



88TACD2024

Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) of the decision of the Revenue Commissioners (“the Respondent”) of 5 July 2023 to refuse the Appellant’s claim for the repayment of income tax overpaid for the year 2018, in the amount of €3,085.42.
2. The reason given for refusal was that the Appellant’s income tax return for 2018 was submitted on 4 July 2023, with the effect that the claim for repayment was made outside the four year time-limit prescribed by section 865(4) of the Taxes Consolidation Act 1997 (“the TCA 1997”).
3. 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

4. The essential facts in this matter were not in dispute. On 4 July 2023 the Appellant, through her agents, filed a late income tax return for the year 2018. On foot of the information provided in this late return, the Appellant was assessed as having overpaid

income tax for the year 2018 in the amount of €3,085.42. The Respondent also applied a surcharge penalty of €1,670.95 as a consequence of the late filing of the return.

5. On 5 July 2023, the Respondent issued a decision refusing to make repayment of overpaid income tax of €3,085.42, with the reason given being the expiry of the four-year time limit on repayment imposed under section 865(4) of the TCA 1997.
6. It is worth noting that in the course of the appeal the Respondent indicated that it was not seeking payment of the surcharge penalty, in circumstances where it had been offset against the tax overpaid for 2018.
7. On 19 July 2023, the Appellant exercised her right under section 865(7) of the TCA 1997 to appeal the decision of the Respondent to refuse repayment.
8. The Appellant explained the reasons why the income tax return for 2018 was submitted late in her Notice of Appeal and Statement of Case. The Appellant said that she had commenced working as a locum doctor in 2018 and had, on the advice of the locum agency from whom she obtained this work, formed a limited liability company of which she was a proprietary director. It was this company that received payment from the locum agency for the services provided, which in turn paid the Appellant as its employee.
9. The Appellant said that the locum agency that had advised her to form a limited liability company for the purposes of receiving payment, did not inform her that doing so would give rise to obligations on foot of her directorship to submit income tax returns.
10. The Appellant also said that throughout the period 2020 and 2021, she had been under severe emotional pressure. This was a consequence of the combination of the Covid-19 pandemic and its impact on her as a front-line health worker and the death of her father after a prolonged illness.
11. Lastly, the Appellant explained that, having become aware of the need to make a return, she had attempted to do so prior to the end of 2022. She had, however, become confused and frustrated by the process and did not see the task through to completion prior to the end of that year. The Appellant said that it was not until she obtained the assistance of accountants in 2023, that the relevant return for 2018 was filed and her overpayment was assessed. She stated that in 2023 she was diagnosed as suffering from ADHD, which explained the confusion and frustration she suffered and her inability to make the return within time without the assistance of her agent.

Legislation and Guidelines

12. 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."

13. 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,

14. 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

15. The Appellant asked that the Commissioner exercise discretion in her favour by allowing the claim for repayment, which she acknowledged was made outside the time prescribed under section 865(4) of the TCA 1997. She submitted that the exercise of discretion in this manner was warranted on the grounds of the failings of the locum agency and her own personal circumstances throughout the period, during which she might have made a timely claim for repayment.

Respondent

16. The Respondent submitted that the Appellant’s claim for repayment was not made until 4 July 2023, this being the date on which she filed her 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

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

- The Appellant filed an income tax return for the year 2018 on 4 July 2023;

- The Appellant was assessed as having overpaid tax for 2018 in the amount of €3,085.42;
- The Respondent refused to repay the amount of tax overpaid by way of a decision dated 5 July 2023;
- The Appellant appealed this decision to the Commission on 19 July 2023 by way of the delivery of a Notice of Appeal.

Analysis

18. 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.
19. 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 her appeal focused on the exercise of discretion by the Commissioner in her favour. The Appellant contended that this discretion should be exercised in circumstances where the timing of the claim for repayment, made by way of the late delivery of an income tax return for 2018, was a consequence of the failings of others, severe pressure at work, a family bereavement and her recently diagnosed ADHD.
20. The Commissioner has personal sympathy for the Appellant in light of the personal circumstances outlined. In particular, it appears that she was under significant strain for at least part of the period during which she might have made a claim for the repayment of tax overpaid for 2018 within the time-limit prescribed by statute.
21. However, 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
22. The function of the Commissioner in the hearing of any tax appeal is limited to interpreting the meaning of relevant legislation passed by the Oireachtas in the exercise of its function as the law-making arm of government, and then applying that legislation to the particular facts arising in an appeal. The Commissioner has no jurisdiction to consider questions

relating to the fairness of legislation as it applies to an individual case. As authority for this the Commissioner refers to the judgment of the Court of Appeal in *Lee v Revenue Commissioner [2021] IECA 18*, which he is bound by law to follow.

23. 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 cannot be allowed. In the present case this means that the Appellant had until the end of 2022 to make her claim by means of the filing of her income tax return for 2018. This did not occur, with the return instead being filed on 4 July 2023, over seven months out of time. This being so, it must be held that the decision of the Respondent to refuse repayment of the tax overpaid was correct and therefore stands affirmed.

Determination

24. 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 €3,085.42, 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 circumstances that played a part in the late filing of the return.
25. 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

26. 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

27. 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.

A handwritten signature in black ink, appearing to read 'COHiggins', written in a cursive style.

Conor O'Higgins
Appeal Commissioner

20 May 2024