



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

37TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by [REDACTED] (“the Appellant”) under section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”), against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a refund of Value Added Tax (“VAT”) under the Value-Added Tax (Refund of Tax) (No. 15) Order, 1981 (S.I. 428/1981) (“VAT Refund Order”).
2. On 1 November 2024, the Commission notified the Appellant and the Respondent that the Commissioner intended to adjudicate on this appeal without a hearing and informed the parties that they could request a hearing within 21 days of that notification. Neither of the parties objected or requested a hearing of the appeal. Accordingly, this appeal is adjudicated without a hearing, under section 949U of the TCA 1997.

Background

3. The VAT Refund Order provides that VAT may be reclaimed on certain aids and appliances for use by people with disabilities. The Appellant claimed a refund of VAT in respect of VAT incurred in relation to works carried out on the floors of her home.
4. On 22 August 2024, the Respondent wrote to the Appellant (through a representative) to inform the Appellant of its decision to refuse the Appellant’s claim for a refund of VAT, on the ground that the Appellant’s claim did not fall under the remit of the VAT Refund Order.
5. In her appeal to the Commission, the Appellant acted through [REDACTED]. On 6 September 2024, the Appellant submitted a Notice of Appeal to the Commission, with supporting documentation. On 18 October 2024 and 22 October 2024 respectively, the Appellant submitted a Statement of Case and supporting documentation. On 31 October 2024, the Respondent submitted a Statement of Case. The Appellant submitted additional supporting documentation in November and December 2024. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

Legislation and Guidelines

6. The legislation relevant to this appeal is as follows:
7. Paragraph 2 of the VAT Refund Order provides:

“Article 2

In this Order -

"the Act" means the Value-Added Tax Act, 1972;

"disabled person" means a person who, as a result of an injury, disease, congenital deformity or physical or mental illness, or defect, suffers from a loss of physical or mental faculty resulting in a specified degree of disablement and cognate words shall be construed accordingly;

"qualifying goods" means goods other than mechanically propelled road vehicles which are aids or appliances, including parts and accessories, specially constructed or adapted for use by a disabled person and includes goods which, although not so specially constructed or adapted, are of such a kind as might reasonably be treated as so constructed or adapted having regard to the particular disablement of that person;

"specified degree of disablement" means, as regards a disablement to which the provisions of the Social Welfare (Occupational Injuries) Regulations, 1967 (No. 77 of 1967), apply, a degree of disablement which, if assessed in accordance with those provisions, would be not less than 30 per cent. and, as regards any other disablement, a degree of disablement of equivalent extent."

8. Paragraph 3 of the VAT Refund Order provides:

"Where a person establishes to the satisfaction of the Revenue Commissioners that -

(a) he has borne or paid tax which became chargeable on or after the 1st day of March, 1981, in respect of the supply to or importation by him of qualifying goods, and

(b) he fulfills the conditions which are specified in paragraph 4 of this Order, and such other conditions as the said Commissioners may impose,

he shall be entitled to repayment of the amount of tax so borne or paid."

9. Paragraph 4 of the VAT Refund Order provides:

"Article 4

The conditions to be fulfilled by a person referred to in paragraph 3 of this Order are -

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

(b) (i) in case he is the person for whose use the goods referred to in paragraph 3 of this Order were supplied or imported, he shall, by the production of such evidence as may be acceptable to the said Commissioners, establish that he is a disabled person

and that the goods are for the purpose of assisting him to overcome his disability in the performance of essential daily functions or in the exercise of a vocation, and that the goods are so used by him;

(ii) in case he is not the person for whose use the said goods were supplied or imported, he shall, by the production of such evidence as may be acceptable to the said Commissioners, establish that the goods were supplied by him, other than in the course of business, to a particular person who is a disabled person for the purpose of assisting that person to overcome his disability in the performance of essential daily functions or in the exercise of a vocation, and that the goods are so used by that other person;

(c) he shall by the production of invoices, provided in accordance with section 17 (12) (a) (i) of the Act, or by the production of receipts for tax paid on goods imported, establish the amount of tax borne or paid to which the claim relates;

(d) he shall establish that he is not entitled to a deduction under section 12 of the Act or a repayment under section 20 (2) of the Act or under a regulation or order, other than this Order, made under the Act in respect of any portion of the tax specified in subparagraph (c) of this paragraph;

(e) he shall establish that the tax specified in subparagraph (c) of this paragraph does not form any part of expenditure incurred by him which has been or will be met, directly or indirectly, by the State, by any board established by statute, or by any public or local authority.”

