



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

01TACD2025



**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**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 (“the TCA 1997”) brought by [REDACTED] (“the Appellant”) regarding the decision by the Revenue Commissioners (“the Respondent”) refusing the Appellant’s claim for a repayment of overpayment of income tax made by the Appellant for the taxable period 1 January 2018 to 31 December 2018 (“2018 Income Tax Year”). The Respondent submits that the Appellant is not entitled to a repayment of overpayment of income tax for the 2018 Income Tax Year. The Respondent submits the repayment claim was made by the Appellant following the expiry of four years after the end of the relevant taxable year. The Respondent further submits that four years is the maximum time period permitted by legislation under section 865 of the TCA 1997 within which a claim for repayment of an overpayment can be made.
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is adjudicated and determined without a hearing.

## Background

3. On 25 March 2024 a return for Income Tax including a claim for allowances/credits for the 2018 Income Tax Year was submitted by the Appellant to the Respondent. The return submitted by the Appellant included a claim of overpayment of income tax by the Appellant in the amount of €3,340.34.
4. On 25 April 2024 the Respondent issued a letter entitled “Late Claim for Repayment of Tax for the 2018 Income Tax Year”. The Respondent stated that the return submitted by the Appellant included a claim for allowances/credits which resulted in an overpayment of tax for the 2018 Income Tax Year. The Respondent further stated that section 865(4) of the TCA 1997 provides that a claim for repayment of tax for a chargeable period shall not be allowed unless it is made within four years after the end of that chargeable period. The Respondent further stated that as the Appellant filed his return on 25 March 2024 it was made after the expiry of four years from the end of 2018 and therefore the Respondent was precluded from making a repayment to the Appellant.
5. On 2 May 2024 the Appellant submitted his Notice of Appeal with the Commission. The grounds of appeal in the Notice of Appeal are: “...*The reason for my appeal is in relation to a [REDACTED] credit. I am claiming this in relation to my [REDACTED]*  
[REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED]



February 2024. [REDACTED] assessment was severely delayed due to him being assessed by the [REDACTED] service and [REDACTED]. From the onset of Covid in late February 2020. From the end of March the whole public health service was severely affected and services withdrawn completely in relation to [REDACTED] services in Ireland. The onset of Covid delayed assessments by approx 2 1/2 years which mean that [REDACTED] was not assessed in a timely manner. This was entirely outside the control of our family. The withdrawal of medical services should not have an adverse effect on the taxation systems which it seems to have happened in this situation. It would appear that the application of the 4 year rule in relation to the refund of tax credits for [REDACTED] credit in this case is not equitable and would breach the basic canon of taxation. Section 865 of the TCA1997 should not apply to this situation as in this period of assessment of my [REDACTED] medical needs covid 19 hit which effectively stopped all non emergency medical care for long periods of over 2 years. .... Section 865 of the TCA1997 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.”

#### *The Respondent's submissions*

10. The Commissioner sets out hereunder an extract of the Respondent's Submissions:

“The Appellant submitted 2018 Income Tax return on the 25 March 2024. The return indicated that he had overpaid tax in the amount of €3,340.34. 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 along with inability to claim [REDACTED] credit [REDACTED]) for the year 2017, as claim being outside timeframe prescribed by legislation, Section 865 TCA. In Notice of Appeal, dated 02 May 2024, the Appellant, as a grounds for an appeal, states the inability to claim [REDACTED] credit in the years 2017 and 2018. The appellant outlines that the [REDACTED] is not a condition which a medical practitioner would be able to diagnose at birth, and it requires thorough examination before the diagnosis can be established. This all have led to a delay in establishing the diagnosis, and subsequently to the delay in claiming the credit. The Appellant believes that [REDACTED] tax credit and refund for both 2017 and 2018 should be allowable given these facts, and also taking into consideration the COVID pandemic which has resulted in a massive delay in healthcare which affected diagnosis and thus an application. While Revenue appreciates the circumstances and sympathises with the Appellant, legislation precludes us from allowing refunds where the claims were made outside of the four-year limit. 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.*

