the Acts and which contains all the information that the Respondent may reasonably require to determine if and to what extent a repayment is due, is regarded as a valid claim. The Commissioner is satisfied that the Appellant's submission via the ROS of income tax returns on **30 August 2023**, is a valid claim for the purposes of section 865(3) TCA 1997.
26. In relation to a limitation period for a repayment of tax, section 865(4) TCA 1997 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. The Commissioner notes the facts of this appeal are such that in **August 2023**, the Appellant realised that income tax returns were outstanding for the years 2018, 2019, 2020 and 2021. The Commissioner notes that on **30 August 2023**, the Appellant filed the aforementioned income tax returns via the ROS. The income tax returns indicated that the Appellant had a liability in the amount of **€596.12**. The Appellant paid **€1,000** to cover the liability. Subsequently, on **31 August 2023**, the Appellant received notification from the Respondent that the sum of **€3,333.19** was due, which the Appellant immediately paid. The Commissioner notes that on **20 October 2023**, the Respondent amended the return to include tax credits which the Appellant was entitled to, but had been omitted, and which

placed the Appellant in a refund position. The Commissioner notes that it is submitted by the Respondent that it refunded/offset the amount of €1,000 paid in error when the Appellant believed there was a liability. Thereafter, on **7 November 2023**, correspondence issued from the Respondent denying the claim, in accordance with the provisions of section 865(4) TCA 1997.

28. As the Appellant's claim for repayment of income tax relates to the tax year **2018**, a valid claim for repayment must have been made on or before **31 December 2022**, for year at issue. The Appellant filed income tax returns on **30 August 2023** and as set out above, it is this date that establishes a valid claim for the purposes of section 865(3) TCA 1997. Having regard to this date, the Commissioner is satisfied that the claim falls outside of the 4 year time limit prescribed in section 865(4) TCA 1997.
29. As the claim for repayment of income tax by the Appellant was made outside the four year period specified in section 865(4) TCA 1997, the claim for repayment was disallowed. The Commissioner notes that correspondence issued on **7 November 2023** from the Respondent, informing the Appellant that repayment of income tax was disallowed under section 865 TCA 1997.
30. The use of the word "shall" as set out in section 865(4) TCA 1997, 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 four year rule might be mitigated. 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 four year period specified in section 865(4) TCA 1997.
31. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website¹.
32. For the sake of completeness, the Commissioner notes the Appellant's reference to unfairness and the manner in which the Respondent engaged with him. Insofar as the Appellant seeks that the Commissioner set aside a decision of the Respondent based on the alleged unfairness, breach of legitimate expectation, or disproportionality, such grounds of appeal do not fall within the jurisdiction of the Commissioner and thus, do not fall to be determined as part of this appeal.
33. The scope of the jurisdiction of an Appeal Commissioner, as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue*

¹ www.taxappeals.ie

Commissioners [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577, is confined to the determination of the amount of tax owing by a taxpayer, in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings.

34. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. The Commissioner determines that a repayment is not available to the Appellant in relation to tax overpaid in respect of the year 2018, as a valid claim for repayment was not made within the four year statutory period contained in section 865(4) TCA 1997.
35. The Commissioner has every sympathy for the Appellant's situation. Unfortunately, the Commissioner has no discretion to assist in these circumstances due to the four year rule prescribed by legislation. Hence, the appeal is denied.

Determination

36. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed and the Appellant has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(4) TCA 1997.
37. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
38. This Appeal is determined in accordance with Part 40A 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) TCA 1997.


Notification

39. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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

40. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.


Claire Millrine
Appeal Commissioner
17 May 2024