



02TACD2017

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

### DETERMINATION

#### Introduction

1. This application involves a hearing pursuant to section 933(1)(d)(iii) of the Taxes Consolidation Act 1997 as amended ('TCA 1997') to enable a determination regarding the issue of whether to allow an application for an appeal.

#### Background

2. On **DATE REDACTED** 2015, the Respondent issued a notice to the Appellant titled '*late claim for repayment of tax*' (hereafter '*late claim notice*') in relation to a putative repayment of VAT of €214 in respect of the VAT period of assessment; 1 January 1993 to 28 February 1993 (hereafter '*the relevant period*'). The notice provided:

*'In accordance with the relevant legislation no repayment of tax shall be made unless a return is submitted within a period of four years from the end of the taxable period to which the return relates. As your return is not within the specified timeframe, the repayment cannot be processed and no further action will be taken. You have the right to appeal this decision to the Appeal Commissioners under Section 865(7) of the Taxes Consolidation Act (1997). Any appeal must be made within 30 days from the date of this letter.'*

3. The Appellant appealed the late claim notice on **DATE REDACTED** 2015. On **DATE REDACTED** 2016 the Respondent wrote to the Appellant refusing the appeal as follows;



*'Your appeal against Revenue's refusal of your late claim for repayment of tax in respect of a tax period which was the subject of High Court proceedings bearing Record Number **HC1** was refused because those proceedings were concluded by a judgment of the High Court granted against you which determined your liability. That judgment was entered in the Central Office of the High Court on the **DATE REDACTED** 2002. You did not appeal or otherwise apply to set aside that judgment.*

*The judgment was then subsequently accepted by you and settled by you on the payment of an agreed sum to the Revenue Commissioners under the terms of a Settlement Agreement dated the **DATE REDACTED** 2005 and signed by you and the then Collector General.*

*The liabilities which were found to be due by judgment of the High Court and which were subsequently included in the scope of the Settlement Agreement are not now susceptible to review or appeal by you.*

*Please note that it is the position of the Revenue Commissioners that the High Court proceedings bearing Record Number **HC1** are concluded."*

4. The Appellant appealed the Respondent's refusal and this hearing arises pursuant to section 933(1)(d)(iii) TCA 1997, to enable a determination regarding the issue of whether to allow an application for an appeal.

### **Submissions of the parties**

#### *The late claim notice*

5. The Respondent stated that the late claim notice was raised in error and that there was no repayment due to the Appellant as the amount in issue in this application was concluded by the outcome of High Court proceedings, record number **HC1**. The Respondent submitted that the Appellant subsequently discharged the liability pursuant to settlement agreements signed by the Appellant and the Collector General, dated **DATE REDACTED** 2005 and **DATE REDACTED** 2006 respectively.
6. The Appellant denied that the putative repayment was concluded and/or determined by the outcome of the High Court proceedings.



### *The four-year rule*

7. The Respondent submitted that even if the late claim notice were valid and even if an overpayment of €214 did arise, the Appellant's repayment claim was out of time in accordance with the provisions of s.99 VATCA2010 on the basis that it was not made 'within 4 years after the end of the taxable period to which it relates'.
8. The Appellant disputed the application of the four-year rule per section 99 VATCA2010. In the alternative, The Appellant submitted that his claim was within time in accordance with s.99 VATCA 2010.

### *Direction pursuant to section 949E TCA 1997*

9. In October 2016 the Commission issued a direction pursuant to section 949E TCA 1997. The Appellant requested the Commission to amend the direction in order to direct the Respondent to furnish 26 categories of information and/or documentation to the Appellant. The Appellant submitted that the request for amendment was appropriate to the within application.

## **Legislation**

### Section 933 TCA 1997 - Appeals against assessment

*(1) (a) A person aggrieved by any assessment to income tax or corporation tax made on that person by the inspector or such other officer as the Revenue Commissioners shall appoint in that behalf (in this section referred to as "other officer") shall be entitled to appeal to the Appeal Commissioners on giving, within 30 days after the date of the notice of assessment, notice in writing to the inspector or other officer.*

*(b) Where on an application under paragraph (a) the inspector or other officer is of the opinion that the person who has given the notice of appeal is not entitled to make such an appeal, the inspector or other officer shall refuse the application and notify the person in writing accordingly, specifying the grounds for such refusal.*

*(c ) A person who has had an application under paragraph (a) refused by the inspector or other officer shall be entitled to appeal against such refusal by notice in writing to the Appeal Commissioners within 15 days of the date of issue by the inspector or other officer of the notice of refusal.*



