



04TACD2019

BETWEEN/

NAME REDACTED

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to a claim for repayment of valued added tax in accordance with section 99(4) of the Value Added Tax Consolidation Act 2010 ('VATCA 2010') in relation to the Appellant's annual VAT period of assessment ending 31 August 2007.
2. This appeal is determined in accordance with section 949U TCA 1997.

Background

3. On 04 April 2012, the Appellant submitted his VAT return in respect of his annual VAT period of assessment, ending 31 August 2007. The return showed VAT overpaid in the sum of €40,925 and the Appellant claimed a repayment and offset of tax. On 17 May 2013, 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. In addition, the Respondent refused the Appellant's claim for offset in accordance with section 865B(2) of the Taxes Consolidation Act 1997 as amended ('TCA 1997'). The Appellant duly appealed.

Legislation

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

- Section 99 VATCA 2010 – General Provisions on Refund of Tax
- Section 865B – No offset where repayment prohibited

Submissions

4. 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 Respondent to refuse the repayment. The Appellant stated that due to hardship, financial difficulties and personal circumstances arising at the relevant time, he was unable to attend to his tax affairs and consequently fell into arrears and default.
5. 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 the return filed in 2012 was out of time and, as a result, the Respondent was unable to process the repayment pursuant to the provisions of s.99(4) VATCA2010.

Analysis and findings

6. The facts in this appeal are not in dispute. The parties agreed that the repayment claim regarding taxable period ending 31 August 2007 was 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.'*
7. In my view, the statutory language used in section 99(4) VATCA 2010, 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.

8. The Appellant also made a claim for the overpayment of VAT to be offset against outstanding tax liabilities. In response, the Respondent relied on section 865B(2) TCA 1997, which provides;

*'... where a repayment of tax cannot be made to a person by virtue of the operation of -
(c) section 99 of the Value-Added Tax Consolidation Act 2010,*

...

...

then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person'.

9. Section 865B(2) TCA 1997 does not permit tax overpaid to be offset against tax liabilities in circumstances where a repayment claim in respect of the tax overpaid would not be available in accordance with the provisions of s.99 VATCA2010. In this appeal, I have determined that a repayment is not available to the Appellant in relation to tax overpaid in respect of the period ended 31 August 2007, as a valid claim for repayment was not made within the four-year statutory period contained in s.99 VATCA2010.
10. As a result, in accordance with section 865B(2) TCA 1997, I have no option but to determine that the tax overpaid of €40,925 arising in respect of the period ended 31 August 2007, is not available for offset against outstanding tax liabilities.
11. 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, 12TACD2018, 16TACD2018, 19TACD2018 and 25TACD2018 can be found on the Commission website at www.taxappeals.ie.

Conclusion

12. Pursuant to the wording of s.99(4) VATCA 2010, 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 the year ended 31 August 2007, is out of time in accordance with section 99(4) VATCA 2010.

13. Section 865B(2) TCA 1997, precludes an offset of VAT overpaid where a repayment cannot be made by virtue of the operation of section 99 of the VATCA and thus no offset is available in respect of the VAT overpayment.
14. This Appeal is determined in accordance with s.949AL TCA 1997.

COMMISSIONER LORNA GALLAGHER

December 2018

Appendix I - 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.

Section 865B – No offset where repayment prohibited

[(1) In this section—

“Acts” means—

(a) the statutes relating to the duties of excise and to the management of those duties,

(b) the Tax Acts,

(c) the Capital Gains Tax Acts,

(d) Parts 18A, 18C and 18D,

(e) the Capital Acquisitions Tax Consolidation Act 2003 and the enactments amending or extending that Act,

(f) the Stamp Duties Consolidation Act 1999 and the enactments amending or extending that Act,

[(g) the Value-Added Tax Consolidation Act 2010 and the enactments amending or extending that Act,



(h) the Finance (Local Property Tax) Act 2012, and

(i) any instruments made under any of the statutes and enactments specified in paragraphs (a) to (h);]

“relevant period”, in relation to a repayment, means—

(a) in the case of corporation tax, the accounting period of the company in respect of which the repayment arises,

(b) in the case of income tax, capital gains tax, income levy, universal social charge or domicile levy, the year of assessment in respect of which the repayment arises,

(c) in the case of stamp duties, the year of assessment or accounting period, as the case may be, within which falls the event in respect of which the repayment arises,

(d) in the case of gift tax or inheritance tax, the year of assessment or accounting period, as the case may be, within which falls the latest of the dates referred to in section 57(3) of the Capital Acquisitions Tax Consolidation Act 2003 and in respect of which the repayment arises,

[(e) in the case of excise duty, the year of assessment or accounting period, as the case may be, within which falls the act or event in respect of which the repayment arises,

(f) in the case of value-added tax, the year of assessment or accounting period, as the case may be, within which falls the taxable period in respect of which the repayment arises, and

(g) in the case of local property tax, the year within which the repayment arises;]

“repayment” includes a refund;

[“tax” means any income tax, corporation tax, capital gains tax, value-added tax, excise duty, stamp duty, gift tax, inheritance tax, income levy, domicile levy, universal social charge or local property tax and includes—]

(a) any interest, surcharge or penalty relating to any such tax, duty, levy or charge,

(b) any sum arising from the withdrawal or clawback of a relief or an exemption relating to any such tax, duty, levy or charge,

(c) any sum required to be deducted or withheld by any person and paid or remitted to the Revenue Commissioners or the Collector-General, as the case may be, and

(d) any amount paid on account of any such tax, duty, levy or charge or paid in respect of any such tax, duty, levy or charge;

“taxable period” has the same meaning as in section 2 of the Value-Added Tax Consolidation Act 2010.



(2) Subject to subsections (3) and (4), where a repayment of any tax cannot be made to a person by virtue of the operation of—

(a) section 865,

(b) section 105B of the Finance Act 2001,

(c) section 99 of the Value-Added Tax Consolidation Act 2010,

(d) section 159A of the Stamp Duties Consolidation Act 1999,

(e) section 57 of the Capital Acquisitions Tax Consolidation Act 2003, or

(f) any other provision of any of the Acts,

then, notwithstanding any other enactment or rule of law, that repayment shall not be set against any other amount of tax due and payable by, or from, that person.

(3) Where a repayment of tax cannot be made to a person in respect of a relevant period, it may be set against the amount of tax to which paragraph (a) of subsection (4) applies which is due and payable by the person in the circumstances set out in paragraph (b) of that subsection.

(4)(a) The amount of tax to which this paragraph applies is the amount, or so much of the amount, of tax that is due and payable by the person in respect of the relevant period as does not exceed the amount of the repayment that cannot be made to the person in respect of that relevant period.

(b) The circumstances set out in this paragraph are where tax is due and payable in respect of the relevant period by virtue of an assessment that is made or amended, or any other action that is taken for the recovery of tax, at a time that is 4 years or more after the end of the relevant period.

(5) No tax shall be set against any other amount of tax except as is provided for by the Acts.]

