



Between

93TACD2024

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) against the refusal by the Revenue Commissioners (“the Respondent”) to allow the Appellant to amend her 2016 and 2017 income tax returns, on the ground that she sought to amend the returns outside the statutory timeframe.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) and by agreement with the parties, this appeal is determined without a hearing.

Background

3. On 11 April 2020, the Appellant filed her income tax returns for 2016 and 2017. The 2016 return resulted in an outstanding balance of €1,121.75, and the 2017 return resulted in an outstanding balance of €1,249.58.
4. On 10 October 2022, the Appellant’s agent requested that the Appellant’s liability for 2016 and 2017 be revised to take account of her spouse having an unused tax band of €9,000

available for transfer. The request was refused by the Respondent on the ground that it was made more than four years after the end of the relevant chargeable periods.

5. On 13 August 2023, the Appellant appealed against the Respondent's refusal to the Commission. On 25 April 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. Neither party objected to the appeal being determined without a hearing. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing.

Legislation

6. Section 865 of the TCA 1997 provides *inter alia* that

“(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 –

[...]

(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. Section 959V of the TCA 1997 provides *inter alia* that

“(1) Subject to the provisions of this section, a chargeable person may, by notice to the Revenue Commissioners, amend the return delivered by that person for a chargeable period.

[...]

(6) (a) Subject to paragraph (b) and subsection (7), notice under this section in relation to a return and a self assessment may only be given within a period of 4 years after the end of the chargeable period to which the return relates.

(b) Where a provision of the Acts provides that a claim for an exemption, allowance, credit, deduction, repayment or any other relief from tax is required to be made within a period shorter than the period of 4 years referred to in paragraph (a), then notice of an amendment under this section shall not be given after the end of that shorter period where the amendment relates to either the making or adjustment of a claim for such exemption, allowance, credit, deduction, repayment or other relief.”

Submissions

Appellant

8. The Appellant’s agent submitted that

“The facts of the case are not disputed. I requested [the Respondent] to amend assessments more than four years after the end of the year of assessment.

My contention is that relief is due under Section 865 of TCA 1997.

I contend that all the information that the [Respondent] may reasonably require was supplied on the Tax Returns submitted within the 4 year time frame, in particular by claiming taxation as separate assessment as opposed to separate treatment.

Two of the guiding principles underlying my argument is that [the Respondent has] a responsibility to assess and collect that tax that is property due; and that a married couple should not have a higher tax liability by being assessed separately as opposed to jointly.

My argument is that [the Respondent has] an administrative function to ensure the principles are achieved to their best abilities. As there is no facility on the Forms 11 to apply for transfer of unused tax bands between spouses, I contend that my client has fulfilled the requirements for Section 865 claim for tax refund to have been complied with.

Over the years I note that in many cases I have written to [the Respondent] requesting unused tax bands to be allocated between separately assessed spouses. I contend however that this should not be an argument for stating that this shows that the onus is on the taxpayer to formally claim the adjustment.

I contend that this is a practice that has been followed as a mechanism whereby taxpayers or tax agents are assisting the [Respondent] in [its] administrative functions to collect the amount of taxes properly due.”

Respondent

9. The Respondent submitted that

“The Appellant filed both [her] 2016 and 2017 Income Tax returns through ROS on the 11th April 2020. The 2016 return indicated that [she] had a liability of €1,121.75. The 2017 return indicated a liability of €1,249.58

On the 10th of October 2022 the appellant’s agent requested that the liability for both 2016 and 2017 be revised to take account of the taxpayer’s spouse having an unused low rate tax band of €9,000 available for transfer.

However, this was refused by [the Respondent] as the request was made outside the four-year time limit as imposed by legislation. It is this decision that the Appellant is appealing.

The legislation covering this matter is Section 959V, subsection 6 of the TCA 1997. Amendments and notices relating to assessments, by chargeable persons under the Acts for any chargeable period shall not be allowed unless made within 4 years after the end of the chargeable period to which the claim relates.

[...]

The chargeable periods in this instance are 1st January 2016 to the 31st December 2016 and 1st January 2017 to 31st December 2017. Therefore, in order that [the Respondent] could consider an amendment or notice relating to these returns they would have to have been received by the 31st December 2020 and the 31st December 2021 respectively.

As both requests were made to [the Respondent] on 10th October 2022 this is clearly outside the four year limit imposed by Section 959V of the [TCA 1997].”

Material Facts

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

10.1. The Appellant filed her income tax returns for 2016 and 2017 on 11 April 2020.

10.2. On 10 October 2022, the Appellant sought to amend her returns by transferring her spouse's unused tax band to herself.

10.3. The Respondent refused the Appellant's request, on the ground that it was made more than four years after the end of the relevant chargeable periods.

Analysis

11. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse her request to transfer her spouse's unused tax band. 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.*"
12. In this appeal, it is not in dispute that the Appellant's request was made more than four years after the end of the relevant chargeable periods. For the 2016 tax year, the four-year period ended on 31 December 2020, and for the 2017 tax year, the four-year period ended on 31 December 2021. However, the request in respect of both years was not made until October 2022.
13. Consequently, the Commissioner is satisfied that the appeal cannot succeed. The Respondent refused the Appellant's request under section 959V of the TCA 1997, which concerns amendment of a return. The Appellant has claimed that section 865 of the TCA 1997 applies, which concerns claims for repayment of tax. However, both of those provisions provide for a four-year time limit, and therefore it is clear that the Appellant's request, whether made under section 865 or section 959V, was made out of time.
14. In his submission, the Appellant's agent argued that there was, in effect, an onus on the Respondent to amend the Appellant's tax bands for her so as to ensure that she did not pay more tax than she was obliged to do. The Commissioner does not agree with this submission, and he is satisfied that it is not open to a taxpayer to seek to appeal against the management of his or her own tax affairs by the Respondent. Section 949A of the TCA 1997 provides that an "appealable matter" means "*any matter in respect of which an appeal is authorised by the Acts.*" The Commissioner is satisfied that the TCA 1997 does not authorise the making of an appeal on the basis of the Respondent's management of a taxpayer's tax affairs.
15. The Commissioner considers that it is an integral aspect of a self-assessment tax regime that a taxpayer provides all the necessary information for an accurate assessment of the

taxes owed, and he does not agree that there is an onus on the Respondent to proactively seek to amend a taxpayer's return in order to ensure that the taxpayer does not pay more tax than is required. In this regard, he notes the comments of Gilligan J in *TJ v Criminal Assets Bureau* [2008] IEHC 168 (as quoted in *Menolly Homes*) that "*it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant.*"

16. The Commissioner appreciates that this determination will be disappointing for the Appellant, who was entitled to check whether the Respondent's refusal of her request was correct. However, for the reasons set out herein, the Commissioner is satisfied that the Respondent's refusal was correct, and therefore the appeal is unsuccessful.

Determination

17. 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 request that her spouse's unused tax band be transferred to her, as the request was made out of time.
18. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 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

19. 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

20. 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 'Simon Noone', written in a cursive style.

Simon Noone
Appeal Commissioner
30 May 2024