Submissions

Appellant

10. The Appellant provided a detailed background to her claim for a refund of VAT in the documentation provided. The Notice of Appeal enclosed a letter dated 5 September 2024, which submitted (among other things):

*“The Appellant is [REDACTED]
[REDACTED]
[REDACTED] the floor in the front hall and a large part of the floor in her living room had become more progressively unstable underfoot... The future viability of the entire floor and indeed the Appellant’s future mobility in and around her home became paramount. The engineer’s report described it best, in that “it was spongy and moved underfoot”*

...soon after a visit by the DCC engineer, we were informed that a figure of 30K had been sanctioned. What is important to note that there was no requirement for the appellant to contribute 5% of the grant... This is way past trying to maintain mobility in one's home or installing a plethora of purpose-built highly engineered products in order to meet VAT requirements.... I think it is fair to assume that the intention of all the above is to assist people with a disability and disablement, within reason... The keywords throughout all the relevant documentation clearly state disability, disablement, mobility in one's home, safe access, the ability to stay in one's home etc and we feel the appellant meets all these criteria. References to VAT requirements and all forms in the DCC website appear to be a secondary consideration."

11. The Appellant's Statement of Case enclosed a letter dated 16 October 2024, which submitted (among other things):

[REDACTED]
[REDACTED]
[REDACTED] The quotation was furnished to DCC and following a visit from the inspector a grant of €30,000 was approved and the work commenced....under "qualifying goods" the reference to "goods which, although not so specially constructed or adapted, are of such a kind as might reasonably be treated as so constructed or adapted having regard to the particular disablement of that person"; I will return to this in my summation, regarding a central part of all legislation; "the spirit of the proposed legislation"...What the intention of a piece of legislation is or why a particular phrase or wording was used is central and very important in our case.... To me it is clear that there was no scheme available that would actually meet our needs at that point in time!...In relation to the payment of VAT, there is no reference when you enter the DCC website and precious little in the grant details themselves, to emphatically note that VAT could be an issue....The Department of Housing, Local Government and Heritage recently launched a report on this very subject entitled Review of the Housing Adaptation Grant for Older People and People with a Disability.... It is clear in this report that our issues around VAT was an issue for several of the "stakeholders" ...Case law changes the interpretation of legislation among other things. A Higher court judge will give his opinion on what he sees as the import of a section of legislation or what is meant or intended by the spirit of a phrase."

12. Additional documentation provided by the Appellant in November and December 2024 submitted (among other things):

"In our initial appeal document we have clearly stated that what we asked for was "remediation" work", not a new floor"...I also feel you are not taking "the spirit of the legislation" into account, as on reading same, it is clear that the S.I. has a very broad scope that is open to different meanings depending who reads it...[the Appellant] is eligible for a stair lift at a cost in excess of 10K, she could also avail of a selection of hand rails and grab rails all about the house, higher toilets with specific grab rails, access ramps to the front and back door and any amount of aids to help keep her mobile. However, what's point if the entire floor is unstable".

Respondent

13. In its Statement of Case, the Respondent submitted (among other things):

"[REDACTED] made an application for a refund of VAT for aids and appliances for use by persons with a disability under the VAT Refund Order. The person with disabilities was [REDACTED]. There was no occupational therapy report or other medical evidence supplied with the claim, however the application form for the Vat refund stated that the disability was [REDACTED]. The claim was in respect of the flooring works carried out on her home. The evidence provided with the claim and further evidence supplied in later correspondence show that the works were carried out due to the deterioration of the floors. [REDACTED]

*[REDACTED]
[REDACTED]
[REDACTED]. The Housing Adaptation grant approval letter submitted with the claim described these works as ancillary works. ...*

The VAT Refund Order provides reliefs on goods which have been specially constructed or adapted for use by a disabled person or might reasonably be treated as so constructed or adapted having regard to the particular disablement of the person.

The VAT Refund Order also provides that a person must provide evidence that is acceptable to the Commissioners to establish that the goods are for the purpose of assisting the disabled person overcome his disability in the performance of essential daily functions.

[REDACTED]
[REDACTED]
[REDACTED] He was advised during a telephone call on 17th May 2024 that the work that was the subject of this claim did not come within the remit of [the] Vat refund scheme based on the information provided there was no special adaptation carried out to the floor for the purpose of assisting a person with a disability.

Further correspondence submitted to support the Vat refund application advises that initially the application to the County Council was for grant approval for 'remedial work' to be carried out to the main areas at ground floor level as this had become a problem for [REDACTED] mobility. Extracts from an engineer's report which was carried out because of the grant application suggest that the floor needed urgent remediation work. In addition to letters to the county council in support of the applicants grant application a doctor's certificate was also submitted. [REDACTED]
[REDACTED]

[REDACTED] application for a Vat refund was refused on the basis that the evidence was not submitted to show that the goods have been specially constructed or adapted having regard to a particular disablement of the person in question, and that the goods are for the purpose of assisting them to overcome their disability in the performance of essential daily functions. Repair works carried out on a property due to deterioration would not fall under the remit of the refund order.

