



19TACD2018

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim for repayment of tax in accordance with section 99(4) of the Value Added Tax Consolidation Act 2010 Taxes Consolidation Act 1997 as amended (hereafter 'TCA 1997') in relation to VAT periods of assessment falling within the tax years of assessment 2011 and 2012.
2. This appeal is determined in accordance with section 949U TCA 1997.

Background

3. In April 2017, the Appellant filed VAT returns in respect of taxable periods falling within 01/01/2012–30/06/2012, 01/01/2011–30/06/2011 and 01/07/2011 – 31/12/2011. The Respondent notified the Appellant that there



was tax overpaid of €5,797 in respect of the relevant taxable periods. The Appellant sought repayment of the tax overpaid.

4. On 21 April 2017, the Respondent declined to process a repayment on the basis that a valid claim for repayment had not been made within the four-year statutory period, in accordance with s.99(4) VATCA2010. The Appellant duly appealed.

Legislation

Section 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 and may include in the amount refunded any interest which has been paid under section 114.

(2) Where the Revenue Commissioners apply section 15 to a number of persons, the Commissioners may defer repayment of all or part of any tax refundable under subsection (1) to any one or more of those persons prior to the application of that section if any one or more of those persons have not furnished all returns and remitted all amounts of tax referred to in section 76 or 77, as may be appropriate, at the time of such application.

(3) (a) Subject to paragraph (b), the Revenue Commissioners may, where it appears requisite to them to do so for the protection of the revenue, require as a condition for making a refund in accordance with subsection (1) the giving of security of such amount and in such manner and form as they may determine.

(b) The amount of security referred to in paragraph (a) shall not, in any particular case, exceed the amount to be refunded.

(4) A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates.

(5) Where the Revenue Commissioners refund any amount due under subsection (1) or section 100, they may, if they so determine, refund any such amount directly into an account, specified by the person to whom the amount is due, in a financial institution

(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.



Submissions

5. The Appellant accepted that the claim for repayment was not made within the four-year statutory limitation period but submitted that it would be unfair for the repayment to be refused. The Appellant stated that his accountant was ill for a number of years and that filing took place in an untimely manner. He stated that the repayment of taxes would allow him to discharge his creditors. The Appellant stated that he had worked hard over the years and that he was seeking repayment of monies belonging to him, which had been overpaid.
6. The Respondent submitted that a claim for repayment of tax must be made within four years after the end of the taxable period to which it relates. The Respondent submitted that returns filed in 2017 were therefore out of time. The Respondent submitted that as the Appellant's claim was out of time in accordance with the provisions of s.99(4) VATCA2010, the Respondent was unable to process the repayment.

Analysis and findings

7. The facts in this appeal are not in dispute. The parties agreed that the repayment claim regarding taxable periods falling within 01/01/2012–30/06/2012, 01/01/2011–30/06/2011 and 01/07/2011 – 31/12/2011 were not made within four years after the end of the chargeable period to which the claim related. The Respondent submitted that the Appellant's claim for repayment was thus out of time in accordance with s.99(4) VATCA2010 which provides; *'A claim for a refund under this Act may be made only within 4 years after the end of the taxable period to which it relates.'*
8. In my view, the statutory language used in section 99(4), in particular the use of the word *'only'* indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the four-year rule might be mitigated. In short, I do not consider that I have the authority or discretion to direct that a repayment be made to the Appellant where the claim for repayment is outside the four-year period specified in s.99(4) VATCA 2010.



9. Previous determinations of the Tax Appeals Commission have addressed the matter of repayment in the context of the four-year statutory limitation period. These determinations, numbered 18TACD2016, 19TACD2016, 21TACD2016, 26TACD2016, 02TACD2017, 08TACD2017, 11TACD2017, 26TACD2017, 09TACD2018 and 12TACD2018 can be found on the Commission website at www.taxappeals.ie.

Conclusion

10. Pursuant to the wording of s.99(4)VATCA2010, and in particular the use of the word “*only*” in the context in which it appears, I determine that I do not have discretion as regards the application of the four-year statutory limitation period in circumstances where the claim has been made outside the four-year period. As a result, I have no alternative but to determine that the repayment claim on behalf of the Appellant in respect of taxable periods falling within 01/01/2012–30/06/2012, 01/01/2011–30/06/2011 and 01/07/2011 – 31/12/2011 is out of time in accordance with section 99(4)VATCA2010.
11. This Appeal is determined in accordance with s.949AL TCA 1997.

APPEAL COMMISSIONER

July 2018

