



14TACD2019

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 years of assessment 2011, 2012 and 2013. The quantum of tax in dispute totals €10,172.
2. This appeal is determined in accordance with section 949U TCA 1997.

Background

3. On 6 March 2018, the Appellant filed revised income tax returns in respect of the tax years of assessment 2011, 2012 and 2013. The revised returns corrected the omission of an interest deduction in the original returns.



4. Based on the revised returns, the Respondent issued amended assessments in respect of the tax years 2011, 2012 and 2013. These assessments indicated that there was income tax overpaid of €3,871, €3,408 and €2,893 in respect of the tax years 2011, 2012 and 2013 respectively. The Appellant sought repayment of the tax overpaid.
5. On 20 March 2018, 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].

Submissions

6. The Appellant confirmed that the revised returns were filed with the Respondent on 6 March 2018. In the original returns, the Appellant omitted an allowable deduction in respect of interest paid, which would have reduced the Appellant's tax liability. The Appellant did not submit a basis for non-applicability of the 4-year statutory limitation period contained in S.865(4) TCA 1997.
7. The Respondent stated that the amended returns were not furnished within four years after the end of the chargeable period to which the claims related, as required by section 865(4) TCA 1997. As a result, the Respondent stated that it was unable to process the repayment of tax arising in respect of the amended assessments.

Analysis

8. The facts in this appeal are not in dispute. The parties agreed that the repayment claims in respect of the tax years of assessment 2011, 2012 and 2013, were not made within four years after the end of the chargeable periods to which the claims related. The Respondent submitted that *'Under Section 865, which deals with the 4-year time limit imposed on repayment claims, this office is unable to deal with claims more than four years after the end of the tax year.'*



9. 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.
10. 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, 16TACD2018, 19TACD2018 and 25TACD2018 can be found on the Commission website at www.taxappeals.ie.

Conclusion

11. It is accepted that the Appellant made a genuine error in her original returns in respect of the tax years of assessment 2011, 2012 and 2013, by failing to claim an allowable deduction in respect of interest. The Appellant endeavoured to correct this error on 6 March 2018 by filing amended returns.
12. However, 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 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.
13. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant for the tax years of assessment 2011, 2012 and 2013, is out of time in accordance with the provisions of section 865(4) TCA 1997.
14. This Appeal is determined in accordance with s.949AL TCA 1997.

COMMISSIONER LORNA GALLAGHER

February 2019



***The parties to this appeal have not requested the Appeal Commissioner to state and sign
a case for the opinion of the High Court***

