



70TACD2019

BETWEEN/

NAME REDACTED

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal relates to a claim for the repayment of tax in accordance with section 865 of the Taxes Consolidation Act, 1997 (hereinafter 'TCA 1997') in respect of the tax year of assessment 2011 and 2012. The appeal is adjudicated in accordance with section 949U TCA 1997.

Facts

2. On 4 July 2017 a return of income, charges and capital gains for the year 2011 and 2012 was received by the Revenue Commissioners for the Appellant. On 4 July 2017 Notices of Assessment to Income Tax for the year 2011 and 2012 issued and notified the Appellant of a balance of tax overpaid of €2,107.83 and €4,836.65 respectively. The Appellant sought a repayment of the tax overpaid.



3. On 6 July 2017, in separate letters from the Revenue Commissioners to the Appellant, the Appellant was informed that the Revenue Commissioners were precluded from repaying the overpayment of tax for the year 2011 and 2012 as the claim was not made within the four-year period in section 865(4) TCA 1997. The Appellant was informed that, in accordance with section 865(7) TCA 1997, an appeal against the decision not to repay the overpayment of tax could be made, within 30 days after the date of the letter, to the Tax Appeals Commission. On 28 July 2017 notices of appeal were received by the Tax Appeals Commission.

Legislation

4. Section 865 TCA 1997 provides:

“(1) (a) *In this section and section 865A-*

“Acts” means the Tax Acts, the Capital Gains Tax Acts, Part 18A, Part 18C and Part 18D and instruments made thereunder,

“chargeable period” has the meaning assigned to it by section 321.

...

“tax” means any income tax, corporation tax, capital gains tax, income levy, domicile levy or universal social charge and includes-

...

“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*

...

*(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 provisions 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.*

...

- (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.*

... ”

Submissions

5. The Appellant submits that there are extenuating circumstances for the failure to deliver a return of income, charges and capital gains for 2011 and 2012 until July 2017, which gave rise to the claim for repayment of tax for 2011 and 2012. The Appellant submits that the personal circumstance of moving to Australia in 2013 and the reliance on advice from an accountant in Australia should be factors taken into consideration in the claim for a repayment of tax under section 865 TCA 1997. The Appellant submits that the repayment of tax would greatly assist his decision to pursue post-graduate education in Australia with a view to returning to Ireland in the future.
6. The Revenue Commissioners submit that a claim for repayment of tax must be made within four years after the end of the chargeable period to which the claim relates. The Revenue Commissioners further submit that as the claim by the Appellant for the year 2011 and 2012 was not made within the period specified in section 865 TCA 1997, the Revenue Commissioners were precluded from making the repayment of tax.

Analysis

7. Section 865(2) provides that a person is entitled to a repayment of tax paid where an amount of the tax paid is not due from that person. Section 865(3) provides that a repayment of tax is not due unless a valid claim has been made to the Revenue Commissioners. Section 865(1)(b)(i) provides that where a person furnishes a return which is required to be delivered by the person for a chargeable period, such a return shall be treated as a valid claim in relation to a repayment of tax where 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 is contained in the return furnished by the person.

8. As regards a limitation period for a repayment of tax under section 865, subsection (4) 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].
9. The Appellant sought a repayment of tax on the basis that an amount of tax paid by him for the year 2011 and 2012 was not due. The entitlement to a repayment of tax arises under section 865(2). Section 865(3) means that the repayment of tax sought by the Appellant under section 865(2) is not due unless a valid claim has been made to the Revenue Commissioners. Therefore, for the repayment of tax of €2,107.83 and €4,836.65 to be due, the Appellant must have made a valid claim to the Revenue Commissioners.
10. As regards when a valid claim was made by the Appellant for the year 2011 and 2012, the Revenue Commissioners had all the information which they required to enable them determine if and to what extent a repayment of tax was due to the Appellant following the delivery of the return for 2011 and 2012 on 4 July 2017 and at the time of the Notices of Assessment dated 4 July 2017.
11. In deciding if the Appellant is entitled to a repayment of tax, and having established that there is a valid claim, the provisions of section 865(4) are applied. As the claim for repayment of tax by the Appellant was made outside the four-year period specified in section 865(4) the claim for repayment of €2,107.83 and €4,836.65 by the Appellant is not allowed. The use of the word ‘*shall*’ in section 865(4) TCA 1997, indicates an absence of discretion in the application of the provision. The wording of the provision does not provide for extenuating circumstances in which the four-year period might be mitigated. In the circumstances, I do not consider that I have the authority to direct that a repayment be made to the Appellant where a



claim for repayment of tax was made outside the four-year period specified in section 865(4) TCA 1997.

12. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment of tax in the context of the four-year statutory limitation period. These determinations, number 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 02TACD2017, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018, 16TACD2018, 19TACD2018, 25TACD2018, 29TACD2018, 03TACD2019, 04TACD2019 and 20TACD2019, can be found on the website of the Tax Appeals Commission at www.taxappeals.ie.

Determination

13. Pursuant to the wording of section 865 TCA 1997, and in particular the word ‘shall’ in section 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year limitation period in circumstances where a valid claim was made outside the four-year period. As a result, I determine that the claim for repayment of tax for the year of assessment 2011 and 2012 is not allowed under section 865 TCA 1997. This appeal is hereby determined in accordance with section 949AL TCA 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

22nd NOVEMBER 2019

