



**AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH**  
**TAX APPEALS COMMISSION**

15TACD2025

Between

████████████████████

**Appellant**

and

**The 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”) brought by ██████████ (“the Appellant”) under sections 865(7) and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of income tax in the amount of €555.80 for the tax year 2019, on the ground that the Appellant’s claim for a repayment of overpaid income tax for the year 2019 was made outside the statutory timeframe.
2. On 27 September 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

## **Background**

3. The Respondent submitted that on 12 March 2024, the Appellant filed an income tax return for 2019 through the Revenue Online System (“ROS”). The income tax return indicated that the Appellant had overpaid income tax in the amount of €555.80.
4. On 20 March 2024, the Respondent wrote to the Appellant to inform him of its decision to refuse the Appellant’s claim for a repayment of income tax for the year 2019, on the ground that the Appellant’s income tax return for 2019 was filed outside the four year time limit imposed by legislation.
5. On 15 April 2024, the Appellant submitted a Notice of Appeal to the Commission, which enclosed the Respondent’s correspondence of 20 March 2024. On 14 June 2024, the Respondent submitted a Statement of Case. On 26 September 2024, the Commission received a letter from the Appellant dated 24 September 2024, with enclosures. In neither his Notice of Appeal nor subsequent correspondence did the Appellant dispute that he had filed his income tax return for 2019 in 2024.
6. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

## **Legislation and Guidelines**

7. The legislation relevant to this appeal is as follows:
8. Section 865 of the TCA 1997 provides (among other things):

*“(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.*

...

*(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.”*

9. Section 865B of the TCA 1997 provides (among other things):

*“(2) Subject to subsections (3) and (4), where a repayment of any tax cannot be made to a person by virtue of the operation of—*

*(a) section 865,*

*(b) section 105B of the Finance Act 2001,*

*(c) section 99 of the Value-Added Tax Consolidation Act 2010,*

*(d) section 159A of the Stamp Duties Consolidation Act 1999,*

*(e) section 57 of the Capital Acquisitions Tax Consolidation Act 2003, or*

(f) any other provision of any of the Acts,

then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person.

(3) *Where a repayment of tax cannot be made to a person in respect of a relevant period, it may be set against the amount of tax to which paragraph (a) of subsection (4) applies which is due and payable by the person in the circumstances set out in paragraph (b) of that subsection.*

(4) (a) *The amount of tax to which this paragraph applies is the amount, or so much of the amount, of tax that is due and payable by the person in respect of the relevant period as does not exceed the amount of the repayment that cannot be made to the person in respect of that relevant period.*

(b) *The circumstances set out in this paragraph are where tax is due and payable in respect of the relevant period by virtue of an assessment that is made or amended, or any other action that is taken for the recovery of tax, at a time that is 4 years or more after the end of the relevant period.*

(5) *No tax shall be set against any other amount of tax except as is provided for by the Acts.”*

## **Submissions**

### *Appellant*

10. In his Notice of Appeal, the Appellant submitted:

*“Thank you for your letter of 20th March advising that I cannot claim repayment of overpayment of Income Tax paid in the year ended 31/12/2019. [REDACTED]*

*[REDACTED] I ask that you please reconsider this decision and, if I overpaid tax in 2019, that this should be repaid to me.*

*I assume that if matters were reversed and it was found that I had inadvertently underpaid taxes in 2019, Revenue would still require and look for me to pay and correct any such shortfalls. That being the case, I ask that you do likewise in my case and please refund any inadvertent overpaid made by me for the period 01/01/2019 - 31/12/2019.”*

11. In his letter dated 24 September 2024, the Appellant submitted (among other things):

*"I received an unexpected claim for underpayment of tax amounting to €803 dating back to 2022...I promptly paid the €803 in full...*

*I was also advised that I could not claim repayment of overpayment of income tax paid in the year ended 31/12/2019...*

*This seems to me to be unfair and it strikes me that dual standards apply."*

*Respondent*

12. In its Statement of Case, the Respondent submitted (among other things):

*"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**

13. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

13.1. On 12 March 2024, the Appellant filed an income tax return for the 2019 tax year.

13.2. The income tax return indicated that he had overpaid income tax for 2019 in the amount of €555.80.

13.3. On 20 March 2024, the Respondent refused a repayment of the overpaid income tax on the ground that the Appellant had filed his income tax return for 2019 outside the four year statutory time limit.

### **Analysis**

14. This appeal relates to the Respondent's refusal of the Appellant's claim for a repayment of overpaid income tax for the tax year 2019. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.

15. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to refuse a claim for repayment of the amount of income tax overpaid by the Appellant. In the High Court case of *Menolly*

*Homes Ltd v Appeal Commissioners and another* [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”.*

#### *Section 865 TCA 1997*

16. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where that tax is not due from that person. However, 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... within 4 years, after the end of the chargeable period to which the claim relates.” (emphasis added).
17. In this appeal, the relevant tax year was 2019. Therefore, the claim for a repayment of income tax must have been made on or before 31 December 2023. The Appellant has not disputed that he filed his income tax return for 2019 on 12 March 2024. It is this date that establishes a valid claim for the purposes of section 865(3) of the TCA 1997. Having regard to this date, the Commissioner is satisfied that the Appellant’s claim fell outside the four year time limit prescribed in section 865(4) of the TCA 1997.
18. The use of the word “shall” in section 865(4) of the 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 legislation does not afford the Commissioner any discretion to disapply the rule.
19. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website<sup>1</sup>.

#### *Section 865B TCA 1997*

20. In its Statement of Case, the Respondent stated that it was precluded from allowing offset of the overpaid tax. For completeness, the Commissioner has therefore considered the application of section 865B of the TCA 1997. Section 865B(2) of the TCA 1997 provides that where a repayment of tax cannot be made because a claim for repayment was made outside the time limit provided for under section 865(4) of the TCA 1997, repayment cannot

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

be offset against any other tax due. Section 865B(5) of the TCA 1997 confirms that there is no right of offset outside that already provided under tax legislation.

21. Section 865B(4)(b) of the TCA 1997 contains an exception to the general rule regarding offsets. It applies where tax is due and payable for a tax year or accounting period, by virtue of action taken by the Respondent, to assess or recover tax at a time that is four years or more after the end of the year or period involved. In such a case, an amount of tax which cannot be repaid because of the application of a time limit, but which relates to the same tax year or accounting period as the tax liability the Respondent is pursuing, is available for offset.
22. The Commissioner notes that in the Appellant's letter dated 24 September 2024, the Appellant stated that he received a claim for underpaid income tax in the amount of €803 for the year 2022, and enclosed a letter from the Respondent dated 15 April 2024 on this matter. As the Respondent took action to recover the underpaid income tax for 2022 at a time that was less than four years after the end of 2022 and moreover the overpaid income tax for 2019 does not relate to the tax year 2022, section 865B(4) of the TCA 1997 would not apply on the facts of this appeal. Consequently, the Commissioner is satisfied that the income tax overpaid in 2019 is not available for offset.
23. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the financial circumstances which the Appellant outlined on appeal. The Appellant was entitled to check whether the Respondent's refusal of his claim for a repayment of income tax was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

#### **Determination**

24. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the Appellant's claim for a repayment of income tax in the amount of €555.80, under section 865(4) of the TCA 1997.
25. 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**

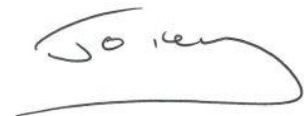
26. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For



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.



Jo Kenny  
Appeal Commissioner  
8 November 2024