

## 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 (as updated by section 128 Finance Act 2012) includes income tax, corporation tax, capital gains tax, income levy, domicile levy and the universal social charge. 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 current regime relating to tax repayments, interest and time limits arising from the scheme 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 Tax Acts other than section 865 TCA. These entitlements are unaffected by the general right to repayment in that section but all entitlements to repayment are subject to the rules relating to time limits in section 865.

## 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 has been charged in an assessment which has become final and conclusive but which is later found to have been charged incorrectly (for whatever reason). This may arise where, for instance, the Tax Appeal Commissioners or the Higher Courts find that the tax is not chargeable and the Revenue Commissioners decide not to appeal against that decision. It may also arise where the Revenue Commissioners accept, in a case with broadly similar facts, without going to appeal, that a different interpretation of the law may be appropriate.

### 3 Valid claims

Section 865(3) TCA provides that a repayment of tax referred to in section 865(2) 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, introduced by section 75 Finance (No 2) Act 2013, 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 they must amend that tax return to make a valid claim. Where the tax return was filed under the full self-assessment system (Part 41A) the person must amend the tax return in line with section 959V TCA. This includes amending the self-assessment and electronically amending the return where it was originally filed electronically. Where the tax return relates to an earlier period, the taxpayer must also amend the tax return in line with section 959V, and these latter amendments reflect the differences between tax returns filed under Part 41 and those filed under Part 41A (that is, references to including a self-assessment with the amended return are removed).

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.

### 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. 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

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 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 by Revenue where it is made more than four years after the end of the tax year or accounting period to which the claim relates, but shorter periods can apply in certain specific provisions. The statutory four-year rule for direct taxes is in section 865(4) Taxes Consolidation Act 1997 (TCA). Similar provisions are contained in the Acts relating to other taxes.

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. 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.

For practical purposes, a return should 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.

## 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 section 865, section 865A or another provision of the Tax Acts, Capital Gains Tax Acts, the income levy, domicile levy and universal social charge provisions of the TCA, 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 84(1) Finance Act 2017 introduced section 865(10) TCA under which the Revenue Commissioners may 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.

## 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.

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.

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 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.

## 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, inserted by section 128 Finance Act 2012, 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 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 and local property tax. Section 865B provides that the rules apply to these taxes regardless of when the tax is or was paid.

Section 865B also ensures that a right to repayment of stamp duty, gift tax, inheritance tax, value-added tax and local property tax (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 – tax year 2007**

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 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 (income tax, interest and penalties) of €3,000 was due for the tax year 2017 and appropriate assessing and recovery action was taken by Revenue in 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 2007.

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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