AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

36TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

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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 24 February 2025. 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 a three-phase power take-off generator ("the PTO generator"). The Appellant acquired the PTO generator on 20 January 2023 and the amount of VAT at issue is €1,138.50.

2. The Appellant's claim for the repayment of the VAT that he incurred was made pursuant to Article 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 themself charges VAT to those who receive their agricultural goods or services supplied for consideration.

3. The issue that falls to be considered in this appeal is whether, for the purposes of the 2012 Refund Order, the VAT incurred by the Appellant as a consequence of his acquisition of the PTO generator 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."*

Background

4. The Appellant is a flat-rate famer who operates a dairy farm located in County [redacted]. On this farm is a building in use as the Appellant's dairy.

5. On 20 January 2023, the Appellant purchased the PTO generator from the supplier [redacted] ("the supplier"). The price he paid was €4,950, of which €1,138.50 was VAT.

6. On 14 November 2024, the Appellant made a claim by means of the submission of a Form 58 return for the repayment of VAT that he had incurred in respect of works that he had carried out to a building on his farm in use as a dairy and on a roadway also located on his farm.

7. Included with the claim form was a copy of an invoice dated 20 January 2023, on which were listed two separate "Jobs". The first was a "*70 KVA Fixed PTO Generator + PTO*

Shaft", the price of which was €4,950 including VAT. The second was *"3 phase distribution board + change over switch for milking parlour",* the price of which was €3,300 including VAT. Near the bottom of the invoice was a ticked box, beside which were the words "*Materials Only".* Boxes for "*Materials + Labour"* and *"Labour Only"* were not ticked.

8. By way of explanation, a PTO generator is a generator that is connected to the driveshaft of a tractor by means of a detachable metal shaft. It is the power delivered to a PTO generator by a tractor's engine, through its driveshaft, that generates electricity that is transferred to a distribution board. PTO generators are typically used as a source of backup electricity.

9. On 24 February 2025, the Appellant's claim for the refund of the VAT incurred was "*partially approved"* by the Respondent. Part of the claim that was refused concerned the VAT incurred in respect of the purchase of the PTO generator, with the reason given for refusal being "*PTO generators are not allowable".* It was an agreed fact in the appeal that the Appellant's claim for the repayment of the VAT incurred on the other item listed on the invoice from the supplier, namely the three-phase distribution board and change over switch, was allowed by the Respondent.

10. On 25 February 2025, the Appellant appealed the Respondent's refusal of his claim to the Commission. In the grounds of appeal section of the Notice of Appeal, the Appellant stated:-

> "*Revenue denied the reclaiming of VAT (unregistered farmers form 58) on a fixed generator. Invoice states that it is a fixed generator, and pictures were provided showing its fixed installation, i.e. it is not a mobile generator."*

11. Later in the appeals process, the Appellant stated in his Statement of Case that:-

> "*We believe that confusion arose as this is a tractor driven PTO generator. However this generator is fixed to the ground inside a shed and wired directly to the fuse board. The tractor attaches outside the building through a hole in the wall."*

Legislation

12. 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

13. Title XII of 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.

14. Title XIII of the VAT Directive concerns 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)."*

15. 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

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

17. 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."

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

19. 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

[…]"

20. 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.

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

22. 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.

23. 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."*

24. 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."

25. 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."*

26. 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."

27. 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."*

28. 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."

29. Of relevance to this Determination is that under SI 267 of 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

30. The Appellant gave evidence at the hearing of the appeal. Asked by the Commissioner to describe a PTO generator, he stated:-

"*A PTO generator is a big dynamo* […] *and we connect the power from the tractor through this PTO, which is called a power take-off. It delivers the power from the tractor to turn the generator."*

31. The Appellant gave evidence that on his farm was a building that functioned as his dairy. Most of the space in the dairy was in use as a milking parlour for cattle. Adjoining the milking parlour was a narrow room, which the Appellant called "*the plant room",* in which were located the three-phase distribution board and changeover switch, as well as the PTO generator. The PTO generator, which was connected to the three-phase electricity supply, was mounted atop a stand that was bolted to the concrete floor of the plant room. It was positioned beside a part of the exterior wall of the dairy that had been broken through to create a hole, through which could pass the shaft connecting the generator to the tractor powering it.

