AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

91TACD2026

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") of a determination of the Revenue Commissioners ("the Respondent") of 21 January 2025, whereby it refused to refund to the Appellant Value Added Tax ("VAT") that he incurred in his acquisition of five items. These items were: cow collars, collar weights, HR-LDn transponders, controllers and slide tags. Hereafter in this Determination these items are referred to collectively as "the items in issue".

2. The Appellant's claim for the repayment of the VAT that he incurred was made pursuant to Article 5 of SI No 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 Value Added Tax Consolidation Act 2010 ("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 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 of the items 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 published in redacted form in accordance with section 949AO of the TCA 1997.

Background

5. The Appellant is a dairy farmer from County [redacted] and a flat-rate farmer.

6. On 31 July 2024, the Appellant purchased the items in issue along with an Astronaut A5 robotic milking machine. The items in issue and the robotic milking machine were all manufactured by Lely Industries NV ("the manufacturer") and purchased from Lely Centre, [redacted] ("the supplier").

7. The robotic milking machine, which was installed in the Appellant's dairy building, is designed to automatically milk cows. It functions by receiving data collected by the HR-

LDn transponders, which are strapped to the cow collars worn by the cows. This data is received and processed when the cow enters the robotic milking machine.

8. Regarding the remainder of the items in issue, the purpose of the collar weights is to hold the cow collars, and thus also the HR-LDn transponders, in the correct position so that data can be transmitted to the robotic milking machine. The slide tags are simply numbers that can be attached to the cow collars so that individual cows can be identified.[1] The Appellant was unsure in his evidence of the purpose of the controllers.[2]

9. On 17 October 2024, the Appellant made a claim by means of the submission of a Form 58 return for the repayment of the VAT that he had incurred in respect of his purchase of the robotic milking machine and the items in issue.

10. In submitting his claim, the Appellant initially provided the Respondent with an un-itemised invoice. This prompted the Respondent to request that he provide an invoice that was itemised, which he then did. According to the itemised invoice, the prices paid for the items in issue, exclusive of VAT were:

   - cow collars: €984.48;
   - collar weights: €1,647.24;
   - HR-LDn transponders: €18,790.96;
   - controllers: €129.99; and
   - slide tags: €55.25.

11. The total amount of VAT paid by the Appellant for the items in issue was €4,969.82.

12. On 21 January 2025, the Respondent refused the Appellant's claim for the repayment of VAT incurred on the purchase of the items in issue. The reason given was that the VAT on them was "*not refundable".* The claim was allowed in so far as it concerned VAT on the robotic milking machine.

13. On 27 January 2025, the Appellant appealed the Respondent's refusal of his claim to the Commission. In the grounds for appeal section of the Notice of Appeal, the Appellant stated *"I wish to appeal the decision to exclude the VAT on Collar weights, controller, collars HR LDN Tags and Slide tags. This is a complete new build and the robotic milkers are new. The milkers cannot function without the collars, they are an essential part of the whole robotic system. I can understand why VAT is non-refundable for collars purchased*

[1] Transcript of hearing, pages 9 -11;
[2] Transcript of hearing, page 14.

in isolation but these are not an optional extra. No part of the system will operate without them. The collars are used by the robotic milker to identify the cow and allow them access to the machine as appropriate."

14. The Appellant later expanded in his Statement of Case on the grounds for his appeal of the Respondent's determination:

    "[…] *the cow collars which are being disputed for our VAT claim are an integral and essential part of the whole robotic* [milking] *system. They come with it, they are not optional extras. The machine cannot identify the cows without them and thus cannot milk the cows. It would be like buying a car without the wheels. This is a completely new build and thus it is our case that if the robots are VAT refundable, the collars have to be also. We understand that if we bought the collars for health monitoring etc on their own, they would not be refundable, these are parts of the robotic system and it cannot work without them."*

15. Later in the appeals process, the Appellant submitted the following correspondence, dated 23 April 2025, from the supplier ("the supplier's letter"):

    "*To Whom it Concerns,*

    The supply of the robot constitutes a composite supply comprising several integrated components, including milk monitoring technology, automatic attachment and detachment of teat cups, and collars for identification purposes. These items are neither physically nor economically separable from the overall supply as they are essential for the robot to perform its intended functions. The robot itself is the principal element of the supply as they are essential for the robot to perform its intended functions. The robot itself is the principal element of the supply, however without the accompanying components the supply would be rendered ineffective as they enable the robot to operate as designed.

