



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

08TACD2026



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought by [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim for repayment of Value-Added Tax and Customs Duty (collectively referred hereinafter as “the Import Taxes and Duties”) paid on the importation of a private used motor vehicle to Ireland (“the State”), from the United Kingdom (“the UK”) in [REDACTED].
2. The vehicle is [REDACTED] used private motor vehicle with UK registration number [REDACTED] (“the Vehicle”).
3. [REDACTED] the Appellant applied for a repayment of the Import Taxes and Duties, following an incident of criminal damage to the Vehicle, by submitting an invalidation request on the Respondent’s electronic import system, the Automated Import System (“the AIS”). The Respondent refused the invalidation request and the claim for repayment of the Import Taxes and Duties was therefore denied.
4. [REDACTED] a Designated Appeal Officer of the Respondent’s Customs Division (“the DAO”) denied the Appellant’s first stage appeal against the Respondent’s refusal of the claim for repayment of the Import Taxes and Duties.
5. [REDACTED] the Appellant duly appealed to the Commission by submitting a Notice of Appeal. In March 2025, the Respondent issued a notice of objection to the acceptance of the appeal pursuant to section 949L of the TCA 1997 on the basis that the case had no merit. In May 2025, the Appellant submitted a Statement of Case (“SoC”) and additional documents to the Commission in support of the appeal in accordance with section 949Q of the TCA 1997. In June 2025, the Commission received the Respondent’s SoC.
6. The Commissioner has considered all submissions and documents received in making this determination.
7. In accordance with the provisions of section 949U of the TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section 949U of the TCA 1997.

Background

8. The submissions from both parties confirm the Vehicle arrived in the European Union (“EU”) when it was imported to the State on [REDACTED].

9. On [REDACTED], the Appellant's agent submitted the Single Administrative Document ("the SAD") declaration for the Vehicle on the AIS. The SAD stated the Import Taxes and Duties liability on the importation of the Vehicle was €2,683.25 in total, consisting of Value-Added Tax ("VAT") of €1,923.12 and Customs Duties ("CD") of €760.13. On [REDACTED], the Import Taxes and Duties were paid in full.
10. On [REDACTED], [REDACTED], the Vehicle was damaged by fire in a criminal damage incident. On [REDACTED], An Garda Síochána issued a report into the incident.
11. On [REDACTED], the Appellant submitted an invalidation request on the AIS claiming repayment of the Import Taxes and Duties on the basis that the Vehicle was damaged prior to its registration in the State. On the same day the invalidation request was refused by the Respondent on the basis that the criminal damage occurred after the Vehicle was in free circulation in the State.
12. The Appellant filed a first stage appeal of the Respondent's refusal of the invalidation request. On 14 February 2025, the DAO refused the first stage appeal, stating:

"I note that the original declaration to import the vehicle was lodged on [REDACTED]. An invalidation request was submitted to the Automated Import System (AIS) on [REDACTED]. No legal basis was provided for the invalidation which was subsequently rejected by customs officers in Dublin Port.

I have reviewed the supporting documents submitted by you however there is no legal basis within the Union Customs Code to support any application for a refund of import taxes or duties. Import taxes and duties become payable once the goods have entered Ireland and are released into free circulation. The current state of the goods after release has no bearing on the taxes and duties paid at import as these are calculated at the time of import.

Accordingly, it is my determination that the original decision made by the officer in this case was correct and for this reason, your appeal is not being upheld."

Legislation and Guidelines

13. VAT and CD are separate tax heads, with appeals and repayment provisions under each of those taxes governed by separate and distinct legislation.
14. The appeal against the refusal of the claim for repayment of the import VAT is brought in accordance with section 119(1)(h) of the Value-Added Tax Consolidation Act 2010 ("the VATCA 2010") which states:

“(1) Any person aggrieved by a determination of the Revenue Commissioners in relation to—

[...]

(h) a claim for repayment of tax,

against which an appeal to the Appeal Commissioners is not otherwise provided for under this Act may appeal the determination to the Appeal Commissioners [...] within the period of 30 days after the date of the notice of that determination.”

15. The VAT legislation providing for repayments of VAT is in sections 54, 59 and 99 to 104 of the VATCA 2010. These sections are reproduced in Appendix I entitled “Relevant Value-Added Tax legislation - claims for repayment of VAT”.

16. The appeal against the refusal of the repayment claim for CD is brought in accordance with section 47 of the Customs Act 2015 (“the CA 2015”) which states:

“A person aggrieved by a determination of the Commissioners made under section 46 may appeal the determination to the Appeal Commissioners, in accordance with section 949I of the Taxes Consolidation Act 1997, within the period of 30 days after the date of the notice of that determination.”

17. The legislation dealing with repayments of CD is to be found in Articles 116 to 120 and Article 174 of Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code, as amended by subsequent regulations (“the UCC”). The relevant articles are set out in Appendix II entitled “Relevant Customs Duty legislation - claims for repayment”.

Submissions

Appellant’s submissions

18. The Appellant provided details of the importation of the Vehicle and [REDACTED] personal circumstances in a letter that was submitted with [REDACTED] Notice of Appeal, stating:

“In [REDACTED] I purchased a car with the registration [REDACTED] from the United Kingdom. Unfortunately, in [REDACTED] I lost my job, which made things extremely difficult for me. As the VRT cost would require an additional €6,000, I decided to defer the payment in order to prioritize essential living expenses. During this time, the car remained parked [REDACTED] and was not driven for five months. In [REDACTED] [REDACTED] I paid the VAT amount of €2,683.25 with the intention of registering the car in

Ireland, as [REDACTED] had promised to lend me the €6,000 required for the VRT once I regained financial stability. However, in [REDACTED] my car was tragically burned [REDACTED]. Given the circumstances, I was unable to insure the vehicle as it was not in use, resulting in a total loss of all the money I had paid for the car.

The year [REDACTED] has been one of the most challenging of my life, and I am now appealing for the €2,683.25 VAT payment to be refunded, as I have suffered significant financial setbacks.

I kindly request that the Appeal Commissioners consider my situation with empathy and approve the refund.”

19. On 8 April 2025, the Appellant submitted an email to the Commission, in response to the Respondent’s objection filed with the Commission on 25 March 2025, stating:

“I totally understand where they [the Respondent] are coming from. I have had [REDACTED] previous cars brought in from the UK and I have also changed the registration in just under 30 days, but unfortunately unplanned events can happen at any time which I believe is part of life. I lost my job just a few days after importing this car into Ireland. I needed a total of 6780 euro to change the registration.

It was a really difficult decision to make between going ahead with the registration change or keeping a roof over my head till I secure a new job. Unfortunately, in [REDACTED] [REDACTED], I lost my job, which made things extremely difficult for me. As the VRT cost would require an additional €6,000, I decided to defer the payment in order to prioritize essential living expenses. During this time, the car [REDACTED] [REDACTED] was not driven for five months. In August 2024, I paid the VAT amount of €2,683.25 with the intention of registering the car in Ireland, as [REDACTED] had promised to lend me the €6,000 required for the VRT once I regained financial stability. However, in [REDACTED] my car was tragically burned [REDACTED]. Given the circumstances, I was unable to insure the vehicle as it was not in use, resulting in a total loss of all the money I had paid for the car. The year [REDACTED] has been one of the most challenging of my life

I would like it if the Revenue can overturn their decision and refund me the €2,683.25 VAT payment, as I have suffered significant financial setbacks. I kindly request that the Revenue consider my situation with empathy and approve the refund.”

