AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

231TACD2025

Between

[redacted]

Appellant

and

The 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 11 March 2024. The decision in question was the Respondent's refusal to repay to [redacted] ("the Appellant") Value Added Tax ("VAT") that he incurred in his acquisition of an evolution automatic calf feeder supplied by JFC Manufacturing Limited ("the automatic calf feeder"). The Appellant acquired the automatic calf feeder in July 2021 and the amount of VAT at issue is €2,438.

2. The Appellant's claim for the repayment of the VAT that he 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 his acquisition of the automatic calf feeder constituted "*outlay"* relating to "*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.

Background

4. On 6 July 2021, the Appellant purchased the automatic calf feeder from JFC Manufacturing Limited. The price that he paid was €13,038, of which €2,438 constituted VAT.

5. The sales invoice provided to the Appellant by JFC Manufacturing Limited listed several different items, which together made up the automatic calf feeder. The first item listed was an "*Evolution autofeeder"* ("the control unit"), the price of which was €8,600 excluding VAT. Next on the invoice were two feed stalls, each of which cost €1,000, also excluding VAT. The final item listed was a drinking bowl, for which there was no charge.

6. On 20 February 2024, the Appellant made a claim by way of the submission of a Form 58 Return for the repayment of the VAT that he incurred as a consequence of his purchase of the automatic calf feeder.

7. On 11 March 2024, this claim was refused by the Respondent. The reason given was "*Feeder not VAT refundable."*

8. On 24 June 2024, the Appellant appealed the Respondent's decision to refuse its VAT repayment claim to the Commission. In the grounds section of his Notice of Appeal, the Appellant stated*, inter alia*:-

> "*The machine was bought in 2021 and as a farmer I have 4 years to claim VAT back, these machines were VAT reclaimable up until November 2023 when the criteria seems to have changed. I was in contact with Revenue through 'My Enquiries' from 3 May until yesterday the 18 June. I was told that these machines were never VAT refundable. This is not correct. Then I was asked for pictures from a supervisor which shows my machine fixed in a purpose built shed connected to a special water booster. Then I was sent a link to a document that was prepared in May surrounding this issue. Even if there are issues now, my purchase was made in 2021 and I was entitled to wait the four years to claim VAT back. These machines were sold as VAT refundable machines in 2021 and VAT refunds were paid on these machines in 2021."*

Legislation

9. It is worth observing at this point that the law governing VAT can be complex and difficult to navigate, even for practitioners in the area. In this part of the Determination the European Union ("EU") and domestic legislation relevant to the matter at issue in this appeal is set out.

EU Legislation

10. 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.

11. 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)."*

12. 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

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

14. 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."*

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

16. 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

[…]"

17. 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.

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

19. 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 of 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.

20. 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."*

21. 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."

22. 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."*

23. 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."

24. 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."*

25. 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."

26. 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's evidence

27. The Appellant gave evidence at the appeal hearing. In addition, the Appellant called [redacted] of JFC Manufacturing Limited, to give evidence.

28. The Appellant began by describing the physical characteristics and function of the automatic calf feeder. He referred to it as, in essence, an electronic cow designed to feed calves. The control unit and the feed stalls were installed in the Appellant's farm shed. The control unit was connected to water and electricity and supplied temperature controlled milk to the feed stalls, which were bolted to the cement floor of the farm shed. Up to 80 calves were able to feed at the two stalls connected to the control unit. The dimensions of the control unit were approximately 1.5 meters high, 0.7 meters wide and 0.95 meters long. The dimensions of the feed stalls connected to the control unit were approximately 1 meter hight, 0.5 meters wide and 1.5 meters long.

29. In cross-examination, it was put to the Appellant that it would be a straightforward exercise to unbolt the feed stalls from the concrete floor and remove the automatic calf feeder from the farm shed. The Appellant did not agree that such a task would be straightforward. He suggested that it would in fact be necessary to get JFC Manufacturing Limited to unbolt and remove it.

30. The Appellant stated in evidence that when he purchased the automatic calf feeder, he did so with the belief that the VAT duly incurred, charged at 23%, would be repayable to him. He said that in November 2023, he read in the Irish Farmers Journal that the Respondent had changed its interpretation of what constituted VAT repayable to flat-rate farmers under the 2012 Refund Order. The Appellant said that, in particular, this article indicated that the Respondent was refusing to repay to flat-rate farmers VAT incurred by them in the purchase of automatic calf feeders.

31. In evidence, the Appellant also referred to the fact that in May 2024 the Respondent published a Tax and Duty Manual relating to the Flat-Rate Farmers Scheme, which indicated that VAT was not repayable to flat-rate farmers in respect of purchases of certain types of machinery, including automatic calf feeders. He made the point that the publication of this manual post-dated both his purchasing of the automatic calf feeder and his making of the claim for repayment.

