AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

129TACD2022

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter "the Commission") as an appeal against an assessment to Value Added Taxation ("VAT") raised by the Revenue Commissioners ("the Respondent") on 4th October 2017.

2. The assessment covers the tax years 2013 and 2014 and the total VAT due on the assessment amounts to €58,416. The Appellant is appealing the assessment in accordance with section 119 (1) Value-Added Tax Consolidation Act 2010, as amended ("VATCA 2010").

Background

3. The Appellant operates as an antiques dealer and specialises in the sale of antique jewellery. The majority of the jewellery purchases made by the Appellant for the period under appeal were sourced from United Kingdom ("UK") suppliers.

4. On 3rd June 2016, the Appellant was notified of a Revenue Audit by the Respondent. The scope of the audit was Income Tax and VAT for the tax years 2013 and 2014.

5. The Revenue Audit was conducted on 8th July 2016. During the course of the audit, the Respondent became aware that the Appellant was providing her Irish VAT number to her UK suppliers and those suppliers were charging zero VAT on the invoices which they issued to the Appellant. As the Appellant's business was registered for VAT in Ireland, it was entitled (subject to certain conditions being fulfilled) to buy goods VAT free from another business in the European Union (which the UK was then a part of).

6. The Respondent also became aware that the Appellant was operating the "margin scheme" when accounting for VAT on the subsequent sale of the UK purchases to her Irish resident customers. The margin scheme is provided for under section 87 VATCA 2010 and allows dealers in certain second-hand goods to pay VAT on the difference between the sales price and the purchase price of goods.

7. The Respondent formed the view that the Appellant had not operated the margin scheme in accordance with the legislation and that this resulted in an underpayment of VAT for 2013 in the sum of €25,988 and €31,925 for 2014.

8. In addition, the Respondent was of the view that total VAT deductibility had been incorrectly claimed by the Appellant in respect of purchases which related to non-business or personal use. The deemed VAT over-claim on these purchase invoices amounted to €223 for 2013 and €280 for 2014. The effect of these over-claims was that VAT was deemed to be underpaid by the amount of over-claim for each of the years 2013 and 2014.

9. As an agreement could not be reached between the Appellant and the Respondent, the Respondent issued a notice of assessment to VAT in the sum of €58,416 on 4th October 2017. The amount of VAT sought on this assessment represented the amount of the deemed additional VAT due on the incorrect operation of the margin scheme (€57,913) and the amount of the deemed over-claimed purchase VAT for the tax years 2013 and 2014 (€503).

10. On 5th December 2017, the Appellant who was not in agreement with the Notice of Assessment lodged an appeal with the Commission. The Appeal hearing was held remotely on 6th July 2022 with the Appellant and her Counsel in attendance. The Respondent was represented by Senior and Junior Counsel.

Legislation and Guidelines

11. The following legislation is relevant to this appeal.

Section 9 VATCA 2010 – Intra-Community acquisitions and accountable persons

(1) Where a person engages in the intra-Community acquisition of goods in the State in the course or furtherance of business, he or she shall be—

(a) an accountable person, and

(b) accountable for and liable to pay the tax chargeable.

(2) Subject to subsection (3) and sections 12 (3) and (5), 13 and 17 (1), and notwithstanding subsection (1), a person for whose intra-Community acquisitions of goods (being goods other than new means of transport or goods subject to a duty of excise) the total consideration for which has not exceeded and is not likely to exceed €41,000 in any continuous period of 12 months shall not, unless the person otherwise elects and then only during the period for which such election has effect, be an accountable person.

(3) Where section 5 (1) applies to a person referred to in subsection (2), then subsection (2) shall not apply to the person unless section 6 (1) also applies to him or her.

(4) Subject to subsection (5), a person who is an accountable person by virtue of this section or section 10 and who is a person referred to in section 6 (1)(a) or (b) shall be deemed to be an accountable person only in respect of—

(a) intra-Community acquisitions of goods which are made by him or her, and

(b) any services of the kind referred to in section 12, 13 or 17 (1) which are received by him or her.

(5) A person may elect that subsection (4) shall not apply to him or her.

(6) Subject to subsection (7), a person who is an accountable person by virtue of this section or section 10 and who is a person referred to in section 17 (2) shall be deemed to be an accountable person only in respect of—

(a) intra-Community acquisitions of goods which are made by him or her,

(b) racehorse training services which are supplied by him or her, and

(c) any services of the kind referred to in section 12, 13 or 17 (1) which are received by him or her.

(7) A person may elect that subsection (6) shall not apply to him or her.

