**03TACD2020**

**BETWEEN/**

**A LIMITED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

## Introduction

1. This appeal relates to a claim for a refund of value added tax ('VAT'). On 30 December 2013 the Appellant filed an amended VAT return on the Revenue Online Service ('ROS') in respect of the November-December 2009 taxable period showing a VAT refund in the amount of €342,001. The return contained VAT input credits in respect of taxable periods falling within 2009 but which pre-dated the taxable period November-December 2009.

2. The Respondent allowed the VAT refund in respect of the taxable period of November-December 2009 on the basis that the Appellant had made a valid claim '*within 4 years after the end of the taxable period to which it relates*' in accordance with s.20(4) VATA 1972/s.99(4) VATCA 2010. The Respondent disallowed the VAT refund in respect of the periods January-February 2009 to September-October 2009 on the basis that the claim was outside the four-year statutory time limit.

3. The issue in this appeal is whether, having regard to the statutory scheme setting out rules for the apportionment of dual use inputs together with the refund provisions in relation to the recovery of VAT, the Appellant is entitled to a recovery of VAT claimed in respect of the periods January-February 2009 to September-October inclusive, in the sum of €323,536.52.

**Background**

4. The Appellant is a subsidiary of X, a company with customers, some of whom are based in the European Union and some of whom are located outside the EU.

5. Prior to 2013, the Appellant proceeded on the basis that its activities were VAT exempt and it therefore had no entitlement to VAT recovery. The Appellant filed its VAT return up to the end of 2013 on the basis of its understanding that it was providing VAT services which were exempt from VAT in accordance with Schedule 1, paragraphs 6 and 7 VATCA 2010 and in relation to which there was no entitlement to VAT recovery of input credits.

6. In 2013, following a review of its activities by agent for the Appellant in this appeal, the Appellant took the view that it carried out activities that fell within the definition of '*qualifying activities*' for the purposes of section 59(I)(d)(i) VATCA 2010, giving a right to deduct VAT pursuant to 59(2) VATCA 2010.

7. In December 2013, the Appellant filed an amended VAT return (titled '*Supplementary VAT3 Return*') for the period November-December 2009 showing a VAT refund in the amount of €342,001.

8. By letter dated 24 January 2014, the Respondent requested a schedule of purchases to which the return related. The Appellant replied on 14 February 2014 and provided a schedule of purchases together with sample invoices. While the Appellant's request for a refund related to the VAT return for the November-December taxable period, some of the invoices related to other taxable periods in 2009, namely, January-February 2009 to September-October 2009 inclusive.

9. By email dated 26 March 2014, the Respondent informed the Appellant that some of the invoices were dated outside the taxable period in question and requested further information.

10. By letter dated 9 May 2014, the Appellant stated that it sought to update its VAT recovery position in relation to the taxable periods in 2009, by way of the revised return for the period November-December 2009. The Appellant stated that:

> *'As outlined in our previous correspondence* [A Ltd.] *engaged our firm to undertake a review of its VAT recovery position. This review identified that our client had failed to correctly identify its entitlement to VAT recovery and as such had not complied with its obligation to revise its VAT recovery position for each review period. The current amended claim seeks to comply with this obligation and to establish its annual VAT recovery with respect to the whole of 2009. As originally filed,* [A Ltd.] *had not claimed any VAT recovery during the course of 2009. However, upon review, as set out in our previous submission, it has determined that it is entitled to recover a proportion of its VAT based on the location of its clients and the fact that a proportion of its services are "qualifying activities" as a result of the relevant clients to which services were provided being located outside the EU. In addition, in line with practice,* [A Ltd.] *has sought to update its VAT recovery position for the entirety of the 2009 review period in the amended November/December 2009 VAT return in line with the provisions of what is now regulation 17(3)(b) Value Added Tax Regulations 2010 (SI 639/2010).'*

11. The Respondent declined to process the VAT refund claim in respect of the periods January-February 2009 to September-October 2009 inclusive, on the basis that the refund claim, insofar as it related to these taxable periods, was not made within the requisite four-year period.