32. In cross-examination, counsel for the Respondent queried why, if he believed upon purchasing the automatic calf feeder that the VAT incurred thereon was repayable, he had waited until February 2024 before making his repayment claim. The Appellant said

that he had waited in circumstances where doing so was in line with the saying "*the longer its in your* [i.e. the Respondent's] *pocket, the longer it's in my pocket."* He made the point that, in any event, his claim was made well within the four-year claim period allowed under legislation.

33. Mr [redacted], [redacted] of JFC Manufacturing Limited [redacted], was then called by the Appellant to give evidence. [redacted] said that JFC Manufacturing Limited had designed and developed the automatic calf feeder about seven years earlier and, since then, had sold roughly [redacted] such machines per year. He said that, as far as he was aware, hundreds of farmers who had purchased the automatic calf feeder had previously made claims for the repayment of the VAT thus incurred, which had not been refused by the Respondent. In his view, the Respondent had in 2023 changed its policy in relation to VAT incurred by flat-rate farmers in the purchase of automatic calf feeders and certain other types of farm equipment.

34. [redacted] said that of the roughly [redacted] automatic calf feeders sold by JFC Manufacturing Limited, he estimated that it had only ever been asked to come on site and remove three. This had occurred on the death of the purchasing farmers and the removal was carried out by JFC Manufacturing Limited so that the automatic calf feeders could be sold by the estates of the deceased farmers.

Submissions

Appellant

35. The Appellant first made the point that the automatic calf feeder, or at least the part thereof constituting the feed stalls, was bolted to the ground. In highlighting this, it was apparent that the Appellant was submitting that the Commissioner should find that, in accordance with Article 7 of the 2012 Refund Order, the purchase of the automatic calf feeder amounted to outlay relating to the construction, extension, alteration or reconstruction of the farm shed into which it was then installed.

36. The Appellant also submitted that the evidence suggested that at the time of his acquisition of the automatic calf feeder, the Respondent had a policy of allowing flat-rate farmers to reclaim the VAT incurred in purchasing such items. The Appellant submitted that it appeared that in November 2023, after his purchase was made, this policy changed and the Respondent began refusing such claims. He said that he bought the automatic calf feeder in July 2021 on the understanding that he would be able to recover the VAT thereby incurred. The Respondent's decision to refuse to allow his claim for repayment

was therefore one lacking in fairness and should be reversed by the Commissioner for this reason.

Respondent

37. Counsel for the Respondent began by emphasising that what was before the Commissioner was a claim made by the Appellant under the 2012 Refund Order. This legislation allows for the repayment of VAT referable to outlay incurred for specific purposes, of which the only one necessary to consider in the context of this appeal was that relating 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* […]"

38. Before proceeding to address the question of whether the outlay at issue related to this purpose, counsel for the Respondent submitted that it was important to bear in mind that the 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. Counsel for the Respondent, citing *Commission v United Kingdom,* Case C276/19, then submitted that as the 2012 Refund Order constituted a derogation from the harmonised system of VAT availed of by Ireland, its provisions had to be interpreted strictly.

39. Counsel for the Respondent also submitted that under national case law, the terms of the 2012 Refund Order, as a tax relieving provision, had to be interpreted strictly. Were the Commissioner to be of the view that there was ambiguity as to whether the Appellant's outlay on the automatic calf feeder related to the construction, extension, alteration or reconstruction of a farm building or structure, then his claim for the repayment of the VAT at issue had to be refused. In support of this submission, counsel for the Respondent cited the judgment of McDonald J in *Perrigo Pharma International DAC v McNamara* [2020] IEHC 552, in particular paragraph 74 therein.

40. Counsel for the Respondent submitted however that, in any event, there was no ambiguity in this case. All of the evidence given pointed to the Appellant's outlay being outlay incurred on the purchase of a piece or pieces of farm machinery, not on construction or the like. She submitted that the crux of the Appellant's case was that the automatic calf feeder, once installed, was an integral part of the farm shed, with the consequence that

its installation should be taken to amount to work carried out on the shed itself, and the purchase of the machine outlay relating to that work.

