

Unjust enrichment. VATA s. 20(5)

100.—(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.