



43TACD2022

Between

[REDACTED]

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**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 (“VATCA 2010”). The amount of tax at issue is €13,759.02.
2. On foot of a notification to the Parties dated 11<sup>th</sup> October 2021 and the Parties agreement with same this appeal has been determined without an oral hearing pursuant to section 949U of the TCA 1997.

**Background**

3. The Appellant submitted a claim for repayment of VAT to the Respondent for the claim period 2017 on 29<sup>th</sup> May 2020. The total repayment claimed was €13,759.02
4. By letter dated 2<sup>nd</sup> June 2020 the Respondent wrote to the Appellant disallowing the claim for repayment of VAT. The basis of the Respondent’s disallowance of the claim was that the invoices included in the return related to the periods 2014 and 2015 and that therefore

a valid claim for repayment had not been made within the four-year limitation period set out in section 99(4) of the VATCA 2010.

5. A Notice of Appeal dated 30<sup>h</sup> July 2020 against the Respondent's decision was filed with the Commission.

### **Legislation and Guidelines**

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

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.”

## **Submissions**

### *Appellant's Submissions:*

7. By way of letter dated 1<sup>st</sup> July 2020 the Appellant's Tax Agent wrote the following letter to the Respondent in relation to the claim to repayment the subject matter of the within appeal. This letter was included in the Appellant's Notice of Appeal:

*“We act as accountants for ██████████ above. I want to make a claim for a repayment of VAT for ██████ which relates to expenditure incurred in late 2014 & early 2015. While I appreciate that we are outside the usual 4-year limit for making this claim I would appreciate if you could see fit to allow this claim under the following grounds:*

*██████████ approached this office in late 2017 when we were preparing his Income Tax return for the 2016 tax year and mentioned that he had read that he was able to reclaim the VAT incurred in building a road in his ██████████ area. ██████████ was dealing with this issue himself personally and assured ██████ that he would look into the issue after the deadline for the submission of the Income Tax returns had passed, ie mid-Nov-2017.*

*Sadly ██████████ of this office became ill in Nov/Dec 2017, was subsequently diagnosed with terminal ██████ cancer in Feb=2018 and he has been unable to work since that date. As a result of ██████████ illness, this VAT reclaim was effectively left “on his desk” and no-one from the office followed through in the issue.*

*One of the main reasons why there was a delay between 2014/2015 when the expenditure was incurred and 2017 when we were made aware of the entitlement to reclaim the VAT is because there is no documentation on the old form VAT 58 which*

*states that expenses in relation to ██████ fall into the category of farming for the purposes of this claim.*

*Following a recent review of ██████ tax affairs it was discovered that this claim had not been followed through and it is for this reason that I am writing today to make a late claim for the VAT refund and I would appreciate if Revenue could, under the circumstances, show some clemency in this situation.”*

Respondent's Submissions:

8. The Respondent submits that under Section 99(4) of the VATCA 2010 a claim for a refund of VAT may only be made within 4 years after the end of the taxable period to which it relates. The Respondent submits that the Revenue website advice on submitting online VAT 58 claims states that a claim can be no older than 4 years.
9. The Respondent submits that when submitting a VAT 58 claim form if the dates input for the start and completed period of the works carried out are older than 4 years a claimant will receive a message stating: “*This claim is outside of the four year time limit to make a claim*”. A date of invoice older than 4-years will not be accepted and a claimant cannot proceed.
10. The Respondent's position is that as the claim was made in May 2020 and as the expenditure to which the claim related was made in 2014 and 2015 no valid claim for repayment was made within the four year limitation period set out in section 99(4) of the VATCA 2010 and as a result the repayment claim was out of time.

**Material Facts**

11. The following material fact is at issue in this Appeal:

11.1 The Appellant submitted a claim for repayment of VAT to the Respondent for the claim period 2017 on the 29<sup>th</sup> May 2020. The expenditure to which the claim to repayment of VAT was made related to expenditure made by the Appellant in 2014 and 2015.

12. This material fact is not at issue between the Parties. The Commissioner accepts that the Appellant submitted a claim for repayment of VAT to the Respondent for the claim period 2017 on the 29<sup>th</sup> May 2020. The expenditure to which the claim to repayment of VAT was made related to expenditure made by the Appellant in 2014 and 2015. Therefore this material fact is accepted.

## Analysis

13. Section 99(4) of the 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*”.
14. In addition section 99(6) of the VATCA 2010 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*”.
15. As a result there is no discretion afforded to the Commissioner to make a refund outside of the four year period set out in section 99(4) of the VATCA 2010.
16. The wording in section 99 of the VATCA 2010 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) VATCA 2010. The Commissioner acknowledges the extenuating circumstances which exist in the within appeal and expresses her sympathy in relation to same.
17. 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.<sup>1</sup>
18. 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.”*
19. 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 VATCA 2010.

## Determination

20. 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.
21. 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

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<sup>1</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

position. However, the Commissioner has no discretion in these cases. The Appellant was correct to check to see whether his legal rights were correctly applied.

22. 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. 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.



Clare O'Driscoll  
Appeal Commissioner  
21<sup>st</sup> March 2022