



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

56TACD2025

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a repayment of VAT, in accordance with the provisions of section 99(4) of the Value-Added Tax Consolidation Act 2010 (“VATCA 2010”), in respect of the chargeable periods 01/05/2017 to 30/06/2017 and 01/09/2013 to 01/09/2014 (“the relevant periods”), in the total amount of €1,686.
2. On 16 May 2024, the Appellant duly appealed to the Commission. By agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U TCA 1997.
3. The Appellant submitted a Notice of Appeal and accompanying documentation in support of its appeal. In addition, the Appellant submitted a Statement of Case which built on the Appellant’s Notice of Appeal. The Commissioner has received a Statement of Case from the Respondent. The Commissioner has considered all of the documentation submitted by the parties in support of their respective positions in this appeal

Background

4. On 28 October 2023 and 17 April 2024, the Appellant filed its outstanding VAT3 returns for the relevant periods. The returns filed, which are the subject of this appeal, are set out in the Respondent’s Statement of Case as follows:

Type	Claim Period	Due Date	Filed Date
Return	September – October 2013	19 th November 2013	17 ^h April 2024
Return	November-December 2013	19 th January 2014	17 ^h April 2024
Return	January-February 2014	19 th March 2014	17 ^h April 2024
Return	March-April 2014	19 th May 2014	17 ^h April 2024
Return	May - June 2014	19 th July 2014	17 ^h April 2024
Return	July - August 2014	19 th September 2014	17 ^h April 2024
Return	September – October 2014	19 th November 2014	17 ^h April 2024
Amended Return	May- June 2017	19 th July 2017	28 ^h October 2023

5. On 15 December 2023, the repayment amount that generated on foot of the amended return filed on 23 October 2023, for the relevant periods May 2017 to June 2017, was disallowed. In this regard, on 2 April 2024, the Respondent issued a notification to the Appellant stating that the claim for repayment for that period was disallowed as the claim for repayment was not made within the relevant four year period.
6. On 25 April 2024, the Respondent wrote to the Appellant to state that the repayment amounts that were generated on foot of the returns filed on 17 April 2024, for the relevant periods 2013 to 2014 were disallowed, as the claims for repayment were not made within the relevant four year period. In its Statement of Case, the Respondent set out a table of the disallowed claims for repayment of VAT as follows:

Claim Period	Credit in period	Liability Filed	Disallowed Refund
Sept-Oct 2013	250.00	0.00	250.00
Nov- Dec 2013	250.00	0.00	250.00
Jan - Feb 2014	250.00	0.00	250.00
Mar-Apr 2014	250.00	0.00	250.00
May - Jun 2014	250.00	0.00	250.00
Jul – Aug 2014	250.00	0.00	250.00
Sept – Oct 2014	186.00	0.00	186.00

7. The Respondent submitted that on review, the original refund for the relevant periods May to June 2017, filed on the 15 October 2018, was found not to have issued, as there were no bank details on file at the time. On 7 August 2024, the Respondent contacted the Appellant to inform it that the Respondent was in agreement that the amount of the repayment of VAT due for the relevant periods May 2017 to June 2017, could be offset. The Respondent submitted that the offset of this amount occurred on 7 August 2024.
8. The Respondent submitted that it refused the repayment of income tax for the relevant periods 2013 to 2014, in accordance with section 99(4) VATCA 2010, which precluded the Respondent from making a repayment of tax paid where a claim was not made within 4 years after the end of the taxable period to which it relates.

Legislation and Guidelines

9. The legislation relevant to this appeal is as follows:-
10. Section 99 VATCA 2010, General provisions on refund of tax, provides that:

- (1) *Subject to subsections (2) and (3), where in relation to a return lodged under Chapter 3 of Part 9 or a claim made in accordance with regulations, it is shown to the satisfaction of the Revenue Commissioners that, as respects any taxable period, the amount of tax (if any) actually paid to the Collector-General in accordance with Chapter 3 of Part 9 together with the amount of tax (if any) which qualified for deduction under Chapter 1 of Part 8 exceeds the tax (if any) which would properly be payable if no deduction were made under Chapter 1 of Part 8, the Commissioners shall refund the amount of the excess less any sums previously refunded under this subsection or repaid under Chapter 1 of Part 8 and may include in the amount refunded any interest which has been paid under section 114.*

.....

- (4) *A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates.*
- (5) *Where the Revenue Commissioners refund any amount due under subsection (1) or section 100, they may, if they so determine, refund any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution*
- (6) *The Revenue Commissioners shall not refund any amount of tax except as provided for in this Act or any order or regulations made under this Act.*

Submissions

Appellant's submissions

11. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in its Notice of Appeal and Statement of Case:-

"I submitted the Value Added Tax returns for the periods to which the refunds relate prior to the four year deadline. However, the refunds were not made at the time due to other Income Tax and Value Added Tax returns being outstanding at the time that the Value Added Tax returns were submitted.