*(d) On receipt of an application under paragraph (c), the Appeal Commissioners shall request the inspector or other officer to furnish them with a copy of the notice issued to the person under paragraph (b) and, on receipt of the copy of the notice, they shall as soon as possible-*

*(i) refuse the application for an appeal by giving notice in writing to the applicant specifying the grounds for their refusal,*

*(ii) allow the application for an appeal and give notice in writing accordingly to both the applicant and the inspector or other officer, or*

*(iii) notify in writing both the applicant and the inspector or other officer that they have decided to arrange a hearing at such time and place specified in the notice to enable them determine whether or not to allow the application for an appeal.*

#### Section 119 VATCA 2010 – Appeals

*(4) The provisions of the Income Tax Acts relating to –*

- a) The appointment of times and places for the hearing of appeals,*
- b) The giving of notice to each person who has given notice of appeal of the time and place appointed for the hearing of this or her appeal,*
- c) The determination of an appeal by agreement between the appellant and an inspector of taxes or other officer appointed by the Revenue Commissioners in that behalf,*
- d) The determination of an appeal by the appellant giving notice of his or her intention not to proceed with the appeal,*
- e) The refusal of an application for an appeal hearing,*
- f) The hearing and determination of an appeal by the Appeal Commissioners (including the hearing and determination of an appeal by one Appeal Commissioner)*
- g) The publication of reports of determinations of the Appeal Commissioners,*

*....*

*Shall, subject to the modifications to those Acts specified in subsection (5) for the purposes of this subsection and to other necessary modifications, apply to an appeal under [section 51, 81, 109 or 111] or this section, or a claim under section 110, as if the appeal or claim were an appeal against an assessment to income tax.*



## Section 99 VATCA 2010 – Appeals

- (1) Subject to subsections (2) and (3), where in relation to a return lodged under Chapter 3 of Part 9 or a claim made in accordance with regulations, it is shown to the satisfaction of the Revenue Commissioners that, as respects any taxable period, the amount of tax (if any) actually paid to the Collector-General in accordance with Chapter 3 of Part 9 together with the amount of tax (if any) which qualified for deduction under Chapter 1 of Part 8 exceeds the tax (if any) which would properly be payable if no deduction were made under Chapter 1 of Part 8, the Commissioners shall refund the amount of the excess less any sums previously refunded under this subsection or repaid under Chapter 1 of Part 8 and may include in the amount refunded any interest which has been paid under section 114.*
- (2) Where the Revenue Commissioners apply section 15 to a number of persons, the Commissioners may defer repayment of all or part of any tax refundable under subsection (1) to any one or more of those persons prior to the application of that section if any one or more of those persons have not furnished all returns and remitted all amounts of tax referred to in section 76 or 77, as may be appropriate, at the time of such application.*
- (3) (a) Subject to paragraph (b), the Revenue Commissioners may, where it appears requisite to them to do so for the protection of the revenue, require as a condition for making a refund in accordance with subsection (1) the giving of security of such amount and in such manner and form as they may determine,*
- (b) The amount of security referred to in paragraph (a) shall not, in any particular case, exceed the amount to be refunded.*
- (4) A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates.*
- (5) Where the Revenue Commissioners refund any amount due under subsection (1) or section 100, they may, if they so determine, refund any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution.*



*(6) The Revenue Commissioners shall not refund any amount of tax except as provided for in this Act or any order or regulations made under this Act.*

Section 22(2) (c) VATA 1972 – Estimation of tax due for a taxable period

*(1) If within the time prescribed by section 19(3)[an accountable person]<sup>1</sup> fails to furnish in accordance with the relevant regulations a return of the tax payable by him in respect of any [period]<sup>2</sup>, then, without prejudice to any other action which may be taken, the Revenue Commissioners may, in accordance with regulations, but subject to section 30, estimate the amount of tax payable by him in respect of that [period]<sup>2</sup> and serve notice on him of the amount estimated.*

*[Provided that where the Revenue Commissioners are satisfied that-*

- a) the amount so estimated is excessive, they may amend the amount so estimated by reducing it, or*
- b) the amount so estimated is insufficient, they may amend the amount so estimated by increasing it,*

*then, in either case, they shall serve notice on the person concerned of the revised amount estimated and such notice shall supercede any previous notice issued under this subsection. (2) Where a notice is served under subsection (1) on a person, the following provisions shall apply:*