20. The Appellant’s SoC referred to the points made in the Notice of Appeal and outlined [REDACTED] personal circumstances following the importation of the Vehicle, including the loss of [REDACTED]

employment in [REDACTED], and the criminal damage to the Vehicle in [REDACTED].
The Appellant stated therein:

“The year [REDACTED] has been one of the most challenging of my life, and I am now appealing for the €2,683.25 VAT payment to be refunded, as I have suffered significant financial setbacks. I kindly request that the Appeal Commissioners consider my situation with empathy and approve the refund.”

21. The Appellant submitted that [REDACTED] claim for repayment of the Import Taxes and Duties should be allowed on the grounds that the Vehicle was not registered in the State when the criminal damage incident occurred.
22. The Appellant submitted a request that the Commission determine the appeal with empathy and consider [REDACTED] personal circumstances, in particular the financial difficulties following the loss of [REDACTED] employment, medical difficulties and the financial loss suffered by the Appellant as a result of the criminal damage incident.

Documents submitted by the Appellant

23. The Appellant submitted the following additional documentation to the Commission:
 - 23.1. A letter from the Appellant, referred to above, accompanying the Notice of Appeal, setting out [REDACTED] personal circumstances and the background to the appeal.
 - 23.2. A copy of the Appellant’s passport (photograph page).
 - 23.3. Letter of dismissal from the Appellant’s former employer dated [REDACTED].
 - 23.4. A copy of the SAD declaration, dated [REDACTED], filed on behalf of the Appellant on the AIS.
 - 23.5. A copy of the An Garda Síochána criminal damage report dated [REDACTED].
 - 23.6. Photographs of the criminal damage to the Vehicle.

Respondent’s submissions

24. The Respondent submitted an objection to the appeal, pursuant to section 949L of the TCA 1997, stating:

“The goods in question, a [REDACTED] passenger vehicle, was purchased by the importer sometime in early [REDACTED] and arrived into the EU on 08/02/2024. These dates have been identified on the Import declaration provided. At that time the

vehicle should have been declared to IPFMD¹ Revenue Customs within 30 days of arrival.

The vehicle was declared as an import on 20/08/2024. The Import of the vehicle was automatically Green Routed on Revenues Automated Import Systems (AIS). No other documentation pertaining to the vehicle was provided at the time that the Import was declared.

The declaration made was created post arrival in the EU, in excess of the 30-day limit for declarations to have been made. All Duties and Taxes, as pertaining to the then declaration, were settled automatically through Revenues Automated Import System, AIS. Subsequently the importer did not progress the VRT/NCT process as should have occurred within 30 days.

It is the opinion of IPFMD Revenue Customs that there is no justification for us to provide a refund to [REDACTED] of duties and taxes that were paid at the time of declaration. As such we wish to object to this TAC Appeal case and request that this appeal be dismissed on the grounds of "No Merit".

25. In its SoC the Respondent submitted:

"1. Description of the matter under dispute:

[...]

1.2 The vehicle was purchased by the appellant in [REDACTED] and arrived into the EU on [REDACTED].

[...]

1.4 The vehicle was declared by the appellant and [REDACTED] customs agent on [REDACTED]. The valuation attributed to the vehicle on the declarations was stg£6200.00 / €7601.25. The vehicle was subsequently destroyed by fire on [REDACTED].

1.5 The appellant is seeking a refund of all Duties and VAT paid to the Revenue Commissioners as the vehicle has been destroyed.

1.6 Based on the current state of the goods in question, there is no provisions under any current legislation, the UCC or the Customs Act 2015, where the

¹ 'Investigation, Prosecution & Frontier Management Division' of the Respondent

current state of the goods, after release for free circulation, would precipitate a refund of duties and taxes paid at the time of declaration.

[...]

3. Outline of relevant Facts:

3.1 The Declaration

A Customs Declaration (MRN²) was made and uploaded to Revenue Customs systems (AIS) on [REDACTED]. The declaration reference was [REDACTED]. This declaration had a Green Customs Routing.

[...]

Per the declaration, the vehicle arrived in the EU on [REDACTED] and was not declared as being in the EU until [REDACTED] some six months following its arrival.

[...]

At the time of declaration [REDACTED] the MRN initially received an "Insufficient Funds" routing at 08:33hrs, which was rectified by 08:52hrs on the same day. This resulted in a Green Exit Port routing on our Customs Automated Import System (AIS). The vehicle was valued at stg£6200.00 / €7601.26 on the MRN. Based on this declaration, all taxes and duties were automatically calculated and paid at the time of clearance.

[...]

This vehicle was not physically presented to Revenue Customs. At the time of the declaration being uploaded to the AIS system, and receiving a Green Routing, no documentation was uploaded for this import.

As of [REDACTED] the vehicle was in Free Circulation within the EU [...].

[...]

3.2 Invalidation Request

On the [REDACTED] at 08:08 hrs, a message was received on AIS where the agent stated the following.

"Message Type: IM414 – Invalidation Request

² 'Movement Reference Number'

Invalidation Reason: Application for Invalidation of this import due to Criminal damage by fire before registration into State, support An Garda Síochána report”

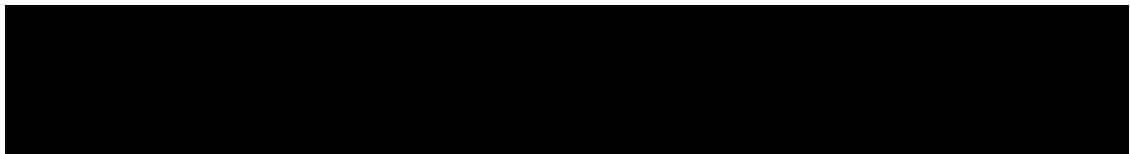
An Invalidation request is a request to cancel the declaration and receive a full refund of any monies that have been paid.

There followed an upload of some documents showing the damage to the vehicle, the Garda Síochána report and the original declaration [...].

This request was declined by an officer on duty at 08:25 hrs on the same day stating:

“When the damage occurred, the vehicle was already in free circulation. This vehicle failed to register for VRT within 30 days of its importation too.”

3.2 Tax in Dispute



The total payment that was made to the Revenue Commissioners was €2,683.25 as outlined on the declaration, a breakdown of which is listed below.

Tax in Dispute:

<i>Customs Duty</i>	<i>VAT</i>	<i>Total</i>
<i>€760.13</i>	<i>€1,923.12</i>	<i>€2,683.25</i>

”

26. The Respondent submitted that there are no provisions for repayment of Import Taxes and Duties within current legislation, the UCC, the CA 2015 or the Respondent's guidance document titled the Vehicle Registration Tax Manual Part I Procedures and Processes in Revenue (November 2024) where the Vehicle was damaged after its importation was declared and it was put into free circulation in the State.

