AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

202TACD2025

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This Determination concerns an appeal made to the Tax Appeals Commission ("the Commission") under section 119 of the Value-Added Tax Consolidation Act 2010 ("the VATCA 2010") of a decision of the Revenue Commissioners ("the Respondent") of 7 June 2024. The decision in question was the Respondent's refusal to repay to [redacted] Limited ("the Appellant") Value Added Tax ("VAT") that it incurred in its acquisition of a *"Volac automatic calf feeder"* ("the automatic calf feeder"). The automatic calf feeder was acquired in December 2021 and the amount of VAT at issue is €3,519.00.

2. The Appellant's claim for the refund of the VAT that it incurred was made pursuant to Regulation 5 of SI 201 of 2012, entitled the Value-Added Tax (Refund of Tax) (Flat-rate Farmers) Order 2012 ("the 2012 Refund Order"). This entitles a "*flat-rate farmer*", as defined in section 2 of the VATCA 2010, who has incurred VAT in respect of outlay on a farm building, structure, land or specific types of equipment, to the repayment of that VAT so incurred. This repayment entitlement arises though a flat-rate farmer is by definition not an "*accountable person*" who themselves charge VAT to those who receive their agricultural goods or services supplied for consideration.

3. Two net issues fall to be considered in this appeal. The first of these is whether, for the purposes of the 2012 Refund Order, the VAT incurred by the Appellant as a consequence of its acquisition of the automatic calf feeder constituted "*outlay"* on "*the construction, extension, alteration, or reconstruction of any building or structure which is designed for use solely or mainly in* [the Appellant's] *farming business."* The second issue is whether, even if it did not constitute such outlay, the Appellant should be entitled to the repayment of the VAT incurred on the automatic calf feeder on the grounds of fairness or equity.

4. The hearing of the appeal occurred on 5 March 2025 by way of remote connection, as requested by the parties. The Appellant was represented by its tax agent, while the Respondent was represented by solicitor and counsel.

Background

5. In December 2021, the Appellant purchased an automatic calf feeder supplied by the company Volac, for which it paid €18,819. Of this sum, €3,519 constituted VAT. The sales invoice provided to the Appellant by Volac specified three different types of item or service supplied. The first was an "*AP 12 inch Station C",* the second was an "*Alma Pro Whole Milk conversion kit"* and the third was "*installation".* The unit price specified in respect of the "*AP 12 inch Station C"* was €15,300, whereas the other two items on the invoice were

given a unit price of nil. The physical characteristics of the automatic calf feeder are discussed in more detail in the Evidence section of this Determination, set out below.

6. There is dispute about when the Appellant first submitted a claim for repayment of the VAT incurred in respect of the automatic calf feeder. It was stated in the Appellant's Statement of Case that a claim was first submitted in 2022 (the precise date of submission was not given), but that this claim was unsuccessful on the grounds that the relevant invoice submitted incorrectly named the purchaser as being "[redacted] Limited", rather than the Appellant's correct name as set out in its Form 58 return (this being the relevant claim form). This was not accepted by the Respondent, which took the position at hearing that the claim submitted in 2022 concerned VAT incurred in respect of other expenditure. For the purposes of this Determination, the Commissioner is prepared to accept that the claim was first made in 2022, though for reasons that are set out hereunder in the Analysis section of this Determination, this fact is not relevant the outcome of the appeal.

7. What is not in dispute is that on 15 May 2024, the Appellant submitted another VAT Form 58, in which it made a valid claim for the repayment of the VAT incurred in respect of its outlay on the automatic calf feeder.

8. On 7 June 2024, this claim was refused by the Respondent on the grounds that "*VAT is not refundable on automatic calf feeders."*

9. On 4 July 2024, the Appellant appealed the Respondent's decision to refuse its VAT refund claim to the Commission. In the grounds section of its Notice of Appeal, the Appellant stated, inter alia:-

> "*It is our understanding that VAT refunds have always been paid in respect of these type of feeders and that if revenue opinion has changed in this matter then it must have changed after the purchase. In our view at the time of purchase the buyer was entitled to believe that VAT would be refunded."*

Legislation and Guidelines

EU Legislation

10. It is trite to state that the provisions relating to VAT are complex and challenging to navigate, even for practitioners in this area. The Commissioner in this section sets out the various provisions that are engaged in relation to this appeal both with respect to European Union ("EU") and domestic provisions.