Section 24 VATCA 2010 – Intra-Community acquisitions of goods

(1) In this Act "intra-Community acquisition", in relation to goods, means the acquisition of—

(a) movable goods (other than new means of transport)—

(i) supplied by—

(I) a person registered for value-added tax in a Member State,

(II) a person obliged to be registered for value-added tax in a Member State,

(III) a person who carries on an exempted activity in a Member State, or

(IV) a flat-rate farmer in a Member State,

(ii) supplied to a person in another Member State (other than an individual who is not a taxable person or who is not entitled to elect to be a taxable person, unless the individual carries on an exempted activity), and

(iii) which have been dispatched or transported from the territory of a Member State to the territory of another Member State as a result of such supply,

…

(2) An intra-Community acquisition of goods shall be deemed not to occur where the supply of those goods is subject to value-added tax referred to in the VAT Directive in the Member State of dispatch under the provisions implementing Articles 4 and 35, first subparagraph of Article 139(3) and Articles 311 to 341 of that Directive in that Member State.

(3) For the purposes of this section and section 32 —

(a) a supply in the territory of another Member State shall be deemed to have arisen where, under similar circumstances, a supply would have arisen in the State under Chapter 1 or Chapter 1 of Part 4 (including either of those Chapters as read with section 2 (3)),

(b) an activity in another Member State shall be deemed to be an exempted activity where the same activity, if carried out in the State, would be an exempted activity,

(c) a person shall be deemed to be a flat-rate farmer in another Member State where, under similar circumstances, the person would be a flat-rate farmer in the State in accordance with section 86 (1), and

(d) a person shall be deemed to be a taxable person or a person who is entitled to elect to be a taxable person in another Member State where, under similar circumstances, the person would be an accountable person or entitled to elect to be an accountable person in the State in accordance with Part 2.

…

Section 29 VATCA 2010

(1) For the purposes of this Act, the place where goods are supplied shall be deemed to be—

(a) in the case of goods dispatched or transported and to which section 30 does not apply, subject to subsection (2), the place where the dispatch or transportation to the person to whom the goods are supplied begins,

(b) in the case of goods which are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place where the goods are installed or assembled,

(c) in the case of goods not dispatched or transported, the place where the goods are located at the time of supply,

(d) in the case of goods supplied on board vessels, aircraft or trains during transport, the places of departure and destination of which are within the Community, the place where the transport begins.

…

Section 87 VATCA 2010

(1) In this section –

…

"margin scheme" means the special arrangements for the taxation of supplies of margin scheme goods;

"margin scheme goods" means any works of art, collectors' items, antiques or second-hand goods supplied within the Community to a taxable dealer—

(a) by a person (other than a person referred to in paragraph (c)) who was not entitled to deduct, under Chapter 1 of Part 8 , any tax in respect of the person's purchase, intra-Community acquisition or importation of those goods where that person is neither—

(i) an accountable person who acquired those goods from a taxable dealer who applied the margin scheme to the supply of those goods to that accountable person, nor

(ii) an accountable person who acquired those goods from an auctioneer (within the meaning of section 89) who applied the auction scheme (within the meaning of section 89) to the supply of those goods to that accountable person,

(b) by a person in another Member State who was not entitled to deduct, under the provisions implementing Articles 167, 173, 176 and 177 of the VAT Directive, in that Member State, any value-added tax referred to in that Directive in respect of that person's purchase, intra-Community acquisition or importation of those goods, or

(c) by another taxable dealer who has applied the margin scheme to the supply of those goods or applied the provisions implementing Articles 4 and 35, first subparagraph of Article 139(3) and Articles 311 to 325 and 333 to 340 of the VAT Directive, in another Member State to the supply of those goods,

and also includes goods acquired by a taxable dealer as a result of a disposal of goods by a person to the taxable dealer where that disposal was deemed not to be a supply of goods in accordance with section 20 (3);

…

"profit margin" means the profit margin in respect of a supply by a taxable dealer of margin scheme goods and—

(a) subject to paragraph (b)—

(i) shall be deemed to be inclusive of tax, and

(ii) shall be an amount which is equal to the difference between the taxable dealer's selling price for those goods and the taxable dealer's purchase price for those goods,

(b) shall be deemed to be nil in any case where the purchase price is greater than the selling price;

"purchase price", in relation to an acquisition of margin scheme goods, means the total consideration, including all taxes, commissions, costs and charges whatsoever, payable by a taxable dealer to the person from whom that taxable dealer acquired those goods;

"second-hand goods" means any tangible movable goods which are suitable for further use either as they are or after repair, including means of transport and agricultural machinery, purchased or acquired on or after 1 January 2010, but not including works of art, collectors' items, antiques, precious metals and precious stones;