32. The Appellant gave evidence that in 2022 and 2023, construction work had been carried out to the dairy. This work involved the extension and refurbishment of the building, and VAT that he had incurred in respect thereof had been the subject of successful refund claims, made pursuant to the 2012 Refund Order in 2022 and early 2023. In cross-examination, the Appellant accepted that the VAT that had been refunded to him on foot of his claims was €9,218 for 2022 and €24,700 for 2023.

33. Part of this construction work in respect of which the Appellant received repayment related to his purchase of the three-phase distribution board, the supply of which was also included on the invoice listing his purchase of the PTO generator. Another part related to the supply of a new milking machine that was installed in the milking parlour.

34. The Appellant did not give evidence about the precise physical dimensions of the PTO generator. However, from photos of it in situ in the dairy and from photos of similar PTO generators in the relevant manufacturer's brochure, included in the appeal booklets, it is apparent that it rises to about waist height when mounted on its stand and is, approximately, between a meter and a meter and a half in length. The PTO generator is connected to the three-phase distribution board and thus is capable of delivering power to the dairy.

35. In cross-examination, counsel for the Respondent asked the Appellant about the circumstances in which the PTO generator would be used. In reply the Appellant stated: "*Whenever the electricity goes down. During the spring this year, I'd say it was on about five times* […]". He added, however, that as power outages tend to occur most frequently in the winter, that was the season in which it was most regularly used to power the dairy. He also made the point that, when the PTO generator was first installed, it functioned for a period of nine months as the dairy's sole supply of electricity in circumstances where there was a delay on the part of the ESB in connecting the building to the three-phase network. The Appellant emphasised that having a reliable source of backup power for the dairy was essential.

36. The Appellant was asked by counsel for the Respondent whether the PTO generator could be unbolted from the concrete floor of the dairy, disconnected from the three-phase distribution board, and removed. The Appellant replied that it could be, though he stressed that he would have no reason to remove it and had no intention of ever doing so. In relation to process of electrical disconnection, he stated that he would require the services of an electrician to manage this. The Appellant made the point that his single-phase PTO generator previously in situ in the same location had, once installed in similar fashion, never been removed until the time of its replacement in January 2023 by the PTO generator the subject of his claim under appeal to the Commission.

37. In cross-examination, the Appellant accepted that after he had submitted his claim in respect of the VAT incurred on the supply of the PTO generator, the Respondent had asked that he provide an invoice relating to its installation. He confirmed that he did not provide an invoice relating to its installation to the Respondent.

Submissions

Appellant

38. The Appellant submitted that it appeared to him that his claim had been refused on the grounds that the PTO generator was only temporarily installed in the plant room of the dairy. He said that this was not the case. He had no intention of moving the PTO generator from its current location, where it served as a backup source of electricity in the event of power outages. It was, he said, an essential item for the purposes of operating the dairy.

Respondent

39. Counsel for the Respondent began by submitting that the Appellant's claim failed at the most fundamental level: it was clear from the relevant invoice that he had no expenditure relating to the installation of the PTO generator, only expenditure relating to its supply to him. This being so, there was no possibility that the VAT incurred in this context was referable solely to outlay 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* […]"

40. Counsel for the Respondent further submitted that Article 4 of the 2012 Refund Order required that a qualifying person under the legislation provide invoices or other documents *"showing the tax incurred by him or her which is the subject of the refund claim".* The Appellant had however not provided any invoice relating to the installation of the PTO generator, despite having been requested by the Respondent to do so. Counsel for the Respondent submitted that the wording of Article 4(b) suggested that the provision of an invoice evidencing taxable expenditure falling within the scope of the 2012 Refund Order was mandatory. She submitted that the Appellant's claim was bound to fail for this reason also.

