



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

27TACD2024



**Appellant**

and

The Revenue Commissioners

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) to issue a refund to the Appellant of Value Added Tax (“VAT”) in the sum of **€1,403**, for the year 2020.
2. The Respondent refused the claim on the basis that it was not made in accordance with the provisions of **section 101 of the Value Added Tax Consolidation Act 2010** (“VATCA 2020”), which provides for intra community refunds of tax.
3. On 23 November 2021, the Appellant duly appealed to the Commission. In accordance with the provisions of **section 949U TCA 1997**, and by agreement with the parties, this appeal is adjudicated without a hearing. The Appellant submitted a Statement of Case which built on the information submitted in the Appellant’s Notice of Appeal. The Commissioner has also received a Statement of Case from the Respondent and that has also been considered in this determination.

## Background

4. On **21 October 2021**, the Respondent received from the Appellant a claim for a refund of VAT paid in the sum of **€1,403**, for the year **2020**. The Appellant is a [REDACTED].
5. The Appellant contends that *“following Brexit the rules for VAT refund were changed and we originally thought that the claim for 2020 would have followed the same rules as before and the deadline was going to be 30/09/21.”*
6. The Respondent contends that the Appellant’s application for a refund of tax paid was late and therefore refused. The Respondent states that *“Under the Brexit Withdrawal Agreement between the UK and the EU the EVR portal would not be available to mainland UK and NI claimants for 2020 claims after 31<sup>st</sup> March 2021”*. Further, the Respondent states that *“In certain circumstances, IE Revenue accepted VAT 60 OEC’s for 2020 claims up to and including 30<sup>th</sup> September 2021 on the basis that the Vat was suffered during 2020 while the UK was fully part of the EU and the Single Market”*.
7. On 28 October 2022, a letter of refusal issued to the Appellant’s Agent informing the Appellant of the reason for refusal of the claim and that the Respondent is returning its Vat 60OEC claim form and the supporting documentation that it submitted to the Respondent.

## Legislation and Guidelines

8. The legislation relevant to this appeal is as follows:-

9. Section 101 VATCA 2010, Intra Community refunds of tax, states *inter alia* that:

*(1) For the purposes of this section—*

*“applicant” means a taxable person who—*

*(a) not being established in the Member State of refund, but being established in another Member State, and*

*(b) having entered into transactions that give rise to a right of deduction in that other Member State,*

*makes a refund application;*

*“refund application” means an electronic application submitted for a refund of tax charged in the Member State of refund to an applicant in respect of goods or services supplied to the applicant by taxable persons in that Member State or in respect of the importation of goods into that Member State.*

*(2) The Revenue Commissioners shall, in accordance with this section and regulations (if any), make a refund to an applicant of tax charged to the applicant by accountable persons in the State or tax charged to that applicant on the importation of goods into the State, in cases where a full and correct refund application has been received by them from the Member State in which the applicant is established.*

.....

*(4) An applicant who wishes to claim a refund of tax may apply for the refund only through the electronic portal set up for the purpose by the applicant’s Member State of establishment.*

*(6) .....*

*(b) A refund application may be lodged only on or before 30 September in the calendar year following the refund period.*

