



46TACD2019

BETWEEN/

Appellant

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal pursuant to section 119(1)(h) Value Added Tax Consolidation Act 2010 (VATCA2010) against a refusal by the Respondent to refund the Value Added Tax (VAT) claimed by a taxable person in another EU member state on goods or services supplied to the Appellant in Ireland. Such claims by a taxable person established in another EU member state pursuant to Section 101 VATCA - Intra-Community refunds of tax, are commonly referred to as “Electronic VAT Reclaims” (EVR).

Background

2. The Appellant is a taxable person in the UK and incurred VAT on goods and services supplied to it in Ireland.



3. The Appellant submitted an electronic VAT repayment claim to HMRC on 18 January 2017. This claim was sent to the Respondent through the EU's EVR system for approval and payment. The total refund claimed totalled €523.31.
4. The Respondent repaid part of the total claim but refused the following amounts for the following reasons:

Claim	VAT repayment claim	Reason given for refusal of VAT repayment
1	€29	Three ' <i>Copy Invoices</i> ' provided – Originals required
2	€149	Four invoices addressed to person other than the Appellant
3	€47	One invoice states ' <i>This is not a V.A.T invoice</i> ' addressed to person other than the Appellant
4	€33	One till receipt provided – This is not a valid VAT invoice
Total	€258	

5. The Appellant duly appealed the refusals of the refunds for the amounts shown in the table above.
6. By agreement of the parties, this case is adjudicated without a hearing in accordance with the provisions of S.949U TCA 1997.

Legislation

As set out in Appendix I below, the relevant legislative provisions are;

- Section 101 Value-Added Tax Consolidation Act 2010



- Section 59 Value-Added Tax Consolidation Act 2010
- Section 66 Value-Added Tax Consolidation Act 2010
- Section 20 Value-Added Tax Regulations 2010 (S.I. No. 639 of 2010)
- Council Directive 2008/9/EC of 12 February 2008
- EU information portal - Summary of VAT refund Process - Legislation relating to the EU VAT Refund procedure
- Vademecum for the electronic refund procedure to taxable persons not established in the member state of refund but established in another members state (Council Directive 2008/9/EC)

Submissions

7. The submissions made by the parties have been categorised based on the 'Reason for Refusal' as set out in the table above.

Submissions to TAC re: Claim 1

'Copy Invoices' provided – Original required

8. The Appellant submitted that;

"the invoices were the only invoices received, and were supplied electronically to the Appellant, via email. They were forwarded in the same form they were received and are obviously not scanned copies, and so should reasonably have been taken as being e-invoices.....the retailer has since provided invoices without the word "COPY" on it, and these VAT amounts have since been reclaimed as part of a later VAT reclaim (September 2017)."

9. The Respondent submitted that;

- *Article 20 of Council Directive 2008/9/EC allows for the request of original invoices. The Republic of Ireland's Vademecum for VAT Refunds on the EU Europa website clearly states that original invoices are required when requested. (Para 13 – procedures in Member State of Refund).*



- *Section 66 of the VAT act 2010 and Section 20 of VAT Regulation SI 639 of 2010 clearly outlines the requirements of a valid VAT invoice and a simplified invoice and Revenue's standard procedures under the legislation do not allow Invoices marked as copies.*

10. The relevant sales invoices were submitted by both parties to the Tax Appeals Commission (TAC). The Invoices are addressed to the Appellant and clearly state at the top of the Invoice "COPY SALES INVOICE".

Submissions to TAC re: Claim 2

Invoices addressed to a person other than the Appellant

11. The Appellant submitted that;

"The name X (our employee/director) appears on all invoices. The address used is a mixture of the delivery address and the address of our client, as our business name is not recognised on the site where the goods were being delivered. Sadly, being a new business, we did not understand the need to differentiate between delivery and invoice addresses."

"Revenue have refused to consider alternative supporting evidence, in the form of Bank Statements emailed to them, that clearly shows Appellant have incurred the VAT costs. Incorrect entries and/or mistakes in a company name and/or address do not justify rejecting claims when alternative evidence clearly and unambiguously shows the VAT reclaim is valid."

12. The Respondent submitted that in respect of invoices received from 2 suppliers the invoices were *"addressed to another entity other than the claimant"*. The Respondent submitted that;

"Each EU Member State has its own country - specific conditions regarding VAT refund processing. It is core requirement of internal IE EVR processing that the valid VAT Invoice is addressed to the claimant."



13. The relevant sales invoices were submitted by both parties to the TAC. The Invoices are addressed to a company in Europe and reference X and a delivery address in Dublin.