*Section 865, subsection 4 states;*

*“(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.”*

*The chargeable period in this instance is 1st January 2017 to the 31st December 2017. Therefore, in order that Revenue could consider a tax relief claim for the 2017 tax year, a claim would have to have been submitted on or before the 31st December 2021.*

*The chargeable period for the year 2018, is 1st January 2018 to the 31st December 2018. Therefore, in order that Revenue could consider a claim for tax relief for the 2018 tax year, a claim would have to have been submitted on or before the 31st December 2022.*

*As the claims for [REDACTED] tax credit for the years 2017 and 2018 have been made outside of the 4-year limit imposed by Section 865 of the Acts, Revenue is precluded from allowing refund or offset of the overpaid tax.”*

## **Material Facts**

11. Having considered and assessed the documentation submitted by the parties in this appeal, the Appeal Commissioner (“the Commissioner”) makes the following findings of material fact:

11.1. On 25 March 2024 the Appellant submitted to the Respondent his return which included a claim for allowances/credits and a claim for a repayment of an

overpayment of income tax for the 2018 Income Tax Year in the amount of €3,340.34.

11.2. On 25 April 2024 the Respondent advised the Appellant that he had made his claim after the expiry of four years from the end of the relevant chargeable period (2018) and that it was precluded from making the repayment of the overpayment of income tax to him.

11.3. On 2 May 2024 the Appellant submitted his Notice of Appeal with the Commission appealing the refusal by the Respondent to make a repayment to the Appellant of the overpayment of income tax made by him for the 2018 Income Tax Year.

### **Analysis**

12. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, (“Menolly”) wherein at paragraph 22, Charleton, J. stated:

*“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”.*

13. The Commissioner also refers to paragraph 12 of the High Court case of *Menolly*, wherein Charleton, J. stated:

*“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...”*

14. The Commission is a statutory entity and it can only lawfully operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee v The Revenue Commissioners* [2021] IECA 18, wherein Murray, J. stated at paragraph 76:

*“The jurisdiction of the Appeal Commissioners ..... is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant*

*to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.”*

15. The Commissioner refers to the legislation relevant to this appeal:

*Section 865 of the TCA 1997: Repayment of tax, provides inter alia:*

*(1) (a) In this section and section 865A—*

*“Acts” means the Tax Acts, the Capital Gains Tax Acts, Part 4A, Part 18A, Part 18C, Part 18D, Part 22A and Part 22B and instruments made thereunder;*

*“chargeable period” has the meaning assigned to it by section 321;*

*“tax” means any income tax, corporation tax, capital gains tax, income levy, domicile levy, [universal social charge, residential zoned land tax or vacant homes tax or IIR top-up tax, UTPR top-up tax or domestic top-up tax (each within the meaning of Part 4A) and includes—*

*(i) any interest, surcharge or penalty relating to any such tax, levy or charge,*

*(ii) any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, levy or charge,*

*(iii) any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and*

*(iv) any amount paid on account of any such tax, levy or charge or paid in respect of any such tax, levy or charge;*



*“valid claim” shall be construed in accordance with paragraph (b).*

*(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 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, and*

*(iii) to the extent that a claim to repayment of tax for a chargeable period arises from a correlative adjustment, the claim shall not be regarded as a valid claim until the quantum of the correlative adjustment is agreed in writing by the competent authorities of the two Contracting States.*

*(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.*

*(2A) Where a chargeable person (within the meaning of Part 41A) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due it shall not constitute a valid claim for the purposes of subsection (3) unless the return and self assessment for the period to which the claim relates is amended, in accordance with section 959V, to correct the error or mistake.*

*(2B) Where a chargeable person (within the meaning of section 950) makes a claim under subsection (2) for repayment of tax which, but for an error or mistake referred to in that subsection, would not have been due and the claim relates to an accounting period which commenced before 1 January 2013 or to a year of assessment before the year of assessment 2013 it shall not constitute a valid claim for the purposes of subsection (3) unless the person's return for the accounting period or year of assessment, as the case may be, to which the claim relates is amended in accordance with section 959V to correct the error or mistake, and for this purpose section 959V shall apply to such an amendment as if—*