"selling price" means the total consideration which a taxable dealer becomes entitled to receive in respect of or in relation to a supply of margin scheme goods, including all taxes, commissions, costs and charges whatsoever and value-added tax (if any) payable in respect of the supply;

"taxable dealer"—

(a) means an accountable person who in the course or furtherance of business, whether acting on the person's own behalf, or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale, purchases or acquires or applies for the purpose of his or her business margin scheme goods or the goods referred to in subsection (4)(a)(ii) and (iii), with a view to resale, or imports the goods referred to in subsection (4)(a)(i), with a view to resale, and

(b) includes a person supplying financial services of the kind specified in paragraph 6(1)(e) of Schedule 1 who acquires or purchases margin scheme goods for the purpose of the supply thereof as part of an agreement of the kind referred to in section 19 (1)(c),

and, for the purposes of this interpretation, a person in another Member State shall be deemed to be a taxable dealer where, in similar circumstances, that person would be a taxable dealer in the State under this section;

"works of art" means any of the goods specified in paragraph 18(2) or 23 of Schedule 3 or in paragraph 1 of Schedule 5 .

(2) Subject to and in accordance with this section, a taxable dealer may apply the margin scheme to a supply of margin scheme goods.

(3) Where the margin scheme is applied to a supply of goods, the amount on which tax is chargeable on the supply in accordance with section 3 (a) or (c) is, notwithstanding Chapter 1 of Part 5 , the profit margin less the amount of tax included in the profit margin.

(4) (a) Subject to paragraph (b) and to such conditions (if any) as may be specified in regulations, a taxable dealer may, notwithstanding subsection (2), opt to apply the margin scheme to all that dealer's supplies of any of the following as if they were margin scheme goods:

(i) a work of art, collector's item or antique which the taxable dealer imported;

(ii) a work of art which has been supplied to the taxable dealer by its creator or the creator's successors in title; or

(iii) a work of art which has been supplied to the taxable dealer by an accountable person other than a taxable dealer, where the supply to that dealer is of the kind referred to in section 48 (1)(c).

(b) Where a taxable dealer opts to apply the margin scheme in accordance with paragraph (a), the option shall be for a period of not less than 2 years from the date when that option was exercised.

(5) Where a taxable dealer exercises the option in accordance with subsection (4), in respect of the goods specified in subsection (4)(a)(i), then, notwithstanding the definition of "purchase price" in subsection (1), the purchase price for the purposes of determining the profit margin in relation to a supply of those goods shall be an amount equal to the value of those goods for the purposes of importation determined in accordance with section 53 increased by the amount of any tax payable in respect of the importation of those goods.

(6) Subject to subsection (7) and notwithstanding Chapter 1 of Part 8 , a taxable dealer who exercises the option in respect of the supply of the goods specified in subsection (4)(a) shall not be entitled to deduct any tax in respect of the purchase or importation of those goods.

(7) Where a taxable dealer exercises the option in accordance with subsection (4), the dealer may, notwithstanding subsection (4)(b), in respect of any individual supply of the goods specified in subsection (4)(a), opt not to apply the margin scheme to that supply, and in such case the right to deduction of the tax charged on the purchase, intra-Community acquisition or importation of those goods shall, notwithstanding Chapter 1 of Part 8, arise only in the taxable period which the dealer supplies those goods.

(8)(a) In this subsection—

"aggregate margin", in respect of a taxable period—

(i) subject to paragraph (ii), means an amount which is equal to the difference between the taxable dealer's total turnover in that taxable period from supplies of low value margin scheme goods, to which the same rate of tax applies, less the sum of that taxable dealer's purchase prices of low value margin scheme goods to which that rate of tax applies to the supply thereof, in that taxable period,

(ii) in any case where the sum of such purchase prices of that dealer is in excess b) Notwithstanding subsection (3) but subject to and in accordance with regulations (if any)—

(i) where a taxable dealer acquires low value margin scheme goods in job lots or otherwise, the amount of tax due and payable in respect of the dealer's supplies of low value margin scheme goods shall, in respect of a taxable period, be the amount of tax included in that dealer's aggregate margin, or margins, for that period and the amount of tax in each aggregate margin shall be determined by the formula—

$$\frac{B}{A \times B + 100}$$

where—

A is the aggregate margin for the taxable period in question, and

B is the percentage rate of tax chargeable in relation to the supply of those goods,

and

(ii) where the taxable dealer referred to in subparagraph (i) makes supplies in any taxable period which are subject to different rates of tax, that taxable dealer shall calculate separate aggregate margins for that taxable period in respect of the supplies at each of the relevant rates.