11. Title XII of the Council Directive 2006/112/EC ("the VAT Directive") makes provision for Member States to apply special schemes for VAT purposes. Chapter 2 of Title XII (Articles

295 to 305) makes provision for one such scheme applicable to farmers, namely the *"flat-rate*" scheme. In essence, under the flat-rate scheme Member States may permit farmers falling within the definition of a "taxable person" to nonetheless operate outside of the normal VAT system if they so choose. These farmers, known as *"flat-rate farmers*", who by definition do not have the right to deduct VAT input costs they incur, may instead charge and retain an additional amount referred to as the "*flat-rate compensation percentage"* to the purchasers of their supplies of agricultural goods and services. This compensation is, as the name would suggest, calculated as a percentage of the consideration due to the farmer for the supply of their agricultural good or service.

12. Title XIII of the VAT Directive makes provision for derogations. Under Article 394 of the VAT Directive:-

> *"Member States which, at 1 January 1977, applied special measures to simplify the procedure for collecting VAT or to prevent certain forms of tax evasion or avoidance may retain them provided that they have notified the Commission accordingly before 1 January 1978 and that such simplification measures comply with the criterion laid down in the second subparagraph of Article 395(1)."*

13. Article 27(1) of the Sixth Council Directive 77/388/EEC ("the Sixth Directive") provided:-

> "*The Council, acting unanimously on a proposal from the Commission, may authorize any Member State to introduce special measures for derogation from the provisions of this Directive, in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance. Measures intended to simplify the procedure for charging the tax, except to a negligible extent, may not affect the amount of tax due at the final consumption stage."*

Domestic Legislation

14. A "*taxable person*" under the VATCA 2010 is defined as one who independently carries on a business in the community or elsewhere.

15. Section 5 of the VATCA 2010 provides, inter alia:-

> *"(1)*
>
> *(a) Subject to paragraph (c), a taxable person who engages in the supply, within the State, of taxable goods or services shall be—*
>
> *(i) an accountable person, and*

(ii) accountable for and liable to pay the tax charged in respect of such supply."

16. A *"taxable good" or "taxable service"* is a service or good the supply of which is not an "*exempted activity*".

17. Under section 4(1) of the VATCA 2010, "*farmer*":-

> "[…] *means a person who engages in at least one Annex VII activity, and –*
>
> *(a) whose supplies consist exclusively of either or both of the following:*
>
> *(i) supplies of agricultural produce*
>
> *(ii) supplies of agricultural services*
>
> […]"

18. Section 6 of the VATCA 2010 is entitled "*Persons not accountable persons unless they so elect".* Under section 6(1) a farmer shall not be an accountable person unless they so elect.

19. Under section 2 of the VATCA 2010 a "*flat-rate farmer"* is defined as "*a farmer who is not an accountable person."*

20. Part 10 of the VATCA 2010 concerns "*Special schemes"* and section 86 of the VATCA 2010, which appears in this Part, concerns "*Special provisions for tax invoiced by flat-rate farmers".* The effect of section 86 is that, in issuing invoices in respect of supplies agricultural produce or services, flat-rate farmers charge an amount for the good or service supplied plus a "*flat-rate addition"* equal to a percentage of the consideration due for the supply.

21. Under section 103(1) of the VATCA 2010 the Minister for Finance may:-

> […] *by order provide that a person who fulfils to the satisfaction of the Revenue Commissioners such conditions as may be specified in the order shall be entitled to be repaid so much, as is specified in the order, of any tax borne or paid by the person as does not qualify for deduction under Chapter 1 of Part 8."*

22. On 12 June 2012, in the exercise of the powers conferred on him by section 103 of the VATCA 2010, the Minister for Finance made the 2012 Refund Order. Article 2 of the 2012 Refund Order defines a "*qualifying person"* as:-

> "[…] *a flat-rate farmer who has incurred tax in relation to an outlay on –*

(a) the construction, extension, alteration or reconstruction of any building or structure which is designed for use solely or mainly in his or her farming business,

(b) the fencing, drainage or reclamation of any land intended for use for the purposes of his or her farming business, or

(c) the construction, erection or installation of qualifying equipment for the purpose of micro-generation of electricity for use solely or mainly in his or her farming business.

where such building, structure, land or qualifying equipment is for use in that farming business for a period of not less than one year commencing on the date the tax was incurred."