    […]"

Legislation

16. 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 of 28 November 2006 on the common system of value added tax ("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*", are precluded under Article 302 from deducting the VAT they incur in respect of their agricultural activities, but 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 goods or services.

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 of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment 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 section 2(1) of 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. Section 2(1) of the VATCA 2010 provides that *"taxable goods" or "taxable services"* are goods or services 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(1) of the VATCA 2010 a "*flat-rate farmer"* is defined, *inter alia*, 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 No 267 of 1972, entitled the 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.

34. "*Principal supply*" is defined in section 2(1) of the VATCA 2010 as:

"*the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary".*

35. "*Ancillary supply*" is defined in section 2(1) of the VATCA 2010 as:

"*a supply, forming part of a composite supply, which is not physically and economically dissociable from a principal supply and is capable of being supplied only in the context of the better enjoyment of that principal supply".*

36. *"Individual supply*" is defined in section 2(1) of the VATCA 2010 as:

"*a supply of goods or services which is a constituent part of a multiple supply and which is physically and economically dissociable from the other goods or services forming part of that multiple supply, and is capable of being supplied as a good or service in its own right".*

37. "*Composite supply"* is defined in section 2(1) of the VATCA 2010 as:

"a supply made by a taxable person to a customer comprising 2 or more supplies of goods or services or any combination of those, supplied in conjunction with each other, one of which is a principal supply".

38. "*Multiple supply*" is defined in section 2(1) of the VATCA 2010 as:

"*2 or more individual supplies made by a taxable person to a customer where those supplies are made in conjunction with each other for a total consideration covering all of those individual supplies, and where those individual supplies do not constitute a composite supply".*

Evidence

39. The Appellant gave evidence at the hearing of the appeal.

40. The Appellant stated that in combination the items in issue made up a digital device, which both he and the Respondent referred to as "*the cow collar"*, worn by his cows. When a cow passed through the robotic milking machine, the cow collar would transmit information to it and the cow would be milked according to that information. The Appellant stated that the robotic milking machine would not function if a cow was not wearing a cow collar. Purchasing the robotic milking machine without the cow collars would, he said, be like purchasing a car without the wheels. The Appellant said that the cow collar was "*part of the robot".*

41. The Appellant was cross-examined by counsel for the Respondent.

42. Counsel for the Respondent asked the Appellant to confirm that the cow collars were physically separate to the robotic milking machine. He accepted that they were.

43. Counsel for the Respondent, referring to the supplier's letter, asked the Appellant what, in his view, was meant by the assertion that the cow collars were not "*economically separable from the overall supply".* The Appellant stated that this meant that "*you can't buy the robots without them."* He then said in relation to the cow collars that:

"*I suppose they are the most separate part. If the cow leaves the shed, you know, they are away from the robot then. But when the cow is away from the shed you need them more than ever, because like it's a robotic system. You're not in physical contact with the cows twice a day as you would milking in the parlour, so you need to know exactly what is happening. You know, if one of them is sick from a welfare point of view* […]"

44. Counsel for the Respondent put it to the Appellant that the cow collars also served the purpose of monitoring the health of the cows. The Appellant agreed with this when he said:

"*It is monitoring her health […] It is monitoring her temperature, I suppose that would be health as well. It is monitoring does she need to get out for grazing? Does she need to eat? It is monitoring everything really."*

45. Counsel for the Respondent put it to the Appellant that one could buy the items in issue from the supplier separately from the robotic milking machine. The Appellant agreed with this.

