Allowable and Non-Allowable Expenditures for VAT Refunds

by Marty Murphy

The concept of flat-rate farmers in Ireland was introduced as a simplified VAT system to ease the administrative burden on small farmers. The system is rooted in European Union VAT directives, particularly Council Directive 2006/112/EC, which allows member states to implement a flat-rate compensation scheme for farmers who opt not to register for VAT. The Irish implementation aims to ensure that farmers receive adequate compensation for VAT paid on inputs without having to engage in complex VAT accounting and reporting procedures.

Background on Flat Rate Farmers

Farmers are not required to register for VAT even when they exceed the VAT thresholds per section 6 of the Value-Added Tax Consolidation Act 2010 (VATCA 2010). The flat rate basis is also applied to companies, partnerships, etc. Where a farmer is required to register for VAT for imports from outside the state, the VAT registration is ringfenced so that the farm only needs to account for VAT on imports, and the rest of their business remains outside the VAT net. Where either a company or an individual is obliged to register for VAT outside of the farm trade, the flat rate basis for VAT is not available.

The flat rate addition appears within the Value-Added Tax Consolidation Act 2010 (VATCA 2010), specifically under Section 86. The current rate set by the Minister for Finance for the flat rate addition is 4.8% (effective from 2024, down from 5.6% in January 2021). This rate is reviewed periodically to ensure it compensates for the VAT incurred on inputs. It should not be confused with the livestock VAT rate which currently also happens to be 4.8%.

A flat-rate farmer does not issue an invoice with a VAT rate on it. Instead, for instance, when a cow has been sold for €1,500, the buyer/mart will add 4.8% to the price paid to the farmer and pay the farmer €1,572. The buyer will issue the farmer with a self-issued invoice, and the buyer will then claim the €72 back from Revenue as an input cost in the buyer's VAT return. The purpose of the flat rate addition is to compensate the farmer for inputs that the farmer would have been entitled to if they registered for VAT but instead chose to be a flat rate farmer.

VAT58B Refunds Overview

Value-Added Tax (Refund of Tax) (Flat-rate Farmers) Order 2012 (S.I. No. 201/2012) allows farmers to claim certain expenditures. This is funded by the Irish exchequer and originates from when Ireland joined the European Union. These refunds are called VAT58s. Starting in 2022, the number of refunds being subject to review by Revenue substantially increased. In the same period, the number of claims being rejected substantially increased, including for items that had previously been allowed. Practitioners became uncertain of what would qualify and could not advise clients. This led to huge uncertainty on capital projects being undertaken by farmers as this could significantly alter the cost of a build if the expenses did not qualify for a refund.

In 2014, the number of claims amounted to 21,227 for €50.9 million. In 2023, a total of 35,896 claims were made for €88 million. The peak of claims was in 2020, with a total of 37,176, and the peak cost was in 2022, with €89.3 million. Obviously, 2022 coincided with a significant increase in the cost of building.

In response to the number of queries and various requests by TDs and lobbying organisations, Revenue has published their guidance based on the explanatory notes from Council Implementing Regulation (EU) No 1042/2013, also known as VAT13B.

The EU guidance is clear in its reference to fixed or in the ground. "The VAT Implementing Regulation refers to buildings and constructions while the VAT Directive only refers to structures fixed to or in the ground. Therefore, irrespective of whether the structure qualifies as a building or construction, what will be decisive to qualify as immovable property is whether the concerned structure is fixed to or in the ground."

Revenue Guidelines on Allowable and Non-Allowable Expenditures

Below, I have provided a general overview of what Revenue has allowed and has not allowed.

Construction of Farm Buildings

Refundable Items:

1. Building Materials:

- Concrete, bricks, steel, and other materials directly used in constructing barns, silos, or other agricultural buildings.
- Insulation materials to ensure the building meets required standards.

- Roofing materials such as metal sheets, tiles, or thatch.

2. **Construction Services:**

- Labour costs for construction workers and contractors directly involved in building the structure.
- Architect and engineering fees for designing the building.

3. **Essential Fixtures:**

- Electrical systems for lighting and powering farm equipment within the building.
- Plumbing systems necessary for the operation of the farm building.
- Ventilation systems to maintain air quality within livestock buildings.

4. **Site Preparation:**

- Costs associated with clearing and levelling the land where the farm building will be constructed.
- Costs for laying the foundation.

Non-Refundable Items:

1. **General Farm Equipment:**

- Tractors, ploughs, harvesters, and other machinery not directly incorporated into the building.
- Tools and small equipment used by construction workers that are not permanently fixed to the building.

2. **Maintenance and Repair Costs:**

- Routine maintenance and minor repairs for existing buildings, such as repainting or fixing leaks.
- Costs for servicing and maintaining construction machinery.

3. **Non-Essential Fixtures:**

- Furniture and office equipment placed within the farm building such as desks, chairs, and computers.
- Decorative elements that do not serve a functional purpose in the operation of the farm.

4. **Personal Expenses:**

- Any costs related to personal use, such as residential space within the farm building.
- Personal vehicles or items not used exclusively for farm operations.

Fencing, Draining, or Reclamation of Farmland

Refundable Items:

1. **Fencing Materials and Installation**:

- Materials: Wooden posts, wire mesh, electric fencing components, gates.
- Installation: Labour costs for setting up the fencing, including digging post holes, setting posts, and attaching fencing material.
- Accessories: Fence energizers, insulators, and other essential accessories for electric fencing.