23. Under Article 3 of the 2012 Refund Order:-

"*An unregistered person who establishes to the satisfaction of the Revenue Commissioners that he or she is a qualifying person, and who fulfils the conditions specified in Article 4, shall be entitled to be repaid the tax specified in Article 7."*

24. Article 4 of the 2012 Refund Order provides:-

"*The conditions to be fulfilled by an unregistered person are as follows:*

(a) he or she shall claim a repayment of the tax by completing such claim form as may be provided for that purpose by the Revenue Commissioners and certify the particulars shown on such claim form to be correct;

(b) he or she shall produce –

(i) the invoices or other documents, issued or given to him or her for the purposes of Chapter 2 of Part 9 of the Act, or

(ii) the receipts for tax paid on goods imported,

showing the tax incurred by him or her which is the subject of the refund claim;

(c) if requested to do so by the Revenue Commissioners, he or she shall produce the plans, specifications or other documentary evidence in relation to—

(i) the construction, extension, alteration or reconstruction of a building or structure which is designed for use solely or mainly for the purposes of his or her farming business,

(ii) the fencing, drainage or reclamation of any land intended for use for the purposes of his or her farming business, or

(iii) the construction, erection or installation of qualifying equipment for the purpose of micro-generation of electricity for use solely or mainly in his or her farming business,

in respect of which the claim for a refund of tax is being made;

and

(d) he or she shall have complied with all the obligations imposed on him or her by the Act, the Income Tax Acts, the Corporation Tax Acts or the Capital Gains Tax Act, and any instruments made thereunder, in relation to—

(i) the payment or remittance of the taxes, interest and penalties required to be paid or remitted thereunder, and

(ii) the delivery of returns."

25. Under Article 5 of the 2012 Refund Order:-

"*A registered person who is a qualifying person shall, subject to the conditions specified in Article 6, be entitled to reclaim the tax specified in Article 7 as if such tax were deductible tax under Chapter 1 of Part 8 of the Act, but such tax shall be deemed to have been refunded for the purposes of Article 9."*

26. Under Article 7 of the 2012 Refund Order:-

"The amount of tax to be repaid in accordance with Article 3 or reclaimed in accordance with Article 5 shall, subject to Article 8, be the tax incurred which the qualifying person shows to the satisfaction of the Revenue Commissioners to be referable solely to outlay which relates to—

(a) the construction, extension, alteration or reconstruction of that part of the building or structure which was designed solely for the purposes of a farming business and has actually been put to use in such a business carried on by him or her,

(b) the fencing, drainage or reclamation of any land which has actually been put to use in such a business carried on by him or her, or

(c) *the construction, erection or installation of qualifying equipment for the purpose of micro-generation of electricity for use solely or mainly in his or her farming business."*

27. Of relevance to this Determination is that under SI 267/1972, Value-Added Tax (Refund of Tax) (No 1) Order, 1972 ("the 1972 Refund Order"), unregistered persons who incurred VAT in connection with outlay on "*the construction, extension, alteration or reconstruction of any building or structure which is designed for use solely or mainly for the purpose of a farming business"* were, as under the 2012 Refund Order, entitled to repayment of such VAT incurred.

Evidence

Appellant

28. The Director of the Appellant gave brief oral evidence at the appeal hearing. Hereafter in this Determination he is referred to as "the Appellant's Director".

29. The Appellant's Director stated that the background to the appeal was the purchase in December 2021 of the computerised automatic calf feeder supplied by Volac. He informed the Commissioner that the automatic calf feeder was purchased on the understanding that VAT charged thereon would be reclaimable by the Appellant.

30. The Appellant's Director gave evidence that he understood that prior to the purchase of the automatic calf feeder, and thereafter until about 2023, the Respondent did not refuse claims made by flat-rate farmers for the repayment of VAT incurred in respect of the purchase of automatic calf feeders, such as that at issue in this appeal. The Appellant's Director further gave evidence that the Appellant had in 2018 claimed and been allowed a refund in respect of VAT incurred on the purchase of an earlier model of calf feeder.

31. The Appellant's Director gave evidence about the physical characteristics of the automatic calf feeder. He said that the calf feeder was an item of five parts. Four of these were identical "*stations"* or "*pens"* from which the calves fed. Each station could accommodate one calf at a time. In addition, there was a machine, which he described as being somewhat bigger than a dishwasher and similar in shape, which supplied milk to each station when a calf was in the process of feeding. Both the stations and the milk supplying unit were installed in a pre-existing farm shed on the Appellant's farm. It is clear that in order to function, the calf feeder was connected both to the water supply and electricity. The Appellant's Director gave further evidence that the stations were bolted into the cement floor of the farm shed (four bolts being necessary apiece). The Appellant's Director did not disagree with the suggestion made by counsel for the Respondent that

the stations, once installed, could in principle be uninstalled by being unbolted and removed.

