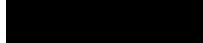




AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

31TACD2025

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 on behalf of [REDACTED] (“the Appellant”) in relation to a decision of the Revenue Commissioners (“the Respondent”), to refuse the repayment of an amount of income tax to the Appellant, pertaining to a claim for relief for fees paid for third level education pursuant to section 473A TCA 1997. The decision to refuse a repayment was made in accordance with section 865(4) TCA 1997.
2. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**.
3. The Appellant submitted a Notice of Appeal and accompanying documentation in support of his appeal. In addition, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal. The Commissioner has received a Statement of Case from the Respondent. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal, including the recent further information submitted by both parties.

Background

4. On **28 December 2022**, the Appellant submitted postal correspondence to the Respondent in relation to a claim for relief for fees paid for third level education, for the tax year 2018. The correspondence submitted by the Appellant was a Form IT31, which confirmed a claim for the period 2018, in the amount of €13,634.00. The Appellant submitted that the fees were paid in relation to his [REDACTED] third level education, in the following amounts:
 - 2017/2018 academic year, in the amount of €6,817, paid in full on **19 January 2018**;
 - 2018/ 2019 academic year, in the amount of €6,817, paid in instalments on **26 October 2018** and **31 December 2018**.
5. On **22 March 2023**, following a review of the correspondence and claim made by the Appellant, the Respondent issued a Statement of Liability to the Appellant confirming that a refund was due to him in the amount of €762.73.
6. On **8 November 2023**, the Appellant contacted the Respondent by phone and queried the relief allowed in respect of his claim for fees paid for third level education, for 2018. Thereafter, and also on 8 November 2023, the Appellant submitted postal correspondence

to the Respondent requesting a review of his claim for fees paid for third level education, for 2018.

7. On **22 November 2023**, the Respondent wrote to the Appellant to refuse the Appellant's claim for fees paid for third level education for 2017, on the basis that the claim was made outside of the 4 year time limit.
8. The Appellant is aggrieved, in circumstances where he received the relief claimed for fees paid for third level education, for the period 2018/ 2019, but was denied his claim for relief for the period 2017/2018, as his claim for relief for fees paid for third level education for that academic year was made outside of the four year time limit, within which the Respondent can make a repayment of tax. The Appellant submitted that he posted the application for his claim for relief for fees paid for third level education, on **22 December 2022**. The Appellant also queried the manner in which the Respondent disregarded the first €3,000 of the claim, pursuant to the provisions of section 473A(4A) TCA 1997.
9. The Respondent submitted that a claim for relief for fees paid for the academic year 2017/2018, must have been made on or before 31 December 2021. Further, the Respondent submitted that the Appellant's claim for relief for fees paid for the academic year 2017/2018, was only received on 6 January 2023 and any relief for the tax year 2017, could only be claimed up to and including 31 December 2021. Therefore, it was not possible to add a claim for relief for tuition fees, for the tax year 2017.
10. On **16 July 2024**, the Appellant duly appealed to the Commission.

Legislation and Guidelines

11. The legislation relevant to this appeal is as follows:
12. Section 473A TCA 1997, Relief for fees paid for third level education, etc, provides *inter alia* as follows:

(1) *In this section—*

"academic year", in relation to an approved course, means a year of study commencing on a date not earlier than the 1st day of August in a year of assessment;

"appropriate percentage", in relation to a year of assessment, means a percentage equal to the standard rate of tax for that year

.....

"qualifying fees", in relation to an approved course and an academic year, means the amount of fees chargeable in respect of tuition to be provided in relation to that course in that year which, with the consent of the Minister for Finance, the Minister approves of for the purposes of this section.

(2) *Subject to this section, where an individual for a year of assessment proves that he or she has made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course commencing in that year of assessment, the income tax to be charged on the individual for that year of assessment, other than in accordance with section 16(2), shall be reduced by an amount which is the lesser of –*

(a) *the amount equal to the appropriate percentage of the aggregate of all such payments proved to be so made, and*

(b) *the amount which reduces that income tax to nil.*

.....

