AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

04TACD2025

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a decision made on 5 April 2024 by the Revenue Commissioners (hereinafter the "Respondent") refusing a claim for a refund of Value Added Tax (hereinafter "VAT") by [redacted] (hereinafter the "Appellant").

2. The VAT refund is sought by the Appellant under the rules established by the European Union (hereinafter the "EU") for the refund of VAT to taxable persons not established in the Member State of refund but established in another Member State under the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (hereinafter the "2006 Directive") and Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in the 2006 Directive, to taxable persons not established in the Member State of refund but established in another Member State (hereinafter the "2008 Directive") as provided for in section 101 of the Value Added Tax Consolidation Act 2010 (hereinafter the "VATCA 2010").

3. The total amount of tax under appeal is €6,787.58.

Background

4. The Appellant is a limited company established in Northern Ireland. In addition, the Appellant is registered for tax in Northern Ireland.

5. On 3 October 2023, the Appellant submitted an Electronic VAT Refund (hereinafter a "refund") application to the Respondent in the amount of €6,787.58 which related to VAT incurred on diesel purchases from an Irish registered fuel supplier which were made during the period 1 January 2022 to 31 December 2022.

6. On 28 November 2023, the Respondent refused the refund application.

7. On 8 March 2024, the Tax Agent for the Appellant wrote to the Respondent providing the invoices relating to the claim and seeking a reason for the refusal of the refund.

8. On 5 April 2024 the Respondent informed the Appellant that the refund was refused on the basis that the refund application was submitted on 3 October 2023 which was 3 days outside of the period in which the application should have been made by the Appellant.

9. The Appellant submitted a Notice of Appeal to the Commission on 25 April 2024 appealing the decision of the Respondent to refuse the refund.

10. On 18 June 2024, the Commissioner wrote to the parties informing them of her intention to adjudicate this appeal without an oral hearing pursuant to the provisions of section 949U of the TCA 1997. As neither party has objected to this course of action, this appeal is being determined without the holding of an oral hearing, pursuant to the provisions of section 949U of the TCA 1997.

Legislation and Guidelines

11. The legislation relevant to this appeal is as follows:

Section 101 VATCA 2010 - Intra-Community refunds of tax:

"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.

(3) (a)Subject to paragraph (b), where the State is the Member State of refund, the amount of tax that is refundable in accordance with subsection (2) is the amount of tax charged to an applicant by an accountable person in respect of supplies of goods or services in the State, or on the importation of goods by the applicant into the State, if those goods or services are used by the purpose of the applicant's business, but only to the extent that the applicant would be able to deduct that amount under Chapter 1 of Part 8 if the applicant were an accountable person in the State.

(b)Where an applicant undertakes in the applicant's Member State of establishment both deductible transactions and non-deductible transactions, the amount to be refunded by the Member State of refund is the proportion of tax attributable to the deductible transactions as determined in accordance with the law of the applicant's Member State of establishment.

(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.

(5) (a)Where an applicant who carries out transactions of the kind referred to in subsection (3)(b) makes a refund application and the proportion of tax referred to in that subsection is subsequently adjusted, the applicant shall make a correction to the original amount that was applied for or has already been refunded.

(b)The applicant shall make the correction in a refund application during the calendar year following the period for which the relevant refund application was made or, if the applicant makes no refund applications during that calendar year, by lodging a separate declaration via the electronic portal established by the Member State of establishment of the applicant.

(6) (a)(i)Where the State is the Member State of refund, the applicant shall ensure that the refund application covers tax charged in respect of supplies of goods or services invoiced to the applicant and importations by the applicant during a

refund period, being a period of not more than one calendar year and, subject to subparagraph (ii), not less than 3 calendar months.

(ii)A refund period may be less than 3 calendar months if the application in respect of the period relates to the last quarter of a calendar year.

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

(c)A refund application may cover tax charged in respect of transactions omitted from the applicant's previous refund applications, but only if those transactions were completed during the relevant calendar year.

(7) *(a)An applicant is not entitled to make a refund application under this section for an amount less than €400 if the claim is for a period of less than one calendar year but at least 3 months.*

(b)An applicant is not entitled to make a refund application under this section for an amount less than €50 if the claim is for a period that represents a full calendar year or the last quarter of a calendar year.

(8)As soon as is practicable after deciding not to forward to another Member State a refund application made by an applicant established in the State on the grounds that the applicant is not entitled to a refund, the Revenue Commissioners shall notify the decision to the applicant by electronic means.

(9) *(a)This subsection applies to a refund application in respect of which the State is the Member State of refund.*

(b)As soon as is practicable after receiving from an applicant a refund application to which this subsection applies, the Revenue Commissioners shall notify the applicant by electronic means of the date on which they received the application.

