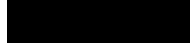




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

18TACD2025



Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction	3
Background.....	3
Legislation and Guidelines	3
Submissions	8
The Appellant’s submissions	8
The Respondent’s submissions	8
Material Facts	10
Analysis	10
Determination	12
Notification	12
Appeal	13

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 Respondent to refuse the Appellant’s application for repayment of an overpayment of income tax paid for the year 2017. It is this decision that the Appellant is appealing.
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing.

Background

3. On 26 April 2024 the Appellant submitted his income tax return for the year 2017. The return indicated that he had overpaid income tax in the amount of €2,968.41. The Respondent refused the Appellant’s request that the overpayment be made to him on the grounds that the income tax return was filed outside the four-year time limit as imposed by legislation.
4. On 28 May 2024 the Appellant submitted his Notice of Appeal to the Commission.

Legislation and Guidelines

5. The legislation relevant to this appeal is as follows:

Section 865 of the TCA 1997: Repayment of tax.

(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 22B17 and instruments made thereunder;

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

“correlative adjustment” means an adjustment of profits under the terms of arrangements entered into by virtue of section 826(1);

“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.

(8) Where the Revenue Commissioners make a repayment of tax referred to in subsection (2), they may if they so determine repay any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution.

(9) Nothing in this section shall prevent the Revenue Commissioners from examining a claim subsequent to any repayment having been made and—

(a) making or amending an assessment, as the case may be, under—

(i) Chapter 5 of Part 41A,

(ii) section 954 or 955, as appropriate, where 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, or

(iii) section 960Q,

or

(b) making a determination under section 960Q, in the case of persons who are not chargeable persons.

(10)(a) In this subsection—

“successor company” has the meaning assigned to it by section 638A(1);

“transferor company” has the meaning assigned to it by section 638A(1).

(b) Where a transferor company is a person to whom subsection (2) applies, this section shall apply as if any thing done pursuant to it or required to be done pursuant to it by or for such a person or a chargeable person, as the case may be, were, as appropriate—

(i) a thing done pursuant to it, or

(ii) a thing required to be done pursuant to it, by or for a successor company.

(c) Where there is more than one successor company, any repayment of tax to be made under this section shall, as necessary, be apportioned on a just and reasonable basis.

(d) The amount of any repayment of tax or part repayment of tax to be made to a successor company or successor companies shall not exceed the total amount that

would have been made to a transferor company but for the application of this subsection.

Section 949AL 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.

(2) The Appeal Commissioners shall, if they consider that a Revenue officer was precluded from making the enquiry or taking the action, as the case may be, referred to in section 959AJ, determine that the officer was so precluded; otherwise they shall determine that the officer was not so precluded.

Submissions

The Appellant's submissions

6. The Appellant's Statement of Case submitted that:

"Income Tax for the period 2017 was over paid 4449.09 less late filling 1480.68 balance due for refund €2968.41. This overpayment was a result of week 1 basis been [sic] operated due to multiple employments from salary only. Upon the request of the revenue commissioners the 2017 income tax return had to be complete. This was due to me been [sic] a [REDACTED]. I had to seek guidance [sic] on how to complete the form and time spent on same. I receive no remuneration from the [REDACTED] that [i] [sic] am a [REDACTED] I feel the refund should be issued due to it been [sic] from PAYE income."

The Respondent's submissions

7. The Respondent's Statement of Case submitted that:

"The Appellant submitted 2017 Income Tax return on the 26 April 2024. The return indicated that he had overpaid tax in the amount of €2,968.41.

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 Notice of Appeal, dated 28 May 2024, the Appellant states that he was not aware he had to file Form 11, as his only income is from his Employment.

The Appellant was a proprietary director, in the year 2017, and therefore had an obligation under Income tax, to file his annual Income tax return (Form11) and to declare his total income for the year, regardless of the source of income, as per section 959A of the TCA 1997.

Irrespective of the Income tax obligations of the Appellant, the claim for overpayment has been made outside of time limit prescribed by legislation.

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 refund of tax overpaid for the 2017 tax

year, a completed return would have to have been submitted on or before the 31st December 2021.

As the 2017 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

8. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
9. On 26 April 2024 the Appellant submitted his income tax return for the year 2017. The return indicated that he had overpaid income tax in the amount of €2,968.41. The Respondent refused the Appellant’s request that the overpayment be made to him on the grounds that the income tax return was filed outside the four-year time limit as imposed by legislation.
10. On 28 May 2024 the Appellant submitted his Notice of Appeal to the Commission.

Analysis

11. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.
12. In this regard, the jurisdiction of an Appeal Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 wherein Murray J. stated at paragraph 20:

“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation”.

13. The Commissioner also refers to the judgment of *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

“ Applying the rationale of the jurisprudence summarised and analysed in Lee, the function of the TAC is limited to what is provided in the legislation

and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions ...”.

14. All material submitted to the Commission has been assessed by the Appeal Commissioner (“the Commissioner”) before making this determination.
15. 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.
16. 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.
17. Section 865(4)(c)(ii) 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 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.
18. The material facts of this appeal are that the Appellant submitted his return for the 2017 income tax year and his claim for repayment of the overpayment of income tax in the 2017 income tax year on 26 April 2024 and that this was after the expiry of four years from the end of the relevant chargeable period (2017) as provided for in section 865(4) of the TCA 1997.
19. 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 2017 income tax year was made after the expiry of four years from the end of the 2017 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 2017 income tax year.
20. 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.
21. Section 949AL 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.

22. 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 2017 income tax year shall stand.

Determination

23. The Commissioner has assessed all matters in this appeal and finds that for the reasons set out above that the Respondent was entitled to refuse the Appellant's request for a repayment of income tax paid by him for the year 2017.
24. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful and the decision of the Respondent to refuse the repayment to the Appellant further to the provisions of section 949AL(1) of the TCA 1997 shall stand.
25. The Commissioner acknowledges that the Appellant was within his rights to appeal the Respondent's decision and to have clarity of his legal rights. The Commissioner has no discretion in how the statutory provisions are to be applied to the Appellant's appeal. The Commissioner understands that the Appellant may be disappointed with the outcome of his appeal.
26. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL(1) 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

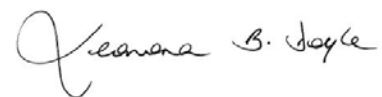
Notification

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
11 November 2024