



101TACD2021

BETWEEN/

THE APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal by the Appellant to the Tax Appeals Commission (“the Commission”) relating to claims for repayment of Value Added Tax (known as VAT) in accordance with section 99(4) of the Value Added Tax Consolidation Act 2010 (“VATCA 2010”). It relates to the Appellant’s bi-monthly VAT periods of assessment. The Appeal was made on 17th January 2020.
2. By agreement of the parties this appeal is determined in accordance with section 949U Taxes Consolidation ACT as amended (“TCA”) 1997.

Background

3. The Appellant submitted his VAT 3 returns showing repayment claims as follows;

VAT PERIOD	DUE DATE	DATE FILED	REPAYMENT
November/December 2014	19/01/2015	02/12/2019	€684
January/February 2015	19/03/2015	02/12/2019	€372
March/April 2015	19/05/2015	02/12/2019	€592
May/June 2015	19/07/2015	02/12/2019	€555
July August 2015	19/09/2015	02/12/2019	€416
September/October 2015	19/11/2015	02/12/2019	€294

4. The Revenue Commissioners (“the Respondent”) declined to process the repayments on the basis that valid claims for repayment had not been made within the four-year statutory

period, in accordance with s.99(4)VATCA 2010. The Appellant duly appealed this refusal to process the repayments sought.

Legislation

5. As set out in Appendix I attached, the relevant legislation that relates to this appeal is section 99 VATCA 2010 - General Provisions on Refund of Tax.

Submissions

6. The Appellant informed the Commission that due to challenges presented arising from his role as a carer for his mother and his own difficult personal medical circumstances at the relevant time, he was unable to attend to his tax affairs and consequently he fell behind in his dealings with the Respondent. The Appellant has suffered a challenging period in his life with caring for his ill mother and then his own challenging medical diagnosis. The Appellant accepted that the claims for repayment were not made within the four-year statutory limitation period.
7. The Appellant said he had difficulties in engaging someone to do his tax returns and that as a result he filed his own returns. He finally caught up on his tax affairs in early December 2019.
8. The Appellant pointed out that he was nearly always in a VAT refund situation and in his view this may have been the reason he was being denied refunds.
9. In relation to the disallowance of refunds due to him, the Appellant stated that he considered that had he owed VAT to the Respondent, payment of the amount due would be sought notwithstanding the four-year time limit. He stated that none of the Revenue officials he dealt with when filing his VAT returns advised him of the four-year rule.
10. The Respondent submitted that a claim for repayment of tax must be made within four years after the end of the taxable period to which it relates. The Respondent submitted that the returns filed in 2019 were out of time and, as a result, the Respondent was unable to process the repayments pursuant to the provisions of section 99(4) VATCA 2010.

Analysis and findings

11. The salient facts relating to the filing of the VAT returns and payments in this appeal are not in dispute. The parties agreed that the repayment claims regarding the taxable period November/December 2014 to September/October 2015 inclusive were not made within four years after the end of the chargeable period to which the claims related. The Respondent submitted that the Appellant's claims for repayment were thus out of time in accordance with section 99(4) VATCA 2010 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'*.
12. The Commissioner also notes that section 99(6) states that *"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"*. So, there is no discretion afforded to the Respondent (and by extension to the Commission) to make a refund outside the four year rule period.

There are no further regulations that grant any discretion. The extenuating circumstances in this appeal have been recognised by the Commission. The Commissioner expresses the utmost sympathy for the Appellant and the challenging position in which he found himself. Unfortunately, the Commissioner's role is to consider the law that applies and whether there is any discretion in relation to claims for repayment made outside the four year rule. There is no such discretion afforded and for that reason the Appellant's appeal fails. The Appellant was correct to seek an appeal to ensure that he was being treated by the Respondent's within the law.

13. The wording in section 99 VATCA 2010 does not provide for extenuating circumstances in which the four-year rule might be mitigated or reconsidered. As such, the Commission does not have the authority or discretion to direct that repayment be made to the Appellant where the claim for repayment falls outside the four-year period specified in section 99(5) VATCA 2010.
14. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the 4-year statutory limitation period. These determinations, may be found on the Commission website.¹

Determination

15. Pursuant to the wording of section 99(4) VATCA 2010, and in particular the use of the word "*only*" in the context in which it appears, the Commissioner determines that they do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claims have been made outside that four-year period. As a result, the Commissioner has no alternative but to determine that the repayment claims on behalf of the Appellant in respect of taxable periods November/December 2014 to September/October 2015 inclusive are out of time, in accordance with section 99(4) VATCA 2010. The Commissioner has the utmost sympathy for the familial circumstances that pertained during those years but that sympathy does not afford the Commissioner the right to exercise discretion to set aside the four-year rule in this instance. The Appellant's appeal is denied.
16. This Appeal is determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
2nd June 2021

¹ www.taxappeals.ie

Appendix – Legislation

Value Added Tax Consolidation Act 2010

Section 99 General provisions on refund of tax

(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.