



4. The Appellant requested a refund of the overpaid tax. On 12 July 2024, the Respondent refused to repay the overpaid tax, on the basis that the claim had been made more than four years after the chargeable period.
5. On 24 July 2024, the Appellant appealed against the Respondent's refusal to the Commission. On 7 October 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 an oral 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

*“(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.*

*[...]*

*(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,*



- *The unreasonable repayment terms imposed after exiting the warehouse scheme, given our financial recovery had barely begun.*
  - *The sheriff's reversal of the agreed repayment plan, which led to undue financial pressure.*
  - *The refusal to refund the €8,000 overpayment for the 2019 tax year, a refund that, if returned, would have allowed us to resolve the €17,000 tax bill much sooner..."*
8. The Appellant also cited case law which he contended supported his position, including *Mara v Hummingbird Ltd* [1982] ILRM 421, *Express Motor Assessors Ltd v Revenue Commissioners* [2021] IEHC 420, and *McNamee v Revenue Commissioners* [2016] IESC 33.

*Respondent*

9. In written submissions, the Respondent stated *inter alia* that

*"The Appellant filed 2019 Income Tax return through ROS on 10 July 2024. The return indicated that the Income tax has been overpaid in amount of €8,036.41.*

*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.*

*In their appeal, dated 24 July 2024, the Appellant has disclosed, in detail, the nature of the hardship they are going through.*

*While Revenue appreciates the circumstances, the legislation precludes us from allowing refunds where the claim was made outside of the four-year limit.*

*[...]*

*The chargeable period in this instance is 1st January 2019 to the 31st December 2019. Therefore, in order that Revenue could consider a refund of tax overpaid for the 2019 tax year, a completed return would have to have been submitted on or before the 31st December 2023.*

*As the 2019 tax return was filed 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

10. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:
  - 10.1. On 10 July 2024, the Appellant filed his income tax for 2019. On the same date, the Respondent issued a notice of self-assessment to the Appellant showing that he had overpaid income tax in the amount of €8,036.41 in 2019.
  - 10.2. The Appellant requested a refund of the overpaid tax. On 12 July 2024, the Respondent refused to repay the overpaid tax, on the basis that the claim had been made more than four years after the chargeable period.

## Analysis

11. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse his claim for a refund of tax. 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. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where an amount of tax paid is not due from that person. However, section 865(4) states *inter alia* 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). In this appeal, the relevant tax year was 2019, and therefore the repayment claim had to be made by 31 December 2023.
13. It is not in dispute that the Appellant’s return for 2019 was submitted outside of the four-year time frame, as it was submitted in July 2024. In his submissions, the Appellant has sought to rely on the disruption to his business caused by the Covid-19 pandemic, and the subsequent financial difficulties experienced by him, to argue that it was unfair of the Respondent to refuse his claim for a refund.
14. The Commissioner appreciates the difficult financial position experienced by the Appellant, and he does not doubt that the pandemic negatively impacted his business. However, the Commissioner’s jurisdiction is limited to considering and applying tax law, and he has no equitable power or wider discretion to disapply statutory provisions on the ground that he sympathises with an appellant’s personal circumstances. In this instance,

the Commissioner is satisfied that the requirement under section 865(4) that a claim for repayment of tax be made within a specified timeframe is mandatory and that no discretion is allowed to the Respondent, or to the Commission on appeal, to disapply it. It is important to note that the Oireachtas did not amend the four-year timeframe to account for difficulties caused by the pandemic, and therefore the Commissioner does not have the power to disapply or amend the timeframe.

15. The Appellant has also sought to rely on what he says were unreasonable payment terms imposed on him in respect of the tax warehousing scheme run by the Respondent to assist taxpayers experiencing financial difficulties as a result of Covid-19, as well as alleged actions of the sheriff in seeking to recover the debt. However, the Commissioner has no jurisdiction to consider these matters. 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 there is nothing in the Tax Acts which would permit him to amend the timeframe for the making of a refund claim on the basis of the Appellant’s allegations regarding the debt warehousing scheme or the actions of the sheriff.
16. Additionally, the Commissioner does not consider that any of the case law referred to by the Appellant empowers or permits him to set aside the clear wording of section 865(4). The Commission’s jurisdiction is limited to focussing on “*the assessment and the charge*”, as stated by Murray J at paragraph 64 of the Court of Appeal’s judgment in *Lee v Revenue Commissioners* [2021] IECA 18. In that case, the court concluded that

*“[The Commissioners’] 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... 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...”*

17. Consequently, as the Commissioner is satisfied that the Respondent correctly interpreted and applied section 865(4) when refusing the Appellant’s claim for a refund, it follows that the appeal cannot succeed. The Commissioner understands that the Appellant will be disappointed with this determination. However, for the reasons as set out herein, the Respondent’s decision to refuse the Appellant’s claim for a refund is upheld.

## Determination

18. 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 application for a refund of income tax in the amount of €8,036.41 for 2019.
19. This Appeal is determined in accordance with 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

20. 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

21. 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.



Simon Noone  
Appeal Commissioner  
08 November 2024