(4A) *In any claim or claims for relief under this section made by an individual in respect of qualifying fees -*

(a) *where the qualifying fees, or part of the qualifying fees, the subject of the claim or claims concerned relate to a full-time course or full-time courses -*

(i) *for the year of assessment 2013 there shall be disregarded the first €2,500 or the full amount of those fees, whichever is the lesser,*

(ii) *for the year of assessment 2014 there shall be disregarded the first €2,750 or the full amount of those fees, whichever is the lesser, and*

(iii) *for the year of assessment 2015 and each subsequent year of assessment there shall be disregarded the first €3,000 or the full amount of those fees, whichever is the lesser,*

- (b) *where all the qualifying fees the subject of the claim or claims concerned relate only to a part-time course or part-time courses -*
 - (i) *for the year of assessment 2013 there shall be disregarded the first €1,250 or the full amount of those fees, whichever is the lesser,*
 - (ii) *for the year of assessment 2014 there shall be disregarded the first €1,375 or the full amount of those fees, whichever is the lesser, and*
 - (iii) *for the year of assessment 2015 and each subsequent year of assessment there shall be disregarded the first €1,500 or the full amount of those fees, whichever is the lesser.*

.....

- (6) *Any claim for relief under this section made by an individual in respect of fees paid to an approved college shall be accompanied by a statement in writing made by the approved college concerned stating each of the following, namely –*

.....

13. Section 865 TCA 1997, Repayment of Tax, *inter alia* provides:-

“(1)...

- (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 –*

- (l) *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 taxes 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*

.....

(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.

.....

(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.

Submissions

Appellant's submissions

14. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

"I applied by post to Revenue, [REDACTED] for Tax Rebate on Tuition Fees (each of 6817 euros, for the academic years 2017-2018 and 2018-2019, on December 28th 2022. I received ca. 20% rebate on the 2018-19 fee, but not for the 2018-19 payment.

I am attaching separately:

1: copy of the 2 x hard-copy letters I sent to Revenue re. above payments, and

2: copy of the 5 x different, online correspondences between Revenue and myself re. my not receiving any rebate for the 2017-18 academic year.

My application for the tax rebate for 2017-18 academic year was made for the tax year 2018 because my full payment (both half-fee payments) for 2017-18 academic year were actually made on 19th Jan 2018. I felt in the circumstances that I could not apply for the rebate for the 2017 tax year as no payment was actually made in 2017. I do not agree with Revenue's statement (see attached copy of online communications) that the relevant tax year is 2017.

I feel that I should get a rebate for my payment of the 2017-18 fees, in the spirit of the purpose of the rebate legislation, which does not in my view align with the protocol in Revenue for deciding the case. I acknowledge that the circumstances of my full payment of the 2017-2018 fees in the tax year 2018 (Jan to Jan) has largely lead to the issue here.

I looked briefly at the Statutory Instrument wording re. fee payments etc and although no legal expert, I could not see definitively that my current rebate claim is untenable; I am hoping that the rebate can be made in such circumstances.

.....

UPDATE. I now attach a copy of a later correspondence from Revenue's [REDACTED] [REDACTED] in which he outlines Revenue's revised position re. the disputed rebate. As far as I can see, the email does not refer now to my appeal being late but focuses instead on one main aspect: ie that a maximum of 7,000 euro is being applied to my claim for the 2018 tax year (for fees paid for two academic years 2017-18 and 2018-19), so that in effect I still do not get rebate for the 2017-18 academic year (also, a separate, minor miscalculation issue has been corrected by Revenue). I wish to emphasise that my application for the tax rebate for 2017-18 academic year fees was made for the 2018 tax year because my full payment was made in Jan 2018 (I thus felt that I should not apply for a rebate for the 2017 tax year). I would like to record that Revenue staff were polite to me at all stages of my tax rebate application. Revenue's revised statement to me states that "...the maximum relief allowable for tax year 2018 is 7,000 euro, with a disregard of 3,000 euro.....".

1: I could not find any such reference or statement on the 7,000 maximum in the Act, ie Taxes Consolidation Act (No. 39 of 1997.....2023 edition).

2: Revenue's own website guidance on "Tuition fees paid for third level education, 1. Overview" states that "The maximum amount you can claim is 7,000 euros per course, per person, per academic year." This indicates that the intention is that tax payers get a tax rebate on fees for each academic year. Also "Tuition fees paid for third level education, 2. "How do you calculate the relief" states that "The 7,000 euro maximum is applied to each course for each academic year (I accessed those items on Revenue.ie on 4th Oct. 2024 at ca. 22:55). There is a large number of websites on third-level fee tax-rebates on the internet, quoting the wording "The maximum amount you can claim is 7,000 euro per course, per person, per academic year." (or similar), see eg Citizens' Information site. Also, Revenue.ie "Notes for Guidance - Taxes Consolidation Act 1997 Finance Act 2023 edition, Part 15, p. 42" states that "For the tax year 2011 and subsequent tax years, the maximum annual relief for tuition fees (including the Student Contribution) is 7,000 euro @ 20% (standard rate) per individual per course". This statement does not appear to specifically cover my situation where fees for two academic years were (unusually) paid by me within the one tax year, ie 2018.

