AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

75TACD2026

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 determination of the Revenue Commissioners ("the Respondent") dated 2 December 2024. The determination in question was the Respondent's refusal to repay to the Appellant Value Added Tax ("VAT") that it incurred in the acquisition and installation of a Prinzen PR70C egg packer and Ergo egg stacker ("the egg packing and stacking machine in issue"). This refusal arose from the Appellant's claim, made on 25 November 2024.

2. The Appellant's claim for the repayment of the VAT that it 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 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 question 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 the acquisition and installation of the egg packing and stacking mache in issue was "*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."*

4. In line with a request made by the Appellant, the hearing of the appeal proceeded in private, in accordance with section 949Y(3) of the Taxes Consolidation Act 1997 ("the TCA 1997"). Therefore, this Determination will be redacted in accordance with section 949AO of the TCA 1997.

Preliminary Matters

5. The Appellant's appeal of the Respondent's determination was made on its behalf by its tax agent. At the appeal hearing, however, only a director of the Appellant, [redacted] ("the Appellant's director"), was in attendance as its representative. The Appellant's director also stated that he wished to give evidence on matters of fact as a witness.

6. The absence of the Appellant's tax agent at the hearing prompted the Respondent to object to the appeal proceeding and to apply for it to be treated as withdrawn under section 949AA of the TCA 1997. The Respondent made this application on the grounds

that in *Battle v Irish Art Promotion Centre Ltd*, [1968] I.R. 252, the Supreme Court held, in the context of court proceedings, that representation of a company by a director should not be permitted, save for in exceptional circumstances.

7. In response to this application, the Appellant's director stated that he was one of three directors of the Appellant, which was a family business (the other directors were his mother and father). He further stated that all of the directors wished that the Appellant's appeal of the Respondent's determination be heard and determined by the Commissioner. Having considered the circumstances, the Commissioner decided that it was in the interests of justice to exercise his discretion to permit the director to represent the Appellant at the appeal hearing and, in addition, to permit him to give evidence as a witness on matters of fact.

8. The Respondent also objected at the outset of the hearing to the acceptance of the Appellant's appeal. The Respondent did so on the grounds that the Appellant had in March 2022 previously made a claim for the refund of the VAT incurred in respect of the egg packing and stacking machine in issue. This claim having been refused, the Appellant then re-submitted a claim on 25 November 2024 concerning the same expenditure. This resulted in the determination of 2 December 2024 now under appeal, in which the Respondent refused to refund the VAT in issue. In circumstances where the determination of 2 December 2024 constitutes one that is specified as being appealable under section 119(1)(h) of the VATCA 2010, the Commissioner considers the Appellant's appeal as being one that is valid and capable of acceptance.

Background

9. The Appellant is a limited liability company and a flat-rate famer, based in County [redacted]. The Appellant operates a farm with [redacted] egg-producing hens.

10. There are four hen sheds on the Appellant's farm, in each of which is an egg packing and stacking machine.

11. In one of these hen sheds is the egg packing and stacking machine in issue, which the Appellant purchased on 5 October 2022 from [redacted] Limited ("the supplier"). The price paid by the Appellant was €38,817, of which €4,617 was VAT. This payment was made in two separate instalments.

12. On 25 November 2024, the Appellant made a claim by means of the submission of a Form 58 return for the repayment of VAT that it had incurred in respect of the egg packing and stacking machine in issue. In the part of the return entitled "*Description of Work*

Carried Out", the Appellant stated: *"Works carried out to modernize and become more energy efficient regarding Free range egg production enterprise."*

13. On 2 December 2024, the Respondent refused the Appellant's claim for the repayment of the VAT incurred. The reason given for refusal was that the VAT incurred was "*Not related to the construction, extension, alteration, reconstruction of farm buildings or structures, land reclamation or fencing."*

14. On 16 December 2024, 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:

    "*The equipment purchased was purchased on the view of getting VAT back (ie. costing net of VAT). I believed that was the case as we had previously claimed vat back on Egg packing equipment on 4 previous occasions without any problem. This is a fixed item and cannot be resituated. As there is precedence and that no new criteria were published I believe this should be paid* […]*"*

15. Later in the appeals process, the Appellant said in his Statement of Case:

    "*The egg packer and stacker is used solely for the farming business on a daily basis. It is essential for the business which deals with high volumes of egg production. The use and function is solely for the purpose of the poultry farming business*

    The installation of the machine was a full 2-day project. The machine required unique modification to fit in the purpose built shed to function correctly. As such it is fitted and fixed to handle the processing of the fragile product.

