



**AC Ref: 18TACD2016**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. The Appellant is an 85-year-old individual who retired on an occupational pension, aged 65. The Appellant attended this Commission in person, in the company of the Appellant's spouse and daughter. This case relates to a repayment claim pursuant to section 865 of the Taxes Consolidation Act 1997 as amended ('TCA 1997').

**Background**

2. The issue in this case concerns income tax wrongly deducted from the Appellant's social welfare old age pension. Through no fault of the Appellant, an error occurred whereby the contributory state pension of the Appellant's spouse was incorrectly treated for tax purposes as income of the Appellant and was taxed accordingly. As a result, the Appellants spouse did not receive the benefit of their PAYE credit. The failure to apply the PAYE credit resulted in the pension monies being taxed at a higher rate and this tax was deducted at source by the Respondent.
3. The Appellant did not notice the error until 2015 when the Appellant submitted a claim to the Respondent in respect of medical expenses. Correspondence ensued in 2015 wherein a formal repayment claim was made by the Appellant in respect of monies wrongly deducted in respect of all tax years. On [DATE REDACTD] 2015 the error was corrected by the Respondent in respect of 2015 and future tax years of



assessment. On foot of the Appellant's repayment claim, amended P21 balancing statements issued for the tax years 2011-2014 and refunds of tax overpaid were processed in respect of these tax years. On 3 June 2015, the Appellant's daughter wrote to the Respondent on the Appellant's behalf in the following terms;

*'.... my [parent] has requested that I write to you on their behalf to ask that you investigate this matter further to establish how long this tax has been deducted in error and to ask for a refund of any tax taken for however many years it has been taken in error from their income prior to the tax year of 2011.  
My [parent] is aware that, in normal circumstances, tax cannot be claimed back for more than [sic] 4 years retrospectively but, on this occasion, they believe that this tax should never have been deducted from them in the first instance and therefore is due back to them for however many years it was deducted in error.  
...'*

4. On [DATE REDACTED] 2015, the Respondent replied, stating that the claim for repayment was out of time in accordance with the provisions of s.865 TCA 1997. The Appellant was notified of the Appellant's entitlement to appeal.
5. The Appellant duly appealed on grounds that the error made by the Respondent resulted in a significant loss of income to the Appellant through no wrongful act or omission on their part and that it was unconscionable to apply the 4 year rule taking into account the facts and circumstances of this case. The Appellant, pursuant to this Appeal, seeks to recover the tax wrongly deducted in those tax years of assessment which pre-date the tax year of assessment 2011.

## Legislation

### s.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.]<sup>8</sup>*

*[(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]<sup>9</sup>), 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]<sup>11</sup>.*

....

## **Submissions and analysis**

6. The facts in this case are not in dispute. The Respondent wrongly deducted tax at source in respect of the Appellant's income in circumstances where tax was not due.



The Respondent admitted that the error had gone unnoticed for in excess of 15 years. The Appellant queried at hearing whether tax had been incorrectly deducted since the Appellant's retirement, some 20 years hence. The Respondent was not able to state with certainty whether this was or was not the case. The Respondent stated that as far as it could be ascertained, the error occurred in 1999/2000 and repeated itself each year since, until it was discovered in 2015.

7. Both parties accepted that the repayment claim in this case was made by the Appellant in the tax year of assessment, 2015. The Respondent contended that the Appellant's claim for repayment in relation to section 865 TCA 1997 was out of time on the basis that it was outside the four year statutory time limit contained at section 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*'. While s.865(3A)(a) permits a repayment to be made by the Respondent '*on the basis of the information available*' to the Respondent, as opposed to via repayment claim by a taxpayer, section 865(3A)(b) requires that this repayment '*shall not be made at a time at which a claim to the repayment would not be allowed under subsection (4)*' thus re-engaging a four year limitation period for this type of repayment. As a result, the Respondent submitted that they are out of time to process a repayment on the basis of s.865(3A)(a) TCA 1997.
8. The use of the word '*shall*' per section 865(3A)(b) and section 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 have authority or jurisdiction to direct that a repayment be made to the Appellant where the claim in respect of the repayment is outside the four year time period specified in s.865(4) TCA 1997.
9. In this case the Appellant has done nothing at all to trigger the overpayment of tax to which they have been subjected. At hearing, the Appellant's daughter, leading submissions on behalf of the Appellant, expressed her frustration regarding the inflexibility of the four year rule. In addition, the Appellant in person, expressed disappointment that the four year rule would operate in a manner so as to prevent repayment of the tax wrongly deducted from their income during the tax year 2010 and previous tax years.



## **Conclusion**

10. Pursuant to the wording of section 865 TCA 1997, and in particular the use of the word "*shall*" per subsections 865(3A)(b) and 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 the claim has been made outside the four year period. As a result, I have no alternative but to determine as a matter of law that the repayment claim on behalf of the Appellant is out of time in accordance with the provisions of section 865(4) TCA 1997.

11. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

APPEAL COMMISSIONER

November 2016

