



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

49TACD2025

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”) brought by [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 tax relief in respect of contributions made to a retirement annuity contract (“RAC”) for the tax years 2001 - 2019, on the ground that the Appellant’s claim was made outside the statutory timeframe.
2. On 4 October 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. On 8 March 2024, the Appellant contacted the Respondent. He stated that he had a private pension since 1 December 2001 and thought that he was receiving tax relief at source, but recently realised that he was not. He had since applied and received tax relief for 2020 – 2023. He asked if it was possible to claim tax relief for the years prior to 2020 and if the Respondent could look upon it as an exceptional circumstance. On 25 April 2024, the Respondent informed the Appellant that he could only claim tax refunds for the last four years. On 30 April 2024, the Appellant provided the Respondent with a copy of his premium history and stated that he felt he should receive full tax relief in recognition of starting a pension in 2001.
4. On 8 May 2024, the Respondent informed the Appellant that it was unable to deal with his claim, on the ground that section 865(4) of the TCA 1997 states that claims for repayment of tax may only be allowed within four years.
5. On 12 May 2024, the Appellant submitted two Notices of Appeal to the Commission: one in respect of the tax years 2001 – 2015 and the other in respect of the tax years 2016 – 2019. On 8 August 2024, the Commissioner directed that both appeals be consolidated.
6. The Appellant submitted supporting documentation, including correspondence between the Appellant and the Respondent, and a premium history from 2001 to 2024. On 1 August 2024, the Respondent submitted a Statement of Case. On 1 October 2024, the Appellant submitted a Statement of Case. On 2 December 2024, the Respondent submitted a copy of correspondence between the Appellant and the Respondent. 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 784 of the TCA 1997 provides (among other things):

“(1) (a) Where an individual, being an individual referred to in paragraph (b), pays a premium or other consideration under an annuity contract for the time being approved by the Revenue Commissioners as being a contract by which the main benefit secured is, or would, but for the exercise of an option by the individual under subsection (2A), be a life annuity for the individual in his or her old age or under a contract for the time being approved under section 785 (in this Chapter referred to as a "qualifying premium"), relief from income tax may be given in respect of the qualifying premium under section 787.

(b) An individual referred to in this paragraph is an individual who is or was (or but for an insufficiency of profits or gains would be or would have been) for any year of assessment chargeable to tax in respect of relevant earnings from any trade, profession, office or employment carried on or held by him or her and who paid a qualifying premium in that year.”

9. 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

10. In his Notice of Appeal, the Appellant submitted:

“I started a pension plan in December 2001 and I have been paying into on a monthly basis since. I was not aware that I could claim back relief on these payments until this year. I received no advice, either from [REDACTED] or from Revenue on this matter. I have been a PAYE worker all my life and was under the impression that all deductions /reliefs were dealt with at source. I mistakenly believed that as a PAYE (Pay As You Go) worker that any relief I was entitled to was received on a "Received As You Go" basis.

My Appeal is based on the fact that had I known that I should have applied for relief on my pension payments then I would have done so on an annual basis. Even through the Covid pandemic when I was on a 3 day working week and in receipt of job seekers benefit I continued making monthly payments.

*This appeal is related to the decision by [REDACTED]
[REDACTED] dated 08/05/2024.”*

11. In his Statement of Case, the Appellant reiterated the submissions made in his Notice of Appeal and also stated:

“I mistakenly believed that [REDACTED] was making submissions on my behalf on this regard to Revenue. I only realised that I could claim Tax relief earlier this year and proceeded to claim for the years from 2020 to 2023.”

Respondent

12. In its Statement of Case, the Respondent submitted:

“The Appellant submitted the following enquiry on 8 March 2024:

“I have a private pension in force with ██████ which commenced on December 1st 2001. Through my ignorance, I thought I was getting tax relief at source. Only recently, I realised this was not happening. I have since applied and received tax relief from 2020 to 2023 online on revenue.ie. Is it possible for me to apply for tax relief for the years prior to 2020. I can ask ██████ to provide me with any information and documents that you may require. I would hope that you could look upon this as an exceptional circumstance.”

The Appellant contacted the Respondent by phone on 18 April 2024 and during the call the Appellant was advised to submit his Retirement Annuity Contract pension certificates for review. The Appellant submitted the pension documentation on the same date.