46. The Appellant gave evidence that the data gathered by the HR-LDn transponders could be accessed on an app downloaded onto his phone or computer. Product documentation furnished by the Respondent in the appeals process and put to the Appellant in cross-examination stated that the HR-LDn transponders provided "*24-7 availability of real-time information".* This information concerned not just the milking of the cow, but also, among other things, heat detection and rumination activity, both relevant to the question of whether a cow was ready to breed. It is notable that the product information stated that data regarding heat detection and rumination would be transmitted directly to the app in question regardless of whether a cow visited the robotic milking machine. It thus functioned independently of the robotic milking machine.

47. The Appellant accepted in his evidence that the HR-LDn transponders could and would be worn by 'dry' cattle other than cows (i.e. cows not for milking), such as heifers.

Submissions

Appellant

48. The Appellant stated that the robotic milking machine would not work without the cow collars. He submitted that, as a consequence of this, his claim in relation to the items in issue should be allowed in circumstances where the VAT incurred on the purchase and installation of the robotic milking machine had been refunded to him. From the content of the correspondence from the supplier, furnished by the Appellant in the appeal process, it is clear that the Appellant's argument for the repayment of the VAT on the items in issue was grounded on the proposition that they constituted the "*ancillary*" part of a "*composite supply"* of goods within the meaning of the VATCA 2010, with the "*principal"* part being the robotic milking machine.

Respondent

49. 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, *inter alia*, the *"construction, extension, alteration or reconstruction"* of a farm building or structure.

50. Counsel for the Respondent submitted that the right of a flat-rate farmer to claim the repayment of VAT so incurred was a derogation from the usual rule under the VAT

Directive, set out under Article 302, that such a farmer could not be refunded VAT incurred in respect of their farming activity. Ireland was, pursuant to Article 394 of the VAT Directive, permitted to derogate in this manner because, as of 1 January 1977, it had in place "*special measures",* prescribed under the 1972 Refund Order, permitting unregistered farmers to claim the repayment of VAT related to outlay on farm building construction, reconstruction, alteration and extension.

51. Counsel for the Respondent submitted that it was settled law of the EU that national derogations be interpreted strictly (Case C-276/19, *Commission v United Kingdom* (EU:C:2020:368), paragraph 42) and Case C-305/16, *Avon Cosmetics Ltd v Commissioners for Her Majesty's Revenue and Customs,* , (EU:C:2017:970) paragraph 36). Counsel for the Respondent also submitted that it was settled law of the EU that, in accordance with the principle of strict interpretation, a national derogation such as that at issue could not be extended by a Member State so as to cover transactions originally excluded under the special measures giving rise to the right to derogate in the first place (Case C-276/19, *Commission v United Kingdom,* (EU:C:2020:368), paragraph 50).

52. Counsel for the Respondent submitted that the need for the strict interpretation of tax-relieving legislation such as the 2012 Refund Order was, furthermore, an established feature of Ireland's national law (*Perrigo Pharma International DAC v McNamara, The Revenue Commissioners, Ireland and the Attorney General* [2020] IEHC 552, (*"Perrigo")* paragraph 74).

53. Thus, were the Commissioner to be of the view that there was doubt as to whether the Appellant's outlay on the items 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.

54. Counsel for the Respondent submitted that, in any event, it was very clear that the VAT incurred by the Appellant in respect of the items in issue was unrelated to any such expenditure. The outlay in question related to items of equipment for the Appellant's cattle, not the construction, extension, alteration or reconstruction of a farm building or structure.