- a) the person may, if he claims that he is not [an accountable person]<sup>4</sup>, by giving notice in writing to the Revenue Commissioners within the period of [fourteen]<sup>4</sup> days from the date of the service of the notice, require the claim to be referred for decision to the Appeal Commissioners and their decision shall, subject to section 25, be final and conclusive,*
- b) on the expiration of the said period, if no such claim is required to be so referred, or if such a claim is required to be so referred, on final determination against the claim, the estimated tax specified in the notice shall be recoverable in the same manner and by the like proceedings as if the person had furnished, within the prescribed period, a true and correct return, in accordance with regulations, for the [period] to which the estimate relates, showing as due by him such estimated tax.*
- c) if at any time after the service of the notice the person furnishes a return, in accordance with regulations, in respect of the [period] specified in the notice and pays*



*tax in accordance with the return, together with any interest and costs which may have been incurred in connection with the default, the notice shall, subject to paragraph (d), stand discharged and any excess of tax which may have been paid shall be repaid.*

- d) where action for the recovery of tax specified in a notice under subsection (1), being action by way of the institution of proceedings in any court or the issue of a certificate under section 485 of the Income Tax Act 1967, has been taken paragraph (c) shall not, unless the Revenue Commissioners otherwise direct, apply in relation to that notice until the said action has been completed.*

*(3) A notice given by the Revenue Commissioners under subsection (1) may extend to two or more taxable periods.*

#### s.865 TCA 1997 - Repayment of Tax

*s.865(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].*

#### Section 949E TCA 1997 - Directions

- 1) The Appeal Commissioners may, on their own initiative or on the application of a party, give a direction at any time to a party in relation to the conduct or disposal of an appeal, including a direction amending an earlier direction or suspending or setting aside its operation.*

*....*

*...*

- 6) A party who asserts that a direction ought not to have been given by the Appeal Commissioners or that a direction given by them should be amended shall apply to the Commissioners for a direction setting aside or suspending its operation or, as appropriate, amending it.*

- 7) That application shall be made not later than 14 days after the date on which the party was notified of the first-mentioned direction in subsection (6).*





## ANALYSIS

### *The late claim notice*

10. On **DATE REDACTED** 1993, a section 22 VAT estimate in respect of the relevant period was raised by the Respondent, in the absence of a return, in the sum of £2,000.00 (€2,5389.48). This estimate was included in High Court proceedings, record number **HC1**, together with other taxes and interest. Judgement was obtained on **DATE REDACTED** 2002, by consent. The total sum for tax liability, costs and interest in those proceedings amounted to **€XXX,XXX.XX**. A copy of the High Court Order was furnished to this Commission.
11. Subsequently, negotiations took place between the Respondent and the Appellant and in December 2003, returns in respect of various tax periods including the relevant period, were filed by the Appellant. The VAT return for the relevant period was returned on 08 December 2003 i.e. 10 years and 9 months after the time for filing. The return declared a VAT liability for the period of €792. It was not accompanied by a payment of tax or interest at that time. Accordingly, the estimate was not displaced in accordance with section 22 of the Value Added Tax Act 1972, as amended.
12. The Respondent submitted that for reasons unknown, the figure on the return was entered on the Respondent's computer system in error (i.e. in Irish pounds) wherein the system automatically converted the sum to euro. As result the sum was entered as €1,006 when it should have been entered as €792. This gave rise to a difference of €214.
13. On **DATE REDACTED** 2005 and **DATE REDACTED** 2006 the Appellant entered into a series of settlement agreements with the Respondent which encompassed the judgment in High Court proceedings, record number **HC1**. The Appellant subsequently discharged these liabilities.
14. In August 2010, the Appellant wrote to the Respondent stating that, as a result of the circumstances giving rise to the figure of €214, the Respondent had overstated the Appellant's tax liability in the proceedings, record number **HC1**. The Respondent rejected this position on the basis that the High Court proceedings, record number **HC1**, which included a liability of €2,539.48 in respect of the relevant period, based





on the section 22 estimate which had not been not displaced, determined and concluded all matters pertaining to the Appellant's VAT liability for the relevant period.

