

## Repayments and Offsets of Taxes and Duties

### Part 37-00-30

This document should be read in conjunction with section 865 and 865B of the Taxes Consolidation Act 1997

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## 1 Overview of repayments

Section 865 Taxes Consolidation Act 1997 (TCA) provides for a general right to repayment of tax. The definition of tax in the section includes income tax, corporation tax, capital gains tax, income levy, domicile levy, universal social charge (USC), residential zoned land tax (RZLT) and vacant homes tax (VHT). It also covers:

- any interest, surcharge or penalty relating to the tax, levy or charge;
- any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to Revenue; and
- amounts paid on account of tax (for example, payments in excess of liability).

The main features of the provisions on tax repayments, interest and time limits were introduced by section 17 Finance Act 2003. This section provided for a general statutory right, subject to time limits, to repayment, in addition to any other existing statutory right under tax law and abolished any previous common law right.

Specific entitlement to repayment of tax may arise under provisions of the Acts<sup>1</sup> other than section 865 TCA. Section 865(5) TCA provides that where another provision of the Acts provides for a shorter time limit for repayment than the 4-year time limit set out in section 865 TCA, then that shorter time limit applies. If another provision applies a longer time limit than the 4-year limit, then the 4-year limit applies.

## 2 Who is entitled to repayment?

Section 865(2) TCA 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. The reference to tax which is not due is to be taken as including tax that was chargeable as a result of a Revenue assessment, but where it is later found that the amount of tax due on foot of that assessment was incorrect (for whatever reason). This may arise where, for instance, the Appeal Commissioners or the Higher Courts determine that the tax is not chargeable, and the Revenue Commissioners decide not to appeal against that determination. It may also arise where the Revenue Commissioners accept that a TAC determination applies to a case under appeal with broadly similar facts and settles the appeal before it is heard on that basis.

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<sup>1</sup> The Acts is defined in section 865(1) TCA and means the Tax Acts, the Capital Gains Tax Acts, Parts 4A (minimum taxation for multinational enterprise groups), 18A (income levy), 18C (domicile levy), 18D (USC), 22A (RZLT) and 22B (VHT) TCA as well as instruments made under these provisions.

### 3 Valid claims

Section 865(3) TCA provides that a repayment of tax referred to in section 865(2) TCA is not due unless a valid claim to repayment has been made. A valid claim must contain all the information the Revenue Commissioners may reasonably require to determine if and to what extent a repayment is due.

Section 865(2A) and (2B) TCA provide that where a person is making a claim for repayment of tax because of an error or mistake in a previously filed tax return, then the person must amend that tax return to make a valid claim. Where the tax return was filed under the full self-assessment system (Part 41A TCA) the person must amend the self-assessment and electronically amend the tax return where it was originally filed electronically, as required by section 959V TCA. Where the tax return relates to an earlier period, the taxpayer must amend the tax return.

Under section 865(3A) TCA, the Revenue Commissioners may, in PAYE cases, repay tax deducted under PAYE in the absence of a valid claim where they are satisfied that tax has been overpaid. Under this provision, the Revenue Commissioners may not make a repayment at a time at which a claim for the repayment would not be allowed, that is, more than four years after the end of the chargeable period to which the repayment relates. The position for PAYE cases does not apply to self-assessment taxpayers with PAYE income; such taxpayers continue to have to make a claim for refund of any overpaid tax.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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### 4 Return or statement may be a valid claim

A return or statement which a person is required to deliver under the Acts and which contains all the information that the Revenue Commissioners may reasonably require to determine if and to what extent a repayment is due, is regarded as a valid claim<sup>2</sup>. Section 865(1)(b)(ii) TCA confirms that where such information is not contained in a return or statement, a claim to repayment is not regarded as a valid claim until that information is furnished.

#### Example 1

A taxpayer filed a Form 11 return of income for 2021 on 31 October 2022. The return correctly stated the amount of each item of income to be taxed and full and correct details of all deductions, tax credits and reliefs claimed for the tax year. On receipt of the return, Revenue made an assessment based on the return, which resulted in an

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<sup>2</sup> Section 865(1)(b)(i) TCA

entitlement to a repayment of income tax. The taxpayer's return is treated as a valid claim made on 31 October 2022.

## 5 Time limits

A claim for repayment of tax cannot be allowed where it is made more than four years after the end of the tax year or accounting period to which the claim relates. The statutory four-year rule for direct taxes is in section 865(4) TCA. Similar provisions are contained in legislation for other taxes<sup>3</sup>.

Other provisions in the TCA apply shorter periods for repayment claims. Section 865(5) TCA provides that where a claim arises under a provision that contains a shorter time limit than the four-year time limit, (such as section 381(6) TCA, which provides for a two-year period for repayment claims) the shorter period applies. In contrast, where a claim arises under a provision that contains a longer time limit than the four-year time limit, then the four-year time limit applies. For example, if a claim arises under a provision that includes a six-year time limit, the four-year time limit applies.