[REDACTED] then appealed the decision. In her notice of appeal the appellant's personal details and medical details are stated along with the background to the work that was carried out and the background to the requirement to have this work completed. A large part of the notice of appeal relates to the City Council's grant scheme for homeowners and information that is provided by the City council on the various grant schemes available to assist with adaptation works, which are necessary to allow the applicant to remain living in their own home.

The remediation works to repair and replace flooring at the property still does not meet the conditions of the Order which specifically state that the specially constructed or adapted items must be for the use of the person with disabilities and the qualifying goods purchased are for the purpose of assisting that person to overcome his disability in the performance of essential daily functions or in the exercise of a vocation, and that the goods are so used [by] that person."

Material Facts

14. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 14.1. In 2024, the Appellant claimed a refund of VAT under the VAT Refund Order in respect of repairs carried out on the floors of her home.
- 14.2. On 22 August 2024, the Respondent refused a refund of VAT on the ground that the claim fell outside the remit of the VAT Refund Order.
- 14.3. On 6 September 2024, the Appellant submitted a Notice of Appeal to the Commission.

Analysis

15. This appeal relates to the Respondent's refusal of the Appellant's claim for a refund of VAT under the VAT Refund Order. The appropriate starting point is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J stated at paragraph 22 that:

"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".

16. However, it is also necessary to observe that in the Court of Appeal case of *Hanrahan v The Revenue Commissioners* [2024] IECA 113, the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated (among other things) that:

"Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake...

In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must

apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation”.

17. This appeal involves consideration of the applicability of the VAT Refund Order to the facts of the Appellant’s case. The Commissioner therefore considers it appropriate to set out well-settled principles of statutory interpretation.
18. In relation to the approach that is required to be taken in relation to the interpretation of taxation statutes, the starting point is generally accepted as being the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, in which Kennedy CJ stated:

“The duty of the Court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament...”

19. The Commissioner also adopts the summary of the relevant principles to be applied to statutory interpretation, as helpfully set out by McDonald J. in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 at paragraph 74:

*“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 Ltd v. The Revenue Commissioner* [2020] IESC 60. 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”.

VAT Refund Order

20. Paragraph 3 of the VAT Refund Order provides that a person is entitled to a repayment of VAT where the person satisfies the Respondent that the person meets two conditions, namely that: “he has borne or paid tax which became chargeable on or after the 1st day of March, 1981, in respect of the supply to or importation by him of qualifying goods” (emphasis added) and “he fulfills the conditions which are specified in paragraph 4 of this Order, and such other conditions as the said Commissioners may impose”.
21. Paragraph 2 of the VAT Refund Order defines “qualifying goods” as “goods other than mechanically propelled road vehicles which are aids or appliances, including parts and accessories, specially constructed or adapted for use by a disabled person and includes goods which, although not so specially constructed or adapted, are of such a kind as might reasonably be treated as so constructed or adapted having regard to the particular disablement of that person”.
22. The wording used in Paragraph 2 of the VAT Refund Order to define “qualifying goods” indicates that the goods must satisfy certain conditions in order to be “qualifying goods”. The goods must be “aids or appliances”. They must also be “specially constructed or adapted for use by a disabled person”; or if they are not so specially constructed or adapted, might reasonably be treated as such having regard to the particular disablement of that person.
23. The Commissioner notes that the first condition to be satisfied is that the goods are “aids or appliances”. In considering the ordinary and natural meaning of those words, the Commissioner has consulted the Oxford English Dictionary (“OED”). The OED contains a few definitions of the word “aid”, including “*help, assistance, support*” and “*economic assistance given to a poor and underdeveloped country*”. Having regard to the context of paragraph 2 of the VAT Refund Order and the fact that the word “aid” is associated with the word “appliance”, the Commissioner is satisfied that the most apt definition is the following: “*a means or source of help or assistance; anything used to assist in performing a task, esp. (in later use) a tool, device, or other object used in this way*”. The OED defines “appliance” as “*something applied as a means to an end; a piece of apparatus. Now often: spec. a utensil or other piece of (electrical) equipment designed to perform a specific (usually domestic) task (cf. household appliance n.)*”.
24. There is no dispute in this appeal that the Appellant claimed a refund of VAT in respect of repairs carried out on the floors of her home and the Commissioner has found this to be a material fact. The Commissioner has therefore considered whether those floor repairs can be classified as “qualifying goods” for the purposes of paragraph 3 of the VAT