15. In 2015, in the course of unrelated High Court proceedings (record No **HC2**) instituted by the Collector General against the Appellant, the Respondent submitted that the Appellant contended that he was not liable for the sums claimed in the proceedings, by reason of the fact of being owed a repayment of tax by the Respondent. The Respondent submitted that it was in this context that a review of the Appellant's tax affairs was undertaken by an official in the Collector General's office.
16. In the course of the review, the Respondent amended the record to reflect the mathematical error wherein a sum of €792 had been computed as if it were IR£792. The Respondent submitted that the amendment of the details on the Respondent's computer system automatically generated the notice headed '*late claim for repayment of tax*' dated **DATE REDACTED** 2015. It is accepted by the Respondent that this notice should not have issued. In December 2015 the Respondent wrote to the Appellant informing the Appellant that the notice should be disregarded and apologising for any inconvenience caused.
17. Based on the oral and written submissions of the parties together with a review of all documentation furnished, I accept as material facts, the following;
  - a. On **DATE REDACTED** 1993 a section 22 VAT estimate in respect of the relevant period was raised in the absence of a return, in the sum of £2,000.00 (€2,5389.48). The section 22 estimate was not subsequently displaced.
  - b. The s.22 estimate was included as part of the total sum to be recovered per High Court proceedings, record number **HC1**. Judgment was obtained, on consent, on **DATE REDACTED** 2002, and this outcome was not appealed.
  - c. The VAT return for the relevant period was returned by the Appellant on 08 December 2003 i.e. 10 years and 9 months after the time for filing.



- d. The Appellant subsequently discharged the judgment obtained pursuant to High Court proceedings record number **HC1**, under settlement agreements dated **DATE REDACTED** 2005 and/or **DATE REDACTED** 2006.
  - e. In August 2010, the Appellant wrote to the Respondent in relation to the circumstances giving rise to the figure of €214 and the Respondent replied.
  - f. In the course of a review in 2015, the Respondent amended the details on the Respondent's computer system in accordance with the figures submitted on the Appellant's return in respect of the relevant period thus correcting an error whereby a sum of €792 had been computed as if it were IR£792. This amendment automatically generated the notice headed '*late claim for repayment of tax*' dated **DATE REDACTED** 2015.
18. The Respondent submitted that the late claim notice was raised in error on foot of a review by the Collector General's office and that the putative repayment of €214 was subsumed into a s.22 VAT estimate for the relevant period which was included in High Court proceedings, record number **HC1**, in which judgment was obtained, on consent, and subsequently discharged by means of settlement. As a result, the Respondent submitted that there was no appealable or justiciable matter in respect of same, before this Commission.
19. The Appellant denied that the putative repayment formed part of the said High Court proceedings however the Appellant was unable to demonstrate a coherent basis for his opposition on this point, in the face of the High Court Order. While the Appellant furnished this Commission with substantial documentation and written submissions, the Appellant did not succeed in demonstrating that the putative repayment did not form part of the High Court proceedings, record number **HC1**.
20. Thus I determine that the putative repayment of €214 formed part of the section 22 estimate in respect of the relevant period (which was not displaced) and formed part of the Respondent's claim against the Appellant pursuant to High Court proceedings, record number **HC1** in which judgment was obtained and later settled by the Appellant.



21. Further, I determine there is no appealable or justiciable matter to be determined on foot of the late claim notice which might enable a determination pursuant to s.933(1)(d)(iii) TCA 1997, allowing an application for an appeal. Thus I determine that the Respondent was correct in law to refuse the appeal pursuant to section 933(1)(b) TCA 1997.

*The four-year rule*

22. The Respondent submitted that even if the late claim notice were valid, the repayment claim (which relates to the VAT period of assessment 1 January 1993 to 28 February 1993) falls outside the four-year statutory time period pursuant to section 99 VATCA 2010 and thus an appeal in respect of same, if it were allowed, would be unsuccessful on this basis.
23. The Appellant disputed the application of the four-year rule per section 99 VATCA2010 and in the alternative, submitted that his claim was made within the requisite four-year period and was thus within time.
24. Section 99(4) VATCA 2010 provides that '*A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates*'. The taxable period in this case is the VAT period of assessment; 1 January 1993 to 28 February 1993. The Appellant did not identify a claim made within 4 years after the end of this period. Both his letter of August 2010 and the review in 2015 which gave rise to the late claim notice, fall far outside the requisite four-year limitation period. Leaving to one side, the issue of whether there was an appealable or justiciable issue to be tried in a substantive hearing, I determine that the Appellant's claim for repayment falls outside the four-year rule and is thus irrecoverable.

