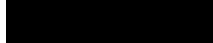




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

98TACD2024



Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction	3
Background.....	3
Legislation and Guidelines	3
Submissions	5
Appellant’s submissions	5
Respondent’s submissions	5
Material Facts	6
Analysis	6
Determination	8
Notification	8
Appeal	8

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 income tax pursuant to section 865 of the Taxes Consolidation Act, 1997 (hereinafter the "TCA 1997") made by the Appellant on 28 February 2024 in respect of the tax year 2019.
2. The amount of tax at issue is €839.93.

Background

3. [REDACTED] (hereinafter the "Appellant") is a taxpayer who on 28 February 2024 filed a tax return for the year 2019 (hereinafter the "Return") with the Respondent. The Return indicated that the Appellant had overpaid Income Tax for 2017 in the amount €839.93.
4. By way of letter dated 29 February 2024, the Respondent disallowed repayment of the overpaid tax on the basis that the claim for repayment of Income Tax had not been made within 4 years of the end of the relevant tax year to which the claim related pursuant to the provisions of section 865 of the TCA 1997.
5. The Appellant has appealed the disallowance of the repayment of tax by the Respondent for the tax year 2019 by way of a Notice of Appeal which was submitted to the Commission on 15 March 2024.
6. On 8 May 2024 the Commission wrote to the parties indicating the Commissioner's intention to determine this appeal without the holding of an oral hearing pursuant to the provisions of section 949U of the TCA 1997 and allowed the parties 21 days to indicate their disagreement with same. Neither party has objected to this course of action. As a result this appeal has been determined pursuant to the provisions of section 949U of the TCA 1997.

Legislation and Guidelines

7. 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's submissions

8. The Appellant submitted the following in support of this appeal in his Notice of Appeal:

"Due to COVID and the issues with reaching our tax representative plus I was involved in an accident which caused various injuries and brought on a number of health issues, caused the delay in filing our returns"

9. The Appellant submitted the following in support of this appeal in section 3 of his Statement of Case entitled "Outline of Relevant Facts":

"Due to COVID arriving in 2020 and lockdown, plus working in [...] I was classed as a front line worker, which being the [...] I was required to [...]. A difficult task in normal times but very time consuming in lockdown. Then in 2022 I was [REDACTED] and spent 2022/23 in and out of hospital for various procedures. It was only when I got the reminder that my wife contacted the tax agent as we expected returns had been sent in to revenue, he informed us that he was waiting for information from us. We immediately supplied the information but unfortunately we were late which was purely down to an oversight on our part."

Respondent's submissions

10. 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.

11. As the Appellant's claim for the repayment of income tax for the tax year 2019 was submitted on 28 February 2024, 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 2023. 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

12. The following material fact is not at issue in this appeal and the Commissioner accepts the following as a material fact:

12.1. The Appellant submitted a tax return for the tax year 2019 to the Respondent on 28 February 2024 which indicated an overpayment of tax for 2019 of €839.93.

Analysis

13. 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.”

14. The Commissioner has considered the submissions made and documentation submitted on behalf of both parties in this appeal.

15. 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.

16. 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.

17. 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.

18. 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].

19. A repayment of tax was sought by the Appellant on the basis that the amount of €839.93 in income tax paid for 2019 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 amount of €839.93 for the tax year 2019 to be due, the Respondent must have received a valid claim.
20. The Respondent had all the information which they required to enable them determine if and to what extent a repayment of tax was due on 28 February 2024 following the delivery of the relevant claim to repayment by the Appellant by way of the submission of a tax return. This was in excess of 4 years from the end of the tax year 2019.
21. 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 €839.93 for the tax year 2019 was disallowed by the Respondent.
22. 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.
23. 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.
24. 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.¹
25. 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 income tax in the amount of €839.93 for the year 2019 was payable by the Respondent.

¹ www.taxappeals.ie

Determination

26. 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.
27. 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.
28. This appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 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

29. 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

30. 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
4 June 2024