



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

32TACD2025

Between



**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## **Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] [REDACTED] (“the Appellant”) under sections 865(7) and 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of income tax in the amount of €3,946.30 for the tax year 2005, on the ground that the Appellant’s claim for a repayment of overpaid income tax for the year 2005 was made outside the statutory timeframe.
2. On 15 November 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

## **Background**

3. The Respondent submitted that on 14 March 2024, the Appellant requested an amendment of his income tax return for the year 2005, which the Respondent granted, and the amendment of the return resulted in an overpayment in the amount of €3,946.30.
4. On 17 October 2024, the Respondent wrote to the Appellant to inform him of its decision to refuse the Appellant’s claim for a repayment of income tax for the year 2005, on the ground that the Appellant’s claim was not made within the four year time limit imposed by legislation.
5. On 31 October 2024, the Appellant submitted a Notice of Appeal to the Commission, which enclosed supporting documentation. On 11 November 2024, the Appellant submitted a Statement of Case. In his submissions, the Appellant did not dispute that he claimed overpaid income tax for 2005 in 2024.
6. On 12 November 2024, the Respondent submitted a Statement of Case. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

## **Legislation and Guidelines**

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

*“(2) Subject to the provisions of this section, where a person has, in respect of a chargeable period, paid, whether directly or by deduction, an amount of tax which is not due from that person or which, but for an error or mistake in a return or statement made by the person for the purposes of an assessment to tax, would not have been due from the person, the person shall be entitled to repayment of the tax so paid.*

...

*(3) A repayment of tax shall not be due under subsection (2) unless a valid claim has been made to the Revenue Commissioners for that purpose.*

...

*(4) Subject to subsection (5), a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made—*

*(a) in the case of claims made on or before 31 December 2004, under any provision of the Acts other than subsection (2), in relation to any chargeable period ending on or before 31 December 2002, within 10 years,*

*(b) in the case of claims made on or after 1 January 2005 in relation to any chargeable period referred to in paragraph (a), within 4 years, and*

*(c) in the case of claims made—*

*(i) under subsection (2) and not under any other provision of the Acts,  
or*

*(ii) in relation to any chargeable period beginning on or after 1 January 2003, within 4 years,*


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

## **Submissions**

### *Appellant*

9. In his Notice of Appeal and Statement of Case, the Appellant submitted (among other things):

[REDACTED]

 As you can see from the above it was not possible for me to claim the refund within the normal four year time limit as I only became aware of the overpayment when the amended notice of assessment for 2005 was issued on the 4th July 2024. I would be grateful there if you would allow my appeal for the repayment of the overpayment of €3,946.30 for 2005.”

*Respondent*

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

*“The chargeable period in this instance is 1st January 2005 to the 31st December 2005. Therefore, in order that Revenue could consider a refund of tax overpaid for the 2005 tax year, an amendment of the return would have to have been requested on or before the 31st December 2009. As the request for amendment of Income tax return for the year 2005 was made 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**

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

- 11.1. On 14 March 2024, the Appellant requested an amendment of his income tax return for the tax year 2005.
- 11.2. On 4 July 2024, a notice of amended assessment for the 2005 tax year issued to the Appellant.
- 11.3. The notice of amended assessment indicated that the Appellant had overpaid income tax for 2005 in the amount of €3,946.30.
- 11.4. On 17 October 2024, the Respondent refused a repayment of the overpaid income tax on the ground that the Appellant had filed his income tax return for 2005, outside the four year statutory time limit.

**Analysis**

- 12. This appeal relates to the Respondent’s refusal of the Appellant’s claim for a repayment of overpaid income tax for the tax year 2005. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.
- 13. In an appeal before the Commission, the burden of proof rests on the Appellant, who in this appeal must show that the Respondent was incorrect to refuse a claim for repayment

of the amount of income tax overpaid by the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 that:

*“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.*

#### *Section 865 TCA 1997*

14. Section 865(2) of the TCA 1997 provides that a person is entitled to a repayment of tax paid where that tax is not due from that person. However, section 865(4) of the TCA 1997 provides that *“a claim for repayment of tax under the Acts for any chargeable period shall not be allowed unless it is made... within 4 years, after the end of the chargeable period to which the claim relates.”* (emphasis added).
15. In this appeal, the relevant tax year was 2005. Therefore, the claim for a repayment of income tax must have been made on or before 31 December 2009. The Appellant has not disputed that he claimed overpaid income tax for 2005 in 2024. It is this date that establishes a valid claim for the purposes of section 865(3) of the TCA 1997. Having regard to this date, the Commissioner is satisfied that the Appellant’s claim fell outside the four year time limit prescribed in section 865(4) of the TCA 1997.
16. The Commissioner notes the Appellant’s submission that he did not become aware that he had overpaid income tax for 2005 until 2024. Nonetheless, the use of the word “shall” in section 865(4) of the TCA 1997 indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the four year rule might be mitigated. The legislation does not afford the Commissioner any discretion to disapply the rule.
17. Previous determinations of the Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website<sup>1</sup>.
18. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the circumstances which the Appellant outlined on appeal. The Appellant was entitled to check whether the Respondent’s refusal of his claim

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

for a repayment of income tax was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

### **Determination**

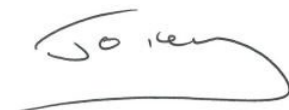
19. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the Appellant's claim for a repayment of income tax in the amount of €3,946.30, under section 865(4) of the TCA 1997.
20. This Appeal is determined 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**

21. 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**

22. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Jo Kenny  
Appeal Commissioner  
07 January 2025