



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

19TACD2025

Between

██████████

Appellant

and

The Revenue Commissioners

Respondent

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 Respondent to refuse the Appellant’s application for repayment of an overpayment of income tax paid for the years 2018 and 2019. It is these decisions 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 9 April 2024 the Appellant submitted her self assessed income tax return for the income tax year 2018 (“Form 11 for 2018”). The Form 11 for 2018 assessed that the Appellant had made an overpayment of €1,766.64 in respect of income tax for 2018. The Respondent noted that a refund of income tax had previously issued to the Appellant for the 2018 tax period but same had not been included in the Form 11 for 2018.
4. On 8 May 2024 the Respondent issued a Notice of Amended Assessment for the year 2018 assessing that a refund of an overpayment of €622.90 was due to the Appellant. The Respondent determined however that as the Form 11 for 2018 was filed more than 4 years after the end of 2018 the Respondent was precluded and prohibited from making the payment of the overpayment to the Appellant.
5. On 18 April 2024 the Appellant submitted her income tax return for the income tax year 2019 (“Form 11 for 2019”). The Form 11 for 2019 assessed that the Appellant had made an overpayment of €165.88 in respect of income tax for 2019.
6. On 26 April 2024 the Respondent made a finding that as the Form 11 for 2019 was filed more than 4 years after the end of 2019 the Respondent was precluded and prohibited from making the payment of the overpayment to the Appellant.
7. On 21 May 2024 the Appellant submitted her Notice of Appeal to the Commission in respect of her appeal regarding the 2019 income tax year.
8. On 9 July 2024 the Appellant submitted her Notice of Appeal to the Commission in respect of her appeal regarding the 2018 income tax year.
9. On 23 July 2024 the Respondent wrote to the Appellant and advised inter alia that on receipt of the Form 11 for 2018 a refund of €1,766.64 was generated. However, it was

noted that a refund for the 2018 period in the amount of €1,624.73 had already issued under PAYE apportioned between the Appellant and ██████████ on 19 August 2019 and 20 August 2019. The Form 11 for 2018 was amended to include the details of the refund already issued under PAYE for the 2018 period. A Notice of Amended Assessment for the income tax year 2018 issued on 8 May 2024 confirming the amended overpayment amount for the 2018 income tax year of €622.90. The Appellant was advised that the refund of €622.90 for the 2018 income tax year could not issue, as the Form 11 for 2018 was filed more than four years after the year end of that tax year. Therefore, the repayable amount of €622.90 was disallowed on the Appellant's record. The Form 11 for 2019 was filed on 18 April 2024 and it was also filed more than four years after the relevant tax year end date.

10. On 5 September 2024 the Appeal Commissioner ("the Commissioner") consolidated the two Notices of Appeals (ref App-2407-00920 (2018) and App-2405-00736 (2019)) into one appeal and assigned one appeal reference to apply thereafter (App-2405-00736). For the avoidance of doubt the within single determination shall apply to and pertain to the two former Notices of Appeal in respect of the Appellant's appeals against the Respondent's decisions regarding the Appellant's income tax years 2018 and 2019.

Legislation and Guidelines

11. 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 22B 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

12. The Appellant was invited by the Commission to submit her Statement of Case to the Commission. The Appellant instructed the Commission that she did not wish to submit such. Subsequently on 24 September 2024 the Appellant wrote to the Commission with further submissions an extract of which is set out below:

“If you wouldn't mind I would like to add my final thoughts before the decision. Time line. Revenue contacts me in 2024 for non payment of income tax for 2018 (6 years later). I was not aware of that. And I wasn't going to get professional person to do my tax return as an extra income wasn't worth the service fee.

“I've payed [sic] ██████ and to finalise had to fill Form 11. Revenue had no problem with that. Which is 6 years old. According to the law I can do tax return for the 4 years ONLY. After submitting Form 11 I've found out that I overpaid tax. But instead me paying the balance Revenue took ██████ in full and overpayment is obsolete (because of 4 years law). I've no problem paying what I owe as you can see. But I think if Revenue has no time limit in my case why should I have no exemption. At the end of the day Revenue still owes me money that I overpaid.....”.

The Respondent's submissions

13. The Respondent submitted its consolidated Statement of Case an extract of which is set out below:

"1. Statutory provisions being relied on.

Section 865 Repayment of Tax – Taxes Consolidation Act (TCA) 1997

Section 959I TCA 1997 Obligation to make a return - Taxes Consolidation Act (TCA) 1997

Section 865 Repayment of Tax

Section 865 (1)

(1) "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.

Section 865 (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.

Section 865 (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).

Section 865 (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.

Section 959I TCA 1997- Obligation to make a return

(1) every chargeable person shall as respects a chargeable period prepare and deliver to the Collector General on or before the specified return date for the chargeable period a return in the prescribed form.

2. Outline of relevant facts.

➤ *The Form 11 Income Tax return for the year ended 31 December 2018 was submitted to Revenue on 09 April 2024. This resulted in an overpayment of €1,766.64. It was noted that a PAYE refund already issued to the appellant for the 2018 tax period but was not included in the 2018 Income Tax Form 11. The 2018 Income Tax Form 11 was subsequently amended to include the details of the repayment already received under PAYE. A Notice of Amended Assessment issued on 08 May 2024 indicating a refund was due in the amount of €622.90. As the return was filed more than 4 years after the end of the 2018 tax year, the overpayment is statute barred and the repayment cannot be made.*

➤ *The Form 11 Income Tax return for the year ended 31 December 2019 was submitted to Revenue on 18 April 2024. This resulted in an overpayment of €165.88. As the return was filed more than 4 years after the end of the 2019 tax year, the*

overpayment is statute barred and the repayment cannot be made.