Submissions to TAC re: Claim 3

Invoices state "This is not a V.A.T invoice"

14. The Appellant submitted that;

"Revenue have refused to consider alternative supporting evidence, in the form of Bank Statements emailed to them, that clearly shows Appellant have incurred the VAT costs. Incorrect entries and/or mistakes in a company name and/or address do not justify rejecting claims when alternative evidence clearly and unambiguously shows the VAT reclaim is valid....The part where the Revenue claims an invoice states "This is not a VAT invoice" is a new excuse that has not previously been brought to our attention!"

15. The Respondent submitted that in respect of one supplier invoice;

"Each EU Member State has its own country - specific conditions regarding VAT refund processing. It is core requirement of internal IE EVR processing that the valid VAT Invoice is addressed to the claimant. Also, one of the documents being referred to by the appellant it is clearly states "This is not a V.A.T Invoice"."

Submissions to TAC re: Claim 4

Till receipt provided – This is not a valid VAT invoice

16. Neither party made submissions particular to this VAT claim. However, both parties submitted a copy of the till receipt from the relevant retail store. Although, the receipt does indicate that an amount of €33 of VAT was paid, the receipt is not laid out in a valid VAT invoice format.

Submissions to TAC re: All Claims 1-4



17. The Appellant, who is a taxable person in the UK submitted that;

"The UK HMRC operates the following policy - "HMRC says that in the absence of a valid VAT invoice its staff will consider whether or not there is satisfactory alternative evidence of the taxable supply available to support a deduction. HMRC staff will not simply refuse a claim without giving reasonable consideration to such evidence - HMRC has a duty to ensure that taxpayers pay no more tax than is properly due.". The Revenue does not operate on such a basis and unreasonably refuses to consider alternative evidence, even though the Revenue has a duty to ensure that taxpayers pay no more tax than is properly due!"

18. The Appellant has provided bank statement evidence that all of the invoices except the till receipt from a retail store were paid for from the Appellant's credit card account.

19. In respect of the general operation of the EVR system the Respondent submitted that;

"In the circumstances, it is submitted that the onus is on the appellant to establish clear entitlement to an Electronic VAT refund under the legislation and requirements of the refunding State."

Analysis and findings: Claim 1

'Copy Invoices' provided – Original required

20. Article 20 of Directive 2008/9/EC provides that;

"The information requested in accordance with this paragraph may include the submission of the original or a copy of the relevant invoice or import document where the Member State of refund has reasonable doubts regarding the validity or accuracy of a particular claim. In that case, the thresholds mentioned in Article 10 shall not apply."

21. In accordance with Article 20 of Directive 2008/9/EC, S.101 (9)(i) VATCA2010 provides that;



“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.”

This legislative provision is also set out in the Vademecum for Ireland which is linked to the EU information portal dealing with Intra- Community refunds of VAT. Point 13 asks;

“Are copies of invoices required?”

“Originals are required when requested”

22. Since the Irish Revenue have requested original invoices in this case and the Appellant has not supplied these in relation to this appeal, I determine that this claim for €29 should not succeed.

The Tax Appeals Commission does not have jurisdiction to adjudicate on the fairness of the application of the Irish VAT regulations and can only determine the matter in accordance with the legislation.

Analysis and Findings re: Claim 2

Invoices addressed to a person other than the Appellant

23. Pursuant to the domestic legislation in Ireland, in respect of claiming a deduction for tax borne or paid, an accountable person is entitled to a credit for the;

“the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations” (S.59 (2)(a) VATCA2010),

and



“containing such particulars as may be specified by regulations.” (S.66 (1) (a) VATCA2010)

24. The regulations referred to in the above sections are set out in the Value-Added Tax Regulations 2010 (S.I. No. 639 of 2010). Section 20 relates to Invoices and other documents. This states the following at Section 20 (2)(d);

“(2) The following particulars are specified for purposes of section 66(1) of the Act and are required to be included in every invoice issued, or deemed to be issued, by an accountable person:

.....

(d) the full name and address of the person to whom the goods or services were supplied,”

.....

25. The condition, that the invoice clearly state the full name and address of the person to whom the goods or services were supplied is required to protect the robustness and integrity of the refund system.

26. The Appellant submitted that;

“The address used is a mixture of the delivery address and the address of our client, as our business name is not recognised on the site where the goods were being delivered. Sadly, being a new business, we did not understand the need to differentiate between delivery and invoice addresses.”