(c)Within 4 months after the date on which they received a refund application from an applicant, the Revenue Commissioners shall, except as otherwise provided by this subsection-

(i)decide whether or not to approve the application (whether wholly or partly), and

(ii)notify their decision to the applicant by electronic means.

(d)(i)At any time within 4 months after the date on which they received a refund application from an applicant established in another Member State, the Revenue Commissioners may request additional information in support of the details provided in the application.

(ii)A request referred to in subparagraph (i) may be made to the applicant, the competent authority of the Member State where the applicant is established or any other person whom the Revenue Commissioners reasonably believe to be capable of providing relevant information.

(e)Where the Revenue Commissioners request additional information in accordance with paragraph (d), they shall, except when paragraph (g) applies-

(i)decide whether or not to approve the application (whether wholly or partly), and

(ii)notify their decision to the applicant by electronic means,

within 2 months after the relevant date.

(f)For the purpose of this subsection, the relevant date is-

(i)where the Revenue Commissioners receive the requested information within one month after the date on which the request was notified to the recipient, the date on which the Commissioners received the additional information,

(ii)where the Revenue Commissioners do not receive the requested information within one month after the date on which the request was made to the recipient, the date on which that period ends,

(iii)where the Revenue Commissioners receive the requested information within one month referred to in subparagraph (i), or that period expires without the Commissioners having received that information, the date that is 6 months after the date on which the refund application was made.

(g)Where the Revenue Commissioners consider it necessary to do so, they may, at any time before they make a decision with respect to a refund application, request any of the persons referred to in paragraph (d) to provide further additional information concerning the application or the applicant.

(h)Where the Revenue Commissioners request further additional information with respect to a refund application or the applicant as provided by paragraph (g), they shall-

(i)decide whether or not to approve the application (whether wholly or partly), and

(ii)notify their decision to the applicant by electronic means,

within 8 months after the date on which they received the refund application.

(i)Where the Revenue Commissioners have reasonable doubts about the validity or accuracy of a refund application, they may request the original or a copy of the relevant invoice or importation document to be produced for inspection.

(j)Without limiting the grounds on which the Revenue Commissioners may refuse a refund application, they may refuse to approve such an application on the ground that a request made by them under this subsection has been refused or has not been complied with within a reasonable time.

(k)Where the Revenue Commissioners notify an applicant of their decision to approve a refund application either wholly or partly, they shall refund the amount due not later than 10 working days after the notification of the decision to the applicant.

(l)Where the Revenue Commissioners decide to refuse to approve a refund application either wholly or partly, they shall include in their decision the grounds for the refusal.

(10)Where the State is the Member State of refund, and the applicant requests payment of the refund to be made in another Member State, the Revenue Commissioners shall deduct from the refund amount any bank charges in respect of the payment.

(11) (a)An applicant who has obtained a refund from the Revenue Commissioners based on an incorrect refund application containing an erroneous claim or declaration (whether or not the error was made intentionally, recklessly or carelessly) shall-

(i)repay to the Commissioners the amount incorrectly obtained as a refund, and

(ii)pay an amount of interest to the Commissioners.

(b)Any such interest is to be calculated at the rate provided for in section 114(2) from the date on which the refund was made to the day on which the applicant repays to the Revenue Commissioners the amount incorrectly obtained as a refund.

(c)The liability imposed on an applicant by this subsection is in addition to the liability imposed by section 116 or 116A, as appropriate.

(12)While an applicant to whom subsection (11) applies continues to fail to pay the Revenue Commissioners an amount payable under that subsection, the Commissioners shall withhold any further refund to that applicant up to the amount that is due from the applicant under that subsection.

(13) (a)Subject to paragraph (b), where the Revenue Commissioners refund an amount due to an applicant but not within the time limits prescribed by subsection (9), they shall pay an amount of interest to the applicant calculated at the rate provided for in section 105(4) from the day following the last day of the period within which payment of the amount due is required to be made to the day on which the amount due is paid to the applicant.

(b)Paragraph (a) does not apply if the applicant-

(i)provides additional information in accordance with a request made by the Revenue Commissioners but not within one month after the date on which the request was notified to the applicant, or

(ii)fails to provide all of the additional information requested within that period.

(14)This section does not apply to an applicant who supplies-

(a)goods or services in respect of which the place of supply is the Member State of refund, other than-

(i)goods or services for which the person who receives them is liable,

(ii)services, the supply of which is taxable in accordance with section 34(kc), to which the Union scheme (within the meaning of section 91A) applies, or

(iii)goods, the supply of which is taxable in accordance with section 30, to which the import scheme (within the meaning of section 91A) applies, or

(b)a transport service, or a service ancillary to such a service, that is exempted in the Member State of supply in accordance with Article 144, 146, 148, 149, 151, 153, 159 or 160 of the VAT Directive."