*Direction pursuant to section 949E TCA 1997*

25. The Appellant's section 933(1)(d)(iii) application for an appeal was heard on **DATE REDACTED** 2016. The day prior to the hearing, the Appellant furnished detailed submissions and exhibits to the Commission. The day after the hearing, the



Commission issued a section 949E TCA 1997 direction to both parties, (hereafter '*the direction*'), directing that the Respondent provide a brief note summarising the oral submissions made by the Respondent during the hearing and that a copy of the High Court Order (regarding proceedings involving the Appellant, record number **HC1**) be furnished to the Commission.

26. By letter dated **DATE REDACTED**, the Appellant furnished further detailed submissions in response to the direction. The Appellant's response included *inter alia*, a request that the direction be amended so as to direct the Respondent to provide a series of documents and information to the Appellant. The documentation and information requested by the Appellant was divided into categories A (points 1-11) and B (points 1-16) at pages 11-13 of the Appellant's submissions. These submissions were copied to the Respondent.
27. On **DATE REDACTED** the Respondent furnished documentation requested pursuant to the direction namely, a note summarising the oral submissions of the Respondent at the hearing and a copy of the High Court Order in proceedings number **HC1**. This documentation was copied to the Appellant.
28. On **DATE REDACTED** the Commission wrote to the parties acknowledging their respective correspondences and requesting that if the parties wished to make any further comments in respect of same, that they do so within 7 days of that date. The Appellant confirmed by return his intention to respond and on **DATE REDACTED** furnished further detailed submissions in respect of his case. The Respondent confirmed that it did not intend to file further submissions.
29. The legislation, per section 949E(1) TCA 1997, provides that the Commissioners '*may*' give a direction '*in relation to the conduct or disposal of an appeal*'. Section 949E(6) provides that a party who asserts that a direction given by the Commissioners should be amended '*shall apply to the Commissioners for a direction setting aside or suspending its operation or, as appropriate, amending it*'.
30. However, having reviewed and considered the information and documentation requested by the Appellant, I determine that it will not assist '*the conduct or disposal*' of the within application (being an application for an appeal pursuant to section 933(1)(d)(iii) TCA 1997) in circumstances where I have determined:



- I. that there is no appealable or justiciable matter before this Commission as the sum of €214 contained on the late claim notice, formed part of and was concluded by High Court proceedings, record number **HC1**, in which judgment was obtained and later settled by the Appellant; and
- II. that even if there were a valid repayment claim in respect of the sum of €214, it is out of time pursuant to section 99 VATCA2010, not having been made '*within 4 years after the end of the taxable period to which it relates*'.

31. The information and/or documentation sought by the Appellant via amendment of the direction, will not assist this Commission in the '*the conduct or disposal*' of the within application and the Appellant has not demonstrated that the amendment requested is '*appropriate*' within the meaning of s.949E(6) TCA 1997. As a result, I refuse the Appellant's request for an amendment of the direction.

### Conclusion

32. A hearing pursuant to section 933(1)(d)(iii) TCA 1997 is a hearing to enable the Tax Appeals Commission determine whether to allow the Appellant's application for an appeal and to consider whether the Respondent was correct in law to refuse the appeal pursuant to s.933(1)(b) TCA 1997.
33. While section 933(1)(d) TCA 1997 is silent as to the criteria to be applied by the Commission in deciding an application thereunder, I am satisfied that to proceed to full hearing, the Appellant is required to demonstrate for the purposes of section 933(1)(d), that there is a *prima facie* stateable case to be heard and determined in the substantive appeal.
34. The Respondent submitted that the late claim notice was raised in error and that there was no repayment due, as the sum stated on the notice formed part of and was concluded by High Court proceedings record number **HC1**, in which judgment was obtained and thereafter, was settled by the Appellant. While the Appellant opposed this submission, the Appellant did not succeed in demonstrating that the putative repayment did not form part of the said High Court proceedings. Thus I determine that the matter of liability in respect of the relevant period is not open to adjudication



in an application before this Commission because there is no appealable or justiciable matter before this Commission, the matter having been determined and concluded by the High Court.

35. In addition, separate to the fact that there is no appealable or justiciable matter before this Commission, I determine that the Appellant's claim for repayment of the sum of €214, falls outside the four-year rule pursuant to section 99 VATCA2010, and is thus irrecoverable.

36. For the reasons set out, the Appellant has failed to demonstrate for the purposes of section 933(1)(d), that there is a *prima facie* stateable case to be heard and determined in the substantive appeal. Thus I determine that the Respondent was correct in law to refuse the appeal pursuant to s.933(1)(b) TCA 1997 and I hereby refuse this application for appeal pursuant to s.933(1)(d)(iii) TCA 1997.

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

**APPEAL COMMISSIONER**

**February 2017**