



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

24TACD2025

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by ██████████ (“the Appellant”) pursuant to section 865(7) of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) against the refusal by the Revenue Commissioners (“the Respondent”) to refund an overpayment of income tax in the amount of €8,867.09 for the tax year 2012, on the ground that the repayment was sought outside the statutory timeframe.
2. In accordance with the provisions of section 949U of the TCA 1997 and by agreement with the parties, this appeal is determined without a hearing.

Background

3. On 31 March 2023, the Appellant filed his income tax return for 2012. The return showed that he had overpaid income tax in the amount of €8,867.09. The Appellant requested a refund of the overpaid tax. On 4 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.

4. On 7 August 2024, the Appellant appealed against the Respondent's refusal to the Commission. On 23 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

5. 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,

within 4 years,

after the end of the chargeable period to which the claim relates.”

Submissions

Appellant

6. In his Notice of Appeal, the Appellant stated *inter alia* that

"I wish to appeal a tax refund re 2012. I had a lot going on that year in question. I had a tax audit and the records for that year were with an accountant ... He charged me over 15000 in fees which was very substantial and I could not afford to pay. He held my records and refused to give them back. I was in contact at the time with a lady in [the Respondent] ... She gave me copies of what she had but it was still not enough info to do the accounts. I was also in contact with my solicitor and after some time [the accountant] said he would give me back the records. He however could not find them. He said they were put in storage and could not be located. I had to start from scratch getting bank statements, records from companies I did work for, getting copies of cheques etc. I also contacted Revenue as [its officer] had info that was in archives. It took so long getting all the information together to be able to do the accounts properly.

Some of the tax that was deducted was [REDACTED]. Even if I could get part of a refund that would help.

[REDACTED].
I hope you can reconsider your decision."

Respondent

7. In its Statement of Case, the Respondent stated *inter alia* that

"The Appellant filed their 2012 Income Tax return on 31 March 2023. The return indicated that they had overpaid their tax in the amount of €8,867.09. 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 his Notice of Appeal, the Appellant states that due to personal issues and delays in obtaining his records for the year from his accountant that the tax return had not been filed and asks that Revenue reconsider their decision.

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...

For the 2012 Income Tax return to be a valid return and any overpayment be available for refund or offset, it would have to be filed within 4 years of the end of the chargeable period i.e. on or before 31 December 2016.

As the Appellant filed their 2012 Income Tax returns on 31 March 2023 and as this is clearly outside of the 4-year limit imposed by Section 865 of the Acts, Revenue are precluded from allowing refund or offset of the overpaid tax in the total amount of €8,867.09.”

Material Facts

8. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:
 - 8.1. On 31 March 2023, the Appellant filed his income tax return for 2012. The return showed that he had overpaid income tax in the amount of €8,867.09.
 - 8.2. The Appellant requested a refund of the overpaid tax. On 4 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

9. 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.”*
10. 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 2012, and therefore the repayment claim had to be made by 31 December 2016.

11. It is clearly the case, and not in dispute, that the Appellant's return for 2012 was submitted well outside of the four-year time frame, as it was submitted in March 2023. In his submissions, the Appellant has stated that he had difficulties with his then accountant, which prevented him from submitting his return on time. He also stated that he had other personal circumstances which affected his ability to submit his return.
12. The Commissioner appreciates that the Appellant is disappointed that the Respondent has refused his refund application. 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.
13. Furthermore, the Commissioner has no jurisdiction to consider the circumstances surrounding the alleged failure by an accountant to submit a return on behalf of a taxpayer. 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 disapply the four-year rule on the basis of alleged behaviour by an accountant.
14. 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

15. 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 €8,867.09 for 2012.
16. 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

17. 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

18. 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
26 November 2024