3: Taxes Consolidation Act 1997 (.....2023 edition) - 473A, (2) states that "Subject to this section, where an individual for the year of assessment proves that he or she, has made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course commencing in that year of assessment, the income tax to be charged on the individual for that year of assessment, other than in accordance with section 16(2), shall be reduced by an amount which is the lesser of " - see Act for details. Although of some complexity, a main message from this 'sub-Section' is that where someone has paid qualifying tuition fees, their income tax shall be reduced (subject to proof and other conditions etc). The text also indicates to me that the intention is that tax reductions/rebates can be availed of for each academic year, course and student (I make both my comments above whilst acknowledging the many conditions, clauses etc in 473A).

SUMMARY/CONCLUSION I can see nothing in the Act which would prohibit me from getting the tax rebate for the 2017/18 academic year.

Revenue's decision against my application for a tax rebate in the 2017/18 academic year seems to be caused to some extent by my own, 'unusual' timing of the full 2017/18 fee payment in 2018, combined with in-house, Revenue implementation processes, rather than from any infringement of the TCA Act or illegitimate claims etc by me.

[REDACTED] my 2018 tax year rebate application was my first one. I submit this Statement of Case to TAC for an independent review.

I feel that there is considerable complexity in my case for the 2018 tax year fees rebate, and the situation is not clear-cut, but I feel that I should, in the spirit of the legislation, be awarded the contested tax rebate, which is not excessive (ca.700 euro out of a total of 13,600 euro paid in tuition fees in 2018 tax year).

Please see Section 6 below for further information etc and possible suggestions on the tax rebate."

Respondent's submissions

15. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:-

"....."

The correspondence submitted by the Appellant, a Form IT31, confirmed a total claim amount for tax period 2018 of €13,634.00. In addition to this, the Appellant provided a supporting covering letter which confirmed a breakdown of the amounts paid in respect of tuition fees in 2018.

- €6,817.00 paid on 19 January 2018*
- €3,408.50 paid on 26 October 2018*
- €3,408.50 paid on 31 December 2018*

Following a review of the correspondence and claim made in respect of 2018 tuition fees, the Respondent issued a Statement of Liability to the Appellant on 22 March 2023 confirming a refund due of €762.73

The Appellant subsequently contacted the Respondent by phone on 8 November 2023 and queried the relief allowed in respect of their tuition fees claim for 2018. Following the call made to the Respondent on 8 November 2023, the Appellant submitted postal correspondence to the Respondent dated 8 November 2023 in which he asked for a review of his tuition fees claim for 2018. Within the correspondence the Appellant acknowledged all payments made in his claim for tuition fees were paid to the relevant college in 2018. However, the Appellant did note that the payment related to two different academics periods and therefore he expected further relief on his tuition fees tax credit of €763.40

.....

The Appellant made a valid claim for tax relief on tuition fees for tax period 2018. The Appellant specifically stated on his IT31 claim form the claim related solely to 2018 only. The amount of the claim was €13,634.00.

In this case, it is clear from the legislation under Section 473(4A) of the TCA1997 that the tuition fees payments made by the Appellant must be treated as follows: 2015 onwards, the first €3,000 of tuition fees paid must be disregarded.

In this case the claim made by the Appellant for 2018 of €13,634.00, was capped at €7,00.00 as the maximum allowable amount for an individual course in a specific tax year is €7,000.00. In addition to this a disregard amount of €3,000.00 was applied in accordance with the legislation referenced above, leaving a valid claim for 2018 of €4,000.00.

The Respondent is satisfied it has acted in accordance with the legislation in allowing a valid claim for 2018 of €4,000.00 leaving the Appellant with a tax credit for tuition fees of €800. No further relief is due to the Appellant for this period.

The Respondent would also note contacts from the Appellant regarding the calculation of his tax relief materialised after 31 December 2022. In that regard, the Respondent would point to previous determination governing the 4-year rule:

.....

Additionally as the Appellant submitted his claim in 2022, it was not possible to allow any part of the the claim which related to the 2017-2018 academic year to be reverted to 2017 as it was outside the 4 year time period.

In this case, while appreciative of the circumstances of the Appellant, the Respondent cannot allow any further relief for 2018 as confirmed by Section 473A TCA 1997.

