



144TACD2022

Between

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter “the Commission”) as an appeal against the refusal of the Revenue Commissioners (hereinafter “the Respondent”) of a claim for the repayment of Value Added Tax (hereinafter “VAT”) in accordance with section 99(4) of the Value Added Tax Consolidation Act 2010 (“VATCA2010”). The amount of tax at issue is €28,778.00.
2. On foot of a notification to the Parties, this appeal has been determined without an oral hearing pursuant to section 949U of the TCA 1997.

Background

3. On 9 March 2022 the Appellant filed amended VAT returns to the Respondent seeking refunds of VAT for the following taxable periods:

Taxable Period	Refund Claimed €
September – December 2015	5,905.00
January – April 2016 September – December 2016	22,131.00
May – June 2017	742.00
Total	€28,778.00

4. By letters dated 30 March 2022 the Respondent wrote to the Appellant disallowing the claim for repayment of VAT. The basis of the Respondent's disallowance of the claims was that valid claims for repayment had not been made within the four-year limitation period set out in section 99(4) of the VATCA2010.
5. A Notice of Appeal dated 25 April 2022 against the Respondent's decision was filed by the Appellant with the Commission.

Legislation and Guidelines

6. The legislation relevant to this appeal is as follows:

Section 99 VATCA2010:

“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."*

Submissions

Appellant's Submissions:

7. The Appellant submitted the following grounds of appeal in her Notice of Appeal:

"Firstly, many apologies for having to have made VAT corrections for the 3 years in question and for any inconvenience it has caused revenue and yourselves.

I tend to end up overpaying VAT on my VAT3 returns, partly because it is sometimes difficult to fully establish VAT on purchases at the end of each VAT3 period. [REDACTED]

[REDACTED] and I don't always have time to go through all my expenses at the end of each period and hence end up overpaying VAT just to ensure it is submitted and that I have paid enough.

*The period from 2016-2017 was probably more difficult than usual because [REDACTED]
[REDACTED]
[REDACTED]*

It is normally when my husband is preparing documents and expenses to send to an accountant each following year for our joint income tax assessment that the amount of VAT overpayments get fully quantified.

We had believed that tax returns could be resubmitted up to 6 years after the end of a tax period, rather than the 4 years that revenue have notified us of in their late claim notifications. Hence, I resubmitted VAT RTD for the years in question on 30th and 31st Dec 2020 and assumed that this would correct all VAT records for those years and generate the refunds.

Subsequently my husband contacted revenue concerning this, because I had not received any refunds, and he was told that the amended VAT RTD would not generate VAT refunds and that VAT3 amendments would also need to be made for each year in question. I made these VAT3 amendments on 9th March this year, and subsequently received the attached late claim notification letters from revenue.

In future I will endeavour to avoid overpaying VAT, and if it is necessary then to ensure that a correction is submitted during the following year.

I would be very grateful if you would consider my appeal for the 3 years in question.”

8. In addition the Appellant submitted the following in support of her appeal in her Statement of Case:

“My VAT overpayments that this appeal relates to are:

for 2015 = € 5,905.00

for 2016 = € 22,131.00

for 2017 = € 742.00

[REDACTED].

We had believed that tax returns could be resubmitted up to 6 years after the end of a tax period, rather than the 4 years that revenue have subsequently notified us of in their late claim notifications. Hence, I resubmitted VAT RTD for the years in question on 30th and 31st Dec 2020 and assumed that this would correct all VAT records for those years noted above and generate the refunds.

Subsequently my husband contacted revenue concerning this, because I had not received any refunds, and he was told that the amended VAT RTDs would not generate VAT refunds and that VAT3 amendments would also need to be made for each year in question. I made these VAT3 amendments on 9th March this year, and subsequently received late claim notification letters from revenue.”

Respondent’s Submissions:

9. The Respondent submits that all of the Appellant’s amended VAT returns which were filed on 9 March 2022 were filed outside the statutory time period of four years in accordance with S.99(4) of Vat Act 2010. The Respondent submitted that it has no discretion to issue a refund outside the statutory time period.

Material Facts

10. The material facts are not at issue in the within appeal and therefore the Commissioner accepts the following material fact:
- i. On 9 March 2022 the Appellant submitted claims for repayment of VAT to the Respondent for the following taxable periods and amounts:

Taxable Period	Refund Claimed €
September – December 2015	5,905.00
January – April 2016	22,131.00
September – December 2016	
May – June 2017	742.00

Analysis

11. The Appellant submitted claims for refund of VAT to the Respondent on 9 March 2022 for the taxable periods (1) September – December 2015, (2) January – April 2016, (3) September – December 2016 and (4) May – June 2017. Claim (1) was submitted to the Respondent some 6 years and 2 months after the end of the taxable period. Claim (2) was submitted to the Respondent some 5 years and 11 months after the end of the taxable period. Claim (3) was submitted to the Respondent some 5 years and 2 months after the end of the taxable period and Claim (4) was submitted to the Respondent some 4 years and 8 months after the end of the taxable period.

12. Section 99(4) of the VATCA2010 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”*.
13. In addition section 99(6) of the VATCA2010 provides 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”*.
14. The wording in section 99 of the VATCA2010 does not provide for extenuating circumstances in which the four-year rule might be mitigated or reconsidered. As such, the Commissioner 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(4) VATCA2010.
15. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website.¹
16. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-
- “This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*
17. The burden of proof has not been discharged to satisfy the Commissioner that the refund is payable by the Respondent pursuant to section 99(4) of the VATCA2010.

Determination

18. For the reasons set out above, the Commissioner determines that the within appeal has failed and that it has not been shown that the relevant refund was payable.
19. It is understandable that the Appellant will be disappointed with the outcome of this appeal. This is an unfortunate situation and the Commissioner has every sympathy with the Appellant’s position. However, the Commissioner has no discretion in these cases. The Appellant was correct to check to see whether her legal rights were correctly applied.
20. This Appeal is determined in accordance with Part 40A 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.

¹ www.taxappeals.ie



Clare O'Driscoll
Appeal Commissioner
29 September 2022