Material Facts

27. Having considered all submissions and documentation provided by both parties, the Commissioner makes the following findings of material fact:

- 27.1. The Vehicle is a [REDACTED] used private motor vehicle with UK registration number [REDACTED].
- 27.2. On [REDACTED] the Vehicle arrived in the State from the UK. The Vehicle received a green routing at the port of importation whereby examination of the Vehicle or its supporting documentation was not required at the point of entry in the State.
- 27.3. On [REDACTED] the SAD declaration was filed by an agent on behalf of the Appellant declaring the importation of the Vehicle to the State and computing the Import Taxes and Duties on the importation totalling €2,683.25. The total Import Taxes and Duties computed consisted of VAT in the amount of €1,923.12 and CD in the amount of €760.13.
- 27.4. On [REDACTED] the Import Taxes and Duties of €2,683.25 were paid by the Appellant. The Vehicle was in free circulation in the State from [REDACTED].
- 27.5. On [REDACTED] the Vehicle was criminally damaged [REDACTED].
- 27.6. The Appellant sought a repayment of the Import Taxes and Duties from the Respondent by filing an invalidation request on the AIS. The Respondent refused the invalidation request on the AIS, thereby denying the repayment claim.
- 27.7. A first stage appeal was submitted by the Appellant to the Respondent. On 14 February 2025 this appeal was denied.
- 27.8. The Appellant imported the Vehicle in a personal capacity for [REDACTED] private use. The Appellant was not VAT-registered in the State or in any other EU member state.

Analysis

The burden of proof

28. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners and another* [2010] IEHC 49 (“*Menolly Homes*”), at paragraph 22, Charleton J. stated:

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal

Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.”

29. The Commissioner considers it useful to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes*, wherein he stated:

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

30. More recently in *JSS & Others v. Tax Appeals Commissioner* [2025] IECA 96 the Court of Appeal reaffirmed the burden of proof in cases before the Commission rests on the Appellant. In that case McDonald J. stated at paragraph 34:

“[...] the taxpayer bears the burden of demonstrating that a tax assessment is wrong.”

Statutory interpretation principles

31. In this appeal the Commissioner is required to consider the relevant statutory provisions setting out when repayment of Import Taxes and Duties is available and apply that analysis to the facts in this appeal. In this context the Commissioner considers it appropriate at this stage to summarise the well-established principles of statutory interpretation of taxation statutes.

32. The principles to be applied to statutory interpretation were set out by McDonald J. in the High Court case of *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“*Perrigo*”). McDonald J. stated at paragraph 74:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in *Dunnes Stores v. The Revenue Commissioners* [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in *Bookfinders Ltd v. The Revenue Commissioners* [2020] IESC 60.*

Based on the judgment of McKechnie J. the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that:

“... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;

[...]”

33. The approach to statutory interpretation as set down in *Perrigo* is authoritative. The judgment provides a framework for interpreting tax legislation.
34. The Commissioner considers the recent case of *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 (“*Heather Hill*”) to be relevant to the principles to be applied to statutory interpretation.
35. In *Heather Hill*, Murray J. stated at paragraph 108:

*“It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose - it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular *Dunnes Stores and Bookfinders* – is that the literal and purposive approaches to statutory interpretation are not hermetically sealed.”*

36. In interpreting the legislation that is relevant to repayment of the Import Taxes and Duties in this appeal, the Commissioner is satisfied that a literal interpretative approach must be taken and the wording in the statutes must be given its ordinary, plain and natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, in accordance with the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.

Charge to Import Taxes and Duties

37. The Commissioner notes that the Appellant has not appealed the validity of the initial charge to Import Taxes and Duties that arose on the importation of the Vehicle or the calculation method or the valuation of the Vehicle that was used to compute that charge. The Commissioner is satisfied that the Appellant accepted the charge to Import Taxes and Duties and the quantum of that charge, in [REDACTED] and that this is confirmed by

the SAD filing made on ■■■■ behalf at that time and the payment of the Import Taxes and Duties arising on foot of that SAD filing.

Vehicle Registration Tax ("VRT") status of the Vehicle

38. The VRT status of the Vehicle is referenced in the submissions received from both parties. The insurance status of the Vehicle is referenced in the Appellant's submissions. While the Commissioner notes these submissions, she is satisfied that they provide background information only and are not relevant to the determination of this appeal.

Separate analyses of repayment provisions for VAT and CD

39. The relevant legislation for VAT and CD is out in Appendices I and II. Separate charges to VAT and CD arose on the single event of the importation of the Vehicle to the State. The VAT and CD charges were declared via the standard system of a single declaration (the SAD) filed on the Respondent's AIS on ■■■■. While one declaration was made, as is correct and appropriate, the charges to VAT and CD arose under separate and distinct legislative frameworks. The VAT charge arose in accordance with VAT legislation. The CD charge arose pursuant to CD legislation.

40. When the Appellant filed the invalidation request on the AIS ■■■■ claimed repayment of VAT and CD, pursuant to the separate and distinct legislative frameworks that apply to these tax heads.

41. As the legislative frameworks for VAT and CD repayments are separate and distinct, the Commissioner is satisfied that it is necessary to consider the claim for repayment under each tax head separately.

VAT analysis

42. The parties are not in dispute on the charge to VAT that arose on the importation of the Vehicle. The dispute has arisen between the parties following the Respondent's refusal of the Appellant's claim for repayment of VAT. The Appellant claimed that repayment by filing the invalidation request on the AIS on ■■■■. That invalidation request was refused and the claim for repayment was therefore denied by the Respondent. Subsequently the Appellant was unsuccessful in ■■■■ first stage appeal of the Respondent's refusal of the claim for repayment.

43. The Commissioner is satisfied that there is no automatic right to repayment of VAT under VAT legislation. To be entitled to repayment of VAT, the facts of the case must fall within one or more of the VAT repayment provisions in the VAT legislation. VAT repayments are provided for in sections 54, 59 and 99 to 104 of the VATCA 2010. Each of these sections has been considered by the Commissioner in detail below.

44. Section 54 of the VATCA 2010, Remission or repayment of tax on certain imported goods, sets out the specific situations where a repayment of import VAT may be made by the Respondent, in accordance with regulations, after imported goods have been declared. Section 54(1) provides that the Respondent may repay, in accordance with regulations, the VAT charged in relation to the following:
- (a) goods imported which had previously been exported;
 - (b) goods imported which have been or are to be re-exported;
 - (c) goods imported from the Shannon Customs Free airport on which tax had already been borne by a person who is not VAT-registered.
45. Section 54(2) provides for repayment of VAT charged on certain imports where the goods have been despatched or transported to non-taxable entities in other EU member states.
46. The Commissioner is satisfied that the facts in this appeal do not fall within the repayment provisions in either section 54(1) or section 54(2) of the VATCA 2010 as the Vehicle was not exported either before or after its importation to the State, imported from the Shannon Customs Free airport or consigned to a non-taxable entity in another EU member state.
47. Section 59 of the VATCA 2010, Deduction for tax borne or paid, sets out the general rules on deductibility of VAT incurred by an accountable person on purchases of goods and services, in computing the VAT payable in respect of a taxable business. The Vehicle was imported by the Appellant in a private capacity for personal use. The Commissioner is satisfied that section 59 of the VATCA 2010 does not provide a basis for the claim for repayment of import VAT in this case as the Appellant is not an accountable person for the purposes of section 59 and the Vehicle was not imported for use in a taxable business carried on by the Appellant.
48. Section 99 of the VATCA 2010, General provisions on refund of tax, sets out when VAT refunds are available to VAT-registered traders where the VAT arising on the traders' inputs (expenses) exceeds the VAT arising on the traders' outputs (sales). As the Appellant imported the Vehicle in a private capacity for personal use and the Appellant did not import the Vehicle for use in a taxable business the Commissioner is satisfied that this refund provision does not apply.
49. Section 100 of the VATCA 2010, Unjust enrichment, provides that where, due to a mistaken assumption in the operation of VAT, a person overpays VAT, the Respondent shall issue a repayment on foot of a claim by that person for the overpaid amount provided the claim would not lead to the unjust enrichment of the claimant. The Commissioner has