10. Article 51 Value Added Tax (VAT) of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, states *inter alia* that:-

- (1) *Council Directive 2006/112/EC ( 29) shall apply in respect of goods dispatched or transported from the territory of the United Kingdom to the territory of a Member State, and vice versa, provided that the dispatch or transport started before the end of the transition period and ended thereafter.*
- (2) *Directive 2006/112/EC shall continue to apply until 5 years after the end of the transition period with regard to the taxable person's rights and obligations in relation to transactions with a cross-border element between the United Kingdom and a Member State that took place before the end of the transition period and with regard to transactions covered by paragraph 1.*
- (3) *By way of derogation from paragraph 2 and from Article 15 of Council Directive 2008/9/EC (30), refund applications that relate to VAT which was paid in a Member State by a taxable person established in the United Kingdom, or which was paid in the United Kingdom by a taxable person established in a Member State, shall be submitted under the conditions of that Directive at the latest on 31 March 2021.*
- (4) *By way of derogation from paragraph 2 and from Article 61(2) of Council Implementing Regulation (EU) No 282/2011 ( 31), amendments to VAT returns that were submitted in accordance with Article 364 or Article 369f of Directive 2006/112/EC either in the United Kingdom with regard to services supplied in Member States of consumption before the end of the transition period, or in a Member State with regard to services supplied in the United Kingdom before the end of the transition period, shall be submitted at the latest on 31 December 2021.*

## **Submissions**

### *Appellant's submissions*

11. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in the Appellant's Notice of Appeal and Statement of Case:-

*"This appeal is in regards the warrant 1532627 (attached) that stated as reason for the rejection of our VAT claim the delay in sending our claim.*

*While our claim was indeed received after the deadline of 30/09/2021 I'm asking to consider the very distressing situation our company was in during the years 2020/2021: apart from the disruption caused by COVID, following Brexit the rules for VAT refund were changed and we originally thought that the claim for 2020 would have followed*

*the same rules as before and the deadline was going to be 30/09/21. Our tax accountant left the company and it wasn't easy hire a new one in the last year so we weren't up to date with the changes. When we were ready to send our claim we discovered that it had to be sent as an extra EU claim and that required a certificate of taxable status from the HMRC which we promptly request but it still took 20 days to arrive forcing us to send our claim after the deadline.*

*As a result of the pandemic, the claim for 2019 was not processed either due to the above circumstances so the losses have been heavy on our company.*

.....

***Basis of VAT claim rejection dispute on behalf of*** [REDACTED]

*“While our claim was in fact received after the deadline of 30/09/2021, we’re asking the Appeals Commission to consider the very distressing situation our company was subject to during the years 2020/2021 (not only the disruption caused by COVID), following Brexit the rules for VAT refund were changed and we originally thought that the claim for 2020 would have followed the same rules as before and the deadline was going to be 30/09/21. Our tax accountant left the company and it was not easy to hire a new one in the last year so we weren't up to date with the changes. When we were ready to send our claim, we discovered that it had to be sent as an extra EU claim and that required a certificate of taxable status from the HMRC which we promptly request but it still took 20 days to arrive forcing us to send our claim after the deadline.”*

***Respondent’s submissions***

12. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, as set out in its Statement of Case:-

*“Council Directive 2008/9/EC of 12 February 2008, Article 14 states “The refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. The application shall be considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11.”*

*Article 8 outlines the detail required in a refund application and information contained on the invoices or importation document. Article 9 requires the claimant to describe the nature of the goods and services acquired by given codes. Article 11 provides for the Member State of refund right to request a description of the business activity by using*

*the harmonised codes determined in accordance with the second subparagraph of Article 34a(3) of Council Regulation (EC) No 1798/2003 (1).*

*Section 101 5(b) of the Value Added Tax Consolidation Act 2010 enacts Council Directive 2008/9/EC of 12 February 2008 into Irish VAT legislation and states “a refund application may be lodged only on or before 30th September in the calendar year following the refund period.”*

*Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. TITLE III, ONGOING VALUE ADDED TAX AND EXCISE DUTY MATTERS, Article 51, Value added tax (VAT), paragraph 3 states “By way of derogation from paragraph 2 and from Article 15 of Council Directive 2008/9/EC , refund applications that relate to VAT which was paid in a Member State by a taxable person during 2020 established in the United Kingdom, or which was paid in the United Kingdom by a taxable person established in a Member State during 2020 , shall be submitted under the conditions of that Directive at the latest on 31 March 2021.*

*Under the Brexit Withdrawal Agreement between the UK and the EU the EVR portal would not be available to mainland UK and NI claimants for 2020 claims after 31<sup>st</sup> March 2021.*