41. Counsel for the Respondent submitted that the Appellant's claim should also fail because it was clear from the available evidence that, even if there had been VAT incurred in respect of a supply constituting the installation of the PTO generator, the act of installing it did not amount to the *"construction, extension, alteration or reconstruction"* of the dairy building. Counsel for the Respondent submitted that what had happened in this instance was that the Appellant's previous single phase PTO generator, already in situ in the plant room, had been removed. It had then been replaced by the three-phase PTO generator at issue in the appeal. Counsel for the Respondent submitted that it was clear from the

evidence of the Appellant that the only work required to install the PTO generator was to bolt the frame on which it was mounted to the concrete floor. The Appellant was also clear in his evidence that the PTO generator and stand could in principle be uninstalled and removed by unbolting the stand and disconnecting the generator from the three-phase distribution board.

42. In support of her submission that the above facts pointed to the installation of the PTO generator not constituting the construction, extension, alteration or reconstruction of the dairy, counsel for the Respondent relied on the previous Determination of the Commission, bearing the reference 202TACD2025. There, it was found that the installation of an automatic calf feeder, the main component of which was bolted to the cement floor of a farm building, did not amount to construction work carried out to that farm building simply by virtue of the fact that it was so bolted. As a consequence of this finding, it was held that the VAT incurred on the installation did not fall to be refunded to the appellant in that appeal under the 2012 Refund Order.

43. Counsel for the Respondent, referring to the Respondent's written legal submissions set out in its Outline of Argument, 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 C-276/19, 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. This was clear from paragraph 26 of the Court of Justice's judgment, where it held:-

> "[….] *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."*

44. The Respondent further pointed out in its Outline of Argument 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* […]"

45. 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 PTO generator 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.

46. Counsel for the Respondent submitted 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 of machinery housed in the plant room of the dairy, not on the construction, reconstruction, extension or alteration of that dairy. Counsel for the Respondent was asked by the Commissioner what was the relevance, if any, to the question of construction of the fact that a hole had been made in the exterior wall of the dairy so as to allow the connection of the PTO generator and the tractor delivering power to it. Counsel for the Respondent said that the creation of this hole did not evidence any construction bringing the Appellant's claim within the scope of the 2012 Refund Order. Firstly, it was clear that the hole existed prior to the acquisition of the PTO generator from the supplier. Secondly, the creation of the hole was in principle no different from one made so as to create a vent for a tumble dryer. Counsel for the Respondent submitted that the creation of such a vent did not mean that the installation of a tumble dryer constituted construction. By the same token, neither did the creation of the hole for the shaft of the PTO.

Material Facts

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

(i) the Appellant is a dairy farmer;

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

(iii) on 20 January 2023, the Appellant purchased a three-phase PTO generator and shaft, which was mounted on a stand;

(iv) the price paid by the Appellant for the PTO generator and shaft was €4,950, of which €1,138.50 was VAT;

(v) the invoice of the supplier specified that the price of €4,950 was for "*material only"* and did not include labour;

(vi) the PTO generator was installed in the plant room in the dairy building located on the Appellant's farm;

(vii) also in the plant room was a three-phase distribution board and changeover switch that was purchased at the same time as the PTO generator;

(viii) the stand on which the PTO generator was mounted was bolted to the concrete flooring of the plant room located in the dairy building;

(ix) the PTO generator was located beside a hole in the exterior wall of the dairy building;

(x) through this hole passed the shaft which connected the PTO generator to the tractor that supplied power to it;

(xi) the PTO generator was connected to the three-phase distribution board in the plant room;

(xii) the purpose of the PTO generator was to provide a backup source of electricity for the dairy in the event of a power outage;

(xiii) on 14 November 2024, 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 €1,138.50 that he incurred on the purchase of the PTO generator;

(xiv) on 24 February 2025, this claim was refused by the Respondent;

(xv) on 25 February 2025, the Appellant appealed this refusal to the Commission.

Analysis

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 who incur VAT on specific kinds of expenditure may claim a repayment of that VAT.

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 44 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 PTO generator is repayable by the Respondent to the Appellant.