2. **Draining Materials and Services:**

- Drainage Pipes: Perforated pipes, tiles, and other materials used for field drainage systems.
- Installation: Labour costs for installing drainage systems, including digging trenches and laying pipes.
- Pumps and Accessories: Submersible pumps and necessary accessories for efficient drainage.

3. **Reclamation Activities:**

- Land Clearing: Costs for removing trees, rocks, and other obstructions from the land.
- Soil Improvement: Materials like topsoil, compost, and lime to improve soil quality.
- Levelling and Grading: Machinery hire and labour costs for levelling and grading the land.
- Seeding: Initial seeding of reclaimed land.

Non-Refundable Items:

1. **General Maintenance:**

- Repairs: Routine repairs to existing fencing or drainage systems, such as fixing broken fence wires or clearing blocked drains.
- Upkeep: Regular upkeep costs such as painting fence posts or replacing worn-out parts.

2. **Non-Essential Additions:**

- Aesthetic Enhancements: Decorative elements like ornamental gates or landscaping around the fencing.
- Non-Essential Machinery: Equipment not directly related to fencing, draining, or reclamation, like lawnmowers for maintaining grass around the fence.

3. **Personal Expenses:**

- Residential Landscaping: Costs related to landscaping around personal residences on the farm.
- Personal Use Items: Any items or services not directly tied to farm operations, like decorative plants or garden ornaments.

Installation of Qualifying Equipment for Micro-Generation of Electricity

Refundable Items:

1. **Solar Power Systems:**

- Materials: Solar panels, inverters, mounting systems, wiring, and batteries for energy storage.
- Installation: Labour costs for installing solar panels on farm buildings, setting up inverters, and connecting the system to the farm's electrical grid.
- Accessories: Charge controllers, monitoring systems, and essential safety equipment like fuses and disconnects.

2. **Wind Turbines:**

- Materials: Wind turbine units, poles, mounting hardware, and electrical components.
- Installation: Labour costs for erecting wind turbines, including foundation work, pole installation, and electrical hookups.
- Accessories: Control systems, batteries for energy storage, and monitoring equipment.

3. **Biogas Plants:**

- Materials: Biogas digesters, gas storage tanks, piping, and combustion equipment.

- Installation: Labour costs for constructing biogas plants, including digging pits, setting up digesters, and installing gas handling systems.
- Accessories: Gas scrubbers, pressure regulators, and safety devices.

4. **Hydroelectric Systems**:

- Materials: Small-scale hydro turbines, water intake structures, pipes, and electrical components.
- Installation: Labour costs for setting up hydroelectric systems, including constructing water channels, installing turbines, and connecting to the farm's grid.
- Accessories: Control systems, batteries, and monitoring equipment.

Non-Refundable Items:

1. **General Equipment:**

- Non-Essential Machinery: Equipment not directly related to the generation of electricity, such as general farm tools or personal use items.
- Maintenance Tools: Tools used for routine maintenance of the micro-generation equipment.

2. **Maintenance and Repair Costs:**

- Routine Maintenance: Costs for regular servicing and minor repairs to existing micro-generation systems, such as cleaning solar panels or oiling wind turbines.
- Spare Parts: Replacement parts for routine upkeep.

3. **Non-Essential Additions:**

- Aesthetic Enhancements: Decorative elements added to the micro-generation setup, like painting turbines or adding non-functional structures.
- Non-Essential Accessories: Items not critical to the operation of the system, such as non-essential monitoring devices or luxury upgrades.

4. **Personal Expenses:**

- Residential Use: Costs related to generating electricity for personal residences on the farm.
- Personal Items: Any items or services not directly tied to farm operations, such as personal electronic devices powered by the system.

Challenges and Revenue Concerns

Revenue has made some questionable decisions where items made, for instance, of concrete and bolted down are allowable, which is in the merit of the EU guidance, but the exact same thing made, for instance, of plastic or not bolted down, such as moveable cow mats, is not allowable.

Revenue is also concerned that several milk bulk tanks, for instance, are for sale on online auctions that had likely qualified for VAT58 refunds. If the bulk tanks could be sold, they could not be considered fixed and therefore not qualifying. The reality is that anything can be removed with the right tool. There is a mix between bulk tanks going for scrap and having been ripped apart to get them out of where they had been installed.

Additionally, a concern of Revenue is why the dairy industry was the source of so many query submissions, but even in the original concept for the scheme, dairy was mentioned.

Future of VAT on Farms:

Revenue is currently under a process to modernise VAT along the same lines as PAYE modernisation. No clear intention has been published by Revenue, but it is likely that all farmers will eventually fall into the VAT net. This will likely take a number of years to materialise and will likely be led by the current EU proceedings concerning broiler chickens resulting in individual sectors being analysed independently and slowly removed from the flat rate addition.

Conclusion

Traditionally, the flat rate addition for farmers has been well-received by farmers along with reduced administrative costs. The complications and additional work being required, due to the complexity of VAT58 claims, are likely to be the first step in a long path to eventually bring all farmers within the VAT net.

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Marty joined the ifac team in 2020, as the Partner of our Dublin Office before becoming the Head of Tax of ifac in 2023. Marty holds a Bachelor of Commerce from University of Galway, he is a fellow of ACCA, a member of the Irish tax institute CTA/AITI and a member of CPA Ireland. Marty trained in a firm in Galway and subsequently worked for a top 10 before leading the corporate division of one of Ireland's largest Private Clients Firms. Marty has both an audit and tax background, with expertise in corporate work, restructuring work and succession. Outside the office, Marty is an avid IT enthusiast and likes to have all the latest technologies and gadgets!