noted previously that there is no dispute between the parties on the validity of the initial charge to VAT on the Appellant's importation of the Vehicle to the State. In this case the initial charge to import VAT arose in accordance with VAT legislation. The import VAT did not arise on foot of any mistaken assumption in the operation of VAT. Therefore, the Commissioner concludes that the repayment provision in section 100 of the VATCA 2010 does not apply.

50. Section 101 of the VATCA 2010, Intra-Community refunds of tax, provides for VAT repayments to certain VAT-registered traders established in other EU member states. The Appellant is an individual located in Ireland and ■■■ imported the Vehicle in a private capacity. The Commissioner is satisfied that the Appellant is not a VAT-registered trader established in another EU member state and therefore the repayment provision in section 101 of the VATCA 2010 is not applicable.
51. Section 102 of the VATCA 2010, Refunds to taxable persons established outside the Community, provides for VAT repayments in certain situations where the claimant is a business established outside the EU. The Appellant is not a business established outside the EU and therefore the Commissioner concludes that this repayment provision does not apply.
52. Section 103 of the VATCA 2010, Ministerial refund orders, provides that the Minister for Finance may make orders for repayment of VAT to persons who fulfil the conditions set out in those orders. The Commissioner is satisfied that the Minister for Finance has not made an order providing for repayment of import VAT incurred by an individual located in Ireland on the importation of a private motor vehicle for personal use where the vehicle is damaged or destroyed following its importation. Therefore, the Commissioner is satisfied that this section of the legislation is not relevant to the facts of this appeal.
53. Section 104 of the VATCA 2010, Repayments in specific circumstances, provides for repayment of VAT in specific circumstances as defined in the section. Section 104(1) of the VATCA 2010 provides for repayment of VAT:
 - (a) to an individual or to another person who cannot claim a VAT deduction for the VAT incurred,
 - (b) where the VAT was incurred on a "*new means of transport*" (as defined in section 2(1) of the VATCA 2010), and
 - (c) that "*new means of transport*" is subsequently dispatched or transported to another member state of the EU.

54. All three requirements must be satisfied for the person claiming the VAT refund to fall within the repayment provision in section 104(1) of the VATCA 2010. A “*new means of transport*” is defined in section 2(1) of the VATCA 2010 as a specific type of motor vehicle that has travelled 6,000 kilometres or less at the time of the supply of the vehicle on which the VAT was incurred.
55. While documentation establishing the kilometrage of the Vehicle has not been submitted by the Appellant to the Commission, the analysis does not turn on this point alone. In addition to satisfying the definition of a “*new means of transport*”, it is essential that the Vehicle is subsequently dispatched or transported to another member state of the EU. The Appellant did not dispatch or transport the Vehicle in this case to another EU member state. The Commissioner therefore concludes that the repayment provision in section 104(1) of the VATCA 2010 is not applicable in this appeal.
56. Sections 104(2), 104(3), 104(4) and 104(5) of the VATCA 2010 provide for repayment of VAT in specific cases involving telephone cards, radio broadcasting reception apparatus, goods shipped on foreign-bound aircraft or ships, goods used on fishing boats and certain related services. The Commissioner is satisfied that these subsections do not apply to the facts in this case. Therefore, the Commissioner is satisfied that Appellant does not have a right to repayment of VAT under sections 104(2) to 104(5) of the VATCA 2010.
57. The Commissioner is satisfied that the facts of the case must fall within the legislation that provides for VAT repayments, as contained in sections 54, 59 and 99 to 104 of the VATCA 2010, for a right to a VAT repayment to be demonstrated in this case. On the basis of the preceding analysis the Commissioner is satisfied that the facts in this case do not fall within any of the legislative provisions for repayment of VAT. In particular, taking the specific grounds for the Appellant’s invalidation request into account, the Commissioner is satisfied that the VAT repayment legislation does not provide a basis for VAT repayment in this case where the Vehicle was damaged before it was registered in the State. The Commissioner notes that the VAT repayment legislation does not refer to the registration status of imported vehicles.

CD analysis

58. The parties are not in dispute on the validity of the charge to CD on the importation of the Vehicle. The dispute has arisen following the claim by the Appellant for a repayment of the CD, pursuant to the invalidation request filed on the AIS on [REDACTED] and the Respondent’s refusal of that claim and subsequent refusal of the Appellant’s first stage appeal.

59. CD legislation does not provide for a general automatic right to repayment of CD in the event of damage or destruction of goods after importation. CD legislation provides for repayments of CD in certain specific circumstances. It is necessary to consider if any of the specific CD repayment provisions in legislation apply to the facts in this appeal. The CD repayment provisions are contained in Articles 116 to 120 and Article 174 of the UCC (reproduced in Appendix II).
60. Article 116 of the UCC, General provisions, states that CD shall be repaid where CD has been overcharged (Article 117), the goods are defective (Article 118), there has been an error by the tax authorities (Article 119), or on grounds of equity (Article 120). Article 116 further states that CD shall be repaid when the customs declaration has been invalidated in accordance with Article 174.
61. Article 117 of the UCC, Overcharged amounts of import or export duty, states that CD shall be repaid where the CD notified exceeds the CD amount payable. There is no dispute between the parties as to the details that were included in the SAD filed on the AIS in [REDACTED], in particular the value of the Vehicle and the computation of the CD charge. The Appellant agreed and accepted the charge by paying the CD liability computed. Thus, the Commissioner is satisfied that the facts of this case do not fall within this article. The repayment provision in Article 117 therefore does not apply.
62. Article 118 of the UCC, Defective goods or goods not complying with the terms of the contract, states that CD shall be repaid where the imported goods are rejected by the importer because, at the time of release into free circulation, the goods were defective or did not comply with the terms of the contract under which they were imported. The Appellant's repayment claim was not made on the basis that the Vehicle was defective at either the point of its arrival in the State [REDACTED] or when the importation was declared [REDACTED] or was not in compliance with the terms of the contract under which it had been imported. The Appellant submitted the claim for repayment of CD on the basis that the Vehicle was criminally damaged before the Vehicle was registered in the State. The criminal damage incident occurred in [REDACTED]. This was more than [REDACTED] months after the Vehicle arrived in the State and more than [REDACTED] months after the importation had been declared and the Vehicle was in free circulation in the State. Therefore, the Commissioner is satisfied that Article 118 does not apply to the facts in this case.
63. Article 119 of the UCC, Error by the Competent Authorities, states that CD shall be repaid where the amount of CD initially notified was lower than the amount payable as a result of an error by the competent authorities. For this purpose, the Commissioner is satisfied

that the Respondent is a competent authority. The Appellant has not contended that there was any error on the part of the Respondent in the calculation of the CD on the importation of the Vehicle. The Appellant accepted the initial charge to CD and this is supported by the filing of the SAD on ■■■■■■■■ behalf confirming the CD charge and the settlement of that charge on ■■■■■■■■. Therefore, the Commissioner finds that Article 119 is not applicable to this case.