27. The Appellant provided evidence of payment of the invoices that were addressed to a person different from the Appellant. The Appellant could have requested that the invoices be cancelled and reissued to the correct customer but did not.

28. The requirement that the invoice be addressed to the correct customer is necessary to ensure that only the correct accountable person can claim a credit for the VAT borne or paid and where this requirement is not met, it follows that a credit should not be granted.

29. Accordingly, I determine that this repayment claim of €149 should fail.



Analysis and Findings re: Claim 3

Invoices state “This is not a valid invoice”

30. The relevant sales invoice was submitted by both parties to the TAC. The Invoice is addressed to a company in Europe with no reference to X but with a delivery address in Dublin. The invoice also states “This is not a V.A.T Invoice”.
31. The requirement that the invoice be addressed to the correct customer is necessary to ensure that only the correct accountable person can claim a credit for the VAT borne or paid and where this requirement is not met, it follows that a credit of €47 should not be granted.

Analysis and Findings re: Claim 4

Till receipt provided – This is not a valid VAT invoice

32. The Appellant submitted a receipt from a retail store as evidence of their entitlement to a VAT refund. Although, this receipt does indicate that an amount of €33 of VAT was paid, the receipt is not laid out in a valid VAT invoice format and does not meet the conditions set out in the Value-Added Tax Regulations 2010.
33. Therefore, in accordance with the analysis above, I determine that a VAT credit of €33 should not be granted.

The burden of proof

34. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate



that it falls within the relief, see *Revenue Commissioners v Doorley* [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 131.

35. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated:

"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."

36. The TAC agrees with the Respondent that;

"In the circumstances, it is submitted that the onus is on the appellant to establish clear entitlement to an Electronic VAT refund under the legislation and requirements of the refunding State"

Determination

37. For the reasons set out above, I determine that the Appellant has not satisfied the requisite statutory conditions necessary to claims entitlement to a VAT repayment of €258.
38. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

Paul Cummins

APPEAL COMMISSIONER

23 October 2019.

Appendix I – Legislation

Section 101 Value-Added Tax Consolidation Act 2010



Intra-Community refunds of tax.

101.(1) 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 applicant for 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)

(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)

(6)

(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)*
- (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.*

Section 59 Value-Added Tax Consolidation Act 2010

Deduction for tax borne or paid.

59. (1) *In this subsection and subsection (2)—*

“qualifying activities” means—

- (a) *transport outside the State of passengers and their accompanying baggage,*
- (b) *supplies of goods which, by virtue of section 30, are deemed to have taken place in the territory of another Member State but only if the supplier of those goods is registered for value-added tax in that other Member State,*

[...]¹

- (d) *services specified in [paragraph 6(1), 7(1)]², 7 or 8 of Schedule 1 supplied—*



(i) outside the Community, or

(ii) directly in connection with the export of goods to a place outside the Community,

(e) services consisting of the issue of new stocks, new shares, new debentures or other new securities by the accountable person in so far as such issue is made to raise capital for the purposes of the accountable person's taxable supplies, and

(f) supplies of goods or services outside the State which would be taxable supplies if made in the State;

“qualifying vehicle” means a motor vehicle which, for the purposes of vehicle registration tax, is first registered, in accordance with section 131 of the Finance Act 1992, on or after 1 January 2009 and has, for the purposes of that registration, a level of CO₂ emissions of less than 156g/km.

(2) Subject to subsection (3), in computing the amount of tax payable by an accountable person in respect of a taxable period, that person may, in so far as the goods and services are used by him or her for the purposes of his or her taxable supplies or of any of the qualifying activities, deduct—

(a) the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations, in respect of supplies of goods or services to him or her,

.....

Section 66 Value-Added Tax Consolidation Act 2010

Issue of invoices and other documents.

66. (1) (a) An accountable person—

(i) who supplies goods or services to—

(I) another accountable person,

(II) a public body,

(III) a person who carries on an exempted activity,



(IV) a person (other than an individual) in another Member State in such circumstances that tax is chargeable at any of the rates specified in section 46(1), or

(V) a person in another Member State who is liable to pay value-added tax pursuant to the VAT Directive on such supply,

or

(ii) who supplies goods to a person in another Member State in the circumstances referred to in section 30(1)(a)(ii),

shall issue to the person so supplied, in respect of each such supply, an invoice, in paper format or subject to subsection (2) in electronic format, and containing such particulars as may be specified by regulations.

