



**25TACD2018**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to a claim for repayment of tax in accordance with section 865 of the Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in respect of the tax year of assessment 2012. The Appellant sought an oral hearing, which took place at the Tax Appeals Commission on 3 October 2018.

**Background**

2. On 21 August 2017, the Appellant filed his income tax return in respect of the tax year of assessment 2012. The Respondent notified the Appellant of income tax overpaid of €6,200 in respect of 2012. The Appellant sought repayment of the tax overpaid.
3. On 5 September 2017, the Respondent declined to process a repayment on the basis that a valid claim for repayment had not been made within the four-year statutory period in accordance with s.865(4) TCA 1997. The Appellant duly appealed.



## Legislation

### Section 865 TCA 1997 - Repayment of Tax

...

*(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.]*

*[(3A) (a) Subject to paragraph (b), subsection (3) shall not prevent the Revenue Commissioners from making, to a person other than a chargeable person (within the meaning of [Part 41A]), a repayment in respect of tax deducted, in accordance with Chapter 4 of Part 42 and the regulations made thereunder, from that person's emoluments for a year of assessment where, on the basis of the information available to them, they are satisfied that the tax so deducted, and in respect of which the person is entitled to a credit, exceeds the person's liability for that year.*

*(b) A repayment referred to in paragraph (a) shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4).]*

*(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]. ....*

#### Section 960H TCA 1997 – Offset between taxes

*(1) In this section –*

*‘claim’ means a claim that gives rise to either or both a repayment of tax and a payment of interest payable in respect of such a repayment and includes part of such a claim; ...’*

#### **Submissions**

4. At hearing, the Appellant stated that he had thought that the hearing related to the tax year 2013 however, he accepted after some discussion that he was mistaken in this regard.
5. The Appellant accepted that his return in respect of the tax year of assessment 2012 had not been filed on time and stated that in 2012, he did not have sufficient funds to discharge the fees of his accountant. While he had stated in his notice of appeal that he was not seeking a return of the monies but was seeking an offset of the monies against future tax liabilities, he accepted at the hearing of the appeal that his claim fell outside the four-year statutory period.
6. The Respondent submitted that a claim for repayment of tax must be made within four years after the end of the tax year to which the claim relates. The Respondent submitted that to be within time, a claim for repayment in relation to the tax year 2012 would have to have been made on or before 31 December 2016. The Respondent submitted that as the Appellant’s claim was out of time in accordance with the provisions of s.865 TCA 1997, the Respondent was unable to process the repayment.

#### **Analysis and findings**

7. The facts in this appeal are not in dispute. The parties agreed that the repayment claim regarding the tax year 2012 was not made within four years after the end of the chargeable period to which the claim related. The





Respondent submitted that the Appellant's claim for repayment was thus out of time in accordance with s.865(4) TCA 1997 which provides; '*... 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]. Section 960H TCA 1997, which provides for offset between taxes, applies only in relation to a claim which gives rise to a repayment.

8. In my view, the use of the word '*shall*' per s.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. In short, I do not consider that I have the authority or jurisdiction to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.865(4) TCA 1997. As there is no repayment of tax, there is no offset for the purposes of s.960H.
9. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations, numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 02TACD2017, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018, 12TACD2018 and 16TACD2018 can be found on the Commission website at [www.taxappeals.ie](http://www.taxappeals.ie).

### **Conclusion**

10. Pursuant to the wording of s.865 TCA 1997, and in particular the use of the word "*shall*" per subsection 865(4) TCA 1997, I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside the four-year period.
11. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax year of assessment 2012, is out of time in accordance with the provisions of section 865(4) TCA 1997.



12. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, s.949AL thereof.

**COMMISSIONER LORNA GALLAGHER**

**October 2018**