.....

The returns generated a refund.

The refund was not paid because of other outstanding Income Tax and Value Added Tax returns.

I enclose a copy of correspondence from the Revenue Commissioners dated 31st October 2018 acknowledging a VAT refund was due for the period May/June 2017

Also enclosed is a copy of correspondence from the Revenue Commissioners dated April 2nd and April 25th 2024 stating that the VAT returns were made after the four year deadline for a VAT repayment". [sic]

Respondent's submissions

12. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

"

2.1 Fact 1

The due date for the VAT 3 returns subject to appeal are as follows -

2.2 Fact

All returns for September-October 2013 to September-October 2014 were received through My Enquiry's on the 17th April 2024.

An amended return for May-June 2017 was filed on ROS the 28th October 2023.

2.3 Fact 3

<i>Type</i>	<i>Claim Period</i>	<i>Due Date</i>	<i>Filed Date</i>
<i>Return</i>	<i>September – October 2013</i>	<i>19th November 2013</i>	<i>17th April 2024</i>
<i>Return</i>	<i>November-December 2013</i>	<i>19th January 2014</i>	<i>17th April 2024</i>
<i>Return</i>	<i>January-February 2014</i>	<i>19th March 2014</i>	<i>17th April 2024</i>
<i>Return</i>	<i>March-April 2014</i>	<i>19th May 2014</i>	<i>17th April 2024</i>
<i>Return</i>	<i>May - June 2014</i>	<i>19th July 2014</i>	<i>17th April 2024</i>
<i>Return</i>	<i>July - August 2014</i>	<i>19th September 2014</i>	<i>17th April 2024</i>
<i>Return</i>	<i>September – October 2014</i>	<i>19th November 2014</i>	<i>17th April 2024</i>
<i>Amended Return</i>	<i>May- June 2017</i>	<i>19th July 2017</i>	<i>28th October 2023</i>

The refunds that generated for September-October 2013 to September-October 2014 inclusive were disallowed on the 24th April 2024, notification issued to the customer on the 25th April 2024.

All credits in periods were transferred against estimated liabilities as returns for the period had not been filed. All credits came from Vat credits for periods between September 2017 and December 2017.

<i>Claim Period</i>	<i>Credit in period</i>	<i>Liability Filed</i>	<i>Disallowed Refund</i>
<i>Sept-Oct 2013</i>	<i>250.00</i>	<i>0.00</i>	<i>250.00</i>
<i>Nov- Dec 2013</i>	<i>250.00</i>	<i>0.00</i>	<i>250.00</i>
<i>Jan - Feb 2014</i>	<i>250.00</i>	<i>0.00</i>	<i>250.00</i>
<i>Mar-Apr 2014</i>	<i>250.00</i>	<i>0.00</i>	<i>250.00</i>
<i>May - Jun 2014</i>	<i>250.00</i>	<i>0.00</i>	<i>250.00</i>
<i>Jul – Aug 2014</i>	<i>250.00</i>	<i>0.00</i>	<i>250.00</i>
<i>Sept – Oct 2014</i>	<i>186.00</i>	<i>0.00</i>	<i>186.00</i>

2.4 Fact 4

The refund that generated on foot of the amended return filed for May-June 2017 was disallowed on the 15th December 2023, notification issued to the customer on the 2nd April 2024. Return was amended from a repayable of €109.00 to a Nil liability. Payments had been made to the period in advance of the original claim of €109. As amended return was filed outside of the 4-year period, the full value of the payments on file when the amended return of Nil was filed were refused.

2.5 Fact 5

On review, original refund for the May-June 2017 period filed on the 15th October 2018 was found not to have issued as there were no bank details on file for the customer at the time.

Contact was made with [REDACTED] and Revenue have agreed to offset this refund to Income Tax liabilities on file. Offsets took place on the 7th August 2024. We believe this appealed period to be settled, with only the periods from Sept-13 to Oct-14 still in dispute.

.....”