**LEGISLATION**

12. Relevant extracts from the following provisions are set out below;

VATCA 2010

- Section 2 VATCA 2010 – Interpretation - general
- Section 59 VATCA 2010 – Deduction for tax borne or paid
- Section 61 VATCA 2010 – Apportionment for dual-use inputs
- Section 99 VATCA 2010 – General provisions on refund of tax
- Section 100 VATCA 2010 – Unjust enrichment

Statutory Instruments

- S.I. 639/2010 – Regulation 17 - Apportionment
- S.I. 548/2006 – Regulation 18 - Apportionment

Council Directive 2006/112/EC

*Origin and scope of right of deduction*

- Article 167 – Origin and scope of right of deduction

*Proportional deduction*

- Article 173
- Article 174
- Article 175

**Submissions in brief**

*Submissions on behalf of the Appellant*

13. The Appellant submitted that its claim for a refund of VAT in accordance with its amended return filed on 30 December 2013, in respect of the taxable period November-December 2009, was a valid claim for a refund of VAT in respect of all taxable periods falling within 2009.

14. The basis of the Appellant's claim was that the amended return filed on ROS on 30 December 2013 was to be characterised as a return in relation to an adjustment of an apportionment of dual-use inputs in accordance with Regulation 17 and section 61 VATCA 2010 and that the claim was thus within time for refunds in respect of all taxable periods falling within 2009.

15. The Appellant submitted that the four-year limitation period contained in section 99(4) VATCA 2010 did not expire until the end of the taxable period immediately following the end of the '*review period*' in accordance with the provisions of Regulation 17, and the Appellant contended that, having filed its return on 30 December 2013, the Appellant was thereby within time for claiming the refund sought.

*Submissions on behalf of the Respondent*

16. The Respondent submitted that the amended November-December 2009 return filed on 30 December 2013, was not an effective means of claiming a repayment of VAT for periods other than the taxable period of November-December 2009.

17. The Respondent submitted that this appeal concerned a case of mistake and that the correct approach to claiming a refund of VAT in a case where VAT was not claimed due to a mistake, was to make a claim in writing within four years after the end of the taxable period to which each item of input VAT related. The Respondent submitted that it was not open to the Appellant to attempt to claim input VAT in respect of taxable periods which pre-dated November-December 2009, by means of a return in respect of the taxable period November-December 2009.

18. On the matter of the application of Regulation 17, the Respondent stated that the Appellant was not, in 2009, a person who apportioned input VAT based on dual-use inputs. The Respondent submitted that as there was no apportionment of dual-use inputs in operation in 2009 and as there was no adjustment of apportionment subsequently carried out in respect of 2009, that the amended November-December 2009 VAT return filed on 30 December 2013 did not constitute a return or an amended return in relation to an adjustment of apportionment of dual-use inputs in respect of 2009.

19. The Respondent submitted that in accordance with section 99(4) VATCA 2010, the Appellant should have made a valid claim for a refund of VAT within four years after the end of each of the taxable periods in 2009 to which the claims related. The Respondent submitted that the Appellant's case was not a claim for apportionment but was a straightforward refund claim based on the provisions of mistake namely, section 100(1)(c) VATCA 2010.

**ANALYSIS**

20. In accordance with section 122(2) VATCA 2010, the applicable VAT legislation for the purposes of the taxable periods falling within 2009 is contained in the VAT Act 1972 and related statutory instruments. The Appellant in its written submission, referred to the equivalent VATCA 2010 provisions and the Respondent then cited in its legal submissions VATCA 2010 legislation together with the equivalent provisions of the 1972 legislation. This is the approach I shall adopt below.

21. The Appellant accepted that its VAT repayment claim arose from a mistaken assumption of the law whereby the Appellant was not aware that it had the right to deduct in 2009, a certain amount of VAT incurred attributable to its '*qualifying activities*' (*i.e.* supplies of certain services to customers based outside of the EU). The Appellant submitted that a claim for repayment arose under section 100(1)(c) VATCA 2010.