Section 20 Value-Added Tax Regulations 2010 (S.I. No. 639 of 2010)

Invoices and other documents

20. (1)

(2) The following particulars are specified for purposes of section 66(1) of the Act and are required to be included in every invoice issued, or deemed to be issued, by an accountable person:

(a) the date of issue of the invoice,

(b) a sequential number, based on one or more series, which uniquely identifies the invoice,

(c) the full name, address and registration number of the person who supplied the goods or services to which the invoice relates,

(d) the full name and address of the person to whom the goods or services were supplied,



- (e) in the case of a reverse charge supply, the value-added tax identification number of the person to whom the supply was made and an indication that a reverse charge applies,*
- (f) in the case of a supply of goods, other than a reverse charge supply, to a person registered for value-added tax in another Member State, the person's value-added tax identification number in that Member State and an indication that the invoice relates to an intra-Community supply of goods,*
- (g) the quantity and nature of the goods supplied or the extent and nature of the services rendered,*
- (h) the date on which the goods or services were supplied or, in the case of supplies specified in section 70(2) of the Act, the date on which the payment on account was made, in so far as that date differs from the date of issue of the invoice,*
- (i) in respect of the goods or services supplied—*
 - (i) the unit price exclusive of tax,*
 - (ii) any discounts or price reductions not included in the unit price, and*
 - (iii) the consideration exclusive of tax,*
- (j) in respect of the goods or services supplied, other than reverse charge supplies—*
 - (i) the consideration exclusive of tax per rate of tax, and*
 - (ii) the rate of tax chargeable,*
- (k) the tax payable in respect of the supply of the goods or services, except—*
 - (i) in the case of a reverse charge supply, or*
 - (ii) where section 87(9) or 89(5) of the Act applies,*

and

 - (l) in the case where a tax representative is liable to pay the value-added tax in another Member State, the full name and address and the value-added tax identification number of that representative.*



(2A) Notwithstanding paragraph (2), every simplified invoice issued by an accountable person in accordance with section 66(1)(b) of the Act is required to include the following particulars:

- (a) the date of issue,*
- (b) a sequential number that uniquely identifies the invoice,*
- (c) the full name, address and registration number of the person who supplied the goods or services,*
- (d) a description of the goods or services supplied, and*
- (e) the tax payable or the consideration exclusive of tax in respect of the supply of the goods or services.*

.....

(8) The amount of tax included on an invoice or other document issued in accordance with Chapter 2 of Part 9 of the Act is required to be expressed in euro.

(10) Any person issuing (other than by electronic means in accordance with Regulation 21(2)(a)) an invoice, credit note or debit note in accordance with Chapter 2 of Part 9 of the Act is required to keep an exact copy of it and references in this Regulation to any such document include references to that copy.

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

Article 10

Without prejudice to requests for information under Article 20, the Member State of refund may require the applicant to submit by electronic means a copy of the invoice or importation document with the refund application where the taxable amount on an invoice or importation document is EUR 1 000 or more or the equivalent in national currency. Where the invoice concerns fuel, the threshold is EUR 250 or the equivalent in national currency.



Article 20

1. Where the Member State of refund considers that it does not have all the relevant information on which to make a decision in respect of the whole or part of the refund application, it may request, by electronic means, additional information, in particular from the applicant or from the competent authorities of the Member State of establishment, within the four-month period referred to in Article 19(2). Where the additional information is requested from someone other than the applicant or a competent authority of a Member State, the request shall be made by electronic means only if such means are available to the recipient of the request.

If necessary, the Member State of refund may request further additional information.

The information requested in accordance with this paragraph may include the submission of the original or a copy of the relevant invoice or import document where the Member State of refund has reasonable doubts regarding the validity or accuracy of a particular claim. In that case, the thresholds mentioned in Article 10 shall not apply.

2. The Member State of refund shall be provided with the information requested under paragraph 1 within one month of the date on which the request reaches the person to whom it is addressed.

EU information portal - Summary of VAT refund Process - Legislation relating to the EU VAT Refund procedure - Extract

EU VAT Refund Process:

9. However, where the MSR does not consider that it has all the relevant information to make a decision, it may request, by electronic means, additional information within that four-month period. Further additional information may be required. (Article 20 (1)).

Vademecum for the electronic refund procedure to taxable persons not established in the member state of refund but established in another members state (Council Directive 2008/9/EC) - Extract

IRELAND



Procedures in the Member State of Refund:

13. Are copies of invoices required?

Originals are required when requested.

UK

Procedures in the Member State of Refund:

13. Are copies of invoices required?

You must attach scanned copies of all invoices and import documents where the taxable amount exceeds:

- £200 in the case of fuel, and*
- £750 in the case of all other goods and services*