Section 473(1) of the Taxes Consolidation Act (TCA) 1997 confirms that an academic year “means a year of study commencing on a date not earlier than the 1st day of August in a year of assessment”.

If a taxpayer makes a payment for an academic year, it is the year of the commencement of the academic year which is seen as the “year of assessment”. A taxpayer can make a payment in respect of that academic year outside of the year of commencement but claim that relief against that payment in the relevant year of assessment, that is, the year the academic year commences.

Therefore, in this instance, even though the Appellant made a payment in 2018 in respect of the academic year 2017/2018, the timeline in Section 865(4) TCA 1997 prevents the taxpayer making a claim for the relief after 2021.

4-year time limit for making claims for repayment of tax

In this case, the Appellant did not contact the Respondent prior to 2022 concerning his claim for tax relief on Tuition Fees. Accordingly, any claim for tax relief related to Tuition Fees for academic year 2017/2018, should have been submitted to the Respondent on or before 31 December 2021.

The Appellant first contacted the Respondent concerning this matter on 16 December 2022.

In that regard, Section 865 of the TCA 1997 is clear on the eligibility for a claim to be allowable in tax year 2017 in this case.

Section 865(4) of the TCA 1997 imposes a 4-year time limit on claims for repayment of tax. Claims must be made within 4 years after the end of the chargeable period to which the claim relates.

The Respondent does accept the facts of this case are unusual, namely that the Appellant paid a sum of €13,634.00 in respect of Tuition Fees in 2018, however the fees clearly related to two academic periods: 2017/2018 and 2018/2019.

In order for tax relief to be allowed for 2017, a valid claim from the Appellant was required on or before 31 December 2021. The Appellant failed to submit the claim within this time period, therefore no relief due for tax year 2017 could be applied to this period.

The Respondent would point to the wording of Section 865(4) of the TCA 1997 and notes that the use of the word "shall" in this section indicates there is no discretion to extend the 4-year time limit.

The Respondent does apologise to the Appellant if it failed to adequately clarify this matter for the Appellant previously and accepts the circumstances of the case are unfortunate and unusual with the full amount of fees in this instance all paid in tax year 2018.

Qualifying Fees Cap

The Respondent has also included correspondence from the Department of Finance to the Department of Education from 2011 confirming a cap per academic year of €7,000.00 per qualifying course.

The Respondent feels this correspondence clarifies previous submissions made on the maximum allowable relief permissible for a specific academic year."

Material Facts

16. Having read the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:

16.1. On 28 December 2022, the Appellant made a claim to the Respondent for relief for fees paid for third level education, [REDACTED].

16.2. The Appellant's IT31 claim form outlined that the claim for relief for fees paid for third level education, related solely to payments made in the year 2018, in the amount of €13,634.00.

- 16.3. The Appellant submitted that fees were paid in relation to his [REDACTED] third level education, in the following amounts:
- 2017 to 2018 academic year, in the amount of €6,817, paid in full on 19 January 2018;
 - 2018 to 2019 academic year, in the amount of €6,817, paid in instalments on 26 October 2018 and 31 December 2018.
- 16.4. On 6 January 2023, the Respondent received the Appellant's claim form for relief for fees paid for third level education, for the academic year 2017/2018.
- 16.5. A claim for relief for fees paid for third level education for the academic year 2017/2018, must have been made on or before 31 December 2021, in order that a repayment of income tax could be made.
- 16.6. The Appellant was denied his claim for relief for the period 2017/2018, as the claim for relief for fees paid for third level education for that academic year was made outside of the four year time limit, within which the Respondent can make a repayment of tax.
- 16.7. The Appellant submitted that he posted the application for his claim for relief to the Respondent, on 22 December 2022.
- 16.8. The maximum allowable amount for an individual course, in a specific tax year, was in the amount of €7,000.00 per annum.
- 16.9. The Appellant paid a sum of €13,634.00 in respect of fees paid for third level education in 2018. However, the fees paid related to two academic periods, namely 2017/2018 and 2018/2019.
- 16.10. On 22 March 2023, the Respondent issued a Statement of Liability to the Appellant confirming that a refund was due to the Appellant in the amount of €762.73.
- 16.11. On 16 July 2024, the Appellant duly appealed to the Commission.

Analysis

17. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd*

v Appeal Commissioners and another [2010] IEHC 49 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”.

18. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

“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...”