(b) Subject to and in accordance with regulations (if any), where a taxable dealer supplies a low value margin scheme good for an amount in excess of €635, then—

(i) notwithstanding the definition of "low value margin scheme goods" in paragraph (a), the supply of that good shall be deemed not to be a supply of a low value margin scheme good,

(ii) in determining the aggregate margin for the taxable period in which the supply occurs, the dealer shall deduct the purchase price of that good from the sum of the dealer's purchase prices of low value margin scheme goods for that period, and

(iii) the purchase price of that good shall be used in determining the profit margin in relation to the supply of that good.

(9) Notwithstanding Chapter 2 of Part 9, a taxable dealer shall not, in relation to any supply to which the margin scheme has been applied, indicate separately the amount of tax chargeable in respect of the supply on any invoice or other document in lieu thereof issued in accordance with that Chapter.

(10) Where the margin scheme is applied to a supply of goods dispatched or transported from the State to a person registered for value-added tax in another Member State, then, notwithstanding paragraph 1(1) of Schedule 2 , section 46 (1)(b) shall not apply unless such goods are of a kind specified elsewhere in that Schedule.

(11) Notwithstanding section 30, where the margin scheme is applied to a supply of goods dispatched or transported, the place of supply of those goods shall be deemed to be the place where the dispatch or transportation begins.

(12) Where a taxable dealer applies the margin scheme to a supply of goods on behalf of another person pursuant to a contract under which commission is payable on purchase or sale, the goods shall be deemed to have been supplied by that other person to the taxable dealer when that taxable dealer supplies those goods.

…

S.I. No. 639 of 2010 – Value Added Tax Regulations 2010

6. Every Invoice issued by an accountable person in accordance with section 87(9) or 89(5) of the Act is required to indicate that the margin scheme or auction scheme, as appropriate, has been applied.

…

20. (1) In this Regulation "reverse charge supply" means a supply of goods or services to a person in another Member State who is liable to pay value added tax under the VAT Directive on such supply.

(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.

…

(4) Every invoice issued by an accountable person in accordance with section 67(1)(a) of the Act in respect of an increase in consideration is required to include the particulars specified in subparagraphs (a) to (f) of paragraph (2),and shall indicate—

(a) the amount, exclusive of tax, of the increase in consideration for the supply,

(b) the rate or rates of tax and the amount of tax at each rate appropriate to that increase in consideration, and

(c) a cross-reference to every other invoice issued by the accountable person in respect of the total consideration for the supply.

EC Directive 2006/112/EC

Article 312

For the purposes of this Subsection, the following definitions shall apply:

(1) 'selling price' means everything which constitutes the consideration obtained or to be obtained by the taxable dealer from the customer or from a third party, including subsidies directly linked to the transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the customer, but excluding the amounts referred to in Article 79;

(2) 'purchase price' means everything which constitutes the consideration, for the purposes of point (1), obtained or to be obtained from the taxable dealer by his supplier.

Article 313

(1) In respect of the supply of second-hand goods, works of art, collectors' items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.

…

Article 314

The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors' items or antiques where those goods have been supplied to him within the Community by one of the following persons:

(a) a non-taxable person;

(b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;

(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

(d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.

Article 315

The taxable amount in respect of the supply of goods as referred to in Article 314 shall be the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.

The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.

Article 316

(1) Member States shall grant taxable dealers the right to opt for application of the margin scheme to the following transactions:

(a) the supply of works of art, collectors' items or antiques, which the taxable dealer has imported himself;

(b) the supply of works of art supplied to the taxable dealer by their creators or their successors in title;

(c) the supply of works of art supplied to the taxable dealer by a taxable person other than a taxable dealer where the reduced rate has been applied to that supply pursuant to Article 103.

(2) Member States shall lay down the detailed rules for exercise of the option provided for in paragraph 1, which shall in any event cover a period of at least two calendar years.

Article 317

If a taxable dealer exercises the option under Article 316, the taxable amount shall be determined in accordance with Article 315.

In respect of the supply of works of art, collectors' items or antiques which the taxable dealer has imported himself, the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable amount on importation, determined in accordance with Articles 85 to 89, plus the VAT due or paid on importation.

Article 318

(1) In order to simplify the procedure for collecting the tax and after consulting the VAT Committee, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return referred to in Article 250.

In the event that such provision is made in accordance with the first subparagraph, the taxable amount in respect of supplies of goods to which the same rate of VAT is applied shall be the total profit margin made by the taxable dealer less the amount of VAT relating to that margin.

(2) The total profit margin shall be equal to the difference between the following two amounts:

(a) the total value of supplies of goods subject to the margin scheme and carried out by the taxable dealer during the tax period covered by the return, that is to say, the total of the selling prices;

(b) the total value of purchases of goods, as referred to in Article 314, effected by the taxable dealer during the tax period covered by the return, that is to say, the total of the purchase prices.