In accordance with Section 959(1) a chargeable person shall deliver a return to the Collector General for each year that they are/were a chargeable person.

The appellant did not deliver the return for the period ended 31 December 2018 until 09 April 2024 and for 2019, the return was filed on 18 April 2024. In order to be within the 4 year time limit, the return should have been filed by 31 December 2022 for 2018 and 31 December 2023 for 2019.

In accordance with Section 865(1)(a) a “valid claim” shall be construed in accordance with paragraph (b).

Per Section 865(1)(b) a valid claim to the repayment of tax arises when a person furnishes a return as required to be delivered in accordance with any provision of the Tax Acts. In this case as a chargeable person the Appellant was required to file a Form 11 Income Tax return for the periods ended 31 December 2018 and 31 December 2019.

Per Subsection 865(4) a 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 Revenue Commissioners submit that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim relates. The Revenue Commissioner’s position is that no valid claim for repayment had been made by the Appellant within the four-year limitation period per s.865(4) TCA 1997 and that as a result, the repayment claims in respect of the tax year of assessment 2018 and 2019 were out of time.

In order for the Appellant’s claims to be valid claims for the repayment of tax the 2018 and 2019 tax returns required to be filed in accordance with Section 959(1) must have been filed by the 31December 2022 and 31December 2023 (4 years) respectively. As the Appellant did not file the 2018 tax return until 09 April 2024 and the 2019 tax return until 18 April 2024, the repayments shall not be allowed in accordance with Section 865(4) and are statute barred...”

Material Facts

14. 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:

- 14.1. On 9 April 2024 the Appellant submitted her Form 11 for 2018 which assessed that the Appellant had made an overpayment of €1,766.64 in respect of income tax for 2018.
- 14.2. The Respondent noted that a refund of income tax had previously issued to the Appellant for the 2018 tax period but same had not been included in the Form 11 for 2018. On 8 May 2024 the Respondent issued a Notice of Amended Assessment for the year 2018 assessing that a refund of an overpayment of €622.90 was due to the Appellant however as the Form 11 for 2018 was filed more than 4 years after the end of 2018 the Respondent submitted it was precluded and prohibited from making the payment of the overpayment to the Appellant.
- 14.3. On 18 April 2024 the Appellant submitted her Form 11 for 2019 which assessed that the Appellant had made an overpayment of €165.88 in respect of income tax for 2019. On 26 April 2024 the Respondent made a finding that the Appellant filed her Form 11 for 2019 more than 4 years after the end of 2019 and accordingly the Respondent was precluded and prohibited from making the payment of the overpayment to the Appellant.
- 14.4. On 21 May 2024 the Appellant submitted her Notice of Appeal to the Commission in respect of her appeal regarding the 2019 income tax year.
- 14.5. On 9 July 2024 the Appellant submitted her Notice of Appeal to the Commission in respect of her appeal regarding the 2018 income tax year.

Analysis

15. 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.
16. 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 (“*Lee*”) 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”.

17. 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 ...”.

18. The Commission is entitled to consider that any assessment issued by the Respondent is valid and has no statutory jurisdiction to question the validity of that assessment. This was confirmed by the High Court in *J.S.S, J.S J, T S, D S, P S v Tax Appeals Commission* [2024] IEHC 565.

19. 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”.

20. 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..."

21. 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*, 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.”

22. All material submitted to the Commission has been assessed by the Commissioner before making this determination.
23. 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.
24. 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.
25. 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 yearsafter the end of the chargeable period to which the claim relates.”
26. The Appellant submitted her return for the 2018 income tax year and her claim for repayment of the overpayment of income tax in the 2018 Income Tax Year on 9 April 2024 which 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. The Appellant submitted her return for the 2019 income tax year and her claim for repayment of the overpayment of income tax in the 2019 Income Tax Year on 18 April 2024 which was after the expiry of four years from the end of the relevant chargeable period (2019) as provided for in section 865(4) of the TCA 1997.

27. 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 and 2019 income tax years was made after the expiry of four years from the end of the 2018 and 2019 income tax years respectively 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 and 2019 income tax years.
28. 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.
29. Section 949AL of the TCA 1997 provides inter alia that in relation to an appeal against an appealable matter, other than an assessment, or a matter referred to in section 949AK(3) of the TCA 1997 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. 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 and 2019 income tax years shall stand.

Determination

30. 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 to make a repayment to the Appellant in respect of overpayments of income tax made by the Appellant for the income tax years 2018 and 2019.
31. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful and the decisions of the Respondent to refuse to make a repayment to the Appellant in respect of overpayments of income tax made by the Appellant for the tax years 2018 and 2019 shall stand.

32. The Commissioner acknowledges that the Appellant was within her rights to appeal the Respondent's decision and to have clarity of her legal rights. The Commissioner understands that the Appellant may be disappointed with the outcome of her appeal.
33. 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

34. 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

35. 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
12 November 2024