AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

99TACD2022

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 the 10th April 2019.

2. The assessment covers the periods 1st January 2015 to 31st December 2017 inclusive and the total VAT due on the assessment amounts to €93,587. 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 a quarry in [redacted] and is also engaged in the purchase and sale of heavy plant and machinery from the same location. A number of sales of heavy plant and machinery during the period 1st January 2015 to 31st December 2017 ("the period under review") were to customers based in Northern Ireland and Great Britain ("UK customers").

4. All sales purportedly made to UK customers for the period under review were zero rated for VAT purposes under schedule 2 (1) (i) VATCA 2010.

5. On the 7th December 2017, the Respondent wrote to the Appellant and advised them that they were conducting a review of intra community supply of goods made by them and they proposed to call to their business the following week to discuss this aspect of the Appellant's business and any consequential VAT issues associated with these activities.

6. Following the initial review, an exchange of information was requested from Her Majesty's Revenue and Customs ("HMRC") under Articles 7, 15, 16, 25, 26 and 27 of Council Regulation (EU) No 904/2010. This Regulation lays down rules and procedures to enable competent authorities of the Member States to cooperate and to exchange with each other any information that may help to effect a correct assessment of VAT, monitor the correct application of VAT, particularly on intra-Community transactions, and combat VAT fraud. In particular, it lays down rules and procedures for Member States to collect and exchange such information by electronic means.

7. This exchange of information requested details primarily of the trading status of the Appellant's UK customers. HMRC advised the Respondent that two of the Appellant's customers had never traded in Northern Ireland or Great Britain, had not submitted any tax returns and that there was no evidence to indicate that either of these businesses had carried on any trade at the respective addresses quoted by the Appellant as the destination where the goods supplied by them to these UK customers were delivered to.

8. Subsequent correspondence exchanged between the Respondent and the Appellant in which the Appellant was requested to provide any documentary evidence of dispatch to or receipt by the respective UK customers of the goods invoiced. As the Appellant could not provide this documentary evidence, the Respondent formed the opinion that the required conditions for zero rating for VAT purposes to the Appellant's UK customers were not fulfilled. Accordingly, the Respondent issued assessments to the Appellant under section 111 VATCA 2010 on the 10th April 2019 seeking the sum of €93,537 in VAT from them.

9. The Appellant disagreed with the Respondent's figures and appealed the assessment to the Commission on the 9th May 2019. In attendance at the hearing held before the Commission on the 12th May 2022 was [redacted] (the "Appellant Director"), the Appellant's Accountants and the Appellant's tax advisor. The Respondent was represented at the hearing by counsel, a member of staff from the Respondent's solicitor division and staff members from the Respondent.

Legislation and Guidelines

10. The following legislation is relevant to this appeal.

Section 111 VATCA 2010

"(1) Where, in relation to any period, the inspector of taxes, or such other officer as the Revenue Commissioners may authorise to exercise the powers conferred by this section (in this section referred to as "other officer"), has reason to believe that an amount of tax is due and payable to the Revenue Commissioners by a person in any of the following circumstances:

(a) the total amount of tax payable by the person was greater than the total amount of tax (if any) paid by that person;

(b) the total amount of tax refunded to the person in accordance with section 99 (1) was greater than the amount (if any) properly refundable to that person;

(c) an amount of tax is payable by the person and a refund under section 99 (1) has been made to the person,

then, without prejudice to any other action which may be taken, the inspector or other officer—

(i) may, in accordance with regulations but subject to section 113, make an assessment in one sum of the total amount of tax which in his or her opinion should have been paid or the total amount of tax (including a nil amount) which in accordance with section 99 (1) should have been refunded, as the case may be, in respect of such period, and

(ii) may serve a notice on the person specifying—

(I) the total amount of tax so assessed,

(II) the total amount of tax (if any) paid by the person or refunded to the person in relation to such period, and

(III) the total amount so due and payable (referred to subsequently in this section as "the amount due").

(2) Where notice is served on a person under subsection (1), the following provisions shall apply:

(a) the person may, if he or she claims that the amount due is excessive, on giving notice to the inspector or other officer within the period of 21 days from the date of the service of the notice, appeal to the Appeal Commissioners, and

(b) on the expiration of the said period, if no notice of appeal is received or, if notice of appeal is received, on determination of the appeal by agreement or otherwise, the amount due or the amended amount due as determined in relation to the appeal, shall become due and payable as if the tax were tax which the person was liable to pay for the taxable period during which the period of 14 days from the date of the service of the notice under subsection (1) expired or the appeal was determined by agreement or otherwise, whichever taxable period is the later.