22. This dispute arises in relation to the Appellant's claim that the amended November-December 2009 return filed on 30 December 2013, constituted a valid claim for a refund for the purposes of s.99(4) (formerly s.20(4)) in respect of prior taxable periods namely, January-February 2009, March-April 2009, May-June 2009, July-August 2009 and September-October 2009, pursuant to Regulation 17 of S.I. 639/2010 (formerly Regulation 18 S.I. 548/2006).

23. The issue for consideration is whether the amended VAT return filed on 30 December 2013 in respect of the taxable period November-December 2009, can be characterised as a return in relation to the adjustment of an apportionment of dual-use inputs for 2009, in accordance with Regulation 17.

*The operation of apportionment of dual-use inputs*

24. The procedure for apportionment of dual-use inputs was not in operation by the Appellant in 2009 and thus a return for the adjustment of apportionment of dual-use inputs was not filed in January-February 2010, pursuant to Regulation 17.

25. Rather, in ordinary course on 22 January 2010, the Appellant filed its VAT 3 return in respect of November-December 2009, showing VAT on sales of €34,152 and showing a VAT amount of zero in respect of purchases.

26. The Appellant submitted that dual-use inputs (section 61 VATCA 2010) were incurred by the Appellant. The Appellant claimed that dual-use inputs did not have to be claimed, apportioned or recovered, to be incurred. The Appellant contended that the amended November-December 2009 VAT return could be treated as a return for the adjustment of an apportionment of dual-use inputs.

27. However, for there to be an adjustment of apportionment, there must first be an apportionment. For there to be an apportionment, the dual-use inputs must be claimed and apportioned in returns for taxable periods in 2009. This was not done by the Appellant and the fact of its not having been done is not in dispute.

28. The Appellant claimed that the amended November-December 2009 return filed on 30 January 2013, should be treated in accordance with Regulation 17 as a return for the adjustment of apportionment of dual-use inputs in respect of 2009, notwithstanding the fact that apportionment of dual-use inputs was not in operation by the Appellant in 2009.

*The four-year rule*

29. On behalf of the Appellant it was submitted at hearing that; *'there is an open question mark as to whether the four years runs from December or whether it runs from 28*

*February. We have taken the view that we submitted based on December, but there is an equal argument that we did it two months early.'*

30. Regulation 17 permits the filing of a return in the *'taxable period immediately following the end of the review period'* in order '*to adjust, if necessary in accordance with subparagraph (b), the amount of tax deducted in that review period to ensure that it correctly reflects the extent to which the dual-use inputs were used for the purposes of that person's deductible supplies or activities and had due regard to the range of that person's total supplies and activities for that review period*'.

31. In this appeal, the Appellant in ordinary course filed its VAT3 return in respect of November-December 2009 on 22 January 2010, showing VAT on sales of €34,152 and a VAT amount of zero in respect of purchases.

32. The Appellant submitted that, as a return in relation to the adjustment of apportionment may be filed in the taxable period '*immediately following the end of the review period*' (Regulation 17) the four-year statutory limitation period in section 99(4) VATCA 2010 may be extendable by the measure of that additional taxable period.

33. The Appellant contended that Regulation 17, might extend the four-year statutory rule pursuant to the operation of sub-paragraph 3(b) of the Regulation which provides for an adjustment to apportionment to be carried out in the '*taxable period immediately following the end of the review period'.* However, the return which the Appellant seeks to have treated as an adjustment return for the purposes of Regulation 17 was filed by the Appellant on ROS on 30 December 2013 and thus the Appellant's submission as regards extending the four-year rule is incidental to the question to be determined in this appeal.

34. The question for determination in this appeal is whether the Appellant's amended VAT return for the period November -December 2009, filed on 30 December 2013, can be characterised as a return for the adjustment of apportionment of dual-use inputs in accordance with the Regulations and applicable legislation.

35. The Appellant, in seeking to have the amended November-December VAT return characterised as an adjustment return, seeks to validate its claim for a refund of VAT

in respect of taxable periods which pre-date the taxable period of November-December 2009, in circumstances where the claim would otherwise be time barred in accordance with section 99(4) VATCA 2010.