Council Directive 2008/9/EC of 12 January 2008:

"Article 7

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.

Article 8

1. The refund application shall contain the following information:

(a) the applicant's name and full address;

(b) an address for contact by electronic means;

(c) a description of the applicant's business activity for which the goods and services are acquired;

(d) the refund period covered by the application;

(e) a declaration by the applicant that he has supplied no goods and services deemed to have been supplied in the Member State of refund during the refund period, with the exception of transactions referred to in points (i) and (ii) of Article3(b);

(f) the applicant's VAT identification number or tax reference number;

(g) bank account details including IBAN and BIC codes.

2. In addition to the information specified in paragraph 1, the refund application shall set out, for each Member State of refund and for each invoice or importation document, the following details:

(a) name and full address of the supplier;

(b) except in the case of importation, the VAT identification number or tax reference number of the supplier, as allocated by the Member State of refund in accordance with the provisions of Articles 239 and 240 of Directive 2006/112/EC;

(c) except in the case of importation, the prefix of the Member State of refund in accordance with Article 215 of Directive 2006/112/EC;

(d) date and number of the invoice or importation document;

(e) taxable amount and amount of VAT expressed in the currency of the Member State of refund;

(f) the amount of deductible VAT calculated in accordance with Article 5 and the second paragraph of Article 6 expressed in the currency of the Member State of refund;

(g) where applicable, the deductible proportion calculated in accordance with Article 6, expressed as a percentage;

(h) nature of the goods and services acquired, described according to the codes in Article 9.

Article 9

1. In the refund application, the nature of the goods and services acquired shall be described by the following codes:

1 = fuel;

2 = hiring of means of transport;

3 = expenditure relating to means of transport (other than the goods and services referred to under codes 1 and 2);

4 = road tolls and road user charge;

5 = travel expenses, such as taxi fares, public transport fares;

6 = accommodation;

7 = food, drink and restaurant services;

8 = admissions to fairs and exhibitions;

9 = expenditure on luxuries, amusements and entertainment;

10 = other.

If code 10 is used, the nature of the goods and services supplied shall be indicated.

2. The Member State of refund may require the applicant to provide additional electronic coded information as regards each code set out in paragraph 1 to the extent that such information is necessary because of any restrictions on the right of deduction under Directive 2006/112/EC, as applicable in the Member State of refund or for the implementation of a relevant derogation received by the Member State of refund under Articles 395 or 396 of that Directive.

…

Article 11

The Member State of refund may require the applicant to provide a description of his business activity by using the harmonised codes determined in accordance with the second subparagraph of Article 34a(3) of Council Regulation (EC) No 1798/2003.

…

Article 15

1. 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. The application shall be considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11.

2. The Member State of establishment shall send the applicant an electronic confirmation of receipt without delay."

AGREEMENT on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community 2019/C 384 I/01 (hereinafter the "Withdrawal Agreement"):

"TITLE III

ONGOING VALUE ADDED TAX AND EXCISE DUTY MATTERS

Article 51

Value added tax (VAT)

1. Council Directive 2006/112/EC shall apply in respect of goods dispatched or transported from the territory of the United Kingdom to the territory of a Member State, and vice versa, provided that the dispatch or transport started before the end of the transition period and ended thereafter.

2. Directive 2006/112/EC shall continue to apply until 5 years after the end of the transition period with regard to the taxable person's rights and obligations in relation to transactions with a cross-border element between the United Kingdom and a Member State that took place before the end of the transition period and with regard to transactions covered by paragraph 1.

3. By way of derogation from paragraph 2 and from Article 15 of Council Directive 2008/9/EC, refund applications that relate to VAT which was paid in a Member State by a taxable person established in the United Kingdom, or which was paid in the United Kingdom by a taxable person established in a Member State, shall be submitted under the conditions of that Directive at the latest on 31 March 2021.

4. By way of derogation from paragraph 2 and from Article 61(2) of Council Implementing Regulation (EU) No 282/2011, amendments to VAT returns that were submitted in accordance with Article 364 or Article 369f of Directive 2006/112/EC either in the United Kingdom with regard to services supplied in Member States of consumption before the end of the transition period, or in a Member State with regard to services supplied in the United Kingdom before the end of the transition period, shall be submitted at the latest on 31 December 2021"

The Protocol on Ireland/Northern Ireland included in the Withdrawal Agreement and the consequential technical adaptations to Article 184 "Negotiations on the future relationship" and Article 185 "Entry into force and application" of 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. (hereinafter the "Northern Ireland Protocol"):

"Article 8

VAT and excise

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.