(3) Where a person appeals an assessment under subsection (1), within the time limits provided for in subsection (2), then—

(a) he or she shall pay to the Revenue Commissioners the amount which he or she believes to be due, and

(b) if—

(i) the amount paid is greater than 80 per cent of the amount of the tax found to be due on the determination of the appeal, and

(ii) the balance of the amount found to be due on the determination of the appeal is paid within one month of the date of such determination,

interest in accordance with section 114 shall not be chargeable from the date of raising of the assessment."

Section 113 VATCA 2010

"*(1) An estimation or assessment of tax under section 110 or 111 may be made at any time not later than 4 years—*

(a) after the end of the taxable period to which the estimate or assessment relates, or

(b) if the period for which the estimate or assessment is made consists of 2 or more taxable periods, after the end of the earlier or earliest taxable period within that period.

(2) (a) Subject to paragraphs (b) and (c), in this subsection "neglect" means negligence or a failure to give any notice, to furnish particulars, to make any

return or to produce or furnish any invoice, credit note, debit note, receipt, account, voucher, bank statement, estimate or assessment, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations.

(b) A person shall be deemed not to have failed to do anything required to be done within a limited time if the person did it within such further time (if any) as the Revenue Commissioners may have allowed.

(c) Where a person had a reasonable excuse for not doing anything required to be done, he or she shall be deemed not to have failed to do it if he or she did it without unreasonable delay after the excuse had ceased.

(d) *Notwithstanding subsection (1), in a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to tax, an estimate or assessment as referred to in that subsection may be made at any time for any period for which, by reason of the fraud or neglect, tax would otherwise be lost to the Exchequer*."

Schedule 2, Part 1 VATCA 2010

"*PART 1*

International Supplies

This Part sets out the exemptions with deductibility in accordance with Chapters 4 to 10 of Title IX of the VAT Directive.

Intra-Community transactions.

(1) The supply of goods dispatched or transported from the State to a person registered for value-added tax in another Member State…."

Article 131 of the Council Directive 2006/112/EC

"*The exemptions provided for in Chapters 2 to 9 shall apply without prejudice to other Community provisions and in accordance with conditions which the Member States shall lay down for the purposes of ensuring the correct and straightforward application of those exemptions and of preventing any possible evasion, avoidance or abuse.*"

Article 138 of the Council Directive 2006/112/EC

"*Member States shall exempt the supply of goods dispatched or transported to a destination outside their respective territory but within the Community, by or on behalf of the vendor or the person acquiring the goods, where the following conditions are met:*

(a) the goods are supplied to another taxable person, or to a non-taxable legal person acting as such in a Member State other than that in which dispatch or transport of the goods begins;

(b) the taxable person or non-taxable legal person for whom the supply is made is identified for VAT purposes in a Member State other than that in which the dispatch or transport of the goods begins and has indicated this VAT identification number to the supplier.

The exemption provided for in paragraph 1 shall not apply where the supplier has not complied with the obligation provided for in Articles 262 and 263 to submit a recapitulative statement or the recapitulative statement submitted by him does not set out the correct information concerning this supply as required under Article 264, unless the supplier can duly justify his shortcoming to the satisfaction of the competent authorities."

S.I. No. 639/2010 - Value-Added Tax Regulations 2010.

"*Conditions under which the intra-Community supply of goods may be zero-rated*

(1) In this Regulation—

"evidence", in relation to goods removed from the State and dispatched to another Member State, means commercial documentation confirming that the goods were supplied to a person registered for value-added tax in another Member State and clearly identifying—

(a) the supplier,

(b) the customer,

(c) the goods and the value of those goods,

(d) the consignor (if different from the supplier),

(e) the method of consignment and

(f) the destination of the goods.

(2) A supply of goods by an accountable person to a person in another Member State (in this paragraph referred to as the "customer") is chargeable to tax at the rate specified in section 46(1)(b) of the Act, if and only if—

(a) the customer is registered for value-added tax in that other Member State,

(b) the customer's value-added tax identification number, including the country prefix, is obtained by the supplier in advance of, or at the time of, the supply and is retained in the supplier's records in relation to that supply,

(c) the value-added tax identification number of the customer and the supplier is quoted on the invoice issued in accordance with Chapter 2 of Part 9 of the Act, and

(d) the goods are dispatched or transported to that other Member State and there is evidence that those goods are removed from the State and are dispatched to that other Member State within a period of 3 months from the date the supply took place.

(3) The supply of goods by an accountable person in the State to a person registered for value-added tax in another Member State for onward supply to a person in a third Member State is chargeable to tax at the rate specified in section 46(1) (b) of the Act provided that the conditions in subparagraphs (a) to (d) of paragraph (2) are satisfied.

(4) Where the conditions in subparagraphs (a) to (c) of paragraph (2) are not satisfied, or where the accountable person fails to produce evidence that the goods have been removed from the State and dispatched to another Member State within the period of 3 months from the date the supply of the goods took place, then, tax is chargeable on the supply of those goods at the rate that would be applicable if those goods were supplied by the accountable person to another person within the State."