Refund Order. In considering this matter, the Commissioner has had regard to all of the documentation provided, which includes a quotation with a description of works: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]". However, the Commissioner is not satisfied that the floor repairs could reasonably be characterised as a "tool, device or other object used to assist in performing a task" and therefore an "aid". Neither does the Commissioner consider that the floor repairs could reasonably be viewed as "a piece of (electrical) equipment designed to perform a specific (usually domestic) task" and therefore an "appliance". The Commissioner believes that to classify the floor repairs as an "aid" or "appliance" would be to strain the ordinary and natural meaning of those words.

25. The Commissioner has then gone on to consider whether the repairs of the Appellant's floors were "specially constructed or adapted for use by a disabled person", or might reasonably be treated as such, having regard to the particular disablement of the person. The Commissioner notes that the repairs were carried out to fix unstable and spongy flooring in the Appellant's home. The Appellant submits that: *"In our initial appeal document we have clearly stated that what we asked for was "remediation" work", not a new floor* and *"the future viability of the entire floor and indeed the Appellant's future mobility in and around her home became paramount"*. However, the Commissioner does not understand the Appellant to contend that there was any special construction of, or adaptation to, the flooring, for the use of a disabled person. More fundamentally, no evidence has been presented to the Commissioner to show that this was the case. Furthermore, the Commissioner does not identify any basis on which to find that the floor repairs might reasonably be treated as specially constructed or adapted for use by a disabled person. Once more, in forming these views, the Commissioner has considered all of the documentation provided, including the description of the floor repairs.
26. It follows from the above that the Commissioner is not satisfied that the repairs of the Appellant's floors are "qualifying goods" for the purposes of paragraph 3 of the Vat Refund Order.
27. The Appellant's submissions make a number of references to the "spirit of the legislation". They maintain that the legislation is open to a broader reading, emphasising that the intention of the legislation is to assist people with disabilities. It therefore seems to the Commissioner that the Appellant's submissions implicitly accept that the floor repairs fall

outside the literal meaning of the provisions in the VAT Refund Order and instead invite the Commissioner to adopt a broader reading of the VAT Refund Order.

28. The Commissioner is mindful of the principles summarised by the High Court in *Perrigo*, as referenced above. Having considered the VAT Refund Order as a whole, the Commissioner does not find any compelling reasons to depart from the ordinary meaning, when seen in context, of the words used to define “qualifying goods”. The Commissioner does not consider that the meaning of those words, when seen in context, is imprecise or ambiguous. Accordingly, the Commissioner is not satisfied that she is permitted to adopt a purposive interpretation of those words. Moreover, insofar as the Appellant invites the Commissioner to find that the floor repairs are “qualifying goods” because the purpose of the legislation is to assist people with disabilities, it seems to the Commissioner that this is a broad purpose which could encompass many things subject to VAT. Yet the Commissioner is cognisant of the principles enunciated in *Perrigo*, which caution against enlarging the operation of a tax exemption beyond the clear and express terms of the statute.
29. The Commissioner has considered the background to the Appellant’s claim for a VAT refund. The Commissioner acknowledges that it was felt to be particularly necessary for the floor repairs to be carried out in light of the Appellant’s health and mobility issues. The Commissioner further acknowledges that Dublin City Council awarded the Appellant a grant which did not cover VAT, as well as the Appellant’s submissions on the nature of that grant. Nonetheless, the Commissioner does not accept that it follows from the particular set of circumstances outlined that the floor repairs must therefore count as “qualifying goods” for the purposes of the VAT Refund Order. For the reasons set out above, the Commissioner considers that to so find would be to expand the scope of the relief provided by the VAT Refund Order, against which the Supreme Court cautioned in *Doorley*.
30. Consequently, the Commissioner finds that the Appellant’s claim for a refund of VAT fell outside the ambit of the VAT Refund Order.
31. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Commissioner acknowledges the particular circumstances which the Appellant outlined on appeal. The Appellant was entitled to check whether the Respondent’s refusal of the claim for a refund of VAT was correct. However, the Commissioner must make a determination in accordance with the legislation.

Determination

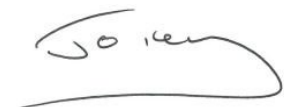
32. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in showing that the Respondent was incorrect to refuse the Appellant's claim for a refund of VAT under the VAT Refund Order.
33. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 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

34. 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

35. 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.



Jo Kenny
Appeal Commissioner
13 January 2025