Submissions

Appellant

32. It was submitted on behalf of the Appellant that the Respondent had a long-standing practice of treating VAT incurred by flat-rate farmers in the purchase of calf feeders as being repayable to those farmers. In this respect, he pointed to the evidence of the Appellant's Director, as well as an article published in the *Irish Examiner* on 18 August 2021, in which its author expressed the view that, *inter alia,* VAT expended in the course of the purchase by a flat-rate farmer of a "*fixed calf feeder"* would be subject to a rebate.

33. The Appellant's agent submitted that when the Appellant purchased the automatic calf feeder in 2021, the Appellant had an expectation, founded on the Respondent's prior conduct, that it would be entitled to the repayment of VAT in the amount of €3,519.00 that it had incurred in so doing. The Appellant's agent pointed to the evidence given that it was only in 2023 that the Respondent had started to refuse claims for the repayment of VAT incurred by flat-rate farmers on calf feeders. He also pointed to the fact that the Respondent had published a Tax and Duty Manual in May 2024 where, for the first time, it specified in express terms to the public that flat-rate farmers could not recover VAT incurred in the purchase of calf feeders. The Appellant's agent submitted that it was clear that the Respondent had reversed its previous policy. This was a policy that, when the Appellant purchased the automatic calf feeder in 2021, was still in place and had not been changed. Fairness, he said, dictated that the policy as was in December 2021 should have been applied to the Appellant's claim, with the result that the claim should have been allowed. He submitted that the Commissioner's Determination should reflect this.

Respondent

34. Counsel for the Respondent began by submitting that what was before the Commissioner was a claim for the refund of VAT incurred in respect of an automatic calf feeder made by the Appellant by means of the delivery of a Form 58 in May 2024. Counsel for the Respondent did not accept that the Appellant had made a claim for the refund of the same VAT in 2022.

35. Counsel for the Respondent submitted that farmers are not required to register for VAT. A farmer who opts not to register for VAT is a "flat-rate farmer" and may avail of the "flat-rate farmers' scheme". The Appellant is such a farmer. The flat-rate farmers' scheme

ensures that an unregistered farmer receives compensation for their inability to deduct VAT input costs.

36. Despite its status as a flat-rate farmer entitled to charge the flat rate addition, the Appellant is nevertheless also entitled to claim as a refund from the Respondent VAT incurred in respect of certain types of input costs, should it incur them. The types of costs that may be claimed by a flat-rate farmer are prescribed under the 2012 Refund Order, and include VAT incurred on outlay referable solely to:-

    "[…] *the construction, extension, alteration or reconstruction of that part of a building or structure which was designed solely for the purposes of a farming business and has actually been put to use in such a business carried on* […]*"*

37. Counsel for the Respondent submitted that it was apparent that the Appellant's claim for repayment of the VAT it incurred on the automatic calf-feeder was founded on the contention that it constituted outlay of the kind referred to in the preceding paragraph of this Determination.

38. Counsel then made the point that the ultimate legal basis for the 2012 Refund Order was to be found in Article 394 of the VAT Directive. This provides that a Member State may implement "*special measures"* constituting derogations from the harmonised system of VAT where, *inter alia*, the Member State had those special measures in place as of 1 January 1977 and they were notified to the Commission as of 1 January 1978.

39. Counsel for the Respondent submitted that since the making of the 1972 Refund Order, set out in paragraph 27 of this Determination, Ireland has had in place a derogation from the harmonised system whereby farmers unregistered for VAT could nonetheless claim the repayment of VAT incurred on, *inter alia*, outlay of the kind referred to in paragraph 36 above.