*Characterisation of the November-December 2009 amended VAT return*

36. Section 61 VATCA 2010 which deals with apportionment for dual-use inputs, contains the meaning of '*dual-use inputs*' which is set out as follows;

> *"*dual-use inputs*" means movable goods or services (other than goods or services on the purchase or acquisition of which, by virtue of section 60(2), a deduction of tax shall not be made, or services related to the development of immovable goods that are subject to Chapter 2) which are not used solely for the purposes of either deductible supplies or activities or non-deductible supplies or activities;'*

37. Section 61(2) provides;

> *'(2) Where an accountable person engages in both deductible supplies or activities and non-deductible supplies or activities, then, in relation to the person's acquisition of dual-use inputs for the purpose of that person's business for a period, the person shall be entitled to deduct in accordance with section 59(2) only such proportion of tax, borne or payable on that acquisition, which is calculated in accordance with this section and regulations, as being attributable to his or her deductible supplies or activities and such proportion of tax is, for the purposes of this section, referred to as the "proportion of tax deductible*".

38. Section 61(7) provides;

> *'(7) The proportion of tax deductible as calculated by an accountable person for a taxable period shall be adjusted in accordance with regulations if, for the accounting year in which the taxable period ends, that proportion does not—*
>
> > *(a) correctly reflect the extent to which the dual-use inputs are used for the purposes of the person's deductible supplies or activities, or*

*(b) have due regard to the range of the person's total supplies and activities.'*

39. Regulation 17 envisages that the Regulation applies where an apportionment of dual-use inputs has been operated in respect of a preceding '*review period*'. Of significance is paragraph 2(a) which provides that:

> '*Where an accountable person deducts, in accordance with sections 59(2) and 61 of the Act, a proportion of the tax borne or payable on the accountable person's acquisition of dual-use inputs for a taxable period, then that proportion of tax deductible by that person for a taxable period is…'*

[emphasis added]

40. In this appeal, it is a matter of fact (undisputed), that no VAT was deducted in respect of any of the taxable periods falling within 2009, prior to submission of the amended November-December VAT return in 2013. The Appellant did not deduct in accordance with section 59(2) or section 61 and did not operate an apportionment of dual-use inputs.

41. Sub-paragraph 3(a) of Regulation 17 provides;

> '*An accountable person who deducts, in accordance with sections 59(2) and 61 of the Act, a proportion of the tax borne or payable on the accountable person's acquisition of dual-use inputs is required, at the end of each review period…'*

[emphasis added]

42. Again, the preface of this sub-paragraph does not accord with the facts in this appeal insofar as the Appellant herein did not deduct in accordance with section 59(2), did not apportion dual-use inputs in accordance with section 61 and did not thereafter review or adjust same.

43. It is clear that Regulation 17 applies in circumstances where an apportionment of dual-use inputs has been in operation in respect of a prior '*review period*'.

44. However, in this appeal there was no deduction, no apportionment, no review and no adjustment of dual-use inputs, in respect of the taxable periods falling within 2009.

45. The exercise undertaken through submission of the amended VAT return for November-December 2009 was not an adjustment of an apportionment of VAT by reference to dual-use inputs nor was it, nor could it have been an amended adjustment of apportionment of VAT by reference to dual-use inputs.

46. Based on the statutory wording contained in Regulation 17, I am satisfied that it is not possible for a taxpayer to operate an adjustment to a system of apportionment of dual-use inputs, where there was no system of apportionment of dual-use inputs in operation or existence in the relevant review period, namely, 2009.

47. I am satisfied that there is no basis for characterising the amended VAT return in respect of the taxable period November-December 2009 as a return in relation to the review of apportionment of dual-use inputs in accordance with the relevant legislation.

*The right to deduct*

48. The Appellant's submission raises questions in relation to the fundamental right to deduct, in particular, when the right arises in relation to the apportionment of dual-use inputs.