*(a) subsections (2) and (4) of that section were deleted,*

*(b) references in that section to "return and a self assessment", "return and the self assessment" and "return or self assessment" were references to "return", and*

*(c) references in that section to section 959Z were references to section 956.*

*(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.*

*(5) Where a person would, on due claim, be entitled to a repayment of tax for any chargeable period under any provision of the Acts other than this section, and –*

*(a) that provision provides for a shorter period, within which the claim for repayment is to be made, which ends before the relevant period referred to in subsection (4), then this section shall apply as if that shorter period were the period referred to in subsection (4), and*

*(b) that provision provides for a longer period, within which the claim for repayment is to be made, which ends after the relevant period referred to in subsection (4), then that provision shall apply as if the longer period were the period referred to in subsection (4).*

*(6) Except as provided for by this section, section 865A or by any other provision of the Acts, the Revenue Commissioners shall not –*

*(a) repay an amount of tax paid to them, or*

*(b) pay interest in respect of an amount of tax paid to them.*

*(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.*

Section 949A of the TCA 1997: Determinations other than in relation to assessments:

(1) *In relation to an appeal against an appealable matter, other than—*

*(a) an assessment, or*

*(b) a matter referred to in section 949AK(3),*

*the Appeal Commissioners shall, if they consider that the decision, determination or other matter, as the case may be, ought to be varied, determine that the decision, determination or other matter be varied, even if such variation is not to the advantage of the appellant; otherwise they shall determine that the decision, determination or other matter stand.*

16. Section 865(2) of the TCA 1997 provides inter alia that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person.
17. Section 865(3) of the TCA 1997 provides inter alia that a repayment of tax is not due to the claimant unless a valid claim has been made to the Respondent.
18. Section 865(4) of the 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- ( c ) (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.*”
19. The material facts of this appeal are that the Appellant submitted his return for the 2018 Income Tax Year and his claim for repayment of the overpayment of income tax in the 2018 Income Tax Year on 25 March 2024 and that this was after the expiry of four years from the end of the relevant chargeable period (2018) as provided for in section 865(4) of the TCA 1997.
20. The Commissioner has assessed the above provisions and finds that the legislation at section 865(4) of the TCA 1997 provides the word “*shall*” and that this means that the application of the four year rule is mandatory and that there is no leeway and/or discretion. The Commissioner having assessed the circumstances and the material facts of the appeal finds that the claim for repayment of the overpayment of income tax for the 2018 Income Tax Year was made after the expiry of four years from the end of the 2018 Income Tax Year and that the provisions of section 865(4) of the TCA 1997 provide that the Respondent cannot give any repayment to the Appellant in respect of any overpayment of income tax for the 2018 Income Tax Year.

21. The Commissioner has no discretion to direct that repayments be made or credits be allocated to the Appellant where the claim for repayment was made after the expiry of four years from the end of the relevant taxable period as specified at section 865(4) of the TCA 1997.

22. Section 949A of the TCA 1997 provides:

*(1) In relation to an appeal against an appealable matter, other than—*

*(a) an assessment, or*

*(b) a matter referred to in section 949AK(3),*

*the Appeal Commissioners shall, if they consider that the decision, determination or other matter, as the case may be, ought to be varied, determine that the decision, determination or other matter be varied, even if such variation is not to the advantage of the appellant; otherwise they shall determine that the decision, determination or other matter stand.*

23. The Commissioner in consideration of the above provision finds that the decision by the Respondent to refuse the Appellant's claim for a repayment of the overpayment of income tax made by the Appellant for the 2018 Income Tax Year shall stand.

### **Determination**

24. The Commissioner for the reasons set out above finds that the Appellant has not been successful in his appeal and the grounds of appeal in the Notice of Appeal are denied.

25. The Commissioner acknowledges that the Appellant was within his rights to seek an appeal of the Respondent's decision to refuse to make a repayment to him of the overpayment of income tax for the 2018 Income Tax Year. The Commissioner understands that the Appellant may be disappointed with the outcome of his appeal.

26. This appeal is determined in accordance with the provisions of Part 40A of the 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) of the TCA 1997.

### **Notification**

27. 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**

28. 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.



Leonora B. Doyle  
Appeal Commissioner  
17 October 2024