(3) Member States shall take the measures necessary to ensure that the taxable dealers referred to in paragraph 1 do not enjoy unjustified advantage or sustain unjustified harm.

Article 319

The taxable dealer may apply the normal VAT arrangements to any supply covered by the margin scheme.

Article 320

(1) Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art, a collectors' item or an antique which he has imported himself, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid on the import.

Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art supplied to him by its creator, or the creator's successors in title, or by a taxable person other than a taxable dealer, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid in respect of the work of art supplied to him.

(2) A right of deduction shall arise at the time when the VAT due on the supply in respect of which the taxable dealer opts for application of the normal VAT arrangements becomes chargeable.

Article 321

If carried out in accordance with the conditions specified in Articles 146, 147, 148 or 151, the supply of second-hand goods, works of art, collectors' items or antiques subject to the margin scheme shall be exempt.

Article 322

> *In so far as goods are used for the purpose of supplies carried out by him and subject to the margin scheme, the taxable dealer may not deduct the following from the VAT for which he is liable:*
>
> > *(a) the VAT due or paid in respect of works of art, collectors' items or antiques which he has imported himself;*
> >
> > *(b)the VAT due or paid in respect of works of art which have been, or are to be, supplied to him by their creator or by the creator's successors in title;*
> >
> > *(c) the VAT due or paid in respect of works of art which have been, or are to be, supplied to him by a taxable person other than a taxable dealer.*

Article 323

> *Taxable persons may not deduct from the VAT for which they are liable the VAT due or paid in respect of goods which have been, or are to be, supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the margin scheme.*

Article 324

> *Where the taxable dealer applies both the normal VAT arrangements and the margin scheme, he must show separately in his accounts the transactions falling under each of those arrangements, in accordance with the rules laid down by the Member States.*

Article 325

> *The taxable dealer may not enter separately on the invoices which he issues the VAT relating to supplies of goods to which he applies the margin scheme.*

Submissions

Appellant

12. The Appellant advised that ordinarily when purchasing stock for her business, representatives from various UK suppliers would call to her home in Co. [redacted] with a "doctor type bag" full of various types of jewellery. She advised the typical type of jewellery that she purchased was diamonds, gold, rubies or sapphires and that all the jewellery purchased was in "set form" (meaning that the items were ready for resale without any form of resetting or refurbishment required). The Appellant advised that following careful examination of the jewellery she selected what items she wished to acquire, which may

have been some or all of the items on offer, and the items she acquired were on "appro" (meaning that they were acquired on a sale or return basis). The Appellant advised that she dealt with established UK dealers who travelled over from the UK to sell jewellery to her and she was unsure when they attended Ireland if they came specifically to visit her or whether those UK dealers attended other customers based in Ireland. However, the Appellant was of the view that the sales concluded between her and her UK suppliers were sales within Ireland as the sales by them were concluded in her home based in Co. [redacted].

13. The Appellant's Counsel submitted that as the UK supplier concluded the sale contract within Ireland that it had a "permanent establishment" in Ireland which would deem the supply to be within the Irish and not the British jurisdiction for VAT purposes. Detailed submissions were provided to the Commission on what constituted a "permanent establishment" under Article 5 (2) of the OECD Model Tax Convention.

14. The Appellant's Counsel submitted that if the UK supplier was deemed to have a permanent establishment in Ireland that did not necessarily require it to register for VAT in Ireland since traders are not required to register for VAT in Ireland unless their turnover exceeds certain annual amounts (€75,000 was the relevant threshold for the supply of goods in both 2013 and 2014). The Appellant's Counsel further submitted that if the UK trader was not obliged to register for VAT within Ireland, then the supplies made to the Appellant were acquired from non-VAT registered entities and as such this entitled the Appellant to account for VAT using the margin-scheme.

15. The Appellant's Counsel submitted that it was the responsibility of the supplier to have registered for VAT in Ireland and as they had not the Appellant had erroneously received zero rated VAT invoices subject to the reverse charge rather than Irish VAT invoices which either charged VAT on them, or if the UK supplier did not exceed the relevant VAT threshold, invoices showing exempt supplies with no VAT charged on them.

16. The Appellant's Counsel submitted that as the Appellant had received these invoices in error from the UK suppliers that any VAT due and owing was not chargeable on the Appellant but rather the UK entity as it was they who had failed to comply with the legislative requirements which had required them to treat the supply as a supply made within Ireland and accordingly subject to Irish rather than British VAT.

17. The Appellant's Counsel further submitted that the imposition of the VAT assessment (relating to the imposition of the VAT liability relating to the deemed incorrect operation of the margin-scheme) on the Appellant was an attempt by the Respondent to collect Irish

VAT from an Irish taxpayer (the Appellant) because of the practical difficulties inherent in pursuing the UK suppliers.

