



**AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH**  
**TAX APPEALS COMMISSION**

**Between**

96TACD2024

██████████

**Appellant**

and

The Revenue Commissioners

**Respondent**

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**Determination**

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## Table of Contents

Introduction .....	3
Background.....	3
Legislation and Guidelines .....	4
Submissions .....	5
Appellant’s submissions .....	5
Respondent’s submissions .....	6
Material Facts .....	8
Analysis .....	8
The VAT Refund Order .....	9
Determination .....	11
Notification .....	12
Appeal .....	12

## 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 (“TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a refusal by the Revenue Commissioners (“the Respondent”) of a claim made by the Appellant for a refund of Value Added Tax (“VAT”), in accordance with the Value Added Tax (Refund of Tax) (No. 15) Order 1981, Statutory Instrument 428 of 1981 (“SI 428 of 1981”) (“the VAT Refund Order”), which provides for a refund of VAT incurred on qualifying goods for the use of persons with a disability. The claim made was in the sum of €3,627.77.
2. On 18 January 2024, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is adjudicated without a hearing in accordance with the provisions of section **949U TCA 1997**.
3. The Appellant submitted a Notice of Appeal, Statement of Case and certain supporting documentation which the Commissioner has considered in this determination. The Commissioner has received a Statement of Case from the Respondent and that has also been considered in this determination.

## Background

4. The Appellant undertook certain construction work, namely an [REDACTED] conversion, in her three bedroom property where she resides with her husband and three children, two of whom suffer from [REDACTED]
5. The Appellant submitted that the conversion of the [REDACTED] space to a bedroom allowed her children to have their own bedrooms, provided them with a comfortable and appropriate sleeping space and catered for their individual needs.
6. On 18 December 2023, the Respondent wrote to the Appellant to inform her that her claim for a VAT refund in accordance with the VAT Refund Order, in relation to aids and appliances for use by a person with disabilities, was refused.
7. The Respondent stated that the claim for a refund of VAT was refused, as the [REDACTED] [REDACTED] was not constructed or adapted for use by a disabled person and the bedroom is for the exclusive use of the Appellant and her husband. The Respondent submitted that there was no reference made in the [REDACTED] reports submitted with the Appellant’s application for the VAT refund, to the need for separate bedrooms for each child, thus the application for the VAT refund was refused by the Respondent, as the work

could not be considered “qualifying goods” for the purpose of assisting the children to overcome their disability and would therefore not come within the remit of the VAT Refund Order.

### **Legislation and Guidelines**

8. The legislation relevant to this appeal is as follows:-

9. S.I. No. 428/1981, Value-Added Tax (Refund of Tax) (No. 15) Order, 1981, *inter alia* provides:-

1. ....

2. *In this Order—*

*“the Act” means the Value-Added Tax Act, 1972;*

*“disabled person” means a person who, as a result of an injury, disease, congenital deformity or physical or mental illness, or defect, suffers from a loss of physical or mental faculty resulting in a specified degree of disablement; and cognate words shall be construed accordingly;*

*“qualifying goods” means goods other than mechanically propelled road vehicles which are aids or appliances, including parts and accessories, specially constructed or adapted for use by a disabled person and includes goods which, although not so specially constructed or adapted, are of such a kind as might reasonably be treated as so constructed or adapted having regard to the particular disablement of that person;*

.....

3. *Where a person establishes to the satisfaction of the Revenue Commissioners that*

(a) *he has borne or paid tax which became chargeable on or after the 1st day of March, 1981, in respect of the supply to or importation by him of qualifying goods, and*

(b) *he fulfills the conditions which are specified in paragraph 4 of this Order, and such other conditions as the said Commissioners may impose*

*he shall be entitled to repayment of the amount of tax so borne or paid.*

4. *The conditions to be fulfilled by a person referred to in paragraph 3 of this Order are-*

(a) *he shall claim a refund of the tax by completing such claim form as may be provided for the purpose by the Revenue Commissioners and he shall certify the particulars shown on such claim form to be correct;*