Article 9 of the Council Directive 2011/16/EU

"*Scope and conditions of spontaneous exchange of information*

The competent authority of each Member State shall communicate the information referred to in Article 1(1) to the competent authority of any other Member State concerned, in any of the following circumstances:

(a) the competent authority of one Member State has grounds for supposing that there may be a loss of tax in the other Member State;

(b) *a person liable to tax obtains a reduction in, or an exemption from, tax in one Member State which would give rise to an increase in tax or to liability to tax in the other Member State;*

(c) *business dealings between a person liable to tax in one Member State and a person liable to tax in the other Member State are conducted through one or more countries in such a way that a saving in tax may result in one or the other Member State or in both;*

(d) *the competent authority of a Member State has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of enterprises;*

(e) *information forwarded to one Member State by the competent authority of the other Member State has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Member State.*

The competent authorities of each Member State may communicate, by spontaneous exchange, to the competent authorities of the other Member States any information of which they are aware and which may be useful to the competent authorities of the other Member States".

Submissions

Appellant

11. The Appellant submitted that it had supplied goods to entities registered for VAT in another member state of the European Union and correctly applied the zero rate of VAT in accordance with schedule 2 (1) VATCA 2010.

12. The Appellant stated that there were only two UK customers during the period under review and these were [redacted] who was based in Northern Ireland (the "Northern Ireland customer") and [redacted] which was based in Liverpool (the "Great Britain customer").

13. The Appellant stated that there were eight transactions with its Northern Ireland customer during the period under review and the goods were delivered by means of a tractor (the covered front part of a lorry which the low loader attaches to) and a low loader owned by the Appellant and driven by the Appellant Director. The Appellant Director advised that no customs or other paperwork was required to transport goods from the Appellant's premises to its customer in Northern Ireland as trade between the Republic of Ireland and Northern

Ireland enjoyed free movement of goods and as such one could freely move goods to and from the border without any customs or other checks.

14. The Appellant advised that there were two transactions for the period under review with its Great Britain customer and the goods sold to them were delivered from the Appellant's premises to Dublin Port where custody of the goods was transferred to a representative from the buyer's company. When the buyer's representative took custody of the goods at Dublin Port, they were responsible for arranging the carriage of the goods by ferry and road to the buyer's premises.

15. The Appellant submitted that the invoices which it issued to its customers were proof of the goods being dispatched to them and no further proof was required by the Respondent to substantiate the fact that items invoiced were sold and delivered to those customers.

16. The Appellant Director provided the Commission with a sworn affidavit from him as further evidence that the goods invoiced to UK customers were dispatched to them. The Affidavit stated:

> "*I refer to Revenue's request for proof of dispatch in respect of seven [sic] machines transported to Northern Ireland and two machines to Liverpool UK.*
>
> *I say and believe that, in the course of legitimate trading in this respect, there is no such proof available because there is no difference in delivering a machine to any of the 26 counties as there is to Northern Ireland. I say this is because of the EU Open Border Rules which particularly applied pre-Brexit which is when these machines were exported. I say that there is no third party evidence available to me.*
>
> *I further say that the Company exported seven [sic] machines to* [redacted] *and on their instructions, we delivered same to* [redacted]*. In addition the Company exported two machines to* [redacted]*, Liverpool….*
>
> *I say and believe that these facts are correct and accurate to the best of my information, knowledge and belief and I do not have further information regarding these transactions…*"

17. The Appellant submitted that it had complied with the requirements of S.I. No. 639/2010 (Value-Added Tax Regulations 2010) as the goods were supplied to its customers who were registered for VAT in another member state of the EU and documentation was completed to identify:

    - The Supplier

- The Customer
- A Description and value of the goods
- How the goods were consigned to the customers
- The addresses of the customers

The documentation which the Appellant was referring to was a copy of the sales invoices which it had issued to its customers.

18. The Appellant advised that it had properly returned all UK sales to the Respondent on its VAT Information Exchange System ("VIES") return. A VIES return is a system operated throughout the EU and applies to any business that sells products to other EU states. The return required the Appellant to make a report to the Respondent which showed the VAT number of its EU customers and the value of the goods supplied to them for given periods of time.

19. Furthermore, the Appellant stated that it had verified its UK customers' VAT numbers with the Respondent and in so doing had established that those VAT numbers were active and valid. The Appellant submitted that if there were "tax issues" with UK customers, then that was a matter for HMRC and not the Respondent as the latter was constrained by what functions they could perform under domestic and EU law.