By way of derogation from the first paragraph, the United Kingdom may apply to supplies of goods taxable in Northern Ireland VAT exemptions and reduced rates that are applicable in Ireland in accordance with provisions listed in Annex 3 to this Protocol.

The Joint Committee shall regularly discuss the implementation of this Article, including as concerns the reductions and exemptions provided for in the provisions referred to in the first paragraph, and shall, where appropriate, adopt measures for its proper application, as necessary.

The Joint Committee may review the application of this Article, taking into account Northern Ireland's integral place in the United Kingdom's internal market, and may adopt appropriate measures as necessary.

...

ANNEX 3

PROVISIONS OF UNION LAW REFERRED TO IN ARTICLE 8

1. Value Added Tax

- Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

- Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State

- Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax

- Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

- Thirteenth Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover

taxes - Arrangements for the refund of value added tax to taxable persons not established in Community territory

- Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries

- Council Directive 2009/132/EC of 19 October 2009 determining the scope of Article 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods

- Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries

- Obligations stemming from the Agreement between the European Union and the Kingdom of Norway on administrative cooperation, combating fraud and recovery of claims in the field of value added tax"

Submissions

Appellant

12. The Appellant submitted a written Statement of Case to the Commission on 13 June 2024 the contents of which the Commissioner has considered in full prior to finalising this determination.

13. The following arguments in support of this appeal were made by the Appellant in "*Section 3: Outline of Relevant Facts*" of the Appellant's Statement of Case:

"*The refund application was due for submission on 30/09/2023 which fell on a Saturday. It was submitted 3 days late on 03/10/2023. Due to ill-health, the director of the company experienced a short delay in providing the relevant information to us as the agent prior to the last working day before submission and further detail on this has been provided below. The loss of the VAT refund would be detrimental to this business. The business operates in the* [redacted] *industry and has experienced significant cost increases which has impacted its cash flow. The loss of this VAT would have a further impact on this and the client is unable to pass on the loss of VAT to its customers. The business regularly purchases goods for use in its business in Northern*

Ireland from suppliers in Republic of Ireland and has duly submitted the VAT EU Refund application in a timely manner prior to this one-off incident.

NAME REDACTED was involved in a serious accident in [redacted] *in which she was hospitalised for several weeks. NAME REDACTED sustained multiple injuries from this accident including* [redacted]*. Once NAME REDACTED was discharged from the hospital, she had further medical appointments to attend as an outpatient in order to help with her recuperation. Further to this, NAME REDACTED* [redacted]*. is a* [redacted] *business and NAME REDACTED has sole responsibility for VAT submissions but unfortunately due to this period of ill-health, she experienced some delays.*

[redacted]."

14. The following arguments in support of this appeal were made by the Appellant in "*Section 6: Supplementary Information*" of the Appellant's Statement of Case:

"*While it is accepted that the above legislation states that the deadline for submission of the claim is 30 September in the calendar year following the refund period, we believe our client has extenuating circumstances and has no history of late claims prior to this. VAT was paid over to Revenue Commissioners by the supplier of the goods. A business within the state would have up to four years to make a claim for the VAT and therefore our client is disadvantaged by being resident outside of the state. The business is a fully taxable business within the single market trading under the NI Protocol, they should not unduly suffer VAT when making its taxable supplies.*"

Respondent

15. The Respondent submitted a written Statement of Case to the Commission on 6 June 2024 the contents of which the Commissioner has considered in full prior to finalising this determination.

16. The Respondent submitted that it could not process the refund sought in the refund application on the basis that the refund relates to the tax year 2022 and that the legislation and EU directives relating to VAT refund applications sets out that an application for a VAT refund must be made on or before September in the calendar year following the refund period.

Material Facts

17. The material facts in this appeal are not at issue and the Commissioner accepts the following as material facts:

    17.1. The Appellant is a limited company established in Northern Ireland.

    17.2. The Appellant is registered for tax in Northern Ireland.

    17.3. On 3 October 2023, the Appellant submitted a refund application to the Respondent in the amount of €6,787.58 which related to VAT incurred on diesel purchases from an Irish registered fuel supplier which were made during the period 1 January 2022 to 31 December 2022.

    17.4. On 28 November 2023, the Respondent refused the refund application.

    17.5. On 8 March 2024, the Tax Agent for the Appellant wrote to the Respondent providing the invoices relating to the claim and seeking a reason for the refusal of the refund.

