AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

180TACD2024

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal by [redacted] ("the Appellant") to the Tax Appeals Commission ("the Commission") against the refusal by the Revenue Commissioners ("the Respondent") to grant refunds of Value-Added Tax ("VAT") in the total amount of €12,317.15. The refunds were refused on the basis, *inter alia*, that the applications were made out of time.

2. The appeal proceeded by way of a hearing on 10 September 2024.

Background

3. The Appellant is a self-employed haulier who is established and registered for VAT in Northern Ireland. On 3 October 2022, the Appellant submitted three applications for refunds of VAT paid on goods (fuel/AdBlue) in the Republic of Ireland to HMRC's online portal. The VAT periods and amounts claimed were as follows:

Period	Amount €

April – June 2021	5028.94
July – September 2021	3271.33
October – December 2021	4016.88

4. On 20 and 21 October 2022, the Appellant was notified that the Respondent had refused the applications on the basis that they were submitted after 30 September 2022.

5. On 10 November 2022, the Appellant's agent submitted three VAT60 OEC forms to the Respondent. These claims concerned the same refund applications as previously submitted to HMRC.

6. On 22 November 2022, the Respondent refused the application for refunds of VAT. It stated that they could not be processed as they had been submitted after the applicable deadline of 30 June 2022.

7. Following further correspondence between the parties, on 12 January 2024, the Appellant appealed against the Respondent's decision to the Commission. The appeal proceeded by way of a remote hearing on 10 September 2024. The Appellant was represented by his agent and the Respondent was represented by counsel.

Legislation

8. Article 171(1) of Council Directive 2006/112/EC ("the Consolidated VAT Directive") states that

> "*VAT shall be refunded to taxable persons who are not established in the Member State in which they purchase goods and services or import goods subject to VAT but who are established in another Member State, in accordance with the detailed rules laid down in Directive 2008/9/EC*."

9. Article 7 of Council Directive 2008/9/EC ("the Intra-EU Refund Directive") states that

> "*To obtain a refund of VAT in the Member State of refund, the taxable person not established in the Member State of refund shall address an electronic refund application to that Member State and submit it to the Member State in which he is established via the electronic portal set up by that Member State*."

10. Article 15(1) of the Intra-EU Refund Directive states *inter alia* that

"*The refund application shall be submitted to the Member State of establishment at the latest on 30 September of the calendar year following the refund period…*"

11. Under the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, the Protocol on Ireland/Northern Ireland ("the Protocol") at Article 8 in respect of VAT and excise states *inter alia* that:

    "*The provisions of Union law listed in Annex 3 to this Protocol concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland.*

    In respect of Northern Ireland, the authorities of the United Kingdom shall be responsible for the application and the implementation of the provisions listed in Annex 3 to this Protocol, including the collection of VAT and excise duties. Under the conditions set out in those provisions, revenues resulting from transactions taxable in Northern Ireland shall not be remitted to the Union."

    Annex 3 to the Protocol includes the Intra-EU Refund Directive.

12. Section 101 of the Value-Added Tax Consolidation Act 2010 ("VATCA 2010") states *inter alia* that

    "*(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.*

    […]

    (4) An applicant who wishes to claim a refund of tax may apply for the refund only through the electronic portal set up for the purpose by the applicant's Member State of establishment.

    […]

    (6)(b) A refund application may be lodged only on or before 30 September in the calendar year following the refund period."

Submissions

Appellant

13. The Appellant submitted that he missed the deadline for submission of the refund claims due to "*extraordinary circumstances*". His bookkeeper suffered from [redacted] and had to have a number of operations between [redacted] 2022, as a result of which she was unable to perform her duties on behalf of the Appellant. The Appellant had to assume all of the administrative duties during his bookkeeper's illness, and as a result this led to an oversight of the claim deadlines. He was unaware of the deadline and had unintentionally missed it.

14. The validity of the refund claims was not in question and full paperwork had been submitted. All of the claims concerned fuel and/or AdBlue purchases. The Appellant had a history of timely compliance with his VAT and other tax obligations. Therefore, it was unfair and unjust to refuse his refund claims, which disproportionately penalised him for factors beyond his control and undermined the principle of fairness and equity in tax administration. The Appellant was seeking to rely on the Respondent's Code of Practice.