55. Counsel for the Respondent addressed the Appellant's argument that the items in issue were the ancillary part of a composite supply with the robotic milking machine, and the consequent implication that the outlay on them should thus be considered to be related to the construction, extension, alteration or reconstruction of a farm building or structure. In relation to this, counsel for the Respondent submitted, firstly, that there was no composite supply within the meaning of the VATCA 2010. While the HR-LDn

transponders functioned to allow the robotic milking machine to milk the Appellant's cows according to their individual data, the available evidence was that they also served as monitoring devices of the health of the cows. This functionality did not depend on connection to the robotic milking machine. Noting that the items in issue were priced individually on the relevant invoice and that the manufacturer documentation indicated that they could each be purchased separately from the supplier, counsel for the Respondent submitted that it was clear that they were "*dissociable*" from the robotic milking machine in both physical and economic terms. As a result, they were not part of a composite supply under the VATCA 2010.

56. Counsel for the Respondent then submitted that, in any event, even were it found that there was a composite supply, this should not mean that the VAT expended on the items in issue would be refundable to the Appellant under the 2012 Refund Order. In this respect, counsel for the Respondent cited the judgment of the Court of Justice of the European Union ("CJEU") in Case C-251/05, *Talacre Beach Caravan Sales Ltd v Commissioners of Customs & Excise* (EU:C:2006:451), ("*Talacre*"). That case concerned a derogation availed of by the United Kingdom whereby it opted to charge VAT on non-trailable caravans at the rate of zero per cent. It was entitled to do so on the grounds that, as of 1 January 1991, this was the rate charged on such caravans under national law. Notably, however, the zero rate was not extended to fittings in the caravans, which were not taxed at a reduced rate, notwithstanding that they and the caravan constituted a single supply. The CJEU held that EU law did not require the same rate to be applied to the fittings in the caravan as the caravan itself. Moreover, in her Opinion in the case (EU:C:2006:295), AG Kockott observed that extending the zero rate to the caravan fittings would have breached the relevant derogation provision in the VAT Directive, in circumstances where the law of the United Kingdom did not as of January 1991 permit them to be so taxed. AG Kockott further observed that the imperative of ensuring a strict interpretation of the scope of derogations outweighed that of taxing individual parts of a single supply at the same rate.

Material Facts

57. The following are the material facts in this appeal:

(i) the Appellant is a dairy farmer;

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

(iii) on 31 July 2024, the Appellant purchased cow collars, collar weights, HR-LDn transponders, transponder controllers and slide tags manufactured by the manufacturer;

(iv) at the same time, the Appellant purchased a robotic milking machine, also manufactured by the manufacturer;

(v) the HR-LDn transponders, which are attached to the cow collars on each cow, communicate with the robotic milking machine so that each cow is milked;

(vi) the HR-LDn transponders also allow for the health monitoring of cows and the monitoring of heat and rumination. This monitoring occurs independently of the robotic milking machine;

(vii) the items in issue could each be purchased separately from the supplier;

(viii) the price paid for each of the items in issue was:

- cow collars: €984.48;
- collar weights: €1,647.24;
- HR-LDn transponders: €18,70.96;
- transponder controllers: €129.99;
- slide tags: €55.25;

(ix) on 17 October 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 the purchase of the items in issue;

(x) on 21 January 2025, the Respondent refused the Appellant's claim for the repayment of VAT incurred on the purchase of the items in issue;

(xi) on 27 January 2025, the Appellant appealed this refusal to the Commission.

Analysis

58. 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 repayment of that VAT.

59. 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.

60. The conferral on an unregistered person who is engaged in economic activity of the right to obtain the repayment 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 Case C-132/16 *Direktor na Direktsia 'Obz halvane i danac hno-osiguritelna praktika' — Sofia v 'Iberdrola Inmobiliaria Real Estate Investments' EOOD* (EU:C:2017:683), 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.

61. In order for a flat-rate farmer to be allowed a repayment 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,* 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"."*

62. 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 items in issue is refundable by the Respondent to the Appellant.