40. Counsel for the Respondent then submitted:-

    "*the net effect is that* […] *the general rules provide that VAT is levied on goods and services provided by a taxable person. And on the flip side of that there are certain permitted deductions for VAT borne or paid in computing the VAT payable by a taxable person. The refund order is a historic derogation on the basis just outlined from the general VAT rules that Ireland has been allowed to maintain. And in terms of these types of derogations, there is well established EU law on the principle of how to approach these derogations and that is that they should be interpreted strictly."*

41. In support of the submission that the provision governing the Appellant's entitlement to repayment had to be interpreted strictly, counsel for the Respondent referred to the judgment of the Court of Justice in *Commission v United Kingdom* (Case C-276/19). There, it was held at paragraph 42 that:-

> "[….] *it should be noted, first, that it follows from the Court's settled case-law that the national derogations referred to in Article 27(1) to (5) of the Sixth VAT Directive (now Articles 394 and 395 of Directive 2006/112), which were allowed 'in order to simplify the procedure for charging the tax or to prevent certain types of tax evasion or avoidance', must be interpreted strictly and may not derogate from the basis for charging VAT usually applicable except within the limits strictly necessary for achieving that aim."*

42. Counsel for the Respondent further submitted that, in accordance with the need for strict interpretation, the Court of Justice held in *Commission v United Kingdom* that a Member State could not extend derogating domestic law that it had been permitted to retain under the VAT Directive so that it cover additional types of transactions. This was apparent from paragraph 50, where the Court held:-

> *"In accordance with those principles* [of strict interpretation] *a particular regime which, in order to achieve that aim, derogates from the general rule laid down in Article 2(1) of Directive 2006/112 that VAT is to be levied on all goods or services supplied for consideration by a taxable person, cannot be extended to transactions which were excluded from that particular regime by the national legislator on the date on which that derogation was permitted under EU law and, more specifically, were not provided for when the Sixth VAT Directive came into force* […]"

43. Counsel for the Respondent then submitted that a strict interpretation of the 2012 Refund Order was, in addition, necessary by reference to principles of statutory interpretation set out in national case law. In this regard, counsel for the Respondent pointed to the judgments of the High Court and Supreme Court in *Perrigo Pharma International DAC v McNamara* [2020] IEHC 552 and *Bookfinders v Revenue Commissioners* [2020] IESC 60. In particular, counsel for the Respondent argued that the judgment of McDonald J in *Perrigo* underlined that where a taxpayer sought to avail of a tax relief or exemption, their claim must clearly and unambiguously meet the wording of the relieving or exempting provision. Counsel for the Respondent submitted that the expenditure by the Appellant on the automatic calf feeder did not clearly and unambiguously constitute outlay relating to "*the construction, extension, alteration or reconstruction"* of a farm building.

44. Counsel for the Respondent submitted that the focus of the Appellant's submissions at the hearing had been on the question of fairness. Counsel said that the essence of the Appellant's case was that it had purchased the automatic calf feeder on the understanding that it was the Respondent's practice to allow the repayment of the VAT element of the price and that not to allow it was in contravention of this understanding. Counsel for the Respondent submitted, in this respect, that the only basis on which the Commissioner should approach the appeal was by interpreting the meaning of the relevant wording of the 2012 Refund Order and establishing whether the Appellant's expenditure qualified thereunder as expenditure capable of being repaid to it. Counsel submitted that for the reasons already set out, the relevant wording of the 2012 Refund Order could not be understood as extending to allowing the repayment of VAT incurred in respect of the automatic calf feeder.

Material Facts

45. The following are the facts material to the determination of this appeal:-

    (i) the Appellant is a limited liability company engaged in the activity of farming;

    (ii) the Appellant is not an accountable person registered for VAT;

    (iii) in December 2021, the Appellant purchased an automatic calf feeder supplied by Volac;

    (iv) the automatic calf feeder comprised four stations, from which calves would feed one at a time, and one milk producing unit supplying milk to those stations;

    (v) the price paid for the automatic calf feeder by the Appellant was €18,819 in total, of which sum €3,519 constituted VAT;

    (vi) the automatic calf feeder was installed by Volac in a farm shed housing calves, located on the farm operated by the Appellant;

    (vii) the stations were secured to the concrete floor of the farm shed by means of four bolts each;

    (viii) the calf feeder was connected to a water supply and electricity;

    (ix) having been installed in the farm shed, it was possible for the calf feeder to be uninstalled;

(x) the Appellant made a claim by means of a Form 58 return for the repayment of the VAT in the sum of €3,519 that it had incurred in the purchase of the automatic calf feeder;

(xi) on 7 June 2024, this claim was refused by the Respondent;

(xii) on 4 July 2024, the Appellant appealed this refusal to the Commission.