64. Article 120 of the UCC, Equity, provides that in cases, other than those referred to in Articles 116(1) and Articles 117 to 119 of the UCC, CD shall be repaid in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the customs debtor. Article 120 continues by stating that such special circumstances shall be deemed to exist where the debtor is in an exceptional situation compared to other operators in the same business and, in the absence of such special circumstances, the debtor would not have suffered disadvantage by the collection of the CD.
65. The Commissioner notes that the Appellant imported the Vehicle in a private capacity and the CD arose in the standard way on that importation. The Commissioner is satisfied that the Appellant was not subject to any special circumstances, when ■■■■■■■■ incurred the customs debt on importation, that would have given rise to inequity if compared to the position of another private individual importing a similar vehicle of similar value in a similar fact pattern at that time. Therefore, the Commissioner is satisfied that Article 120 does not apply to the facts of this case.
66. Article 174 of the UCC, Invalidation of a customs declaration, sets out the general rules applicable to CD invalidation requests. Article 174(1) states that the customs authorities shall invalidate a customs declaration that has already been accepted where the goods are placed under another customs procedure or where the authorities are satisfied it is no longer justified to retain the goods under the customs procedure for which they were declared. Article 174(2) provides that a customs declaration shall not be invalidated once the goods have been released into free circulation unless otherwise provided for in the UCC.
67. The Commissioner is satisfied that the facts of this appeal fall outside the scope of the invalidation request provisions in Article 174(1). The Vehicle was not placed under any other customs procedure after it was released into free circulation. There were no special circumstances in this case whereby it could be considered that it was no longer justified for the Vehicle to remain under the customs procedure that it was originally placed under on importation. The invalidation request was uploaded to the AIS in ■■■■■■■■. This

was more than [REDACTED] months after the declaration of the import and payment of the Import Taxes and Duties [REDACTED]. The Commissioner concludes that the non-registration status of the Vehicle after import and the criminal damage of the Vehicle do not bring the facts of this case within the repayment provision in Article 174(1) of the UCC.

68. After the import was declared, and the Import Taxes and Duties thereon were paid, the Vehicle was in free circulation in the State. The Commissioner is satisfied that there is no provision elsewhere in the UCC providing for invalidation of the import declaration where, after the import declaration, the Vehicle was not registered in the State and criminally damaged. Therefore, the Commissioner finds that the exception provided for in Article 174(2) of the UCC does not apply to the facts in this case.
69. The Commissioner is satisfied that CD repayments are provided for under legislation only when the facts of the case fall within one of the Articles in the UCC providing for repayment of CD (i.e. under the Articles 116 to 120 or Article 174 of the UCC). The Commissioner notes that repayment of CD is not permitted if the facts of the case do not fall within these legislative provisions. Based on the preceding analysis the Commissioner is satisfied that the facts in this case do not fall within any of the CD repayment provisions.
70. Furthermore, the Commissioner has considered the specific grounds provided in the invalidation request filed on the AIS. The grounds submitted were that the Vehicle was damaged before it was registered in the State. The Commissioner is satisfied that the registration status of the Vehicle when the damage occurred is not specified within the CD repayment legislation as a basis for repayment.
71. The Commissioner notes the use of the word “*shall*” in Articles 116 to 120 and Article 174 of the UCC indicates an absence of discretion in the application of the CD repayment provisions in these Articles. However, as the Commissioner is satisfied that the Appellant’s claim for repayment of CD does not fall within any of the CD repayment provisions, that absence of discretion within the repayment provisions is not relevant to this analysis.

Jurisdiction of an Appeal Commissioner

72. Finally, the Commissioner notes that the Appellant requested the Commission to consider [REDACTED] appeal with empathy in the context of [REDACTED] personal circumstances and consider granting a refund of the Import Taxes and Duties on that basis.
73. The Commissioner’s jurisdiction was set out clearly in the Court of Appeal decision of *Lee v The Revenue Commissioners* [2021] IECA 18 (“*Lee*”) where, at paragraph 20, Murray J. stated:

“The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation.”

74. In *Lee*, Murray J. continued at paragraph 76:

“[...] the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry.”

75. The judgment in *Lee* affirms that the Commissioner’s role is solely to interpret the statutory provisions and the application of those provisions to the facts of the appeal before her.

76. The Commissioner notes the submissions made by the Appellant outlining ■■■ personal circumstances including financial difficulties, loss of employment, medical issues and the Appellant’s request to consider the appeal with empathy. However, the Commissioner does not have any discretion to set aside a decision of the Respondent based on the personal circumstances of the Appellant or considerations of empathy.

77. The Commissioner does not have oversight on the procedures adopted by the Respondent. The alleged lack of empathy on the part of the Respondent, in making the decision to refuse to repay the Import Taxes and Duties, does not fall within the jurisdiction of the Commissioner and thus does not fall to be determined as part of this appeal. Such matters come within the jurisdiction and remit of the Courts.

Conclusion

78. In an appeal before the Commission, the burden of proof rests on the Appellant who must prove, on the balance of probabilities, that either an assessment to tax or a decision of the Respondent is not correct. The Commissioner finds that the Appellant has not shown any basis upon which the decision of the Respondent to refuse to repay the Import Taxes and Duties totalling €2,683.25 was incorrect.

79. Following the analysis of the VAT and CD repayment legislation set out above, the Commissioner concludes that the Appellant’s claim to repayment of the Import Taxes and Duties fails for the following reasons:

- 79.1. The facts of the case do not fall within the scope of the VAT repayment provisions in sections 54, 59 or 99 to 104 of the VATCA 2010.
 - 79.2. The facts of this case do not fall within the CD repayment provisions in Articles 116 to 120 or Article 174 of the UCC.
 - 79.3. Repayment of VAT and CD is permitted when there is a legislative basis for repayment. In this case, a legislative basis for repayment does not exist under either tax head.
 - 79.4. The Vehicle's registration status at the time of the criminal damage incident is not a relevant factor under the legislative frameworks for repayment of either VAT or CD.
 - 79.5. The criminal damage to the Vehicle that occurred after the Vehicle was declared and in free circulation in the State does not confer on the Appellant a right to a repayment under either the VAT or CD legislative frameworks.
80. The Commissioner's role is to interpret tax statutes and determine the application of those statutes to the facts. While the Commissioner empathises with the Appellant's difficulties and personal circumstances, she does not have jurisdiction to set aside the Respondent's decision by taking those matters into account. She can only set aside a decision of the Respondent if there is a legislative basis for doing so. The Commissioner concludes that no such legislative basis exists.