18. The Appellant's Counsel stated that if the UK suppliers had adopted the correct VAT treatment (and assuming that they were required to register for Irish VAT), the net effect to the Respondent was nil since the (Irish) output VAT charged by the UK supplier would have been deductible by the Appellant when she was calculating her liability to VAT. Counsel also submitted that if the purchases were to be treated as EU intra Community purchases, those invoices were required under VAT Regulation 20, to have wording recorded on them to the effect that the purchaser was required to self-account for VAT on the purchases, such as "*the reverse charge applies to this supply*".

19. The Appellant's Counsel stated that undue hardship would bestow the Appellant if she was denied eligibility for the margin scheme. He advised that the Appellant had based her profit margins on the understanding that she was eligible to account for VAT using the margin scheme. By way of illustration, the Appellant's Counsel advised that if an item was purchased for €100 and sold for €120 then the profit on the sale was €20. He further advised if VAT was to be charged on the margin (€20) that this equated to a VAT sum due of €3.73 (20/1.23 x .23) and that this left the Appellant with a "real profit" of €16.27 (€120 - €100 - €3.73). Whereas, if the Appellant was subject to VAT on the entire sales price with no purchase deductibility, as was being advocated by the Respondent, this would leave the Appellant with an overall loss on the sale of the item, of €2.43 (€120 - €100 – (120/1.23 x .23) = €22.43). The Appellant's Counsel submitted that the treatment advocated by the Respondent was a farce as the availability of the margin scheme to traders like the Appellant was in being to accommodate the traditional low margins within her industry which took account of the fact that the items of jewellery had already been subject to VAT (on their original purchase).

20. The Appellant's Counsel further stated that the Respondent was in breach of its "care and management" obligations in failing to apply tax law in a fair, correct and consistent manner. He submitted that the Respondent is under a statutory duty to collect the correct tax from the Appellant and that they do not have a discretion to absolve the tax liabilities of one set of taxpayers (the UK supplier) at the cost to another taxpayer (the Appellant).

21. In summation, the Appellant's Counsel submitted that the assessment raised was incorrect and contrary to law and as such, it should be vacated.

Respondent

22. The Respondent submitted that the Appellant's arguments were contradictory and made no sense. They stated that while on one hand, the Appellant stated that she acquired purchases from suppliers based in the UK, her Counsel on the other hand deemed that those same UK suppliers had a taxable presence in Ireland.

23. The Respondent submitted that the purchases from the UK suppliers were an intra-community acquisition of goods and as such the Appellant was not entitled to avail of the margin scheme when calculating their sales VAT liability. In forming this view, the Respondent stated that they had regard to the following factors in relation to the UK suppliers' invoices issued to the Appellant:

    - They were from UK based suppliers with addresses in the UK;
    - The UK supplier quoted their UK VAT number on those invoices;
    - The UK supplier showed the Appellant's Irish address and Irish VAT number on the issued invoices;
    - The invoices recorded the VAT rate of 0%, showed a VAT analysis column (which recorded the sale at 0%) and showed net totals, VAT (which was recorded as zero) and the total due in Great British pounds.
    - The invoices did not contain any narrative which indicated that the goods supplied were so done on the margin scheme basis.

24. The Respondent submitted that the Appellant did not fulfil the statutory requirements to avail of the margin scheme. They advised as the Appellant had provided the UK suppliers with her VAT number and as this was not required under the margin scheme, then eligibility under the margin scheme must be denied to the Appellant. The Respondent also stated that as the invoices which had issued from the UK suppliers did not contain the words "*margin scheme*" or indicate that the goods had been provided under the margin scheme that this was fatal to the Appellant's entitlement to utilise the margin scheme.

25. The Respondent further submitted that the level of product detail on the UK suppliers invoices did not comply with the requirements for the margin scheme to be applied. They observed that the invoices submitted by the Appellant did not contain any breakdown on them as to the individual items but instead used generic one line descriptions beside relatively large amounts of money such as "*Jewellery £20,000*".

26. Furthermore, the Respondent submitted that as the Appellant fulfilled the definition of intra-community supplies under section 24 (1) VATCA 2010, then the supplies to the Appellant should be treated as such. They advised that as section 29(1) VATCA 2010 provides that the goods are deemed to be supplied from the place where the dispatch or transportation begins and as the goods were transported from the UK, that the appropriate place of supply was the UK and not Ireland.