53. In this appeal, the question is whether the Appellant's outlay on the PTO generator constituted outlay 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."*

54. Applying the interpretive approach outlined by 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. Regarding the interpretation of the 2012 Refund Order, the Commissioner finds that the use in combination of the words "*construction",* "*extension",* "*alteration"* or "*reconstruction"* indicates a clear intention on the part of the legislature that, in order to be refundable under Article 7(a) of the 2012 Refund Order, the outlay in respect of which VAT is incurred by a flat-rate farmer must "*relate*" to building work that is carried out to a farm structure.[1]

56. It is clear from the evidence given by the Appellant at hearing that the installation of the PTO generator involved two main acts. The first act was that it, or more precisely the stand on which it was mounted, was bolted to the concrete floor of the plant room beside the pre-existing hole in the exterior wall, created to permit its connection to the driveshaft of the tractor supplying energy that was turned into electricity. The second act was that the PTO generator was connected to the three-phase distribution board, which was

[1] In this regard, the Commissioner notes that Oxford English Dictionary defines "*construction"* as "*the action or process of constructing, building, assembling, or making something, or of causing something to be constructed or made",* "*extension"* as "*an addition to (esp. the rear of) a house or other building*", "*alteration"* as "*a change in the character or appearance of a person or thing; an altered condition"* and "*reconstruction"* as "*the action or process of rebuilding".*

positioned beside it in the same room, in order that electricity could then be supplied to milking parlour part of the dairy building.

57. In his evidence, the Appellant accepted under cross-examination that the PTO generator could be unbolted from the concrete floor, albeit he indicated that he had no desire to do this. The Appellant also accepted that it could be disconnected from the distribution board, although he qualified this by stating that he would not be capable of doing this task himself and would require the services of an electrician. The Appellant accepted that by these steps, the PTO generator could be uninstalled and removed from the plant room and the dairy itself.

58. The Commissioner finds these facts to be decisive in this appeal. Outlay on the installation of a machine such as the PTO generator at issue in this appeal, which may after its installation at any point be uninstalled without having an impact on the structure of the building itself, is not outlay relating to work constituting the construction, extension, alteration or reconstruction of that building or structure. It is instead outlay relating to the good itself and cannot therefore be considered to fall within the parameters of the conditions imposed under the 2012 Refund Order.

59. Moreover, the Commissioner considers his finding in this regard concerning the meaning of the 2012 Refund Order to be consistent with the distinction drawn under EU law between the concepts of "*immovable"* and "*movable"* property for the purposes of VAT. In this respect, under Article 13b of Council Implementing Regulation (EU) No 1042/2013 "*immovable property"* is defined for the purposes of the VAT Directive as including:-

> "[…]
>
> *(c) any item that has been installed and makes up an integral part of a building or construction without which the building or construction is incomplete, such as doors, windows, roofs, staircases and lifts;*
>
> *(d) any item, equipment or machine permanently installed in a building or construction which cannot be moved without destroying or altering the building or construction."*

60. Movable property, by contrast, includes an item, piece of equipment or machinery that is capable of removal from the building in which it has been installed without destroying or altering the state of that building.

61. What this underlines is that, as a matter of EU VAT law, there is a distinction drawn between goods that, once installed in a building or structure, become integrated into that building or structure, such that their removal would constitute a change to the building

itself. It is clear to the Commissioner that the PTO generator falls within the definition of movable property that could, once installed in the plant room in the dairy, be removed without doing damage to that room and its installation. The Commissioner's finding already made regarding the interpretation of the 2012 Refund order, and his conclusion that the outlay on the PTO generator was not outlay relating to "*construction",* "*extension", "alteration"* or "*reconstruction"* of the dairy building, are bolstered by this.

Determination

62. The Respondent's decision of 24 February 2025 to refuse the Appellant's claim for the repayment of VAT in the amount of €1,138.50, incurred in respect of outlay on the purchase of a PTO generator, is found to be correct and shall stand.

63. 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

64. 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

65. 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
3 February 2026