Determination

81. For the reasons set out above, the Commissioner determines that the Appellant has failed in ■ appeal. Therefore, the decision of the Respondent to refuse to issue a repayment of the Import Taxes and Duties to the Appellant shall stand.
82. The Commissioner understands that this decision will be disappointing for the Appellant. The Appellant was correct to appeal this matter to obtain clarity.
83. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL and section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

84. 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

85. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Suzanne Carter
Appeal Commissioner
6 January 2026

Appendix I: Relevant Value-Added Tax legislation - claims for repayment

Value-Added Tax Consolidation Act 2010 (“VATCA”)

PART 1 PRELIMINARY AND GENERAL

[...]

2. Interpretation - general

(1) In this Act—

"*accountable person*" has the same meaning as it has in Part 2;

[...]

"*business*" means an economic activity, whatever the purpose or results of that activity, and includes any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, and the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis;

[...]

"*Community*" [...] has the meaning as it has in Articles 5 to 8 of the VAT Directive [...]

[...]

"*exempted activity*" means—

- (a) a supply of immovable goods in respect of which, pursuant to sections 93(2)(a)(i), 94(2) and 95(3) and (7)(b), tax is not chargeable, and
- (b) a supply of any goods or services of a kind specified in Schedule 1;

"*exportation of goods*" means the exportation of goods to a destination outside the Community, and cognate words shall be construed accordingly;

[...]

"*goods*" means all movable and immovable objects (other than things in action or money), and references to goods include references to both new and used goods;

[...]

"*importation of goods*" means the importation of goods from outside the Community into the State—

- (a) directly, or
- (b) through one or more than one other Member State where value-added tax referred to in the VAT Directive has not been chargeable on the goods in such other Member State or Member States in respect of the transaction concerned,

and cognate words shall be construed accordingly;

[...]

"movable goods" means goods other than immovable goods;

[...]

"new means of transport" means motorised land vehicles with an engine cylinder capacity exceeding 48 cubic centimetres or a power exceeding 7.2 kilowatts, vessels exceeding 7.5 metres in length and aircraft with a take-off weight exceeding 1,550 kilogrammes—

- (a) which are intended for the transport of persons or goods, and
- (b)
 - (i) which in the case of vessels and aircraft were supplied 3 months or less after the date of first entry into service and in the case of land vehicles were supplied 6 months or less after the date of first entry into service, or
 - (ii) which have travelled 6,000 kilometres or less in the case of land vehicles, sailed for 100 hours or less in the case of vessels or flown for 40 hours or less in the case of aircraft,

other than vessels and aircraft of the kind referred to in paragraph 4(2) of Schedule 2

"person registered for value-added tax"—

- (a) in relation to another Member State, means a person currently issued with an identification number in that State for the purposes of accounting for value-added tax referred to in the VAT Directive,
- (b) in relation to the State, means a registered person;

[...]

"registered person" means a person who is registered in the register maintained under section 65;

[...]

"tax" means value-added tax chargeable by virtue of this Act;

[...]

"*taxable goods*", in relation to any supply, intra-Community acquisition or importation, means goods the supply of which is not an exempted activity;

[...]

"*taxable person*" means a person who independently carries on a business in the Community or elsewhere;

[...]

"*VAT Directive*" means Council Directive No. 2006/112/EC of 28 November 2006 [OJ No. L347, 11.12.2006, p.1] on the common system of value-added tax;

"*vesse*", in relation to transport, means a waterborne craft of any type, whether self-propelled or not, and includes a hovercraft;

[...]

(4) In this Act, a reference to the territory of a Member State has the same meaning as it has in Articles 5 to 8 of the VAT Directive, and, subject to *subsection (4A)*, references to Member States and cognate references shall be construed accordingly.

(4A) In this Act, each reference to—

- (a) Community, and
- (b) Member State,

Shall apply as if the reference included a reference to Northern Ireland, [...]

[...]

PART 2 ACCOUNTABLE PERSONS

[...]

Chapter 2

General rules

[...]

5. Persons who are, or who may become, accountable persons.

(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.

[...]

PART 7 PROVISIONS RELATING TO IMPORTS, EXPORTS, ETC.

[...]

54. Remission or repayment of tax on certain imported goods.

(1) The Revenue Commissioners may, in accordance with regulations, remit or repay, if they think fit, the whole or part of the tax chargeable—

- (a) on the importation of any goods which are shown to their satisfaction to have been previously exported,
- (b) on the importation of any goods if they are satisfied that the goods have been or are to be re-exported,
- (c) on the importation of any goods from the customs-free airport by an unregistered person who shows to the satisfaction of the Commissioners that he or she has already borne tax on the goods.

(2) Subject to *subsection (3)*, the Revenue Commissioners shall, in accordance with regulations, repay the tax chargeable on the importation of goods where the goods have been dispatched or transported—

- (a) to another Member State from outside the Community, and
- (b) to a person (other than an individual) who is not registered for value-added tax in that other Member State.

(3) *Subsection (2)* shall apply only where it is shown to the satisfaction of the Revenue Commissioners that the goods in question have been subject to value-added tax referred to in the VAT Directive in that other Member State.

[...]

PART 8 DEDUCTIONS

Chapter 1

General Provisions

59. Deduction for tax borne or paid.

(1) In this subsection and *subsection (2)*—

"*qualifying activities*" means—

- (a) transport outside the State of passengers and their accompanying baggage,
- (b) supplies of goods which, by virtue of *section 30*, are deemed to have taken place in the territory of another Member State but only if the supplier of those goods is registered for value-added tax in that other Member State,
- (d) services specified in *paragraph 6(1), 7(1) or 8 of Schedule 1* supplied—
 - (i) outside the Community, or
 - (ii) directly in connection with the export of goods to a place outside the Community, and
- (f) supplies of goods or services outside the State which would be taxable supplies if made in the State;

[...]

(2) Subject to *subsection (3)*, in computing the amount of tax payable by an accountable person in respect of a taxable period, that person may, in so far as the goods and services are used by him or her for the purposes of his or her taxable supplies or of any of the qualifying activities, deduct—

- (a) the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations, in respect of supplies of goods or services to him or her,
- (b) in respect of goods imported by him or her in the period, the tax paid by him or her or deferred as established from the relevant customs documents kept by him or her in accordance with *section 84(3)*,

[...]

PART 12 REFUNDS AND REPAYMENTS OF TAX

99. General provisions on refund of tax.

(1) Subject to *subsections (2) and (3)*, where in relation to a return lodged under *Chapter 3 of Part 9* or a claim made in accordance with regulations, it is shown to the satisfaction of the Revenue Commissioners that, as respects any taxable period, the amount of tax (if any) actually paid to the Collector-General in accordance with *Chapter 3 of Part 9* together with the amount of tax (if any) which qualified for deduction under *Chapter 1 of Part 8* exceeds the tax

(if any) which would properly be payable if no deduction were made under *Chapter 1 of Part 8*, the Commissioners shall refund the amount of the excess less any sums previously refunded under this subsection or repaid under *Chapter 1 of Part 8* [...]

[...]

