

[37.00.30] Repayments and Offsets of Taxes and Duties

1. Scheme of repayment – Finance Act 2003

The main features of the regime relating to tax repayments, interest and time limits arising from the scheme introduced by *Section 17 of Finance Act 2003* were set out in an article in Tax Briefing No. 56 dated July 2004. Further clarification on a number of issues, including circumstances in which repayments of tax might arise, due to a mistaken assumption in the application of a provision by Revenue or an error or mistake by the taxpayer, was contained in an article in Tax Briefing No. 59 dated April 2005. These articles are not reproduced in this instruction but should be consulted as necessary.

The 2003 scheme provided for a general statutory right, subject to time limits, to repayment, in addition to any other existing statutory right under tax law, but abolished any previous common law right.

2. Time limitation on repayment claims

A fundamental feature of the repayment regime is that a claim for repayment of tax cannot be allowed by Revenue where it is made more than 4 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. For direct taxes, the statutory basis for this rule is contained in section 865(4) of the Taxes Consolidation Act 1997. Similar provisions are contained in the Acts relating to other taxes.

A summary of the current rules in section 865 relating to repayment of tax is set out at Appendix 1.

3. Revenue position on 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 in the normal way.

Where a repayment of tax is claimed outside of the relevant time limit, Revenue's position has always been that it cannot offset any of the tax involved against any other tax liability of the taxpayer as no repayment is due to the taxpayer. Notwithstanding Revenue's position on this issue, taxpayers have continued to seek the offset of repayments, which are prohibited because of time limits, against both past and current liabilities to tax.

4. Finance Act 2012 – general rule regarding offsets

Statutory confirmation of Revenue's position is included in section 128 of Finance Act 2012. Section 128 inserts a new section 865B in the Taxes Consolidation Act 1997 which confirms 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 5** 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 the direct taxes (and related charges and levies), stamp duty, gift tax, inheritance tax, excise duties and value-added tax. Section 128 provides that the rules apply to these taxes regardless of when the tax is or was paid.

Finally, section 128 ensures that a right to repayment of stamp duty, gift tax, inheritance tax and value-added tax (or to interest in relation to such taxes) does not arise outside of the tax codes. A corresponding excise provision is contained in section 70(q) of Finance Act 2012.

5. Exception to general rule

One exception to the general rule regarding offsets has been provided for in the new section 865B. The exception 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 4 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 i.e. assessing or recovery action taken **outside** of the 4-year period.

It follows, therefore, 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** 4 years of the end of the year or period.

Example – tax year 2007

An individual trader made a personal tax return for the tax year 2007 on 31 October 2008. The person also declared and paid a Capital Gains Tax (CGT) liability of €4,000 for 2007 in October 2008. In 2012, it comes to Revenue's attention that the person's trading profits for 2007 had been understated i.e. more than 4 years after the end of the tax year. At that stage, €2,500 of the original income tax due for 2007 is still outstanding.

Following discussions with the taxpayer, it is agreed that an additional tax liability (income tax, interest and penalties) of €3,000 is due for the tax year 2007 and appropriate assessing and recovery action is taken by Revenue in 2012 to collect this

amount. During the discussions with the taxpayer, it transpires that an exemption applied in relation to the capital gain declared for 2007. The taxpayer lodges a repayment claim (in 2012) in relation to the CGT of €4,000 paid for the tax year 2007.

While the 4-year rule prohibits a repayment of the €4,000 CGT relating to 2007, an offset may be made by Revenue against the additional tax 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 2012.

*The amount of the CGT payment of €4,000 that can be offset is limited to the additional tax liability of €3,000 that is identified in 2012. The balance of €1,000 **cannot** be offset against the income tax of €2,500 still outstanding for the tax year 2007 as that tax was due and payable by virtue of the original income tax assessment for 2007 that issued in November 2008.*

6. Repayment Claim Processing

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

[...]

Appendix 1

Time Limits for Repayment of Income Tax, Corporation Tax, Capital Gains Tax, Income levy, Domicile levy and Universal Social Charge

1. Overview

Section 865 TCA 1997 provides for a general right to repayment of tax. The definition of tax in the section (as updated by section 128 of 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. Also included is any sum relating to a withdrawal of a relief or an exemption and sums required to be withheld and remitted to Revenue. Finally, amounts paid on account of tax (e.g. including payment in excess of liability) are included.

Specific entitlement to repayment of tax may arise under provisions of the Tax Acts other than section 865. These entitlements are unaffected by the general right to repayment in section 865 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) 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 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) 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), as introduced by Section 75 of F (No 2) A 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 in order to make a valid claim. Where the tax return was filed under the full self assessment system (Part 41A) then they must amend the tax return in line with section 959V. 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, then 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 (e.g. references to including a self-assessment with the amended return are removed).

Under section 865(3A), 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 exception, the Revenue Commissioners may not make a repayment at a time at which a claim for the repayment would not be allowed i.e. after 4 years from the end of the chargeable period to which the repayment relates. The exception in relation to PAYE cases does not apply in the case of self assessment taxpayers with PAYE income as such taxpayers continue to have to make a claim for refund of any overpaid tax.

3.1 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 his return of income Form 11 for 2009 on 31.10.2010. 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 31.10.2010.

4. Time limit for making a claim for repayment

Section 865(4) provides time limits for the making of claims for repayment of tax. In general, a claim to repayment must be made within 4 years after the end of the chargeable period to which the claim relates. All claims under the general repayment provision, in section 865(2), must be made within this time limit.

4.1 Claims under specific provisions containing their own time limits

Section 865(5) provides that where a claim arises under a provision that contains a shorter time limit than the 4-year time limit, then the shorter period applies. In contrast, where a claim arises under a provision that contains a longer time limit than the 4-year time limit, then the 4-year time limit applies. For example, if a claim arises under a provision that includes a 6-year time limit, the 4-year time limit applies. However, if the time limit in the particular provision is 2 years, that shorter time limit applies.

5. Practical issues relating to time limits and valid claims

5.1 Repayment arising from error or mistake in a return

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 so, irrespective of the reason why the taxpayer made an error or mistake in the return.

For example, where a taxpayer fails to claim some 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.

5.2 Repayment arising from mistaken view taken by Revenue

Where the repayment arises as a result of a mistaken view taken by Revenue of the tax treatment of some 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 for claims.

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 - 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.

6. No right to repayment other than under tax code

Section 865(6) provides that Revenue shall not repay tax, or pay interest, other than under section 865, section 865A or some other provision of the tax codes. Therefore, there is no right to a repayment, or interest, except under the tax codes.

7. Right of Appeal

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

8. Interest on repayment of tax

Under section 865A, the interest regime differs depending on whether a repayment arises because of a mistaken assumption by Revenue or arises for some other reason. In cases of mistaken assumption giving rise to repayments of tax, 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 because returns are outstanding.

In all other repayment cases not involving a mistaken assumption by Revenue, the period, after receipt of a valid claim, when Revenue has an obligation to pay interest on repayments is now 93 days. Included here are cases where there has been an administrative delay on the part of Revenue in processing a valid claim. Again, 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 in respect of 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.

9. Matters to be considered where a taxpayer has made a claim to repayment

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

[...]