Analysis

46. It is appropriate to begin this part of the Determination by outlining the role of an Appeal Commissioner in hearing a tax appeal. In *Lee v Revenue Commissioners* [2021] IECA 18, the Court of Appeal held, in the context of an appeal of a Revenue assessment, that the focus of a tax appeal hearing must be on establishing the correct amount, if any, of tax owed by an appellant. Such a question must be answered by the application of the relevant legislation to facts proved. The Court held in clear terms that questions unrelated to the analysis of relevant taxing legislation were not for an Appeal Commissioner to consider in reaching their determination. In particular, an argument to the effect that an assessment was, despite its conformity with applicable legislation, in error on the grounds that the conduct of the Revenue Commissioners was somehow unfair or unequitable, such that they should be estopped from raising an assessment, was not one that fell within the jurisdiction of an Appeal Commissioner to consider in deciding an appeal.

47. This analysis of the jurisdiction of an Appeal Commissioner of the Commission applies with equal force to an appeal of a decision of the Respondent to refuse a claim for the repayment of VAT, as it does to an appeal of an assessment raised. The focus of the Commissioner in this instance must be on analysing whether the Appellant's claim for the repayment of VAT falls within the parameters of the applicable legislation.

48. The legislation at the heart of this appeal is secondary legislation made by the Minister for Finance, namely the 2012 Refund Order. The effect of the 2012 Refund Order is that flat-rate farmers that incur VAT on specific kinds of expenditure may claim a repayment of that VAT. One of the three types of expenditure enumerated in the 2012 Refund Order is that outlaid on "*the construction, extension, alteration or reconstruction of any building or structure which is designed for use solely or mainly in* [the farmer's] *farming business."*

49. The 2012 Refund Order was made by the Minister for Finance pursuant to the powers given to him by the Oireachtas under section 103 of the VATCA 2010. This provides that the Minister may make provision for the repayment of VAT incurred by a person meeting prescribed conditions, which VAT that person is not entitled to deduct under the usual rules set out in section 59 of the VATCA 2010.

50. The conferral on an unregistered person who is engaged in economic activity of the right to obtain repayment of VAT incurred in the course of that activity, even though that person has by definition no corresponding output, constitutes a derogation from the general principles of the VAT system laid down under the VAT Directive (see *Iberdrola Immobiliaria Real Estate Investments* (Case C-132/16) paragraph 28). Counsel for the Respondent identified the legal basis in the VAT Directive for this derogation as being Article 394 therein, which allows Member States to retain "*special measures"* in place as of 1 January 1977, provided those measures were notified to the Commission by 1 January 1978. Counsel for the Respondent cited the 1972 Refund Order, which reflects the terms of the 2012 Refund Order, as being the special measure in place as of the date in question that was capable of retention.

51. The Commissioner agrees with the submission of counsel for the Respondent that in order for a flat-rate farmer to be allowed a refund under the 2012 Refund Order, the outlay in question must fall clearly and unambiguously within the meaning of the relevant provision therein. That this is so as a matter of EU law is apparent from the judgment of the Court of Justice in *Commission v United Kingdom* (Case C-276/19), in particular the passage quoted at paragraph 41 of this Determination. It is, however, also well-established in domestic case law, as is clear from the judgment in *Perrigo Pharma International DAC v McNamara & Ors* at paragraph 74. There, McDonald J set out in detail the following guiding principles concerning the interpretation of legislation, in particular taxing legislation:-

> *"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*
>
> > *(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
> >
> > *(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible"."*

52. The Commissioner observes that although what is at issue is secondary legislation not passed by the Oireachtas, he considers that as a matter of law the above passage

constitutes the correct approach to the interpretation of the 2012 Refund Order. In short, what must be done is to establish the plain meaning of the words used in the legislation, viewed in context, in order to find whether the VAT incurred as part of the outlay on the automatic calf feeder is repayable by the Respondent to the Appellant.

53. It is clear that of the three types of outlay specified in the 2012 Refund Order capable of making the Appellant a "*qualifying person"* entitled to the repayment of VAT, the only type which the Appellant's outlay could possibly constitute is that on "*the construction, extension, alteration or reconstruction of any building or structure which is designed for use solely or mainly in his or her farming business."* These words are, in the view of the Commissioner, plain and their meaning self-evident. The question is whether the Appellant's expenditure on the automatic calf feeder falls within the definition of such outlay.

54. Applying the interpretive approach outlined by the McDonald J in *Perrigo Pharma International DAC v McNamara & Ors* [2020] IEHC 552, the Commissioner is satisfied that it does not. This is so for the following reasons.