Material Facts

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

- 13.1. On 28 October 2023 and 17 April 2024, the Appellant filed its outstanding VAT3 returns for the relevant periods.
- 13.2. On 15 December 2023, the repayment amount that generated on foot of the amended return filed on 23 October 2023, for the relevant periods May 2017 to June 2017, was disallowed.
- 13.3. On 2 April 2024, the Respondent issued a notification to the Appellant stating that the claim for repayment for the relevant periods May 2017 to June 2017 was disallowed as the claim for repayment was not made within the relevant four year period.
- 13.4. On 25 April 2024, the Respondent wrote to the Appellant to state that the repayment amounts that were generated on foot of the returns filed on 17 April 2024, for the relevant periods 2013 to 2014 were disallowed, as the claims for repayment were not made within the relevant four year period.
- 13.5. The Respondent submitted that on review, the original refund for the relevant periods May to June 2017, filed on the 15 October 2018, was found not to have issued as there were no bank details on file at that time.
- 13.6. On 7 August 2024, the Respondent contacted the Appellant to inform it that the Respondent was in agreement that the amount of repayment of VAT due for the relevant periods May 2017 to June 2017, could be offset. The Respondent submitted that the offset of this amount occurred on 7 August 2024.
- 13.7. The Respondent submitted that it refused the claim for repayment for the relevant periods 2013 to 2014, in accordance with section 99(4) VATCA 2010, which precluded the Respondent from making a repayment of tax paid where a claim was made outside of the four year time limit.
- 13.8. On 16 May 2024, the Appellant appealed to the Commission the Respondent's refusal of the Appellant's claim for repayment for the relevant years.

Analysis

14. The Appellant's appeal relates to a refusal by the Respondent to permit a claim for a repayment of VAT pursuant to section 99(4) VATCA 2010, for the relevant periods as the claim for repayment of tax for the relevant periods was not made within four years after the end of the taxable period to which it relates.

15. The appropriate starting point for the analysis of the issues 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. This proposition is now well established by case law, for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. stated 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. The Commissioner also considers it useful herein to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated that:

“Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute...”

Section 99(4) VATCA 2010

17. The Appellant has been denied a repayment of income tax by the Respondent on the grounds that the Appellant does not meet the criteria outlined in section 99(4) VATCA 2010, namely that a claim for repayment of tax for the relevant periods was not made within four years after the end of the taxable period to which it relates.
18. The Commissioner has considered the Appellant's submissions as set out in the Notice of Appeal and Statement of Case. In addition, the Commissioner has considered the Respondent's submissions as set out in its Statement of Case, in relation to the repayment claim.
19. The Commissioner notes that on 7 August 2024, the Respondent contacted the Appellant to inform it that the Respondent was in agreement that the amount of repayment of VAT due for the relevant periods May 2017 to June 2017, could be offset. The Respondent submitted that the offset of this amount occurred on 7 August 2024. Therefore, the Commissioner is satisfied that the remaining amounts at issue in this appeal relate to the relevant periods 2013 to 2014 only.
20. Section 99(4) of the VATCA 2010 provides that “[a] claim for a refund ... may be made only within 4 years after the end of the taxable period to which it relates”. In addition section 99(6) of the VATCA 2010 provides that “[t]he Revenue Commissioners shall not

refund any amount of tax expect as provided for in this Act or any order or regulations made under this Act”.

21. The Commissioner notes that the facts of this appeal are such that on 17 April 2024, the Appellant filed its outstanding VAT3 returns for the relevant periods 2013 to 2014. Consequently, on 25 April 2024, the Respondent wrote to the Appellant to state that the repayment amounts that were generated on foot of the returns filed on 17 April 2024, for the relevant periods 2013 to 2014 were disallowed, as the claims for repayment were not made within the relevant four year period, pursuant to section 99(4) VATCA 2010.
22. The Commissioner is satisfied that in order for the Respondent to permit a claim for repayment, the Appellant was required to submit that claim for repayment, within four years after the end of the taxable period to which it relates. As the Appellant filed its VAT3 returns for the relevant periods 2013 to 2014, in 2024, the Commissioner finds that the Respondent was correct in its decision to refuse the claims for repayment of VAT for the relevant periods 2013 to 2014.
23. The wording in section 99 VATCA 2010 does not provide for extenuating circumstances in which the four year rule might be mitigated or reconsidered. As such, the Commissioner does not have the authority or discretion to direct that repayment be made to the Appellant where the claim for repayment falls outside the four year period specified in section 99(4) VATCA 2010.
24. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four year statutory limitation period. These determinations may be found on the Commission website¹.
25. As set out above, 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. The Commissioner determines that a repayment is not available to the Appellant in relation to tax overpaid in respect of the relevant periods 2013 to 2014, as a valid claim for repayment was not made within the four year statutory period contained in section 99(4) VATCA 2010. The Commissioner has no discretion to assist in these circumstances due to the four year rule prescribed by legislation. Hence, the appeal is denied.

Determination

26. As such and for the reasons set out above, the Commissioner determines that the Appellant’s appeal has failed and the Appellant has not succeeded in showing that the

¹ www.taxappeals.ie

Respondent was incorrect to apply the provisions of section 99(4) VATCA 2010 in respect of the claims for repayment for the relevant periods 2013 to 2014.

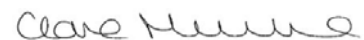
27. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
28. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

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

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



Claire Millrine
Appeal Commissioner
6 February 2025