*In line with this HMRC had advised on its website that EVR would not be available to file 2020 EVR claims after 31<sup>st</sup> March 2021 in line with the Withdrawal Agreement between UK and the EU.*

*The 2020 Electronic VAT Refund application was not submitted by [REDACTED] to the Member State of establishment by 31/3/2021*

*The usual deadline for VAT 60 OEC applications is 6 months after the calendar year has passed. i.e., 30<sup>th</sup> June 2021 for 2020 claim.*

*In certain circumstances, IE Revenue accepted VAT 60 OEC's for 2020 claims up to and including 30<sup>th</sup> September 2021 on the basis that the Vat was suffered during 2020 while the UK was fully part of the EU and the Single Market. In line with Council Directive 2008/9/EC the deadline for receipt of Vat 60OECs by IE Revenue for 2020 claims from UK incl. NI was extended until 30<sup>th</sup> of September 2021. Any Vat 60OEC claims for Vat suffered in IE during 2020 received after that date were refused as late.*

**2020 Diesel VAT reclaim - Outline of Appellant's reasons against missing the deadline**

- *Impact of COVID restrictions.*
- *Brexit*
- *The tax Accountant left the company leading to delays in preparing and filing claims.*
- *Delay in issuing Certs of taxable status by HMRC*

***Reasons for refusal of the 2020 claim.***

*The Vat 60OEC for €1,403.00 was not received by IE Revenue until 26<sup>th</sup> October, 2021. The claim was late and a letter of refusal informing of the refusal reason accompanied by the Vat 60OEC claim form submitted and the supporting documentation issued to the claimant/agent on 28<sup>th</sup> October, 2022.”*

**Material Facts**

13. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 13.1. The Appellant is a [REDACTED].
- 13.2. On 21 October 2021, the Appellant made a claim for a refund of VAT in the sum of €1,403 for the year 2020.
- 13.3. On 28 October 2021, the Respondent refused the Appellant’s claim for a refund of VAT in the sum of €1,403.
- 13.4. The Appellant’s claim for VAT was made after 30 September 2021.
- 13.5. The Appellant cited the following reasons for the late claim namely, the impact of COVID restrictions, Brexit, the tax accountant leaving the company leading to delays in preparing and filing claims and delay in issuing certificates of taxable status by the HMRC.

**Analysis**

14. The sole issue for consideration in this appeal is whether the Appellant is entitled to a **refund of VAT** in the sum of **€1,403** for the year **2020**, in accordance with the provisions of **section 101(2) VATCA 2010**.
15. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd*



*v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated that:-

*“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”*

16. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

*"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."*

17. Section 101 VATCA 2010 enacts **Council Directive 2008/9/EC** of 12 February 2008 into Irish VAT legislation. Article 15 of Council Directive 2008/9/EC states that the refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period. The application shall be considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11.

18. Section 101(1) VATCA 2010 defines “refund application” as an electronic application submitted for a refund of tax charged in the Member State in respect of goods or services supplied to the applicant by taxable persons in that Member State or in respect of the importation of goods into that Member State.

19. Section 101(4) VATCA 2010 provides that an applicant who wishes to claim a refund of tax may apply for the refund only through the electronic portal set up for the purpose by the applicant’s Member State of establishment. [Emphasis added]

20. Section 101(6) VATCA 2010 provides that a refund application may be lodged on or before **30 September** in the calendar year following the refund period.

21. Section 101(2) VATCA 2010 provides that the Respondent shall make a refund of tax charged where **a full and correct refund application** has been received. The Commissioner notes the use of the word “shall” which indicates an absence of discretion in the application of this provision. The Commissioner has no authority or discretion to direct that repayment be made to the Appellant where the claim for a refund has not been made to the Respondent, in accordance with the provisions of section 101 VATCA 2010.