27. The Respondent submitted that the correct treatment for VAT purposes on the acquisition of intra-community purchases was that at the time of acquisition of the goods the taxpayer is required to self account for VAT on the reverse charge basis. They submitted that this treatment was VAT neutral to the Appellant at the time of acquisition of the goods (since she would have been charging herself VAT on an amount only to deduct the same amount under self-accounting), but as the purchases were intra-EU purchases that VAT was required to be charged on the full sales price (on the subsequent sale by the Appellant) and that this had not occurred.

28. The Respondent noted that the Appellant did not issue sales invoices to her customers as all her customers were private individuals. The only sales documentation which was issued by the Appellant was receipts to customers which did not contain any reference to VAT.

29. The Respondent further stated that the Appellant incorrectly claimed VAT input credits on invoices which were deemed to be for non-business or private purposes and as such the portion of the assessment which related to those invoices should be upheld by the Commission.

30. Accordingly, they requested that the Commission uphold the assessment in the sum of €58,416.

Material Facts

31. The Commissioner finds the following material facts:-

    31.1. The Appellant was registered for VAT for the years 2013 and 2014 in Ireland.

    31.2. The Appellant provided her UK suppliers with her Irish VAT number.

    31.3. The Appellant's UK supplier issued invoices to the Appellant which showed her Irish VAT number on them and that of the UK suppliers.

    31.4. Those invoices charged VAT at the zero rate of VAT and the VAT analysis section of those invoices showed the goods sold classified at the zero rate of VAT.

31.5. Those invoices did not contain any narrative which indicated that the "margin scheme" had been operated in the supply of the goods.

31.6. The goods were supplied by a UK supplier who travelled to Ireland from the UK and concluded sales with the Appellant in her home.

31.7. The Appellant operated the margin scheme when accounting for VAT on her sales.

31.8. No evidence was presented to the Commission regarding the Appellant's alleged over claim of purchase VAT in respect of goods relating to personal or non-business use.

Analysis

32. The issues to be considered by the Commissioner whether:

32.1. The UK suppliers had a permanent establishment in Ireland by virtue of concluding sales in Ireland.

32.2. The invoices which issued as EU intra-community supplies were required to have "*the reverse charge applies to this supply* "or similar wording embossed on them.

32.3. The Appellant's invoices were issued in compliance with the margin scheme.

32.4. The Respondent was correct is disallowing an element of the Appellant's VAT purchase input in respect of invoices deemed to relate to private or non-business purchases.

32.5. The assessment which issued by the Respondent on 4th October 2017 in the sum of €58,416 should be upheld by the Commission.

33. In appeals before the Commission, the burden of proof rests with the Appellant who must prove on a balance of probabilities that the assessments or tax deductions are incorrect. In the case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at paragraph 22 Charleton J. stated:

> '*The burden of proof in this appeals 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*'

34. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* ([2020] IEHC 552) where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

"*The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

> *If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*
>
> *Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "… context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*
>
> *Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*
>
> *Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*
>
> *In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*
>
> *Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*
>
> *Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be*

given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible"

35. Turning to the first issue, Counsel for the Appellant submitted by virtue of the Appellant's UK suppliers concluding contracts in Ireland that this constituted a "permanent establishment" and as such this placed the Appellant's UK suppliers within the Irish VAT net. The Commissioner finds this argument without merit as both section 29 (1) VATCA 2010 and Article 33 of Directive 2006/112/EC state that the place of supply of goods shall be deemed to be the place "*where the dispatch or transportation to the person to whom the goods are supplied begins".* As the Appellant in her evidence stated that her UK suppliers travelled over to her from the UK, it is evident that the transportation of the goods began in the UK and as such the supplies are deemed to be UK supplies. EU case law, such as *Dong Yang Electronics* (C547/18) has confirmed that the appropriate test for VAT purposes is not whether a permanent establishment exists but whether a fixed establishment is in place while confirming that such a test is only of relevance for supplies of services rather than the supply of goods. As both section 29(1) VATCA 2010 and Article 33 Directive 2006/112/EC are clear and unambiguous, the Commissioner determines that the place of supply of the Appellant's purchases is the UK.

36. Section 9 and section 24 VATCA 2010 set out the conditions to be fulfilled in order for a purchase to be considered an Intra-Community Acquisition in addition to providing how the Appellant was required to account for the VAT on such acquisitions. As neither, section 9 nor section 24 VATCA 2010 requires any wording to be embossed on the Intra-Community Acquisition invoice, the Commissioner determines that the Appellant's Counsel's submission that the invoices were not compliant with the requirements of the Act by virtue of being required to contain narrative such as "*the reverse charge applies to this supply*" to have no substance. Furthermore, as the invoices issued to the Appellant comply with the requirements outlined in section 9 and 24 VATCA 2010, by virtue of them showing the Appellant's and the Appellant's suppliers respective VAT registration numbers

in addition to the goods being charged VAT at zero percent, the Commissioner determines that the Appellant's purchase invoices qualify as Intra-Community purchase invoices.