20. In response to the Respondent's concerns that neither the Northern Ireland or Great Britain customer had ever traded, submitted accounts or tax returns to HMRC, the Appellant submitted that it was irrelevant as to whether or not the its UK customers traded or not. They stated that there was no requirement in either domestic or EU law that their UK customers were required to be trading entities for zero rating to apply. However, they submitted, if their view was incorrect that there was ample evidence that both the UK companies were trading which included seller statements provided from third-party auction companies which detailed goods sold on behalf of the UK Companies and bank statements in the name of the Northern Ireland customer which detailed numerous transactions and which were made available to the Respondent and the Commission.

Respondent

21. The Respondent advised that they had engaged with the Appellant and its Agents from the period 7th December 2017 to 23rd April 2019 in an attempt to obtain satisfactory documentation to substantiate the Appellant's claim that the disputed sales to its UK customers qualified for zero rating in accordance with schedule 2 (1) (i) VATCA 2010.

22. The Respondent advised the Appellant by way of letter on the 23rd April 2019 that they could not accept the Appellant Director's word which had been offered to them in writing that "*all sales returned as UK sales were in fact UK sales*" nor the provided "end user invoices" as sufficient evidence to demonstrate that the sales made to them were in fact UK sales. Furthermore, they advised that while the Appellant had provided numerous extracts from auction brochures showing items of plant and machinery for sale by their UK customers that they had no way of verifying that these assets were the same as those originally sold by the Appellant as they had only included generic descriptions on the invoices they issued to their UK customers. The Respondent stated that as these invoices did not include any information such as a registration or serial number which would allow them to verify that the assets sold at auction were the same as those originally purportedly sold by the Appellant. Absent satisfactory documentary evidence the Respondent raised assessments to VAT on the disputed UK transactions on the 10th April 2019 in the sum of €93,537.

23. The Respondent submitted that as the Appellant had failed to provide any satisfactory documentation, such as evidence of dispatch of the goods or receipt of the goods by the respective consignees, they had failed to fulfil the requirements of schedule 2 (1) (i) VATCA 2010, were not entitled to avail of zero rating as a result and the assessment should be upheld by the Commission.

Evidence at the Hearing

24. The Appellant Director gave evidence at the hearing. He advised under examination in chief that he used a tractor and low loader to transport goods to the Appellant's Northern Ireland customer and that as there was no customs checks you could "*get into your machine or lorry and just drive to your destination in the North and you'll see nobody. You don't have get out of a lorry or talk to anybody the whole way*".

25. The Appellant director advised that when transporting goods for sale to its Great Britain customer, he brought the goods to Dublin Port where he met a representative of the Great Britain customer. He advised that they changed over the goods and he went home while the Great Britain customer representative took custody of the goods and transported them to the UK on the ferry.

26. The Appellant Director advised that he obtained notification that the VAT numbers were valid and active for its UK customers before issuing zero rated invoices to those customers and he quoted the UK VAT numbers on the invoices at the time of issue in addition to a description of the goods sold and the price payable. The Appellant director advised that

owing to the method of transportation of the goods, the only paperwork in being which verified the sale of the goods to the UK customers was the sales invoices which he issued and no other documentation was available.

27. Under cross examination by the Respondent, the Appellant director advised that the company had commenced trading in or about [redacted] and he had previously operated the business for a number of years prior providing identical activities as a sole trader. He advised that the business premises consisted of a quarry and a large yard and that it had two full time employees, including himself, and one part-time staff member. The Appellant Director advised that he and the staff split their activities between sales of quarry supplies and maintaining and selling the plant and machinery.

28. The Appellant Director confirmed that he was the sole shareholder in the Northern Ireland customer which the Appellant had made all its Northern Ireland sales to. He advised that he incorporated the Northern Ireland Company as there was some plant and machinery that the Appellant could not sell in the Republic of Ireland and he believed if that plant and machinery was offered for sale to UK customers from a company based in the UK they would be easier to sell. In his own words he advised that "*foreign people will come in and buy a machine situated in the UK quicker than they'll buy it if it's in Southern Ireland*".

29. The Appellant Director was asked why a number of purported sales from the Northern Ireland customer were allegedly made by an auction house based in the Republic of Ireland as this contradicted his earlier statement and created a suspicion as to the function of the Northern Ireland Company. In reply the Appellant director stated that "*I don't know. That's what we were asked to do and told to do at that time*" [by our accountants].

30. The Appellant Director confirmed that the address for the Northern Ireland customer was just a registered office address and also that Company's accountants' address and the Northern Ireland customer did not have a physical premises where it could store goods or operate a business from. The Appellant Director advised that when he transported plant and machinery sold to the Northern Ireland customer, he often transported it from the Appellant's base in [redacted] to friends of his premises based at various locations in Northern Ireland. The Appellant Director advised that he was unable to provide the names of those friends or where the premises were located but no particular location was frequented. However, he advised that the goods were usually delivered to either Tyrone or Newry and subsequently provided the name of one such friend.