## 6 Practical issues relating to time limits and claims

### 6.1 Repayment arising from error or mistake in a return or statement

Where the repayment arises because of an error or mistake in a return or statement, the return or statement will not constitute a valid claim until the return or statement is corrected (section 865(2A) and (2B) TCA). This is the case irrespective of the reason the taxpayer made an error or mistake in the return.

For example, where a taxpayer fails to claim a deduction in calculating profits for tax purposes and it is found later, in a case with similar facts, that the deduction is due, the return would not constitute a valid claim. The taxpayer would have to provide all the information necessary to determine if and to what extent a repayment is due before that taxpayer would have made a valid claim.

### 6.2 Repayment arising from mistaken view taken by Revenue

Where the repayment arises from a mistaken view taken by Revenue of the tax treatment of an item, and that item had either been correctly dealt with in the return or statement or correctly excluded from the return or statement, the return or statement should be regarded as a valid claim for the purposes of the time limit.

An example of an item correctly contained in a return or statement giving rise to a repayment, would be where Revenue disallowed a claim to relief claimed in a return and the relief is subsequently found to be due. In such a case the return would be regarded as a valid claim, assuming the return contained the information necessary to quantify the relief.

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<sup>3</sup> Section 57(3) Capital Acquisitions Tax Consolidation Act 2003, section 159A Stamp Duties Consolidation Act 1999, and section 99(4) Value-Added Tax Consolidation Act 2010.

For practical purposes, a return may be regarded as containing all the information that Revenue may reasonably require to determine if and to what extent a repayment is due, if either the making of an assessment in accordance with the figures contained in the return, or amending the assessment made to bring it into line with the figures contained in the return, would result in the repayment concerned becoming due. However, where further information is requested to determine if a repayment is due and the amount of any such repayment, the return will not be treated as containing all the information reasonably required and will therefore not be treated as a valid claim. Only when the required information is received to determine if a repayment is due and the amount of any such repayment can the return be treated as a valid claim.

## 7 No right to repayment other than under tax legislation

Section 865(6) TCA provides that Revenue shall not repay tax, or pay interest, other than under sections 865 and 865A TCA or another provision of the Acts and related statutory instruments. There is no right to a repayment or to interest for overpayment except under those provisions.

## 8 Repayment to successor/transferor company or companies

Section 865(10) TCA allows the Revenue Commissioners to repay tax to a successor company or companies, where a valid claim is made in respect of tax overpaid by a transferor company following a merger or division undertaken in accordance with the Companies Act 2014. Where there is more than one successor company, any repayment of tax shall be apportioned on a just and reasonable basis. The amount of any repayment of tax to a successor company or companies shall not exceed the total amount that would have been repayable to a transferor or company. This subsection applies from 1 June 2015.

## 9 Right of appeal

Where Revenue decides a person is not entitled to a repayment, the person may, under section 865(7) TCA, appeal against the Revenue decision in the same manner as an appeal against any other Revenue decision.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

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## 10 Interest on repayment of tax

The two categories of interest on repayment of tax under section 865A TCA are:

- where a repayment arises because of a mistaken assumption by Revenue; or
- where it arises for another reason.

Section 865A(1) TCA provides that in cases of a mistaken assumption giving rise to repayments, interest is payable from the day after the end of the chargeable period for which the repayment is due or the date on which the tax was paid, whichever is the later. Interest will not apply, however, for any period where the repayment is withheld in accordance with section 960H TCA because returns are outstanding.

Section 865A(2) TCA confirms that in all other repayment cases, Revenue's obligation to pay interest begins 93 days after receipt of a valid claim. This includes cases where there has been an administrative delay on the part of Revenue in processing a valid claim. As with cases of mistaken assumption by Revenue, interest will not apply for any period where the repayment is withheld in accordance with section 960H TCA because returns are outstanding.

No interest is payable for days when a repayment is withheld pending the receipt of information which the taxpayer was reasonably obliged to submit with a valid claim. This can arise where the taxpayer inserts the phrase "details to follow" on a return form. In such a case, the claim is not a valid claim until the information is furnished.

Notwithstanding the general right to interest on a repayment of tax, where any person appeals an assessment, makes a payment to Revenue in connection with that appealed assessment and is subsequently entitled to a refund of that payment, either because the person settles the appeal with Revenue, is successful at appeal or the assessment is determined in that person's favour by a court, repayment in these circumstances will not attract interest as provided for by section 960GA TCA.