- (b)(i) *in case he is the person for whose use the goods referred to in paragraph 3 of this Order were supplied or imported, he shall, by the production of such evidence as may be acceptable to the said Commissioners, establish that he is a disabled person and that the goods are for the purpose of assisting him to overcome his disability in the performance of essential daily functions or in the exercise of a vocation, and that the goods are so used by him;*
- (ii) *in case he is not the person for whose use the said goods were supplied or imported, he shall, by the production of such evidence as may be acceptable to the said Commissioners, establish that the goods were supplied by him, other than in the course of business, to a particular person who is a disabled person for the purpose of assisting that person to overcome his disability in the performance of essential daily functions or in the exercise of a vocation, and that the goods are so used by that other person;*
- (c) *he shall by the production of invoices, provided in accordance with section 17 (12) (a) (i) of the Act, or by the production of receipts for tax paid on goods imported, establish the amount of tax borne or paid to which the claim relates;*
- (d) *he shall establish that he is not entitled to a deduction under section 12 of the Act or a repayment under section 20 (2) of the Act or under a regulation or order, other than this Order, made under the Act in respect of any portion of the tax specified in subparagraph (c) of this paragraph;*
- (e) *he shall establish that the tax specified in subparagraph (c) of this paragraph does not form any part of expenditure incurred by him which has been or will be met, directly or indirectly, by the State, by any board established by statute, or by any public or local authority.*

## **Submissions**

### *Appellant's submissions*

10. The Commissioner has set out hereunder, a summary of the submissions made by the Appellant in her Notice of Appeal and Statement of Case:-

*"I am appealing A decision from Revenue to refuse a VAT claim on a recent [REDACTED] conversion. Revenue declined my claim based on myself using the [REDACTED] conversion instead of my child with additional needs.*

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED].

*We live in what was a three bed semi detached house.*

*Based on my [REDACTED]  
[REDACTED]*

*[REDACTED] we cannot afford to move to a bigger house  
we had no choice but to adapt the one we have to best cater for the children's needs*

*I would just like to explain why I had to resort to the decision for us, [REDACTED]  
[REDACTED] space as our bedroom as it was the only option  
available to me.*

*On converting the [REDACTED] we we unable to include an en-suite in our budget. Because  
of this we had no choice but to [REDACTED]*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

*Which brings me to my second issue with the [REDACTED] space as a suitable bedroom for a  
child with [REDACTED]*

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]. *Because of this we had no  
choice but to use a considerable portion of the other existing bedroom to  
accommodate the stairs in accordance with regulation requirements. For this reason  
we were then unable to allow for [REDACTED]*

[REDACTED] Also  
*for safety reasons with the stairs this was going to be an issue for him". (sic)*

*Respondent's submissions*

11. The Commissioner has set out hereunder, a summary of the submissions made by the Respondent in its Statement of Case:-



how items are meeting the needs of the person's specific disability is a report from a Medical Practitioner. [REDACTED]

[The Appellant] then appealed the decision. [REDACTED]

[The Appellant] had also referenced a previous claim she made under the VAT Refund Order [REDACTED]

### Material Facts

12. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

12.1. The Appellant resides in a three bedroom dwelling with her husband and three children.

12.2. The Appellant converted the [REDACTED] space in her dwelling into a bedroom for use [REDACTED].

12.3. The Appellant's [REDACTED] [REDACTED].

12.4. [REDACTED]

12.5. [REDACTED] [REDACTED].

### Analysis

13. The Appellant's appeal relates to a refusal by the Respondent to permit a claim for a refund of VAT, in accordance with the VAT Refund Order, in relation to an [REDACTED] conversion in her dwelling.



14. 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; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, at paragraph 22, Charleton J. states 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”.*

15. The Commissioner also considers it useful herein to set out paragraph 12 of the Judgment of Charleton J. in *Menolly Homes*, wherein he states that:

*“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...”*

### **The VAT Refund Order**

16. The Appellant has been denied a refund of VAT by the Respondent on the grounds that the Appellant does not meet the criteria outlined in the VAT Refund Order, namely that the [REDACTED] was not constructed or adapted for use for a disabled person and the [REDACTED]. “Disabled Person” is defined in paragraph 1 of the VAT Refund Order. This is not an issue in dispute in this appeal. The issue in this appeal is whether the requirements of paragraph 4 of the VAT Refund Order are met.