Respondent

15. The Respondent submitted that, on 3 October 2022, the Appellant submitted three refund applications to HMRC, which were transferred to the Respondent for review. The Respondent refused the applications as they had been submitted after 30 September 2022, and notification of the refusal was given to the Appellant by HMRC. However, counsel for the Respondent accepted that the invoices submitted by the Appellant were genuine.

16. On 10 November 2022, the Appellant submitted three VAT60 OEC claims to the Respondent. These claims concerned the same refund applications as previously submitted to HMRC. The Respondent notified the Appellant that the claims were refused as they were submitted after 30 June 2022.

17. Form VAR 60 OEC applies to claims made pursuant to Council Directive 86/560/EEC ("the Thirteenth VAT Directive"). Where a taxable person established in Northern Ireland had chosen to operate under the terms of the Protocol, the Thirteenth VAT Directive was not applicable to claims by that person for refunds of VAT incurred on purchases of goods in Member States. However, the Thirteenth VAT Directive was applicable insofar as refunds are claimed for VAT incurred on purchases of services in Member States.

18. Therefore, as the refund applications related to VAT incurred on purchases of goods by a taxable person established in Northern Ireland who had chosen to trade with EU Member States under the Protocol, the effect of Article 8 and Annex 3 was that the appropriate procedure was to submit a refund application pursuant to the Intra-EU Refund Directive rather than a refund application under the Thirteenth VAT Directive. In that regard, the Irish and EU legislative framework required that an application for a refund under the Intra-EU Refund Directive must have been made by 30 September 2022.

19. The 30 September deadline established by the Intra-EU Refunds Directive was mandatory and could not be extended; Case C-294/11 *Elsacom* and 30TACD2023. The Thirteenth VAT Directive did not apply; but even if it did, any application for a refund pursuant to it had to be made "*within 6 months of the end of the calendar year in which the tax became chargeable*"; regulation 37 of the Value-Added Tax Regulations 2010 (SI 639/2010). In this case, the latest deadline was 30 June 2022, whereas the applications were not received by the Respondent until 17 November 2022.

Material Facts

20. The Commissioner does not understand there to be any substantive dispute regarding the facts material to this appeal. No sworn evidence was heard at the hearing. Based on the documentation received, and the submissions made on behalf of the parties at the hearing, the Commissioner makes the following findings of material fact:

    20.1. The Appellant is a self-employed haulier who is established and registered for VAT in Northern Ireland. He has chosen to trade with EU Member States in accordance with the terms of the Protocol.

    20.2. On 3 October 2022, the Appellant submitted three applications for refunds of VAT paid on goods (fuel/AdBlue) in the Republic of Ireland to HMRC's online portal:

Period	**Amount €**
April – June 2021	5028.94
July – September 2021	3271.33
October – December 2021	4016.88

20.3. The refund applications were transferred by HMRC to the Respondent for review. On 20 and 21 October 2022, the Appellant was notified that the Respondent had refused the applications on the basis that they were submitted after 30 September 2022.

20.4. On 10 November 2022, the Appellant submitted three Form VAT60 OEC claims to the Respondent in relation to the same amounts that had been submitted to HMRC on 3 October 2022.

20.5. On 22 November 2022, the Respondent notified the Appellant that it could not process the VAT60 OEC refund claims as they had been received by the Respondent on 17 November 2022, which was after the applicable deadline of 30 June 2022.

20.6. Following further correspondence between the parties, on 12 January 2024, the Appellant appealed against the Respondent's decision to the Commission.

20.7. The Appellant's claims for refunds were vouched by way of invoices. The Appellant stated that the claims were made late because his bookkeeper fell ill and was therefore unable to submit the claims on time. A medical certificate for his bookkeeper was submitted to the Commission.