(6) The Revenue Commissioners shall not refund any amount of tax except as provided for in this Act or any order or regulations made under this Act.

100. Unjust enrichment.

(1) Where, due to a mistaken assumption in the operation of the tax, whether that mistaken assumption was made by an accountable person, any other person or the Revenue Commissioners, a person—

- (a) accounted, in a return furnished to the Revenue Commissioners, for an amount of tax for which that person was not properly accountable,
- (b) did not, because that person's supplies of goods and services were treated as exempted activities, furnish a return to the Revenue Commissioners and, therefore, did not receive a refund of an amount of tax in accordance with *section 99(1)*, or
- (c) did not deduct an amount of tax in respect of qualifying activities, within the meaning of *section 59(1)*, which that person was entitled to deduct,

then, in respect of the total amount of tax referred to in *paragraph (a), (b) or (c)* (in this section referred to as the "*overpaid amount*"), that person may claim a refund of the overpaid amount and the Revenue Commissioners shall, subject to this section, refund to the claimant the overpaid amount unless they determine that the refund of that overpaid amount or part thereof would result in the unjust enrichment of the claimant.

(2) A person who claims a refund of an overpaid amount under this section shall—

- (a) make that claim in writing setting out full details of the circumstances of the case and identifying the overpaid amount in respect of each taxable period to which the claim relates, and
- (b) furnish such relevant documentation to support the claim as the Revenue Commissioners may request.

(3)

- (a) For the purposes of determining whether a refund of an overpaid amount or part thereof would result in the unjust enrichment of a claimant, the Revenue Commissioners shall have regard to—
- (i) the extent to which the cost of the overpaid amount was, for practical purposes, passed on by that claimant to other persons in the price charged by the claimant for goods or services supplied by the claimant,
 - (ii) any net loss of profits which they have reason to believe, based on their own analysis and on any information that may be provided to them by that claimant, was borne by the claimant due to the mistaken assumption made in the operation of the tax, and
 - (iii) any other factors that that claimant brings to their attention in this context.
- (b) The Revenue Commissioners may request from the claimant all reasonable information relating to the circumstances giving rise to the claim as may assist them in reaching a determination for the purposes of *paragraph (a)*.

(4) Where, in accordance with *subsection (3)*, the Revenue Commissioners determine that a refund of an overpaid amount or part thereof would result in the unjust enrichment of a claimant, they shall refund only so much of the overpaid amount as would not result in the unjust enrichment of that claimant.

(5) Where, in relation to any claim under *subsection (1)*, the Revenue Commissioners have withheld an amount of the overpaid amount claimed under *subsection (1)* as it would result in the unjust enrichment of the claimant, the Commissioners shall, notwithstanding *subsection (1)*, refund to the claimant that part of the withheld amount together with any interest payable in accordance with *section 105* which the claimant has undertaken to repay to the persons to whom the cost of the overpaid amount was passed on if they are satisfied that the claimant has adequate arrangements in place to identify and repay those persons.

(6) Where a claimant receives a refund in accordance with *subsection (5)* and fails to repay the persons concerned at the latest by the 30th day next following the payment by the Revenue Commissioners of that refund, then any amount not so repaid shall, for the purposes of this Act, be treated as if it were tax due by the claimant for the taxable period within which that day falls.

101. Intra-Community refunds of tax.

(1) For the purposes of this section—

"applicant" means a taxable person who—

- (a) not being established in the Member State of refund, but being established in another Member State, and
- (b) having entered into transactions that give rise to a right of deduction in that other Member State,

makes a refund application;

"deductible transactions" means transactions that give rise to a right of deduction in the Member State concerned;

"Member State of refund", in relation to an applicant, means the Member State in which value-added tax (as referred to in the VAT Directive) was charged to the applicant in respect of—

- (a) goods or services supplied to the applicant by other taxable persons in that Member State, or
- (b) the importation of goods into that Member State;

"non-deductible transactions" means transactions that do not give rise to a right of deduction in the Member State concerned;

"refund application" means an electronic application submitted for a refund of tax charged in the Member State of refund to an applicant in respect of goods or services supplied to the applicant by taxable persons in that Member State or in respect of the importation of goods into that Member State.

(2) The Revenue Commissioners shall, in accordance with this section and regulations (if any), make a refund to an applicant of tax charged to the applicant by accountable persons in the State or tax charged to that applicant on the importation of goods into the State, in cases where a full and correct refund application has been received by them from the Member State in which the applicant is established.

[...]

102. Refunds to taxable persons established outside the Community.

(1) In this section *"deductible tax"*, in relation to a person to whom this section applies—

- (a) subject to *paragraph (b)*, means tax chargeable [...] in respect of goods or services used by the person for the purposes of any business carried on by him or her to the

extent that such tax would be deductible by that person under *Chapter 1 of Part 8* if the business were carried on by that person within the State,

(b) does not include tax chargeable in respect of goods for supply within the State.

(2) In accordance with regulations, the Revenue Commissioners shall repay to a person to whom this section applies, deductible tax chargeable in respect of supplies of goods or services to that person or in respect of goods imported by him or her.

(3) This section applies to a person who satisfies the Revenue Commissioners that the person—

(a) carries on a business outside the Community, and

(b) supplies no goods or services in the State [...]

[...]

103. Ministerial refund orders.

(1) Subject to *subsection (2A)*, the Minister 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*.

(2) Subject to *subsection (2A)*, the Minister may by order amend or revoke an order under this section, including an order under this subsection.

(2A) Where the Minister makes an order under this section, the Minister, in making the order, shall have regard to one or both of the following:

(a) the nature or purpose, including any social purpose, of the goods or services to which the refund the subject of the order relates;

(b) the nature or purpose of the person referred to in *subsection (1)* in relation to the goods or services to which the refund the subject of the order relates.

[...]

104. Repayments in specific circumstances.

(1)

(a) In accordance with regulations, the Revenue Commissioners shall repay, to a person to whom this subsection applies, the residual tax included in the consideration for

supply of a new means of transport where such new means of transport is subsequently dispatched or transported to another Member State.

(b) This subsection applies to a person who is not entitled to a deduction under *Chapter 1 of Part 8* of the tax borne or paid by the person on the purchase, intra-Community acquisition or importation of the new means of transport in question.

(2)

(d) Where a telephone card is used to access a telecommunications service, the value of the telephone card so used shall, for the purposes of *section 37(3)*, be disregarded.

(3) Notwithstanding anything in this Act, a refund of the tax paid in respect of radio broadcasting reception apparatus and parts thereof belonging to an institution or society may be made to the institution or society but only if—

(a) in the opinion of the Revenue Commissioners, it has for its primary object the amelioration of the lot of blind persons, and

(b) it shows, to the satisfaction of the Revenue Commissioners, that the goods in question are intended for the use of blind persons.

(4) Regulations may make provision for remitting or repaying, subject to such conditions (if any) as may be specified in the regulations or as the Revenue Commissioners may impose, the tax chargeable in respect of the supply of goods, or of such goods as may be specified in the regulations, in cases where the Commissioners are satisfied that—

(a) the goods have been shipped on board an aircraft or ship proceeding to a place outside the State,

(b) the goods are, or are to be used in, a fishing vessel used or to be used for the purposes of commercial sea fishing.