17. The Commissioner has considered the Appellant’s submissions as set out in her Notice of Appeal and Statement of Case. In addition, the Commissioner has considered the Respondent’s submissions as set out in its Statement of Case, in relation to the claim for a refund of VAT.

18. The VAT Refund Order provides for a refund of VAT if the requirements set out in Paragraph 3 of the VAT Refund Order are met. Paragraph 3 provides that a person shall be entitled to a refund of the amount of tax borne or paid, if the person establishes to the satisfaction of the Respondent that the person has borne or paid tax in respect of the supply to or importation of qualifying goods and the person fulfils the conditions specified in paragraph 4 of the VAT Refund Order.

19. Paragraph 4 of the VAT Refund Order provides *inter alia* that the conditions to be fulfilled by a person referred to in paragraph 3 are that evidence shall be produced that establishes that the goods were imported or supplied to a person who is a disabled person for the purpose of assisting that person to overcome the disability in the performance of essential daily functions or in the exercise of a vocation and that the goods are so used by that person, and invoices or receipts are provided to establish the amount of tax borne or paid.

20. The VAT Refund Order defines “qualifying goods” as: “*goods other than mechanically propelled road vehicles which are aids and appliances, including parts and accessories, specially constructed or adapted for use by a disabled person and includes goods which, although not so specially constructed or adapted, are of such a kind as might reasonably be treated as so constructed or adapted having regard to the particular disablement of that person*”.

21. The Commissioner notes that the Appellant submitted that the reason the [REDACTED] was not [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

22. The Respondent submitted that the [REDACTED] reports submitted with the Appellant’s application for a refund of VAT did not specify that [REDACTED]. Moreover, the Respondent stated that the Appellant previously claimed a refund of VAT under the VAT Refund Order [REDACTED] [REDACTED] [REDACTED].

23. The Commissioner is satisfied that the VAT Refund Order provides relief on goods which have been specially constructed or adapted for use by a disabled person or might reasonably be treated as so constructed or adapted, having regard to the particular disablement of the person. In addition, the VAT Refund Order requires that the goods are “*for the purpose of assisting the person to overcome the disability in the performance of essential daily functions.... and that the goods are so used by that person*”. [Emphasis added]

24. Having considered the facts and documentation submitted in this appeal, the Commissioner is satisfied that the conditions of the VAT Refund Order have not been met. The Commissioner has considered the Appellant's submission that the [REDACTED] conversion serves the purpose of permitting [REDACTED]. The Commissioner can understand how that arrangement would be beneficial to family life, having regard to the Appellant's circumstances. However the Commissioner is bound to interpret and apply the applicable legislative provisions. The plain and ordinary meaning of the words in paragraph 4(b) of the Vat Refund Order are that the goods are used by the disabled person. This requirement has not been met and therefore, the Commissioner must find that the Appellant's appeal fails.
25. As set out above, 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. The Commissioner determines that a refund is not available to the Appellant, in circumstances where the facts of this appeal do not support the requirements of the VAT Refund Order having been met.
26. The Commissioner has every sympathy for the Appellant's situation. Unfortunately, the Commissioner has no discretion to assist in these circumstances, as the Commissioner is bound to apply the applicable legislative provisions. Hence, the appeal is denied.

### **Determination**

27. As such and for the reasons set out above, the Commissioner determines that the Appellant's appeal has failed and the Appellant has not succeeded in showing that the Respondent was incorrect to refuse a refund of VAT, in accordance with the Value Added Tax (Refund of Tax Order)(No. 15) Order 1981 ("SI 428 of 1981").
28. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties. The Appellant was correct to appeal to have clarity on the position.
29. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

## Notification

30. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ 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

31. 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.



Claire Millrine  
Appeal Commissioner  
31 May 2024