37. As the Appellant's UK purchases are deemed to be Intra-Community acquisitions, section 9 (1) (b) VATCA 2010 is of relevance. That section states that the Appellant "*shall be accountable for and liable to pay the tax chargeable*". The tax chargeable is computed on a "two step" approach. Step one required the Appellant to have self-accounted for VAT at the time of acquisition and as the Appellant's business consisted of total vatable activities, the effect of this would have been VAT neutral (since the Appellant would have charged herself VAT and deducted the same amount by virtue of the self-accounting method). Step two would have required the Appellant to have charged VAT to her customers on the basis of the full sales price with no VAT deduction available for the purchase of the goods (since the Appellant would have already accounted for the purchase VAT at the time of acquisition). As the Appellant's UK purchases are Intra-Community acquisitions, and as the Respondent calculated the VAT assessments correctly in accordance with the requirements of the Act, the Commissioner determines that the portion of that assessment which relates to VAT due on the Intra-Community Acquisitions (€57,913) must stand. The Commissioner understands the position that this leaves the Appellant in but notes as VAT is a European Union tax one party cannot be unjustly enriched by the actions of others. Unjust enrichment could arise in the instant situation by virtue of the Appellant's UK suppliers recovering their purchase VAT (which they could do as they treated the sales to the Appellant as intra-community supplies) on their acquisition of the goods subsequently supplied to the Appellant VAT free.

38. Conversely, availability of the margin scheme requires compliance with sections 87 VATCA 2010, S.I. 639/2010 and Articles 312 to 325 EC Directive 2006/112/EC. While much of that legislation provides for the operation of the margin scheme, of particular mention is section 87 (6) VATCA 2010, subsection (6) of S.I. 639/2010 and Articles 314, 319 and 325 of EC Directive 2006/112/EC. Article 314 (d) EC Directive 2006/112/EC required the UK suppliers to have operated the margin scheme for the Appellant in turn to have applied the margin scheme on her subsequent supplies and as they did not this renders the Appellant ineligible for inclusion on the margin scheme. Furthermore, both Article 325 EC Directive 2006/112/EC and section 87 (6) VATCA 2010 provides that a taxable dealer shall not (in respect of margin scheme supplies) indicate separately the amount of tax chargeable in respect of the supply on any invoice or other document in lieu thereof. As the Appellant's UK suppliers showed both a VAT charge and analysis on the invoices which they issued to the Appellant, this further denies the Appellant inclusion on the margin scheme.

39. In addition, section 6 of S.I. 639/2010 requires that any invoice issued by an accountable person availing of the margin scheme is required to indicate that the margin scheme has been applied to the supply. As the Appellant's UK supplier invoices did not specify that the margin scheme applied to the supplies on their issued invoices, it is clear to the Commissioner that the supplies made by the Appellant's UK suppliers were not in accordance with the legislative requirements of the scheme and the Appellant's entitlement to avail of the margin scheme on her subsequent supplies must be denied. Finally, it should be noted that Article 319 EC Directive 2006/112/EC provides that a taxable person can elect to be excluded from the margin scheme which confirms that the scheme is of a discretionary rather than mandatory nature.

40. As no submissions were made to the Commission regarding the VAT over-claims in respect of invoices deemed to relate to private or non-business purchases, the Commissioner determines that the Respondent was correct in disallowing an element of the Appellant's VAT purchase inputs. Accordingly the portion of the assessment which relates to these purchases, €503 is upheld by the Commission.

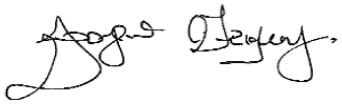
41. The Commissioner determines that the Appellant has not discharged the necessary burden of proof to establish her entitlement to avail of the margin scheme. In addition, the Commissioner determines that the Appellant has not discharged the necessary burden of proof to establish that an element of her purchases did not relate to non-business or personal use. As a result the Respondent's assessment to VAT in the sum of €58,416 are upheld.

Determination

42. The Commissioner determines that the assessments to VAT in the sum of €58,416 stand as the Appellant has not discharged the necessary burden of proof. Therefore, the appeal is denied and the assessment is upheld.

43. The Commissioner appreciates this decision will be disappointing for the Appellant but the Commissioner has no discretion and must, as stated above apply the provisions of the VATCA 2010 and associated EU law. The Appellant was correct to check to see whether her legal rights were correctly applied.

44. The appeal is determined in accordance with section 949AK Taxes Consolidation Act 1997 ("TCA 1997"). This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
20 July 2022

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.