55. The evidence suggests that what the Appellant purchased was a machine comprising two distinct elements. One element was a set of four stations or pens from which calves would feed. These were bolted to concrete flooring by four bolts apiece. The Appellant's Director accepted in his evidence that they could, at least in principle, be unbolted and removed. The second element was the milk producing unit, which the Appellant's Director described as being somewhat larger than a washing machine. It is clear that this was plumbed in to the water supply and connected to electricity. There is, again, nothing to suggest that this unit could not be disconnected from both water and power and removed from the shed. In other words, in no sense could the automatic calf feeder, having been installed, be considered something that was then a part of the building or structure in which it was located, namely the farm shed, such that its installation amounted to work on the building or structure itself.

56. The Commissioner finds this fact to be decisive in this appeal. The wording of the relevant part of the 2012 Refund Order makes it clear that the Minister intended the right to repayment to be connected to outlay on work to the structure of a farm building itself. That this is so, is manifest from the use of the words "*construction",* "*extension", "alteration"* and "*reconstruction",* which wording is clear and unambiguous in its meaning. Outlay on the purchase and installation into the farm building of a machine such as the automatic calf feeder, which may after installation be uninstalled and perhaps replaced, is not outlay on work constituting construction, extension, alteration or reconstruction of a building or

structure. It cannot therefore be considered to fall within the parameters of the conditions imposed under the 2012 Refund Order.

57. It must be noted, however, that in the appeal hearing the Appellant and its agent focused less on the question of whether the outlay fell within the wording of the 2012 Refund Order, and more on the question of whether prior conduct of the Respondent in relation to its treatment of other claims for VAT refunds in relation to automatic calf feeders meant that its own claim should be allowed. In this regard, the Appellant's Director gave evidence of a previous claim of the Appellant itself, made in respect of outlay on an earlier purchase of an automatic calf feeder. This previous claim had not been refused. The Appellant's agent also pointed out that the Respondent had for the first time issued guidance in its 2024 Tax and Duty Manual indicating that refund claims arising from VAT incurred by flat-rate farmers in relation to their purchases of automatic calf feeders would not be allowed. This was, he observed, well after the Appellant had purchased the calf-feeder in December 2021. All of this, the Appellant's agent submitted, meant that the Respondent's decision was one that was lacking in fairness. This was so, he submitted, as the Appellant had an entitlement to expect that the Respondent's approach to refund claims made in respect of calf feeders as of the time of its purchase should not be changed. He said that the Appellant's case was one, in essence, of legitimate expectation.

58. At this point it is necessary to return to the judgment of the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18 referred to above at paragraph 46. As already noted, the function of the Commissioner in determining this appeal is limited to identifying the relevant legislation, reaching a conclusion on its meaning and applying that meaning to the facts of the case. This is what has been done in the preceding paragraphs of this Determination. What the Commissioner is not empowered to do in fulfilling his statutory function in this instance is to take into consideration any different approach that may have been taken previously by the Respondent in relation to VAT refund claims concerning certain types of farm machinery. Nor is the Commissioner empowered to take into consideration whether the Appellant may, on the basis of any such different approach, have understood that it would be allowed the repayment of the VAT at issue and whether it acted on such understanding to its detriment. This being so, the arguments made on behalf of the Appellant concerning the fairness or equity of the decision made cannot have any impact on the outcome of the appeal. This outcome must be that, in accordance with the meaning of the 2012 Refund Order, the Appellant is not entitled to the repayment of VAT incurred in relation to its outlay on the automatic calf feeder. The appealed

decision of the Respondent of 7 June 2024 is therefore found to be correct and stands affirmed.

59. The Commissioner has sympathy for the Appellant's director in circumstances where he understood that in purchasing the automatic calf feeder his company, the Appellant, would be entitled to the refund of the VAT incurred. However, as stated above, it is not within the jurisdiction of the Commissioner to take such a factor into consideration in determining this appeal. The Appellant was correct to appeal to seek legal clarity.

Determination

60. The Respondent's decision of 7 June 2024 to refuse the Appellant's claim for the repayment of VAT in the amount of €3,519.00, incurred in respect of outlay on the purchase and installation of a Volac automatic calf feeder, is found to be correct and shall stand.

61. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

62. 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

63. 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.

Conor O’Higgins
Appeal Commissioner
30 May 2025