63. In this appeal, the question is whether the Appellant's outlay on the items in issue 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* the Commissioner is satisfied that it did not. This is so for the following reasons.

64. 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".*

65. It is clear that, taken individually, each of the items in issue, and the Appellant's outlay on them, is unrelated to building work carried out to a farm structure. The items in issue are each compact pieces of farm equipment. With the possible exception of the two "*controllers*" purchased, in relation to which the Appellant was unable to give clear evidence regarding their purpose, they are worn by cattle. Thus, the sole basis for the Appellant's assertion that the VAT incurred on their purchase should be repaid to him is their connection to another piece of farm equipment, one that is installed in the Appellant's dairy building. The Appellant's claim under the 2012 Refund Order relating to the purchase and installation of this piece of equipment, namely the robotic milking machine, was allowed by the Respondent.

66. It is important to emphasise that this Determination is not concerned with the merits of the decision made by the Respondent in relation to the Appellant's outlay on the robotic milking machine. Rather, what the Commissioner must address is, firstly, the contention, implicit in the Appellant's Notice of Appeal and the supplier's letter, that the purchase of the items in issue and the robotic milking machine amounted to a single "*composite"* supply under the VATCA 2010 and EU law. If necessary, the Commissioner must then address the Appellant's contention that if the items in issue were the ancillary element in a single composite supply, the VAT incurred on them should, akin to the principal element

in the form of the robotic milking machine, be found to be outlay falling within the scope of the 2012 Refund Order.

67. In relation to the Appellant's contention that there occurred a single composite supply involving the robotic milking machine and the items in issue, the Commissioner is satisfied that this is incorrect. What happened instead was that the Appellant received different individual supplies at the same time from the supplier. This constituted a "*multiple supply"* under the VATCA 2010 in circumstances where the invoice initially provided by the supplier was not itemised, but rather set out "*total consideration"* for individual supplies. The Commissioner makes this finding for the following reasons.

68. Under section 2 of the VATCA 2010, in order for a good supplied to be the "*ancillary"* part of a single composite supply, it must be one "*which is not physically and economically dissociable from a principal supply and is capable of being supplied only in the context of the better enjoyment of that principal supply."* Case law of the CJEU clarifies what this means. In Case C-349/96, *Card Protection Plan Ltd v Commissioners of Customs and Excise* (EU:C:1999:93), the ancillary element of a single supply was defined as being one which did "[…] *not constitute for customers an aim in itself, but a means of better enjoying the principal service supplied."* In Case C-153/17, *Commissioners for Her Majesty's Revenue and Customs v Volkswagen Financial Services (UK) Ltd* (EU:C:2018:845), the CJEU held that customers must therefore have no *"economic interest"* in acquiring the ancillary element of a single supply independent of their economic interest in obtaining the principal element. In Case C-463/16, *Stadion Amsterdam CV v Staatssecretaris van Financiën* (EU:C:2018:22), it was made clear that whether a supply constituted an aim in itself was not to be judged by reference to the intention of each specific customer, but rather from the perspective of the "*typical customer".*

69. At hearing, the parties referred for the most part to the items in issue as a single digital cow collar. Taking the same approach, the Commissioner considers that the evidence is that a typical customer would have an economic interest in purchasing such a collar independent of the robotic milking machine. In his evidence, the Appellant stressed that the robotic milking machine would not function without receiving data from the key part of the cow collar, namely the HR-LDn transponder. He said that he thus had no option but to acquire the items in issue. However, from the documentary material published by the manufacturer and proffered in the appeal process, it is apparent that while facilitating automatic milking was one function of the collar, another was transmitting live data concerning, *inter alia,* heat and rumination, both of which were related to breeding. Again,

the documentary material indicates that the transmission of this data to an app occurs independently of the robotic milking machine, for instance when the cows are in the field. From all of this, the Commissioner draws the conclusion that a typical customer may have an economic interest in the digital cow collar whether or not the cow was one in need of milking. In this regard, as the Appellant accepted in his own evidence, the cow collar might be worn not just by a cow in milking, but also by a heifer or other 'dry' cow. The Commissioner also notes that the Appellant accepted in his evidence that he did in fact receive data relating to his cows to an app on devices he owned.