    The feasibility of purchasing the machine costing €36k approx. was based around the VAT being recoverable.

    The Flat Rate Refund Scheme is designed as an administrative simplification measure to enable unregistered farmers to be compensated on an overall basis for VAT on inputs while remaining outside the VAT system, thereby avoiding the administrative burdens associated with VAT registration and filing.

    While we availed of the relief for not registering for VAT, we would point out that if we had elected to register for VAT, the sale of eggs would attract the zero-rate for output VAT purposes and VAT recovery for all related input business VAT costs, fully recoverable.

As such, we believe that the machinery has a sufficient element of a fixed nature, not allowing for it to be removed without significant dismantlement and that the Flat Rate Refund Scheme, which is designed to alleviate VAT registration, should allow the refund of the VAT in the spirit of how the legislation is intended, and in particular, in a case where there is no "loss to the Revenue" relating to output VAT for [the Appellant's] *trade."*

Legislation

16. 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

17. 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 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.

18. 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)."

19. Article 27(1) of the Sixth Council Directive 77/388/EEC 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

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

21. 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."

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

23. 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

[…]"

24. 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.

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

26. 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.

27. 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.*"

28. 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.*"

29. 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.*"

30. 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."

31. 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."

32. 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."

33. 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

The evidence of the Appellant's director

34. The Appellant's director gave oral evidence at the appeal hearing.

35. The Appellant's director began by stating that on the Appellant's farm were four hen sheds, in each of which were egg packing and stacking machines. He said that the egg packing and stacking machine in issue was the one most recently purchased by the Appellant.

36. The Appellant's director said that the Appellant had previously made successful claims for the refund of VAT incurred in respect of the acquisition and installation of the three

other egg packing and stacking machines in use on the farm. He stated that it was his understanding when acquiring the egg packing and stacking machine in issue that the Appellant's claim for the refund of VAT incurred would likewise be successful.

37. The Appellant's director gave evidence that the egg packing and stacking machine in issue was configured by the supplier to fit within the hen shed in which it came to be housed. In particular, he stated that the supplier "[…] *would come out, measure your picking area, measure all that to make sure that he can design the machine to fit in your area."* The Appellant's director said that buying an egg packing and stacking machine was not "*like buying something off the shelf where it's the same in every packing area."*

38. The Appellant's director, referring to a position adopted by the Respondent in advance of the hearing, said that any suggestion that an egg packing and stacking machine could be uninstalled from a hen shed and sold on the second-hand market was misguided. He said that it would make far more economic sense for a prospective purchaser to find a new machine, rather than buy second-hand.

39. The Appellant's director also gave evidence under cross-examination by counsel for the Respondent.

40. Counsel for the Respondent suggested to the Appellant's director that it was in fact possible to find second-hand examples of egg packing and stacking machines for sale online. The Appellant did not dispute this. He observed however that a particular machine would only be fit for installation in a small number of existing buildings. Failing having an existing shed capable of accommodating such a machine, it would be necessary to build a shed to accommodate it.

41. Counsel for the Respondent drew the Appellant's director's attention to a diagram of a Prinzen egg packing and stacking machine, contained in a sales brochure, setting out its dimensions. These dimensions were 4.64 meters in length and 2.375 meters in width. The Appellant observed in reply that the diagram was of a model of Prinzen egg stacking and packing machine with a slightly greater capacity to process eggs. It was thus somewhat larger than the egg packing and stacking machine in issue.

42. Counsel for the Respondent put it to the Appellant's director that while it was an agreed fact that the Appellant had previously received substantial VAT refunds under the flat-rate farmers scheme, there was no evidence to suggest that these refunds had related to expenditure on egg packing and stacking machines. The Appellant's director reiterated that the Appellant had received refunds in respect of such machines, which he said were manufactured by Staalkat, rather than Prinzen. He said that the Staalkat machines were

smaller and easier to uninstall than the egg stacking and packing machine in issue, which made the Respondent's refusal of the Appellant's claim all the more unexpected and difficult to understand.