    17.6. On 5 April 2024 the Respondent informed the Appellant that the refund was refused on the basis that the refund application was submitted on 3 October 2023 which was 3 days outside of the period in which the application should have been made by the Appellant.

    17.7. The Appellant submitted a Notice of Appeal to the Commission on 25 April 2024 appealing the decision of the Respondent to refuse the refund.

Analysis

18. The Commissioner has already accepted as a material fact that the Appellant did not submit a claim for a refund of VAT pursuant to the provisions of the 2008 Directive and / or the provisions of section 101 of the VATCA 2010 for the period 1 January 2022 to 31 December 2022 prior to 30 September 2023. There is no dispute between the parties about this and the Appellant accepts that it submitted the refund claim to the Respondent on 3 October 2023.

19. Having noted that there is no dispute as to the material facts in this appeal the Commissioner has regard to the recent judgment in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 where the Court of Appeal clarified the approach to the burden of proof where an appeal relates to the interpretation of law only. The court stated *inter alia* that

"*97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake…*

98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law; ... Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner's correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation……."

20. As such, the Commissioner must now interpret the relevant law and apply it to the undisputed facts of this appeal.

21. Article 15(1) of the 2008 Directive provides that a VAT 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. The application shall be considered submitted only if the applicant has filled in all the information required under Articles 8, 9 and 11.

22. Section 101 of the VATCA 2010 adopts the 2008 Directive into Irish law.

23. Article 51 of the Withdrawal Agreement provides that "*By way of derogation from paragraph 2 and from Article 15 of Council Directive 2008/9/EC, refund applications that relate to VAT which was paid in a Member State by a taxable person established in the United Kingdom, or which was paid in the United Kingdom by a taxable person established in a Member State, shall be submitted under the conditions of that Directive at the latest on 31 March 2021*."

24. The effect of this provision of the Withdrawal Agreement was that a taxable person in the United Kingdom was obliged to submit a claim for a VAT refund under the 2008 Directive on or before 31 March 2021.

25. However, it is important to note the provisions of the Northern Ireland Protocol applied to taxable persons in Northern Ireland and that Article 8 of the Northern Ireland Protocol states 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."* Annex 3 of the Northern Ireland Protocol lists, *inter alia*, the 2008 Directive. This means that the 2008 Directive remained operative for taxable persons in Northern Ireland seeking to submit VAT refund claims. As previously noted Article 15(1) provides that a 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.

26. Section 101(6)(b) of the VATCA 2010 provides that "*where the State is the Member State of refund, a refund application may be lodged only on or before 30 September in the calendar year following the refund period*".

27. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter "*Perrigo*"), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

> *"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 Commissioner *[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";*
> >
> > *(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*
> >
> > *(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*
> >
> > *(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners*, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in* Revenue Commissioners v. Doorley *[1933] I.R. 750 where Kennedy C.J. said at p. 766:*

> *"Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible."*"

28. These principles have been confirmed in the more recent decision of the Supreme Court in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 (hereinafter "*Heather Hill*").

29. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo* and the Supreme Court in *Heather Hill*, the Commissioner finds that the words contained in section 101(6)(b) of the VATCA 2010 are plain and their meaning is self-evident. The Commissioner finds that the words contained in section 101(6)(b) of the VATCA 2010 mean that applications for refunds of VAT where the State is the Member State of refund may be lodged only on or before 30 September in the calendar year following the refund period. Therefore for the year 2022 a valid refund application may

only have been lodged or submitted on or before 30 September 2023. The Commissioner finds that the wording of the provision does not provide for extenuating circumstances in which the deadline might be extended past 30 September in the year following the year of refund, in this case 30 September 2023.

30. As a result of the above, the Commissioner is satisfied that the decision of the Respondent dated 28 November 2023 to refuse the Appellant's claim for a refund of VAT under the provisions of the 2008 Directive was correct.

Determination

31. The Commissioner determines that the Respondent's decision of 28 November 2023 to refuse the Appellant's claim for a refund of VAT under the provisions of the 2008 Directive was correct.

32. The Commissioner therefore determines that that the Respondent's decision of 8 November 2023 to refuse the Appellant's claim for a refund of VAT under the provisions of the 2008 Directive shall stand.

33. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949AL and 949U thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

34. It is understandable that the Appellant will be disappointed with the outcome of his appeal. This is an unfortunate situation, however the Commissioner does not have any discretion to extend the deadline for the making of a claim for a VAT refund under the provisions of the 2008 Directive. The Appellant was correct to check to see whether its legal rights were correctly applied.

Notification

35. 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

36. 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.

Clare O'Driscoll
Appeal Commissioner
18 October 2024