49. Contrary to Article 167 of Council Directive 2006/112/EC which provides: '*A right of deduction shall arise at the time the deductible tax becomes chargeable*', the Appellant argued that its right to deduct was not limited to the taxable period in which the expense was incurred. The Appellant argued that its right to recovery derived from Articles 175 and 167 of the Directive.

50. The Respondent submitted that the right to deduct is exercisable bi-monthly in accordance with section 2 of the VATCA 2010 where a year is divided into six bi-monthly taxable periods. The Respondent submitted that it is in each of those taxable periods that a taxpayer may exercise its fundamental right to deduct and that apportionment was a mathematical exercise to ensure that returns filed in 2009

accurately reflected turnover as between qualifying activities and exempt activities, in 2009. The Respondent submitted that where a return in relation to an adjustment of an apportionment of dual-use inputs for a review period arises, it does not create a fresh right to deduct, it merely operates as an adjustment to the deductions already made in the review period and it operates to ensure that those figures are correct.

51. Section 59 VATCA 2010 (formerly section 12 VATA 1972) emphasises references to '*taxable period*' therein as follows;

> *(2) Subject to subsection (3), in computing the amount of tax payable by an accountable person in respect of a taxable period, that person may, in so far as the goods and services are used by him or her for the purposes of his or her taxable supplies or of any of the qualifying activities, deduct—*
>
> *(a) the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations, in respect of supplies of goods or services to him or her,*
>
> *[…]*
>
> *(5) Where, in relation to any taxable period, the total amount deductible under this Chapter exceeds the amount which, but for this Chapter, would be payable in respect of such period, the excess shall be refunded to the accountable person in accordance with section 99(1), but subject to section 100.*

[emphasis added]

52. It is notable that section 59(2) makes no reference to a right to deduct by reference to a '*review period*' (as contained in Regulation 17) but rather makes reference to a right to deduct by reference to a '*taxable period*.'

53. Section 61(2) VATCA 2010 (formerly section 12(4) VATA 1972) which deals with dual-use inputs provides;

> *(2) Where an accountable person engages in both deductible supplies or activities and non-deductible supplies or activities, then, in relation to the person's acquisition of dual-use inputs for the purpose of that person's business*

*for a period, the person shall be entitled to deduct in accordance with section 59(2) only such proportion of tax, borne or payable on that acquisition, which is calculated in accordance with this section and regulations, as being attributable to his or her deductible supplies or activities and such proportion of tax is, for the purposes of this section, referred to as the "proportion of tax deductible".*

*…….*

*(7) The proportion of tax deductible as calculated by an accountable person for a taxable period shall be adjusted in accordance with regulations if, for the accounting year in which the taxable period ends, that proportion does not—*

*(a) correctly reflect the extent to which the dual-use inputs are used for the purposes of the person's deductible supplies or activities, or*

*(b) have due regard to the range of the person's total supplies and activities.*

[emphasis added]

54. Section 99(1) VATCA 2010 (formerly section 20(1) VATA 1972) provides;

*'99. (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.'*

[emphasis added]

55. Section 99(4) VATCA 2010 (formerly section 20(4)(b) VATA 1972) provides;

*'(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.'*

56. It is clear that section 99(4) applies to section 100 which deals with cases of mistake, as it extends to a claim for a refund '*under this Act*' which is a reference to the Act as a whole comprising all of its provisions. Thus, each and every refund which is made under the Act is subject to this overriding time limit. It is the right to deduct that leads to the refund and the taxable period to which the refund relates, is the period during 2009 when the right to deduct arose.