41. However, counsel for the Respondent submitted that the only facts that the Appellant could point to in support of this submission were that the feed stalls were bolted to the ground and that the control unit was plumbed-in and connected to electricity. She submitted that these facts fell far short of allowing the Appellant to make out his case that the outlay in question related to the construction, extension, alteration or reconstruction of his farm shed. Counsel for the Appellant made the point that Mr [redacted] had accepted in his evidence that it was possible to unbolt the feed stalls in order to remove them, and that he had said that this had in fact occurred in the past. She further submitted that the fact that the control unit was plumbed in and powered up did not make it part of the building in which it had been installed. Exactly the same could be said of a washing machine, however there was no question that the installation of that type of machine would ever be considered work relating to the construction, extension, alteration or reconstruction of the building into which it had been installed. By the same token, the installation of the automatic calf feeder should not be held by the Commissioner to constitute construction work carried out on the Appellant's farm shed.

42. Counsel for the Respondent submitted that in so far as the Appellant's submissions concerned the perceived unfairness of the refusal decision in circumstances where he said that he understood at the time of purchase that the VAT incurred would be repaid to him, this was not something that the Commissioner could take into consideration in making his determination on the matter at issue. The decision about whether the VAT was repayable had to be reached by reference to the meaning of the 2012 Refund Order, as interpreted by reference to the plain and ordinary meaning of the wording used therein. The appeal could not be decided by reference to the Appellant's own circumstances and whether the application of the legislation to those circumstances was thought by the Commissioner to be fair or unfair. In support of this, the Appellant cited the judgment of the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18.

Material Facts

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

    (i) the Appellant is a farmer;

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

    (iii) in July 2021, the Appellant purchased an automatic calf feeder supplied to him by JFC Manufacturing Limited;

(iv) the automatic calf feeder was comprised of a control unit and two feed stalls;

(v) the price, excluding VAT, of the control unit was €8,600 and that of the feed stalls €1,000 each;

(vi) the overall price, excluding VAT, of the automatic calf feeder was €10,600;

(vii) the rate of VAT charged in respect of the supply of the automatic calf feeder was 23%, amounting to €2,438;

(viii) the total cost to the Appellant of the automatic calf feeder, including VAT, was €13,038;

(ix) the automatic calf feeder was in a farm shed on the Appellant's farm, in which were housed calves;

(x) the feed stalls were secured to the concrete floor of the farm shed by means of bolts;

(xi) the control unit was connected to the water supply and electricity;

(xii) the Appellant made a claim by way of the filing of a Form 58 return for the repayment of the VAT in the sum of €2,438 that it had incurred in the purchase of the automatic calf feeder;

(xiii) on 11 March 2024, this claim was refused by the Respondent;

(xiv) on 24 June 2024, the Appellant appealed this refusal to the Commission.

Analysis

The function of the Commissioner

44. 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 it 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.

45. 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.

The 2012 Refund Order

46. 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 who 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 in relation to "*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."*

47. 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.

48. 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.

49. 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"."*

50. 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.

51. 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 relating to "*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.

52. 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.

53. The evidence suggests that what the Appellant purchased was a machine comprising two distinct elements. One element was a set of two feed stalls from which calves would get their milk. These were bolted to concrete flooring. It was apparent from the evidence of Mr Concannon that they could, in principle at least, be removed and re-sold. The second element was the milk producing part referred to as the control unit, which in its size was somewhat bigger than a washing machine. This was plumbed into the water supply and connected to electricity. Similarly to the feed stalls, it is clear that the control unit could 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.

54. 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 relating to 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 relating to 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.

55. In the appeal hearing the Appellant observed that when he bought the automatic calf feeder, he did so on the understanding that it was the Respondent's interpretation of the law that VAT incurred in respect of such farm machinery was repayable to flat-rate farmers. He said that the automatic calf feeder was "*sold to me as VAT refundable at the time"* and that it was only in May 2024, after his claim was made, that the Respondent produced a Tax and Duty Manual which expressly indicated that VAT incurred on calf feeders fell outside the scope of the 2012 Refund Order. It is clear from the evidence given and submissions made by the Appellant that he considered that the refusal to allow his claim in such circumstances was a decision lacking in fairness.

56. 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 repayment claims concerning outlay on 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 he would be allowed the repayment of the VAT at issue and whether he acted on such an understanding. This being so, the arguments made on behalf of the Appellant concerning the fairness or equity of the decision to refuse his claim 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 his outlay on the automatic calf feeder. The appealed decision of the Respondent of 11 March 2024 is therefore found to be correct and must stand.

57. The Commissioner has sympathy for the Appellant in circumstances where he understood that in purchasing the automatic calf feeder he 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

58. The Respondent's decision of 11 March 2024 to refuse the Appellant's claim for the repayment of VAT in the amount of €2,438, incurred in respect of outlay on the purchase and installation of an automatic calf feeder supplied by JFC Manufacturing Limited, is found to be correct and shall stand.

59. 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

60. 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

61. 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
28 August 2025