Section 960GA TCA provides that interest will not be paid on a repayment of tax where a person makes a payment of tax to Revenue or the Collector General, either directly or indirectly against a liability to tax they wish the repayment to be offset against. Interest will not be paid in excess of the amount of the assessment to tax made by that person. This provision ensures that where a taxpayer makes a payment to Revenue in respect of an appealed assessment, without accepting the liability as assessed by Revenue, and is ultimately successful at appeal or a court finds in the taxpayer's favour, the taxpayer will not be entitled to receive interest on that repayment. This allows Revenue to accept a payment from a taxpayer in respect of a "disputed" assessment without prejudging the case by bringing the payment to account against the taxhead in question.

For details of the applicable rates of interest paid by Revenue please see Appendix A.

## 11 Offsets

Where a repayment of tax is claimed within the relevant time limit for repayment claims, the repayment is available to be offset in accordance with section 960H TCA in the normal way.

Where a repayment of tax is claimed outside the relevant time limit, Revenue cannot offset any of the tax involved against any other tax liability of the taxpayer as no repayment is due to the taxpayer.

## 12 Section 865B TCA - general rule regarding offsets

Section 865B TCA provides that, where a repayment of tax cannot be made to a person because a claim is lodged outside of the relevant time limit, offset against any other tax liabilities of the person is prohibited. This is subject to the exception outlined in paragraph 13 below. Section 865B TCA also confirms that there is no right of offset outside of that already provided for under the tax codes.

These rules apply across all direct taxes, related charges and levies, stamp duty, gift and inheritance tax, excise duties, value-added tax (VAT) and local property tax (LPT). Section 865B TCA provides that the rules apply to these taxes regardless of when the tax is or was paid.

Section 865B TCA also ensures that a right to repayment of stamp duty, gift tax, inheritance tax, VAT and LPT (or to interest in relation to such taxes) does not arise outside of tax legislation. A corresponding excise provision is contained in section 70(q) Finance Act 2012.

## 13 Exception to general rule

Section 865B(4)(b) TCA contains an exception to the general rule regarding offsets. It applies where tax is due and payable for a tax year or accounting period by virtue of action taken by Revenue to assess or recover tax, at a time that is four years or more after the end of the year or period involved. In such a case, an amount of tax which cannot be repaid because of the application of a time limit, but which relates to the same tax year or accounting period as the tax liability Revenue is pursuing, is available for offset against that liability. This is subject to the condition that the amount available for offset cannot exceed the amount of tax that becomes due and payable for the relevant year or period as a result of the assessing or recovery action so taken by Revenue; that is, assessing or recovery action taken outside the four-year period.

It follows that where an amount of tax cannot be repaid because of a time limit, it cannot be offset against any tax outstanding for the year or period involved where that tax was originally due and payable within four years of the end of the year or period.

**Example 2 – tax year 2017**

An individual made a personal tax return for the tax year 2017 on 31 October 2018. The person also declared and paid a Capital Gains Tax (CGT) liability of €4,000 for 2017 in October 2018. In November 2022, more than four years after the end of the tax year, it came to Revenue's attention that the person's trading profits for 2017 had been understated. At that stage, €2,500 of the original income tax due for 2017 was still outstanding.

Following discussions with the taxpayer, it was agreed that an additional tax liability of €1,550 was due. With interest and penalties the total additional amount of €3,000 was due for the tax year 2017 and appropriate assessing and recovery action was taken by Revenue in December 2022 to collect this amount.

During discussions with the taxpayer, it transpired that an exemption applied to the capital gain declared for 2017. The taxpayer lodged a repayment claim in 2022 for the CGT of €4,000 paid for the tax year 2017.

Although the four-year rule prohibits a repayment of the €4,000 CGT relating to 2017, an offset may be made by Revenue against the additional liability (income tax, interest and penalties) that became due and payable for that year by virtue of the assessing and recovery action taken by Revenue in 2022.

The amount of the CGT payment of €4,000 that can be offset is limited to the additional liability of €3,000 identified in 2022. The balance of €1,000 cannot be offset against the income tax of €2,500 still outstanding for the tax year 2017 as that tax was due and payable by virtue of the original income tax assessment for 2017 that issued in November 2018.

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**Note: This manual is currently subject to review and may not reflect up-to-date position.**

**Most recent version.**

## 16 Historic interest rates on repayment of tax

Revenue pays interest on repayments of tax, where that repayment arises because of a mistaken assumption by Revenue, or where the tax is not repaid within 93 days of when the repayment claim becomes valid. The rate of interest on such repayments, as provided for in section 865A Taxes Consolidation Act 1997, is **0.011%** per day or part of a day commencing on or after 1 November 2003.

The rates of interest applicable to qualifying repayments from 1 August 1971 to 31 October 2003 are as follows:

0.75% for any month or part of a month commencing on or after 1 August 1971

1.50% for any month or part of a month commencing on or after 1 May 1975

1.25% for any month or part of a month commencing on or after 1 August 1978

0.60% for any month or part of a month commencing on or after 1 August 1990

0.50% for any month or part of a month commencing on or after 27 March 1998

0.0161% for any day or part of a day commencing on or after 1 September 2002