31. The Appellant Director advised if the goods originally sold to the Northern Ireland customer by the Appellant were subsequently sold by the Northern Ireland customer to a third party via auction or other means, then the purchaser who had purchased the goods would

usually pick them up from wherever he had previously left them in Northern Ireland. The Appellant Director advised that he could offer no proof of delivery or other form of documentation to the Commission to verify any element of the transaction aside from the Appellant's invoices to the Northern Ireland customer or copies of the Northern Ireland customer's bank statements which showed detailed transactions.

32. The Appellant Director confirmed that the Northern Ireland Company was struck off the Companies House register some two years after it was incorporated and that he was unaware if it had ever filed UK VAT or other tax returns and he didn't recall ever signing any accounts or other returns for the Northern Ireland Company. He advised "*The setting up of* [redacted] *in the North of Ireland was a serious error of judgment, the consequence of which is a VAT demand that would not have existed had all exported plant and machinery been dealt with in the normal way to registered genuine companies where most of the trading was traditionally done at zero percent VAT*."

33. The Appellant Director advised that he was not able to provide the invoice book for sales to the Great Britain customer as he was unaware he was required to have it for the hearing and "*it wasn't in his jeep*" but he provided the invoice book which contained details of the sales to the Northern Ireland customer. Several of these invoices were put to the Appellant Director by the Respondent's Counsel which demonstrated notable deficiencies such as invoices being issued out of numerical sequence, invoices from the Appellant Company being dated several weeks after the date they were sold by their customers (the UK Companies) to third parties, an incorrect VAT number being quoted, dates on the carbon copies altered from the issued invoices and no serial or other identification mark being shown on those invoices in respect of the machinery and plant sales, but rather generic terms such as "Volvo 8250 Dump Truck" being used in place.

34. The Appellant Director was asked why the Appellant operated two different forms of invoicing and why three sets of "invoice books" were maintained. This related to computerised invoices which had issued correctly showing all required information including serial numbers, a duplicate book purely for sales to the Northern Ireland customers which contained handwritten invoices and a separate duplicate book which recorded sales solely for the Great Britain customer which were also handwritten. In reply, the Appellant Director stated that a friend of his (who he refused to name) did the computerised invoices as he was not very computer literate and the manual books were maintained for convenience.

35. The Appellant Director was further asked why plant and machinery sold by the Appellant to the Northern Ireland customer were subsequently sold by the Northern Ireland customer

to third parties at a significant loss from the price they had paid for them and why the Appellant Company was paid by the Northern Ireland customer only when the Northern Ireland customer was paid for its subsequent sale to a third party. In reply, the Appellant Director stated as the goods were ordinarily sold at auction they had to take whatever they could get for them and in relation to the payment method that the Appellant had to be paid for the goods.

36. The various locations where the Appellant Director had earlier stated to have dropped off the goods sold by the Appellant to the Northern Ireland customer was subject to a series of questions from the Respondent's Counsel. The Appellant Director proceeded to answer these questions with "No Comment" responses.

37. Regarding the sales to the Great Britain customer, when asked as to why the customer based in Liverpool had the same address as the Northern Ireland customer (the accountant's address), whether it had a physical premises and why no VAT or other tax returns were submitted by the Great Britain customer, the Appellant Director continued with his "No Comment" answers.

38. The Appellant's agents were given the opportunity to re-examine the Appellant Director but declined to do so stating that their view was that sufficient commercial documentation had issued (the invoices) and that was the only proof needed for the Appellant to be entitled to charge the zero rate of VAT on its sales to the Northern Ireland customer. In relation to the sales made to the Great Britain customer, the Appellant's agents conceded that while the goods were left at Dublin Port that the VAT Regulations were "probably" not complied with as they could not provide evidence that the goods had left the State.

Material Facts

39. The Commissioner found the following material facts:

    39.1. The Appellant Director was the sole shareholder of the Northern Ireland customer Company and as such controlled and directed its operations.

    39.2. The Northern Ireland customer did not have a physical address but used the address of its accountant for registered office purposes.

    39.3. The Appellant's Great Britain customer did not have a physical address and also used the accountant's address as its registered office.

    39.4. Neither of the UK companies filed any tax returns, paid any tax or traded from the addresses shown on the invoices issued to them or any address.

39.5. The only documentation made available to the Commission in respect of the sale and dispatch of goods sold to UK customers were handwritten invoices.

39.6. These invoices contained numerous discrepancies and were unreliable evidence.

39.7. The Appellant Director transported goods sold by the Appellant to its Northern Ireland customer using the Appellant's own vehicles and equipment.

39.8. Goods sold to the Great Britain customer were transported to Dublin Port by the Appellant Director using the Appellant's own vehicles and equipment. An unnamed representative of the Great Britain customer was allegedly responsible for dispatching the purchased goods by ferry and road from Dublin port to the Great Britain customer.