Analysis

21. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to refuse his claims for VAT refunds. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49 ("*Menolly Homes*"), Charleton J stated at paragraph 22 that "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*"

22. Under the Protocol, it was agreed between the UK and the EU that Northern Ireland would continue to apply and adhere to EU rules in relation to trade in goods. Annex 3 to the Protocol includes the Intra-EU Refund Directive. Article 15(1) of the Intra-EU Refund Directive provides that refund applications must be made "*at the latest on 30 September of the calendar year following the refund period…*" This deadline is replicated in section 101(6)(b) of the VATCA 2010, which provides that "*A refund application may be lodged only on or before 30 September in the calendar year following the refund period*."

23. In this appeal, the refund periods in question were April – June 2021, July – September 2021, and October – December 2021. Therefore, the calendar year following these periods was 2022, and both Article 15(1) of the Intra-EU Refund Directive and section 101(6)(b) of the VATCA 2010 mandate that the refund applications had to be made by no later than 30 September 2022.

24. However, it is not in dispute that the Appellant made his application to HMRC for refunds on 3 October 2022. The Appellant has stated that the reason for the late application is that his bookkeeper developed serious health difficulties which prevented her from completing the applications on time, and that the consequent administrative burden on him meant that he also missed the deadline.

25. The Commissioner notes that a medical certificate has been submitted to prove the Appellant's bookkeeper's illness, and he also notes that the Appellant's refund claims were supported by vouching documentation such as invoices. Consequently, the Commissioner accepts that the Appellant's claims were genuine, and he further accepts that the deadline for refund applications was missed by him as a result of the unfortunate illness suffered by his bookkeeper.

26. However, the insurmountable difficulty that the Appellant faces in this appeal is that neither Article 15(1) of the Intra-EU Refund Directive nor section 101(6)(b) of the VATCA 2010 allow any scope for an extension of the deadline due to extenuating circumstances. The Commissioner is satisfied that the wording of both provisions is clear that the 30 September deadline is mandatory. He considers that this view is supported by the CJEU's judgment in C-294/11 *Elsacom*, which considered the equivalent time limit under Council Directive 79/1072/EEC ("the Eighth VAT Directive"), and which found that the time limit was mandatory. The Appellant did not point to any countervailing precedent or authority to justify his contention that the deadline should be discretionary.

27. Consequently, the Commissioner concludes that, as the Appellant made his application for refunds under the Intra-EU Refund Directive after the applicable deadline of 30 September 2022, the applications were correctly refused. In so concluding, the Commissioner considers it important to stress that his jurisdiction is limited to considering "*the assessment and the charge*", as stated by Murray J in *Lee v Revenue Commissioners* [2021] IECA 18. The Commissioner is confined to considering whether the refusal of the refund applications was correct in law, and has no equitable jurisdiction or broader power to disapply the clear statutory wording. Nor does he have any jurisdiction to take into consideration the Respondent's Code of Practice regarding how it deals with taxpayers.

28. The Appellant subsequently made an application for refunds, in the same amounts and for the same time periods, directly to the Respondent pursuant to the Thirteenth VAT Directive, by way of three VAT60 OEC forms. The Commissioner agrees with the Respondent that, as the Appellant had chosen to trade with EU Member States in accordance with the terms of the Protocol, and as therefore the Thirteenth VAT Directive was only applicable insofar as it concerned refunds claimed on services rather than goods, the Appellant was not entitled to seek refunds for the VAT paid by him on goods in this jurisdiction on that basis. In any event, even if he was so entitled, the latest deadline for the making such an application was 30 June 2022, and therefore his application on this basis would also have been late.

29. The Commissioner has sympathy for the Appellant, who has been denied refunds of VAT to which he would otherwise have been entitled as a result of the applications having made after the deadline. However, as set out above, the Commissioner is satisfied that the deadline is mandatory, and there is no scope to the Respondent, or to the Commissioner on appeal, to extend it due to extenuating circumstances. In conclusion, therefore, the appeal is unsuccessful.

Determination

30. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct in refusing the Appellant's claims for refunds of VAT in the total amount of €12,317.15.

31. This Appeal is determined in accordance with Part 40A of the TCA 1997 in particular 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

32. 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

33. 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.

Simon Noone
Appeal Commissioner
18 September 2024