(5) Regulations may make provision for remitting or repaying, subject to such conditions (if any) as may be specified in the regulations or as the Revenue Commissioners may impose, the tax chargeable in respect of the supply of both or any one (as may be specified in the regulations) of the following services:

(a) the repair, maintenance and hiring of plant or equipment used in a vessel or an aircraft specified in *paragraph 4(2) of Schedule 2*,

(b) the repair, maintenance and hiring of a vessel used, or of plant or equipment used in a vessel used, for the purposes of commercial sea fishing.

Appendix II: Relevant Customs Duty legislation - claims for repayment

REGULATION (EU) No 952/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 October 2013 laying down the Union Customs Code (“UCC”)

[...]

TITLE I

GENERAL PROVISIONS

CHAPTER 1

Scope of the customs legislation, mission of customs and definitions

[...]

Article 5

Definitions

For the purposes of the Code, the following definitions shall apply:

(1) "customs authorities" means the customs administrations of the Member States responsible for applying the customs legislation and any other authorities empowered under national law to apply certain customs legislation;

[...]

(15) "declarant" means the person lodging a customs declaration [...] in his or her own name or the person in whose name such a declaration [...] is lodged;

(16) "customs procedure" means any of the following procedures under which goods may be placed in accordance with the Code:

- (a) release for free circulation;
- (b) special procedures;
- (c) export;

[...]

(18) "customs debt" means the obligation on a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force;

(19) "debtor" means any person liable for a customs debt;

(20) "import duty" means customs duty payable on the import of goods;

(21) "export duty" means customs duty payable on the export of goods;

(22) "customs status" means the status of goods as Union or non-Union goods;

(23) "Union goods" means goods which fall into any of the following categories:

- (a) goods wholly obtained in the customs territory of the Union and not incorporating goods imported from countries or territories outside the customs territory of the Union;
- (b) goods brought into the customs territory of the Union from countries or territories outside that territory and released for free circulation;
- (c) goods obtained or produced in the customs territory of the Union, either solely from goods referred to in point (b) or from goods referred to in points (a) and (b);

(24) "non-Union goods" means goods other than those referred to in point 23 or which have lost their customs status as Union goods;

[...]

(26) "release of goods" means the act whereby the customs authorities make goods available for the purposes specified for the customs procedure under which they are placed;

(27) "customs supervision" means action taken in general by the customs authorities with a view to ensuring that customs legislation and, where appropriate, other provisions applicable to goods subject to such action are observed;

(28) "repayment" means the refunding of an amount of import or export duty that has been paid;

(29) "remission" means the waiving of the obligation to pay an amount of import or export duty which has not been paid;

[...]

(31) "person established in the customs territory of the Union" means:

- (a) in the case of a natural person, any person who has his or her habitual residence in the customs territory of the Union;
- (b) [...]

[...]

(33) "presentation of goods to customs" means the notification to the customs authorities of the arrival of goods at the customs office or at any other place designated or approved by the customs authorities and the availability of those goods for customs controls;

[...]

(39) "decision" means any act by the customs authorities pertaining to the customs legislation giving a ruling on a particular case, and having legal effects on the person or persons concerned;

[...]

TITLE III

CUSTOMS DEBT AND GUARANTEES

[...]

CHAPTER 3

Recovery, payment, repayment and remission of the amount of import or export duty

[...]

Section 3

Repayment and remission

Article 116

General provisions

1. Subject to the conditions laid down in this Section, amounts of import or export duty shall be repaid or remitted on any of the following grounds:

- (a) overcharged amounts of import or export duty;
- (b) defective goods or goods not complying with the terms of the contract;
- (c) error by the competent authorities;
- (d) equity.

Where an amount of import or export duty has been paid and the corresponding customs declaration is invalidated in accordance with Article 174, that amount shall be repaid.

[...]

5. No repayment or remission shall be granted when the situation which led to the notification of the customs debt results from deception by the debtor.

[...]

Article 117

Overcharged amounts of import or export duty

1. An amount of import or export duty shall be repaid or remitted insofar as the amount corresponding to the customs debt initially notified exceeds the amount payable, or the customs debt was notified to the debtor contrary to point (c) or (d) of the second subparagraph of Article 102(1).

[...]

Article 118

Defective goods or goods not complying with the terms of the contract

1. An amount of import duty shall be repaid or remitted if the notification of the customs debt relates to goods which have been rejected by the importer because, at the time of release, they were defective or did not comply with the terms of the contract on the basis of which they were imported.

Defective goods shall be deemed to include goods damaged before their release.

[...]

Article 119

Error by the competent authorities

1. In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 120, an amount of import or export duty shall be repaid or remitted where, as a result of an error on the part of the competent authorities, the amount corresponding to the customs debt initially notified was lower than the amount payable, provided the following conditions are met:

- (a) the debtor could not reasonably have detected that error; and
- (b) the debtor was acting in good faith.

[...]

Article 120

Equity

1. In cases other than those referred to in the second subparagraph of Article 116(1) and in Articles 117, 118 and 119 an amount of import or export duty shall be repaid or remitted in the interest of equity where a customs debt is incurred under special circumstances in which no deception or obvious negligence may be attributed to the debtor.

2. The special circumstances referred to in paragraph 1 shall be deemed to exist where it is clear from the circumstances of the case that the debtor is in an exceptional situation as compared with other operators engaged in the same business, and that, in the absence of such circumstances, he or she would not have suffered disadvantage by the collection of the amount of import or export duty.

[...]

TITLE V

GENERAL RULES ON CUSTOMS STATUS, PLACING GOODS UNDER A CUSTOMS PROCEDURE, VERIFICATION, RELEASE AND DISPOSAL OF GOODS

[...]

CHAPTER 2

Placing goods under a customs procedure

[...]

Section 4

Provisions applying to all customs declarations

[...]

Article 174

Invalidation of a customs declaration

1. The customs authorities shall, upon application by the declarant, invalidate a customs declaration already accepted in either of the following cases:

- (a) where they are satisfied that the goods are immediately to be placed under another customs procedure;
- (b) where they are satisfied that, as a result of special circumstances, the placing of the goods under the customs procedure for which they were declared is no longer justified.

However, where the customs authorities have informed the declarant of their intention to examine the goods, an application for invalidation of the customs declaration shall not be accepted before the examination has taken place.

2. The customs declaration shall not be invalidated after the goods have been released unless where otherwise provided.

[...]

TITLE VI

RELEASE FOR FREE CIRCULATION AND RELIEF FROM IMPORT DUTY

CHAPTER 1

Release for free circulation

Article 201

Scope and effect

1. Non-Union goods intended to be put on the Union market or intended for private use or consumption within the customs territory of the Union shall be placed under release for free circulation.

2. Release for free circulation shall entail the following:

- (a) the collection of any import duty due;
- (b) the collection, as appropriate, of other charges, as provided for under relevant provisions in force relating to the collection of those charges;
- (c) the application of commercial policy measures and prohibitions and restrictions insofar as they do not have to be applied at an earlier stage; and
- (d) completion of the other formalities laid down in respect of the import of the goods.

3. Release for free circulation shall confer on non-Union goods the customs status of Union goods.

[...]