57. Section 99(6) provides;

*'(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.'*

58. Section 100(1)(c) VATCA 2010 (formerly section 25 VATA 1972) provides;

*'100. (1) Where, due to a mistaken assumption in the operation of the tax, whether that mistaken assumption was made by an accountable person, any other person or the Revenue Commissioners, a person—*

*(a) ....*

*(b) ....*

*(c) did not deduct an amount of tax in respect of qualifying activities, within the meaning of section 59(1), which that person was entitled to deduct,*

*then, in respect of the total amount of tax referred to in paragraph (a), (b) or (c) (in this section referred to as the "*overpaid amount*"), that person may claim a refund of the overpaid amount and the Revenue Commissioners shall, subject to this section, refund to the claimant the overpaid amount unless they determine that the refund of that overpaid amount or part thereof would result in the unjust enrichment of the claimant.*

*(2) A person who claims a refund of an overpaid amount under this section shall—*

> *(a) make that claim in writing setting out full details of the circumstances of the case and identifying the overpaid amount in respect of each taxable period to which the claim relates, and*
>
> *(b) furnish such relevant documentation to support the claim as the Revenue Commissioners may request.'*

[emphasis added]

59. I am satisfied that the within appeal is one which arose from a mistaken assumption of the law whereby the Appellant was unaware that it had the right to deduct in 2009, a certain amount of VAT incurred attributable to its '*qualifying activities*' (*i.e.* supplies of certain services to customers based outside of the EU) and I am satisfied that the four year statutory limitation period contained in section 99(4) VATCA applies to the claim.

60. The Respondent submitted that the '*proportion of tax deductible*' is a mathematical calculation which is calculated in accordance with the above sections and with regulations and that it is separate and distinct from the fundamental right to deduct.

61. In accordance with section 61 above, VAT is deductible in a particular taxable period but is adjusted by reference to the accounting year. That does not mean that it becomes deductible in a different accounting period or in a later accounting period. It is deductible within the taxable period in which it was properly charged in accordance with the VATCA 2010 and the accompanying regulations.

62. Articles 173, 174 and 175 of the Directive are directed at proportional deduction. Article 175, which is contained in Chapter 2 and which is titled '*proportional deduction'* provides that: *'The deductible proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next whole number.'*

63. The right to deduct thus arises on an annual basis in relation to qualifying activities and dual-use apportionment in accordance with Article 175. Article 175 is mandatory and provides that the deductible proportion '*shall be determined on an annual basis*', however, that was not done in this case.

64. The issue in this appeal concerns an adjustment of deductible VAT and not the establishment of a right to deduct. Article 167 does not purport to be subject to Article 173, Article 174 or Article 175 and I am satisfied that the taxpayer has a right to deduct from the moment VAT becomes chargeable in accordance with Article 167 and not otherwise. It is in light of this right to deduct that time limits must be read and interpreted.

65. As a result, and for the reasons set out above, I am satisfied that the legislation and regulations in relation to the operation of apportionment of dual-use inputs does not alter the position as set out in Article 167 of Council Directive 2006/112/EC which provides: '*A right of deduction shall arise at the time the deductible tax becomes chargeable*'.

66. The Appellant in submissions opened the case of *Banca Antoniana Popolare Veneta v Ministero dell'Economia e delle Finanze*, Case C-427/10 and relied on the principle stated at paragraph 31 of the judgment which provides;

> *'…the Court has held that a national authority may not rely on the expiry of a reasonable time-limit if the conduct of the national authorities, combined with the existence of a time-limit, means that a person is totally deprived of any possibility of enforcing his rights before the national courts.'*

67. In *Banca Antoniana*, the taxable person had charged and passed on VAT on the basis of a Revenue position which the Revenue authority subsequently decided was incorrect. The taxable person was later sued for VAT. The companies that sued the taxpayer had a period of ten years within which to recover the VAT while the taxpayer had just two years to recover from the Revenue authority. The Court took exception to the fact that the Revenue authority had incorrectly interpreted the legislation, which had been applied and followed by the taxpayer.

68. However, in this appeal, the conduct of the Respondent is not in issue. The Respondent did not mislead the taxpayer. It was the taxpayer who failed to advert to the correct tax treatment in relation to its own qualifying activities.