39.9. No proof of delivery or other commercial documentation regarding the sales was produced to the Commission.

39.10. The affidavit provided by the Appellant Director referred to seven transactions allegedly made by the Appellant with the Northern Ireland customer when there in fact were eight such transactions and as such is unreliable.

39.11. The computerised invoices issued by the Appellant listed serial numbers and identification makes for plant and machinery sold while the handwritten invoices did not contain this information.

39.12. The Appellant was paid for goods supplied to its UK customers after the UK customer sold that asset onto a third party.

Analysis

40. The Appellant engaged in a series of triangular transactions involving companies based in the Republic of Ireland, Northern Ireland and Great Britain. There was no commercial substance presented to the Commission as to why the transactions were conducted in the manner in which they were administered and the sole purpose of the arrangement presents itself as an attempt to sell valuable items of plant and machinery without remitting any value added taxation on the sale of those assets. It should be borne in mind that zero rating for VAT purposes is an exception to the general rule that VAT applies to most transactions save for transactions involving social necessities or for reasons of promoting equal trade. This is reinforced by the legislative provisions which provide that zero rating of intra EU supplies applies "*if any only if*" certain conditions are fulfilled as detailed in subsection 2 of the VAT Regulations 2010.

41. In relation to the Appellant's submission that it was irrelevant the UK companies did not trade or submit any tax returns or payments to HMRC it failed to comprehend that one of the purposes of the exchange of information between EU Member States and the various requirements of the domestic and European VAT legislation is to combat VAT fraud and ensure that transactions of a type entered into by the Appellant are not effective.

42. Section 66 (1) (a) VATCA 2010 requires a taxable person, in this case the Appellant, where it supplies goods or services another taxable person, in this case the Appellant's UK customers, to issue and retain an invoice *"in such form and containing such particulars as may be specified by regulations*". Subsection (2) (c) (1) of that section requires where an invoice is issued or received by a taxable person, it shall apply business controls "*to ensure:*

- *The authenticity of the origin of that invoice or other document,*
- *The integrity of the content of that invoice or other content, and;*
- *That there is a reliable audit trail for that invoice or other document and the supply of goods or services as described therein*."

Paragraph (b) continues:

"*The accountable person shall furnish evidence of the business controls used to comply with paragraph (a) as may be required by the Revenue Commissioners and such evidence shall be subject to such conditions as may be specified in regulations. (If any)*."

43. In essence, what section 66 VATCA 2010 provides for is that in addition to the requirement to issue and keep invoices, those invoices should be subject to normal business controls and there must be a genuine transaction behind them which show the integrity of the content within them.

44. The regulations referred to in section 66 VATCA 2010 were introduced into law by S.I. No. 639/2010 and are entitled "Value-Added Tax Regulations 2010". Regulation 20 of those regulations specifies particulars in respect of section 66 VACTA 2010 and are required to be "*included or deemed to be issued by an accountable person*". They are:

(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, …*"

45. The invoices and oral evidence of the Appellant Director presented to the Commission during the hearing demonstrated that the invoices contained numerous discrepancies and from a cursory review of these deficiencies, it is evident that the invoices issued by the Appellant do not comply with the requirements of these regulations.

46. The conditions under which an intra-Community supply of goods may be zero-rated are detailed in regulation 29 (1) of the Value-Added Tax regulations 2010. It provides:

"*evidence, in relation to goods removed from the State and dispatched to another Member State, means commercial documentation confirming that the goods were supplied to a person registered for value-added tax in another Member State and clearly identifying—*

(a) The supplier

(b) the customer,

(c) the goods and the value of those goods,

(d) the consignor (if different from the supplier),

(e) the method of consignment and

(f) the destination of the goods."

Subsection 2 of that regulation continues:

"*A supply of goods by an accountable person to a person in another Member State (in this paragraph referred to as the "customer") is chargeable to tax at the rate specified in section 46(1)(b) of the Act, if and only if—*

(a) the customer is registered for value-added tax in that other Member State,

(b) the customer's value-added tax identification number, including the country prefix, is obtained by the supplier in advance of, or at the time of, the supply and is retained in the supplier's records in relation to that supply,

(c) the value-added tax identification number of the customer and the supplier is quoted on the invoice issued in accordance with Chapter 2 of Part 9 of the Act, and

(d) *the goods are dispatched or transported to that other Member State and there is evidence that those goods are removed from the State and are dispatched to that other Member State within a period of 3 months from the date the supply took place.*"

47. The Respondent's narrative contained within its Tax and Duty Manual and entitled "*Substantive requirements for zero-rating intra-community supplies*" [**Appendix One**] provides guidance of the type of proof required to verify transactions where the supplier of the goods organises the transport of goods. Paragraph 3.1 of those guidelines provides:

"*Where the supplier is responsible for organising the transport of the goods, there are two sets of proof which they can produce. The supplier may:*

- *have two pieces of evidence from column A of the table at 3.1.1, from two unconnected parties, or*

- *one piece of evidence from column A, along with another non-contradictory piece of evidence from column B, from two unconnected parties. An unconnected party is one which is independent of the supplier, the customer, and the other unconnected party who provides documents.*

3.1.1 Table of Documentation

Column A

Two documents relating to the dispatch or transport of goods, such as:

- *A signed CMR (Convention Relative au Contrat de Transport International de Marchandises par la Route) document/CMR note*
- *A bill of lading*
- *An airfreight invoice*
- *An invoice from the carrier/transporter of the goods*

Column B

One of the documents below, as well as one document from column A:

- *An insurance policy relating to the transport of the goods*
- *A bank document proving payment for dispatch/ transport*
- *Official documents, for example from a notary, confirming the arrival of the goods in the MS of destination*
- *A receipt from a warehouse keeper in the Member State of destination, confirming the goods are being stored there*".

48. *Sub*section 4 of the Value-Added Tax Regulations 2010 provides:

"*Where the conditions in subparagraphs (a) to (c) of paragraph (2) are not satisfied, or where the accountable person fails to produce evidence that the goods have been removed from the State and dispatched to another Member State within the period of 3 months from the date the supply of the goods took place, then, tax is chargeable on the supply of those goods at the rate that would be applicable if those goods were supplied by the accountable person to another person within the State*."

49. As the Appellant failed to satisfy the conditions outlined in subsection 4 (2) (a) to (c) of the Value-Added Tax Regulations 2010, subsection 4 requires that the supply of the goods by the Appellant is that which would be charged if those goods were supplied in the domestic market.

50. Section 46 (1) (a) VATCA 2010 provides that the rate of VAT attaching to the Appellant's supply of plant and machinery is the standard rate of VAT which at all times applicable was 23% of the value of the goods.

51. Section 111 VATCA 2010 permits the Respondent where they have "*reason to believe that an amount of tax is due and payable to the Revenue Commissioners*" in circumstances where "*the total amount of tax payable by the person was greater than the total amount of tax (if any) paid by that person*" to "*make an assessment in one sum of the total amount of tax which in his or her opinion should have been paid*".

52. In terms of statutory interpretation, the approach to be applied is a literal one based on the relevant jurisprudence including inter alia, *Bookfinders Limited v Revenue Commissioners* [2020] IESC 60, *Dunnes Stores v Revenue Commissioners* [2019] IESC 50, *Inspector of Taxes v Kiernan* [1982] ILRM 13, *Revenue Commissioners v Doorley* [1933] IR 750 and the seminal decision of *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552, where McDonald J., from his review of the most up to date jurisprudence, summarised the fundamental principles of statutory interpretation at paragraph 74:

> *"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:*
>
> > *(a) 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;*
> >
> > *(b) 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";*
> >
> > *(c) 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;*

(d) 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.

(e) 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;

(f) 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.

(g) 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 106 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 subjectmatter. 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".*

53. In interpreting section 111 VATCA 2010, the Commissioner in applying the literal approach must firstly establish that the Respondent has "*reason to believe that an amount of tax is due and payable*" by the Appellant to them. Secondly, it must be established in interpreting the legislation on a balance of probabilities standard of proof basis that the opinion used

in establishing the quantum due by the Appellant was established by reference to reasonable opinion.

54. As the Appellant failed to satisfy the conditions for zero rating under Schedule 2, Part 1 VATCA 2010 and in establishing that the correct rate of VAT that should have been applied to the transactions was 23%, it is evident that the VAT returns for the period are erroneous and must be corrected to reflect the true position. This satisfies the first requirement of section 111, VATCA, 2010.

55. Regarding the second-limb of the test, the Commissioner is satisfied that reasonable opinion was used in establishing the assessment as the Respondent based their calculations on the figures entered on the Appellant's invoices and therefore the Respondent's calculation of the additional VAT in the sum of €93,587 is correct.

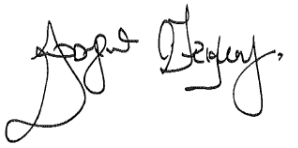
Determination

56. For the reasons set out above, the Commissioner determines that the Appellant has failed in its appeal and has not succeeded in showing that the relevant tax was not payable.

57. As a result, the Commissioner determines that the assessments issued by the Respondent on the 10th April 2019 in the sum of €93,587 must stand.

58. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct amount of tax.

59. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AK thereof. 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
7 June 2022

Substantive Requirements for zero-rating intra-Community supplies

This document should be read in conjunction with Council Implementing Regulation (EU) 2018/1912 which amends Implementing Regulation (EU) 282/2011 and paragraph 1(1) of Schedule 2 to the VAT Consolidation Act 2010 (VATCA)

Document last reviewed November 2021

Introduction

This guidance sets out the substantive requirements for the application of the zero-rate of VAT to an intra-Community supply (ICS) of goods and the evidence required to be retained by the supplier of the goods relating to the transport of the goods. These new measures take effect from 1 January 2020.

1 Substantive requirements

The place of supply of an ICS of goods is the place where the transport begins.

The zero rate of VAT can apply to the ICS of goods if all of the following substantive requirements are met:

- the customer must be registered for VAT in another Member State
- the customer's VAT registration number (including country prefix) must be obtained and retained by the supplier
- the supplier's VAT number and the customer's VAT number must be quoted on the sales invoice
- the goods must be dispatched or transported to another Member State, and
- correct VIES Returns must be made by the supplier.

2 The presumption that goods have been transported

The condition that goods are dispatched or transported to another Member State is a critical condition for the application of the zero-rate to an ICS. The new amendment to the Implementing Regulation outlines circumstances where it will be presumed that the goods have been transported from one Member State to another, provided certain information or documentation is available. The other conditions contained in paragraph 1(1) of Schedule 2 to the VATCA must also be fulfilled for the zero-rating to apply to the supply.

3 Obligations regarding the presumption that goods have been transported

In order for the presumption that goods have been transported to apply in the context of an ICS, the supplier of the goods must retain the relevant documents, as outlined below.

The documentation required differs depending on which party to the transaction organised the transport of the goods. In both scenarios however, the supplier is the person who must retain the relevant documents in order for the presumption that transport has taken place to apply. This presumption may be rebutted by Revenue.

The information to be retained by the supplier is not a substantive condition for the zero-rating of an ICS. Instead, the information is required for it to be presumed that the transport of the goods from the State to another Member State has, in fact, taken place.

Where the conditions for the presumption to transport of goods are not met, this does not automatically mean that the zero-rating provided for in paragraph 1(1) of Schedule 2 to the VATCA does not apply. In that case, it will be up to the supplier to prove that all the conditions contained in paragraph 1(1) of Schedule 2 to the VATCA, including the transport of the goods have been met, as the presumption would not have arisen.

3.1 Supplier organises transport of goods

Where the supplier is responsible for organising the transport of the goods, there are two sets of proof which they can produce. The supplier may:

- have two pieces of evidence from column A of the table at 3.1.1, from two unconnected parties, or
- one piece of evidence from column A, along with another non-contradictory piece of evidence from column B, from two unconnected parties.

An unconnected party is one which is independent of the supplier, the customer, and the other unconnected party who provides documents.

3.1.1 Table of Documentation

Column A	**Column B**
Two documents relating to the dispatch or transport of goods, such as: • A signed CMR (Convention Relative au Contrat de Transport International de Marchandises par la Route) document/CMR note • A bill of lading • An airfreight invoice • An invoice from the carrier/transporter of the goods	One of the documents below, as well as one document from column A: • An insurance policy relating to the transport of the goods • A bank document proving payment for dispatch/ transport • Official documents, for example from a notary, confirming the arrival of the goods in the MS of destination • A receipt from a warehouse keeper in the Member State of destination, confirming the goods are being stored there

The items contained in Column A are not prescriptive or exhaustive. The items contained in column B are prescriptive.

3.2 Customer organises transport of goods

Where the customer of the goods is responsible for organising transport, the supplier remains responsible for retaining the relevant documents for the purposes of availing of the presumption of transport.

In this scenario, the supplier must retain:

- two pieces of evidence from column A of the table at 3.1.1, from two unconnected parties, or,
- one piece of evidence from column A of the table at 3.1.1, along with another non-contradictory piece of evidence from column B, from two unconnected parties.

3.2.1 Statement from the customer

Where the customer organises the transport of the goods, the supplier must also retain a statement from the customer that goods have been transported by them or on their behalf which identifies the MS of destination.

The statement must contain the following:

- the date of issue (of the statement)
- the name and address of the customer
- the quantity and nature of the goods, and
- the date and place of arrival of the goods.

Furthermore, where the supply of goods is a 'means of transport', the statement must also include:

- the identification number of the 'means of transport' e.g. the vehicle identification number or boat identification number, and
- the identification of the individual accepting the goods on behalf of the customer.

Note that this additional information in the statement is for **all** 'means of transport', and not just for '**new** means of transport' as defined in section 2 of the VATCA.

The customer of the goods must furnish the statement containing the information above to the supplier of the goods by the tenth day of the month following the supply.

4 Rebuttal of Presumption of Transport

Where the supplier has provided the required documents outlined above but Revenue has evidence that the goods in question have not, in fact, been transported, Revenue may rebut the presumption that transport has occurred.