70. The Commissioner finds that the consequence of this is that the items in issue, constituting in combination a digital cow collar, were not part of a single composite supply under the VATCA 2010, also involving the robotic milking machine. This is because they were not, as asserted by the supplier in correspondence furnished in support of the Appellant's appeal, "*neither physically nor economically separable from the overall supply*". Rather the items in issue were, under the VATCA 2010 part of a "*multiple supply"* involving different "*individual supplies"* made at the same time. Thus, the connection that the Appellant has sought to make between the items in issue and claimed outlay on construction, the VAT on which was refunded by the Respondent, cannot be established. The Appellant's appeal of the Respondent's determination fails on this basis and the Respondent's determination stands.

71. Furthermore, even if the Commissioner is in error in finding that the items in issue were not part of a single composite supply involving the robotic milking machine, it would not result in the Appellant succeeding in this appeal. In this regard, Ireland's entitlement to depart from the usual rule under the harmonised system that an unregistered person cannot claim repayments of VAT incurred arises under a derogation provision, namely Article 394 of the VAT Directive. This allows a Member State to retain special measures in place as of 1 January 1977. The question that follows from this is whether, under national law, the Appellant's outlay on the items in issue is, or ever was under the 1972 Refund Order, 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."*

72. As was held in *Perrigo* and, prior to that, in *Revenue Commissioners v Doorley* [1933] IR 750, an exemption from tax must be given by the Oireachtas in *"clear and unambiguous terms"* and a claim must fall "*within the letter of the statute".* Bearing this in mind, the Commissioner finds that the Oireachtas did not intend, in granting unregistered farmers the right to claim repayment on VAT outlaid in relation to construction expenditure on farm

structures, to include as repayable not only VAT incurred on goods related to construction, but also VAT on other goods ancillary to them. The Commissioner concludes that to find otherwise would be to extend the flat-rate farmer's right to repayment, which is an exception to the usual rules prevailing under the VAT system, to outlay on a good that is itself not related to construction, but rather is related to a separate good that is. The Commissioner further notes that it is clear from the judgment of the CJEU in *Talacre* that the law of the European Union permits, and perhaps even requires, the different elements of a single composite supply to be examined individually in order to establish whether a national derogation granting relief from VAT can be applied to them.

73. The effect of the Commissioner's finding in this respect is that while VAT incurred by the Appellant in relation to the robotic milking machine might fall within the parameters of the 2012 Refund Order (which to reemphasise is not an issue before the Commissioner), it does not follow from this that the VAT incurred on any goods ancillary to it must also be found to be related to the construction of a farm building or structure. The Commissioner has found already that the items in issue were not ancillary to the robotic milking machine. However, were this finding to be in error, it remains the case that whether the Appellant's outlay on the items in issue was related to such *"construction, extension, alteration or reconstruction"* stands to be judged separately from any analysis conducted in relation to the robotic milking machine. Having regard to the principles of statutory interpretation set out in *Perrigo,* the Commissioner finds that the outlay on the items in issue was not related to outlay falling within the parameters of the 2012 Refund Order. For this reason also, the Appellant's appeal is unsuccessful and the determination of the Respondent under appeal stands.

Determination

74. The Respondent's determination of 21 January 2025, whereby it refused the Appellant's claim for the repayment of VAT in the amount of €4,969.82, incurred in respect of the acquisition of the items in issue, stands.

75. The Commissioner appreciates that this determination may be disappointing for the Appellant. The Appellant was correct to appeal in relation to what is a complex and challenging area of law so as to obtain clarity on the scope of his right to the refunding of VAT.

76. 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

77. 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

78. 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
18 June 2026