69. In *Banca Antoniana Popolare Veneta* the Court was critical of the actions of the Revenue authorities and stated at paragraphs 32 and 33;

*'In order to assess the foreseeable nature of the interpretation and application of Article 10(5) of DPR No 633/72, the referring court should take into consideration not only the fact that the tax authority changed its position as regards the taxation of fees charged for the collection of consortium contributions, but also the fact that the position taken by the Italian courts on that point was changing.*

*As regards the principle of the protection of legitimate expectations, Elmeka (16) may be of use to the referring court, even though that judgment concerns the legitimate expectations of taxpayers in relation to the conduct of the administrative authorities. To my way of thinking, the conclusions arising from that judgment may be applied generally to all conduct on the part of administrative authorities.*'

70. However, the Appellant in this appeal has not been deprived of the possibility of enforcing his rights to a refund of VAT in accordance with the provisions of European law. In addition, the Respondent in this appeal did not mislead the taxpayer in any respect. As a result, I am satisfied that the authority of *Banca Antoniana* is of limited assistance to the Appellant herein.

*The four-year limitation period*

71. As I have determined that that the amended November-December 2009 return does not constitute and cannot be characterised as a return in relation to the adjustment of apportionment of dual-use inputs pursuant to the provisions of section 61 VATCA 2010 and Regulation 17, the question which falls for consideration is whether the amended November-December 2009 return (absent the application of Regulation 17) constitutes a valid claim for a refund of VAT for prior taxable periods namely; January-February 2009, March-April 2009, May-June 2009, July-August 2009 and September-October 2009.

72. The Appellant accepted that its VAT repayment claim arose from a mistaken assumption of the law whereby the Appellant was not aware that it had the right to deduct a certain amount of VAT incurred attributable to its '*qualifying activities*' (*i.e.*

supplies of certain services to customers based outside of the EU). The Appellant submitted that a claim for repayment arose under section 100(1)(c) VATCA 2010.

73. There can be no doubt but that section 100 is subject to section 99(4) which provides;

> *'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.'*

[emphasis added]

74. The Respondent allowed a claim for a refund of VAT in respect of November-December 2009, on foot of the filing of the amended November-December 2009 return on 30 December 2013.

75. However, the Respondent submitted that the November-December 2009 return was not an effective means of claiming a repayment of VAT for periods other than November-December 2009. The Respondent submitted that the correct approach to claiming a refund of VAT where VAT was not reclaimed due to a mistake, was to make a claim in writing, within four years after the end of the taxable period to which each item of input VAT related.

76. The interpretation and application of section 99(4) VATCA 2010 does not support the view that a valid claim in respect of prior taxable periods has been made within the requisite four-year period by means of the filing of the amended November-December 2009 return.

77. I am satisfied that the amended VAT return for November-December 2009 constituted a valid claim in respect of input credits applicable to November-December 2009 only. The November-December 2009 VAT return does not constitute a valid claim in respect of input credits applicable to prior taxable periods namely, January-February 2009, March-April 2009, May-June 2009, July-August 2009 and September-October 2009.

**Conclusion**

78. For the reasons set out above, I determine that the taxpayer has a right to deduct from the moment VAT becomes chargeable in accordance with Article 167 and not otherwise. It is in light of this right to deduct that time limits must be read and interpreted.

79. I determine that there is no basis for characterising the amended VAT return in respect of the taxable period November-December 2009 as a return in relation to the review of apportionment of dual-use inputs in accordance with section 61 VATCA 2010 and Regulation 17 of S.I. 639/2010.

80. I determine that the amended November-December 2009 return filed on 30 December 2013, does not constitute an effective means of claiming a repayment of VAT for taxable periods other than November-December 2009.

81. I determine that the amended November-December 2009 VAT return filed on 30 December 2013 does not constitute a valid claim in respect of input credits applicable to prior taxable periods namely, January-February 2009, March-April 2009, May-June 2009, July-August 2009 and September-October 2009.

82. I determine that the Respondent was correct to refuse the Appellant's claim for a refund of VAT in respect of the taxable periods January-February 2009, March-April 2009, May-June 2009, July-August 2009 and September-October 2009 on the basis that the claim made on 30 December 2013 was not made within 4 years after the end of the taxable periods to which it related.

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

**COMMISSIONER LORNA GALLAGHER**

**October 2019**

**This determination has not been appealed pursuant to sections 949AP and 949AQ TCA 1997.**