



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

172TACD2024 <sup>TM</sup>

██████████

**Appellant**

and

**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 by [REDACTED] (“the Appellant”) regarding the decision by the Revenue Commissioners (“the Respondent”) to refuse the Appellant’s claim for a repayment of Value Added Tax (“VAT”) paid by the Appellant for the taxable period 1 January 2018 to 31 December 2018. The Respondent submits that the Appellant is not entitled to a repayment of the VAT payments made for 2018 as the claim for the repayment was made by the Appellant after the expiry of four years after the end of the relevant taxable year. The Respondent further submits that four years is the maximum time period permitted by section 99(4) of the Value Added Tax Consolidation Act 2010 (“the VATCA 2010”) within which a claim for repayment of VAT can be made.
2. In accordance with the provisions of section 949U of the TCA 1997, this appeal is adjudicated and determined without a hearing.

## Background

3. On [REDACTED] December 2023 the Appellant submitted to the Respondent a Form 58 (*Claim by Unregistered Farmer for Refund of Value Added Tax (VAT) under the Value-Added Tax (refund of tax) (flat-rate farmers) Order 2012*) (“Form 58”) for 2018 and 2021. The Form 58 for the year 2018 (“2018 Form 58”) contained a claim for repayment of the sum of €588.83 for VAT incurred by the Appellant on [REDACTED]. In addition to the 2018 Form 58 the Appellant submitted [REDACTED], invoices [REDACTED].
4. On [REDACTED] December 2023 the Respondent issued a decision to the Appellant refusing the claim for repayment of VAT as contained in the 2018 Form 58 (“Decision Letter”). The grounds of refusal were that the 2018 Form 58 was received after the expiry of the four year period provided for by section 99(4) of the VATCA 2010 which states inter alia that “A claim for a refund under this Act may be made only within four years after the end of the taxable period to which it relates” and that as the 2018 Form 58 claim was not submitted on or before 31st December 2022, the repayment claim was filed after the expiry of the four year time limit and the Respondent was precluded from issuing the sought repayment amount.

5. On ■ January 2024 the Appellant submitted his Notice of Appeal to the Commission. In the Notice of Appeal the Appellant submitted that ■ was unable to submit a claim for repayment of VAT for the year 2018 by the deadline of 31 December 2022 due to ■ ill health and ■ furnished medical certificates ■ support of ■ claims.
6. On ■ February 2024 the Respondent submitted its Statement of Case to the Commission.
7. The Commission wrote to the Appellant on a number of occasions and requested that ■ submit ■ Statement of Case. No reply and/or communication was received from the Appellant.
8. On 28 May 2024 the Commission wrote to the Appellant and advised that the appeal would be determined by the Commissioner without a hearing and based on the documentary material submitted further to the provisions of section 949U of the TCA 1997 unless the Appellant notified the Commission of his objection within 21 days of the date of the letter. No reply and/or communication was received from the Appellant.

### **Legislation**

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

*Section 99 of the VATCA 2010: General provisions on refund of tax; provides:*

*(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**

### *The Appellant's submissions*

10. The Appellant's submission as per [REDACTED] Notice of Appeal is that [REDACTED] had ill health and [REDACTED] was certified unfit for work for the period [REDACTED] and [REDACTED] was unable to submit [REDACTED] return to the Respondent earlier.

### *The Respondent's submissions*

11. The Commissioner sets out hereunder an extract of the Respondent's submissions from its Statement of Case:

*"2.1 Fact 1 On [REDACTED]/12/23 Paper Form 58 claim for periods 2018 and 2021 was received in Sarsfield House. 2018 Form 58 claim amount of €588.83 for VAT incurred on [REDACTED]. Claim Form was accompanied by cover letter, invoices and [REDACTED] stated [REDACTED] was unfit to attend work from [REDACTED] [REDACTED] was unfit to attend work [REDACTED]."*

*2.2 Fact 2 On [REDACTED]/12/23 a reply issued by post, advising [REDACTED] that 2018 Form 58 is outside the four-year claim limit as provided for in Section 99(4) Value Added Tax*

*Consolidation Act 2010. 2018 Form 58 Claim was refused as late as it was not submitted to Revenue by the final day of submission, 31/12/22. Revenue Letter also advised [REDACTED] [REDACTED] to submit 2022 Form 58 online as it was within the 4-year claim limit.”*

### **Material Facts**

12. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
  - 12.1. On [REDACTED] December 2023 the Appellant submitted to the Respondent the 2018 Form 58 (with supporting material) and claimed repayment of the sum of €588.83 for VAT incurred in 2018.
  - 12.2. On [REDACTED] December 2023 the Respondent issued its Decision Letter to the Appellant refusing the claim for repayment of VAT as contained in the 2018 Form 58 on the grounds that the 2018 Form 58 claim was received after the expiry of four years from the end of the 2018 taxable period.

### **Analysis**

13. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, wherein at paragraph 22, Charleton, J. stated:

*“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”.*

14. The Commissioner also refers to paragraph 12 of the High Court case of *Menolly Homes*, wherein Charleton, J. stated:

*“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...”*

15. The Commission is a statutory entity and must operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee v The Revenue Commissioners* [2021] IECA 18, wherein Murray, J. stated at paragraph 76:

*“The jurisdiction of the Appeal Commissioners ..... is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.”*

16. The Commissioner refers to the provisions of section 99(1) of the TCA 1997 which provides inter alia that if the Respondent is satisfied that an amount of tax actually paid to the Collector-General exceeds the tax (if any) which would properly be payable if no deduction were made, the Respondent shall refund the amount of the excess less any sums previously refunded or repaid further to the provisions of the VATCA 2010.
17. The Commissioner refers to the Material Fact that the Appellant filed his 2018 Form 58 for the year 2018 on ■ December 2023. The Commissioner refers to the provisions of section 99(4) of the VATCA 2010 which 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.”* The Commissioner having assessed the circumstances of the appeal and the Material Facts finds that the claim for repayment of VAT for the year 2018 was made after the expiry of four years from the end of 2018 and that the provisions of section 99(4) of the VATCA 2010 provides that the Respondent cannot provide any repayment to the Appellant in respect of his claim for repayment of VAT for 2018.

18. The Commissioner has no statutory right or discretion to direct that the repayment of VAT be made after the expiry of four years from the end of the relevant taxable period as specified at section 99(4) of the VATCA 2010.

### **Determination**

19. The Commissioner has assessed all matters in this appeal and finds that the Respondent complied with the statutory provisions in its Decision Letter not to agree to make a repayment to the Appellant of VAT paid for the year 2018. Accordingly, for the reasons set out above the Commissioner finds that the Appellant's appeal in this matter is unsuccessful.
20. The Commissioner acknowledges that the Appellant was within ■■■ rights to appeal the Respondent's decision to refuse the claim for a repayment of VAT paid by ■■■ in 2018 and to have clarity of ■■■ legal rights. The Commissioner understands that the Appellant may be disappointed with the outcome of ■■■ appeal.
21. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

22. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the 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**

23. 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 of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



*Leonora B. Doyle*

Leonora B. Doyle  
Appeal Commissioner  
11 September 2024