22. Therefore, the Commissioner is satisfied that the applicable legislative provisions provide that the Respondent shall make a refund of tax paid, when a full and correct refund application is made, electronically and lodged on or before 30 September in the calendar year following the refund period.
23. However, the Commissioner notes that the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“**the Withdrawal Agreement**”), Article 51 Value Added Tax (VAT) is also relevant herein. On 31 January 2020, the United Kingdom (“UK”) withdrew from the European Union (“EU”). This is commonly known as **Brexit**. The Withdrawal Agreement which came into force on 1 February 2020, sets out the arrangements for the withdrawal of the UK from the EU.
24. Article 51, paragraph 3 states that “by way of derogation from paragraph 2 and from Article 15 of Council Directive 2008/9/EC, refund applications that relate to VAT which was paid in a Member State by a taxable person during 2020 established in the United Kingdom, .....shall be submitted under the conditions of that Directive at the latest on 31 March 2021”.
25. The Commissioner notes that the Respondent submits that under the Withdrawal Agreement, the Electronic Vat Refund (“EVR”) portal would not be available to mainland UK and NI claimants for 2020 claims after 31<sup>st</sup> March 2021 and therefore, the 2020 electronic VAT refund application was not submitted by the Appellant to the Respondent by 31 March 2021.
26. The Respondent submits that in certain circumstances, it accepted applications for refunds of VAT by a taxable person not established in Ireland for 2020 claims up to and including 30 September 2021, on the basis that the VAT was suffered during 2020 while the UK was fully part of the EU and the Single Market, but that any claims for VAT during 2020 received after that date were refused as being late claims.
27. The Commissioner has considered the Appellant’s submission and reasons why the claim was received by the Respondent after the deadline of 30 September 2021. The Commissioner notes that the Appellant cites the following matters as contributing to the delay in the submission of its claim namely, the impact of COVID restrictions, Brexit, its tax accountant leaving the company leading to delays in preparing and filing claims and delay in issuing certificates of taxable status by the HMRC. Moreover, the Commissioner notes that the Appellant is asking “*the Appeals Commission to consider the very distressing situation our company was subject to during the years 2020/2021*”.

28. However, having regard to the facts of the Appellant's appeal, it is evident to the Commissioner that the Appellant did not make a claim for a refund of VAT in accordance with the provisions of section 101 VATCA 2010. Section 101(2) VATCA 2010 provides that the Respondent shall make a refund of tax charged where a full and correct refund application has been received. [Emphasis added] The Commissioner is satisfied that the Appellant has not satisfied the legislative requirements in that regard.
29. As set out above, in a tax appeal before the Commission, the burden of proof rests on the Appellant. The Commissioner is satisfied that on balance the Appellant has not shown that the application for a refund was made electronically and lodged on or before **30 September** in the calendar year following the refund period. Moreover the Commissioner notes that the Appellant's claim was required to be submitted to the Respondent at the latest on 31 March 2021 and that the Appellant would have no access to the portal thereafter. Whilst the Commissioner notes that the Withdrawal Agreement provides for the earlier date of **31 March 2021** and that the electronic portal was closed thereafter, the Respondent did accept claims to 30 September 2021. However, whilst there may have been concessional extensions granted to filing deadlines to 30 September 2021 as submitted by the Respondent, the Appellant's claim was not received by the Respondent until the even later date of **26 October 2021**. Hence, the Commissioner is satisfied that the appeal should be refused.

### **Determination**

30. In the circumstances, and based on a review of the facts and a consideration of the submissions provided by both parties, the Commissioner is satisfied that the Appellant has not shown that the Respondent was incorrect in its decision to refuse the claim for a refund of VAT in the sum of €1,304 for the year 2020.
31. The Commissioner appreciates that this determination is likely to be disappointing to the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax.
32. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

### **Notification**

33. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the

avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

34. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine  
Appeal Commissioner  
04 December 2023