Section 436A TCA 1997

19. The Appellant’s appeal relates to the Appellant’s claim for relief for fees paid for third level education for the academic years 2017/2018 and 2018/2019, and the Respondent’s decision to refuse the Appellant’s claim on the basis that the claim in relation to the academic year 2017/2018 was made outside of the four year time limit prescribed by section 865(4) TCA 1997. The Appellant also queried the manner in which the Respondent applied section 473A(4A) TCA 1997 and the basis upon which the Respondent disregarded the first €3,000 of the fees paid for academic year 2018/2019.

20. In 2022, the Appellant submitted a Form IT31 to the Respondent confirming that he made a total payment in the amount of €13,634.00 for the year 2018. The Commissioner notes that the payment of €13,634.00 constituted two academic periods namely, 2017/2018 and 2018/2019. The payments were as set out above, and are restated here as follows:

- €6,817.00 paid on 19 January 2018;
- €3,408.50 paid on 26 October 2018;
- €3,408.50 paid on 31 December 2018.

21. Section 473A(1) TCA 1997 defines an academic year as “*in relation to an approved course, means a year of study commencing on a date not earlier than the 1st day of August in a year of assessment*”.

22. In addition, section 473A(2) TCA 1997 provides that “*where an individual for a year of assessment proves that he or she has made a payment in respect of qualifying fees in respect of an approved course for the academic year in relation to that course*

commencing in that year of assessment, the income tax to be charged on the individual for that year of assessment, other than in accordance with section 16(2), shall be reduced by an amount which is the lesser of ...” [Emphasis added]

23. The Commissioner is satisfied that the approach to be taken in relation to the interpretation of sections 473A(1) and (2) TCA 1997 is a literal interpretative approach and that the words in the statute must be given a plain, ordinary or natural meaning. The Commissioner gratefully adopts the summary of the principles of statutory interpretation helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“*Perrigo*”) at paragraph 74:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that;

.....”

24. The Commissioner is satisfied that sections 473A(1) and (2) TCA 1997 mean that if a taxpayer makes a payment for an academic year, it is the year of the commencement of the academic course which is seen as the “year of assessment”. Whilst, nothing prevents a taxpayer making a payment in respect of that academic year, outside of the year of commencement of that academic year, nonetheless the claim for relief for fees paid for third level education is as against that payment for the relevant year of assessment, that is, the commencement of the academic year.

25. Applying the legislative requirements to the facts of this appeal, the Commissioner notes that in 2022, the Appellant submitted a Form IT31 to the Respondent confirming that he made a total payment in the amount of €13,634.00 for the tax year 2018, which formed the basis of his claim for relief for fees paid for third level education. However, as set out

above the amount of €6,817.00, paid on 19 January 2018, related to the academic year 2017/2018 and thus, the Commissioner is satisfied that in accordance with the applicable legislative provisions, the payment made on 19 January 2018, in the amount of €6,817.00, related to the 2017 year of assessment.

26. Furthermore, the Commissioner notes the Respondent's correspondence via its "MyEnquiries" system to the Appellant dated 23 August 2024, wherein the Respondent stated that *".....your total claim came to €13,634.00, the maximum relief allowable for tax year 2018 is €7,000.00 with a disregard amount of €3,000.00 being applied leaving a total valid claim for tax relief in 2018 of €4,000.00 with the appropriate tax credit being applied on foot of this.."*
27. Section 473A(4A) TCA 1997 is relevant in this regard, which states that in any claim or claims for relief in respect of qualifying fees, for the year of assessment 2015 and each subsequent year of assessment there shall be disregarded the first €3,000 or the full amount of those fees, whichever is the lesser. [Emphasis added]
28. Having regard to the principles of statutory interpretation the Commissioner finds that the Respondent correctly applied the provisions of section 473A(4A) TCA 1997, in the manner in which it calculated where the deduction of €3,000 arose.
29. For the academic year 2017, the Appellant paid the amount of €6,817. In accordance with section 473A(4A) TCA 1997 the first €3,000 shall be disregarded. Therefore the amount of €3,817 was capable of being claimed for the year of assessment 2017, leaving aside the application of section 865(4) TCA 1997 and the four year rule which the Commissioner deals with hereunder. As set out, it matters not that the fees for the academic year 2017/2018 were paid in 2018, the fees are attributable to the year of assessment 2017, in accordance with the provisions of sections 473A(1) and (2) TCA 1997.
30. In relation to the academic year 2018, the Appellant also paid the amount of €6,817. In accordance with section 473A(4A) TCA 1997 for *"each subsequent year of assessment there shall be disregarded the first €3,000"*. Therefore, the amount capable of being claimed by the Appellant in the sum of €6,817 is reduced by the amount of €3,000, in accordance with section 473A(4A) TCA 1997.
31. The Commissioner notes that for the year of assessment 2018, the Respondent deducted the amount of €3,000 from the amount of €7,000, which was the amount that the Minister for Finance had approved *"as the level of qualifying fees that can qualify for tax relief under Section 473A..."* as per the correspondence submitted by the Respondent dated 18 February 2011, from the Department of Finance to the Department of Education and Skills.