43. Counsel for the Respondent asked the Appellant's director how long it had taken to install the egg packing and stacking machine in issue in the hen shed on the Appellant's farm. The Appellant said that it had taken four days. Counsel for the Respondent put it to the Appellant's director that in the Appellant's Notice of Appeal, it was stated that installation had taken two days. The Appellant's director said that "*it was two days to put it in and two days to refine it and get it working properly."*

44. Counsel for the Respondent referred to the statement by the Appellant in its Statement of Case that the egg packing and stacking machine in issue had a *"sufficient element of a fixed nature not allowing for it to be removed without significant dismantlement."* She put it to the Appellant's director that this was tantamount to saying that it could be removed. To this, the Appellant replied that "*Everything is possible".*

Submissions

Appellant

45. The Appellant's director submitted that the Respondent's refusal of the Appellant's claim for the repayment of VAT incurred in relation to the purchase and installation of the egg packing and stacking machine in issue was lacking in fairness. This was so because the Respondent had previously allowed the Appellant to receive refunds of VAT incurred arising from purchases of similar machines which performed the same function. The Appellant's purchase of the egg packing and stacking machine in issue was made on the understanding that the VAT element of the price, being in the amount of €4,617, would be recoverable. The Commissioner should thus allow the Appellant's claim and reverse the determination of the Respondent.

46. The Appellant's director also submitted that the Appellant should succeed in its appeal on the grounds that the machine was one that was customised to fit within the hen shed in which it was housed. This was not, the Appellant's director submitted, a machine that, having been uninstalled and removed from the hen shed, could easily be sold to a buyer on the second-hand market.

Respondent

47. Counsel for the Respondent submitted that under Article 7 of the 2012 Refund Order, a flat-rate farmer could claim the refunding of VAT incurred relating to the *"construction, extension, alteration or reconstruction"* of a farm building or structure.

48. Counsel for the Respondent submitted that, as tax-relieving legislation, the wording of the 2012 Refund Order had to be interpreted strictly. 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 ("*Perrigo v McNamara"*), in particular paragraph 74 therein. Thus, were the Commissioner to be of the view that there was doubt as to whether the Appellant's outlay on the egg packing and stacking machine in issue related to the construction, extension, alteration or reconstruction of a farm building or structure, then the claim for the repayment of the VAT in question had to be refused.

49. Counsel for the Respondent submitted that the Appellant had provided no evidence that the VAT it incurred on the purchase of the egg packing and stacking machine in issue was related to the construction, alteration or reconstruction of a farm building or structure. Counsel submitted that the simple fact was that the Appellant's outlay was related to "*a machine that was installed in a shed."*

50. In support of her legal submissions, counsel for the Respondent relied on the previous Determinations of the Commission, bearing the references 202TACD2025 and 231TACD2025, concerning a refusal to repay claims made by flat-rate farmers under the 2012 Refund Order. In these appeals, it was found that installing automatic calf feeders in a dairy building by bolting them to the ground and connecting them to the water and electricity supplies did not relate to *"reconstructing"* or "*altering"* the dairy buildings in question. On foot of this finding, it was held that the VAT incurred by the flat-rate farmers in question on the installation of the automatic calf feeders did not fall to be refunded.

51. Counsel submitted that, in this case, there was no oral evidence given that the egg packing and stacking machine in issue was even attached to the shed floor. As such, the grounds for the refusal of the Appellant's claim were stronger again than the refusals upheld in the Determinations 202TACD2025 and 231TACD2025.

52. Counsel for the Respondent submitted that there was no documentary evidence to corroborate the Appellant's claim that it had previously been refunded VAT incurred in relation to its acquisition of other egg packing and stacking machines. Moreover, counsel for the Respondent submitted that the Appellant's appeal should fail even if such documentary information had been forthcoming in the appeals process. In this regard,

counsel for the Respondent relied on the judgment in *Lee v Revenue Commissioners* [2021] IECA 18 (*"Lee v Revenue Commissioners*") in support of the proposition that the full extent of the Commissioner's function was to decide on whether the Appellant was entitled to the refund claimed by reference to the legislation in question. This legislation was to be interpreted by reference to its wording. The Commissioner was not, counsel for the Respondent submitted, empowered to decide that the Appellant was entitled to the refunding of the VAT incurred on its purchase of the egg packing and stacking machine in issue, on the grounds of legitimate expectation or for reasons of fairness or equity.

Material Facts

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

(i) the Appellant is a limited liability company that owns and operates a farm with [redacted] egg-producing hens;

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

(iii) on 5 October 2022, the Appellant purchased the egg packing and stacking machine in issue from the supplier;

(iv) the price paid by the Appellant was €38,817, of which €4,617 was VAT;

(v) the egg packing and stacking machine in issue was installed by the supplier in one of the Appellant's hen sheds;

(vi) the egg packing and stacking machine in issue was configured by the supplier in such a manner that it would fit within the Appellant's hen shed;

(vii) the egg packing and stacking machine in issue could be disassembled and removed from the Appellant's hen shed;

(viii) on 25 November 2024, the Appellant made a claim by means of the submission of a Form 58 return for the repayment of VAT that it had incurred in respect of the purchase and installation of the egg packing and stacking machine in issue;

(ix) on 2 December 2024, the Respondent refused the Appellant's claim for the repayment of the VAT incurred. The reason given for refusal was that the VAT expenditure was "*Not related to the construction, extension, alteration, reconstruction of farm buildings or structures, land reclamation or fencing."*

(x) on 16 December 2024, the Appellant appealed this refusal to the Commission.