The Respondent contacted the Appellant on 25 April 2024 to confirm that no claim for tax relief on Retirement Annuity Contract payments could be facilitated prior to tax year 2020 in line with the legislation governing such claims.

The Appellant submitted a further enquiry on 30 April 2024 advising that he wished to appeal this decision as he “was under the mistaken impression that I was receiving tax relief at source having never received clear guidance from revenue or any other authority on this subject”. The Respondent replied on 8 May 2024 confirming the Appellants claim was now Statute Barred and included information on how the Appellant could appeal this decision.

The Appellant subsequently submitted an appeal to the Tax Appeals Commission on 12 May 2024 in respect of the tax relief due for Retirement Annuity Contract contributions made from 2001 – 2019.

The Respondent contacted the Appellant on 11 June 2024 and confirmed that unclaimed Retirement Annuity Contract pension contributions prior to 1 January 2020 are Statute Barred and cannot be reviewed in accordance with Section 865(4) TCA 1997. The Respondent confirmed that relief had been applied in respect of contributions made after 1 January 2020.

The Appellant is sympathetic to the Appellant in this matter but has no discretion under the existing legislation Section 865(4) TCA 1997 to apply any additional relief in respect of 2001 – 2019.”

Material Facts

13. Having read the documentation submitted, the Commissioner makes the following findings of material fact:
 - 13.1. In 2024, the Appellant claimed tax relief in respect of contributions paid to a RAC for the tax years 2001 - 2019.
 - 13.2. On 8 May 2024, the Respondent refused the Appellant’s claim on the ground that the Appellant’s claim was made outside the four year statutory time limit.
 - 13.3. On 12 May 2024, the Appellant submitted Notices of Appeal to the Commission.

Analysis

14. This appeal relates to the Respondent’s refusal of the Appellant’s claim for tax relief in respect of contributions paid to a RAC for the tax years 2001 - 2019. The Commissioner is confined to considering whether that decision was in accordance with the applicable legislation.
15. 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 784 & Section 865 TCA 1997

16. Section 784 of the TCA 1997 provides for relief from income tax in respect of contributions paid to a RAC. Section 865 of the TCA 1997 provides for a general right to repayment of tax. The definition of tax in that section includes income tax and also covers: any interest, surcharge or penalty relating to the tax, levy or charge; any sum arising from the withdrawal of a relief or an exemption; any sum required to be withheld and remitted to

the Respondent; and amounts paid on account of such tax (for example, payments in excess of liability).

17. Section 865(2) of the 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. 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).
18. In this appeal, the relevant tax years were 2001 - 2019. Therefore, the claim for tax relief must have been made on or before 31 December 2005, 31 December 2006 (and so on) – 31 December 2023 respectively. The Appellant provided a premium history which shows that he has paid premiums into a policy since December 2001. However, the Appellant has not disputed that he claimed tax relief in respect of those premiums for the tax years 2001 – 2019 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 for each of the tax years 2001 - 2019 fell outside the four year time limit prescribed in section 865(4) of the TCA 1997.
19. The Commissioner acknowledges the Appellant's submission that he was unaware that he could claim tax relief until recently, as well as his request that his case should be viewed as an exceptional circumstance. However, 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.
20. The Commissioner also acknowledges the Appellant's submission that neither the pension provider nor the Respondent advised the Appellant that he could claim tax relief. As noted above, the Commissioner is confined to considering whether the Respondent's decision was in accordance with the legislation. Accordingly, the question of advice which was or was not given to the Appellant falls outside the Commissioner's remit.
21. 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.

¹ www.taxappeals.ie

22. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the circumstances outlined on appeal. The Appellant was entitled to check whether the Respondent's refusal of his claim for tax relief was correct. However as noted above, the legislation does not afford the Commissioner any discretion on this matter.

Determination

23. 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 tax relief in respect of contributions paid to a RAC for the tax years 2001 – 2019, under section 865(4) of the TCA 1997.

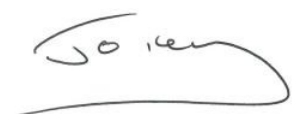
24. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

25. 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

26. 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
29 January 2025