32. Whether it be a deduction in the amount of €3,000 from €7,000 as per the Respondent or the amount of €3,000 from the amount actually paid for that academic year and thus year of assessment 2018, namely €6,817, the Commissioner is satisfied that the Respondent was not incorrect to disregard the amount of €3,000 from the Appellant's claim for 2018, in the sum of €6,817 for relief for fees paid for third level education. The Commissioner finds that the Respondent acted in accordance with the provisions of section 473A(4A) TCA 1997.
33. Whilst the total amount paid in 2018, was in the sum of €13,634, as stated the Commissioner is satisfied that the total amount is attributable to two academic years, namely 2017/2018 and 2018/2019, due to the provisions of sections 473A(1) and (2) TCA 1997. The Commissioner will now deal with the reasons why the Respondent was precluded from making a repayment of income tax for the year 2017.

Section 865 TCA 1997

34. The Appellant has been denied a repayment of income tax for 2017 that arose as a result of his claim for relief for fees for third level education for the years 2017 to 2018, on the grounds that the Appellant did not meet the criteria outlined in section 865(4) TCA 1997, namely that a claim for repayment of income tax for the chargeable period was not made within four years after the end of the chargeable period.
35. Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section includes income tax, corporation tax and capital gains tax. It also covers: any interest, surcharge or penalty relating to the tax, levy or charge; any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to the Respondent; and amounts paid on account of tax (for example, payments in excess of liability).
36. Section 865(2) TCA 1997 provides that a person who has paid tax which is not due, or which, but for an error or mistake in the person's return, would not have been due, is entitled to repayment of that tax.
37. Section 865(3) TCA 1997 provides that a repayment of tax referred to in section 865(2) TCA 1997 is not due unless a valid claim to repayment has been made. A return or statement which a person is required to deliver under the Acts and which contains all the information that the Respondent may reasonably require to determine if and to what extent a repayment is due, is regarded as a valid claim. It was the IT31 form filed by the Appellant in the year 2022 that established a valid claim for the purposes of section 865(3) TCA 1997.

38. In relation to a limitation period for a repayment of tax, section 865(4) 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].
39. As the Appellant's claim for repayment of income tax, on the basis of his claim for relief for fees paid for third level education, related to the period **2017**, a valid claim for repayment must have been made on or before **31 December 2021**. The Appellant filed his claim for relief for fees paid for third level education in **2022**, and as set out above, it is this date that establishes a valid claim for the purposes of section 865(3) TCA 1997. Having regard to this date, the Commissioner is satisfied that the claim falls outside of the 4 year time limit, prescribed in section 865(4) TCA 1997.
40. The use of the word "**shall**" in section 865(4) 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 Commissioner has no authority or discretion to direct that repayment be made or credits allocated to the Appellant where the claim for repayment falls outside the four year period specified in section 865(4) TCA 1997.
41. 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 website¹.
42. As set out above, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. The Commissioner determines that a repayment of income tax for the year 2017 was not available to the Appellant in relation to tax overpaid, as a valid claim for repayment was not made within the four year statutory period contained in section 865(4) TCA 1997. Moreover, the Commissioner is satisfied that the Respondent correctly applied the provisions of section 473A TCA 1997, to calculate the Appellant's claim for relief for fees paid for third level education, in relation to the year of assessment 2018.
43. The Commissioner has every sympathy for the Appellant's situation. However, the legislation does not afford the Commissioner any discretion on this matter. Hence, the appeal is denied.

¹ www.taxappeals.ie

Determination


44. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed and the Appellant has not succeeded in showing that the Respondent was incorrect to apply the provisions of section 865(4) TCA 1997 and section 473A TCA 1997.
45. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position. The Commissioner determines that the Appellant's appeal has failed in respect of a claim for repayment of income tax for the year of assessment 2017, as the claim was made outside of the four year time limit pursuant to the provisions of section 865(4) TCA 1997.
46. This Appeal is determined in accordance with Part 40A 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) TCA 1997.

Notification

47. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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

48. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.


Claire Millrine
Appeal Commissioner
2 January 2025