Analysis

54. The legislation at the heart of this appeal, namely the 2012 Refund Order, is secondary legislation made by the Minister for Finance. The effect of the 2012 Refund Order is that flat-rate farmers who incur VAT on specific kinds of expenditure may claim the refund of that VAT.

55. 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 refunding 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.

56. The conferral on an unregistered person who is engaged in economic activity of the right to obtain the refund of VAT incurred in the course of that activity, even though that person has by definition no taxable output, constitutes a derogation from the general principles of the VAT system laid down under the VAT Directive (see *Iberdrola Inmobiliaria Real Estate Investments* (Case C-132/16) paragraph 28). The legal basis in the VAT Directive for this derogation is 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. The 1972 Refund Order, which reflects the terms of the 2012 Refund Order, constitutes the special measure in place as of the date in question that was capable of retention.

57. In order for a flat-rate farmer to be allowed a refund under the 2012 Refund Order, the outlay in question must fall clearly within the meaning of the tax referred to in Article 7 therein. That this is so, is apparent from the judgment in *Perrigo v McNamara,* where, at paragraph 74, 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"."

58. 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 established is 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 egg packing and stacking machine in issue is refundable by the Respondent to the Appellant.

59. In this appeal, the question is whether the Appellant's outlay on the purchase and installation of an egg packing and stacking machine 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."* Applying the interpretive approach outlined by McDonald J in *Perrigo v McNamara*, the Commissioner is satisfied that it did not. This is so for the following reasons.

60. Regarding the interpretation of the 2012 Refund Order, the Commissioner finds that the use in combination of the words "*construction", "extension", "alteration"* and "*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. 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".*

61. The evidence given by the Appellant's director in this appeal was that the egg packing and stacking machine in issue was configured by the supplier in such a manner that it would fit within the hen shed in which it was housed. The Appellant's director also gave evidence that the egg packing and stacking machine in issue could be disassembled and removed from this hen shed.

62. The Appellant's director however gave no evidence of any construction, reconstruction or alteration work carried out to hen shed in the course of the installation of the egg packing and stacking machine. To the extent that there was any construction work carried out, it was the construction of the egg packing and stacking machine itself, not construction related to the Appellant's farm building in the form of the hen shed. This being the case,

the VAT incurred by the Appellant cannot be found to fall within definition of the type of tax refundable under Article 7 of the 2012 Refund Order to a flat-rate farmer, namely that incurred in respect of the construction, reconstruction or alteration of a farm building.

63. The Commissioner accepts the oral evidence of the Appellant's director that the Appellant previously made claims relating to the purchase and installation of machines similar to that in issue, which had not been refused by the Respondent. The Commissioner also accepts that, this having occurred, it was understood by the Appellant's directors that in purchasing the egg packing and stacking machine in issue, the VAT incurred would be refundable. That the claim was then refused caused understandable frustration and disappointment.

64. However, the Commissioner is, in accordance with the law as expressed by the Court of Appeal in *Lee v Revenue Commissioners*, empowered under legislation only to assess the Appellant's entitlement to the refunding of the VAT in issue by reference to the relevant legislation. In this regard, the Commissioner has held already in this Determination that the Appellant's purchase of the egg packing and stacking machine in issue did not, as was required, relate to outlay on the construction, reconstruction or alteration of a farm building or structure. The Court of Appeal further made clear in *Lee v Revenue Commissioners* that a Commissioner was not empowered to determine a tax appeal on the basis of legitimate expectation, or for other reasons relating to the fairness or equity of the decision or determination appealed. This being so, the Respondent's determination refusing to refund to the Appellant the VAT that it incurred upon the purchase and installation of the egg packing and stacking machine in issue is correct and stands.

Determination

65. The Respondent's determination of 2 December 2024 to refuse the Appellant's claim for the repayment of VAT in the amount of €4,617, incurred in respect of the purchase and installation in the Appellant's hen shed of an egg packing and stacking machine is correct and stands.

66. 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

67. 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

68. 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.

C O'Higgins

Conor O'Higgins
Appeal Commissioner
14 May 2026