



101TACD2023

Between:

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a decision made on 31 March 2020 by the Revenue Commissioners (hereinafter the "Respondent") refusing a claim for a refund of Value Added Tax (hereinafter "VAT") for the VAT periods September / October 2015 to November / December 2019 (hereinafter the "relevant VAT periods") by the [REDACTED] [REDACTED] (hereinafter the "Appellant").
2. The total amount of tax under appeal is €4,365,302.

Background

3. The Appellant was established under the [REDACTED] Act [REDACTED] (hereinafter the "[REDACTED] Act") and is an Irish incorporated and Irish tax resident company which [REDACTED] [REDACTED] and is responsible, *inter alia*, for the management of [REDACTED] [REDACTED].
4. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]
5. [REDACTED] is an Irish incorporated and Irish tax resident [REDACTED] [REDACTED]. [REDACTED] [REDACTED] specialises in providing [REDACTED] training across [REDACTED]. [REDACTED] [REDACTED].
6. The Appellant entered into a [REDACTED] Agreement with [REDACTED] on [REDACTED] under which [REDACTED] agreed to provide [REDACTED] training and retraining services to the Appellant for its students and employees. The relevant sections of the [REDACTED] Agreement are appended to this determination at **Annex 1** of this determination.
7. On 10 June 2015 the Appellant advised the Respondent that it had entered into the [REDACTED] Agreement with [REDACTED] and requested confirmation from the Respondent that the VAT exemption contained in Paragraph 4(3) of Schedule 1 of the Value Added Tax Consolidation Act 2010 (hereinafter the "VATCA2010") applied to certain training services which the Appellant provides to [REDACTED] under the [REDACTED].

8. On 16 July 2015 the Respondent informed the Appellant that it was of the opinion that the training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement are not of a vocational nature. The Respondent advised the Appellant that it should levy VAT at 23% on its charges to [REDACTED] who, the Respondent stated, could claim this VAT as an input credit.
9. The Appellant began charging VAT at the standard rate on its services to [REDACTED] from that point onwards.
10. Following further communication between the Parties, the Respondent wrote to the Appellant on 22 January 2016 and repeated its position that the training services provided by the Appellant to [REDACTED] are subject to VAT.
11. The Parties continued in correspondence in relation to the VAT treatment of training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement and by letter dated 23 November 2018 the Respondent again reiterated its opinion that the Appellant's services to [REDACTED] under the [REDACTED] Agreement do not come within the VAT exemption contained in Paragraph 4(3) of Schedule 1 of the VATCA2010.
12. On 12 February 2019 the Appellant requested a local review of the Respondent's handling of the matter under the Respondent's Complaint and Review Procedures. On 2 April 2019 the Respondent informed the Appellant that the reviewing officer had confirmed that she was satisfied that there was no basis to confirm that the VAT exemption contained in Paragraph 4(3) of Schedule 1 of the VATCA2010 applies to the Appellant's services to [REDACTED] under the [REDACTED] Agreement.
13. By letter dated 18 February 2020, the Appellant notified the Respondent that, in accordance with Regulation 36 of the VAT Regulations 2010, it wished to claim a refund of VAT for the relevant VAT periods on the basis that the training services supplied by it to [REDACTED] are exempt from VAT. The claim for refund of VAT submitted by the Appellant was as follows:

Year	VAT Return Period	[REDACTED] [REDACTED]	Of which VAT charged to [REDACTED] €
2015	Jan / Feb	[REDACTED]	0
2015	Mar / Apr	[REDACTED]	0
2015	May / Jun	[REDACTED]	0

2015	Jul / Aug	████████	0
2015	Sep / Oct	████████	1,312,008
2015	Nov / Dec	████████	125,431
2016	Jan / Feb	████████	0
2016	Mar / Apr	████████	144,558
2016	May / Jun	████████	116,620
2016	Jul / Aug	████████	103,221
2016	Sep / Oct	████████	101,681
2016	Nov / Dec	████████	132,201
2017	Jan / Feb	████████	137,353
2017	Mar / Apr	████████	136,974
2017	May / Jun	████████	104,807
2017	Jul / Aug	████████	93,397
2017	Sep / Oct	████████	153,489
2017	Nov / Dec	████████	123,067
2018	Jan / Feb	████████	0
2018	Mar / Apr	████████	0
2018	May / Jun	████████	381,286
2018	Jul / Aug	████████	100,012
2018	Sep / Oct	████████	137,702
2018	Nov / Dec	████████	156,710
2019	Jan / Feb	████████	154,808
2019	Mar / Apr	████████	149,881
2019	May / Jun	████████	93,233
2019	Jul / Aug	████████	135,526

2019	Sep / Oct	██████████	51,762
2019	Nov / Dec	██████████	219,576
		Total refund claimed	4,365,302

14. By letter dated 31 March 2020, the Respondent refused the refund of VAT request on the basis that the training services supplied by the Appellant to ██████████ are not vocational training services and are therefore not eligible for the VAT exemption provided for in Paragraph 4(3) of Schedule 1 of the VATCA2010.

15. The Appellant submitted Notices of Appeal to the Commission dated 24 April 2020 and 20 May 2020 in relation to the refusal of VAT refund decision by the Respondent.

16. The oral hearing of this appeal took place on 22 and 23 September 2022 following which the Parties were given leave to lodge further supplementary submissions to the Commission. The further supplementary submissions were received from the Parties in November 2022.

Grounds of Appeal

17. In its Notices of Appeal submitted to the Commission on 24 April 2020 and 20 May 2020 the Appellant submitted the following grounds of appeal to the Commission:

“ ...

The Appellants grounds of appeal are that it believes that the ██████████ training services it provides are VAT exempt vocational training services in accordance with Article 132(1)(i) VAT Consolidation Directive 2006 and Paragraph 4(3) of Schedule 1 of VATCA and are therefore not liable to VAT.

As the Appellant is self-evidently the only party which physically performs and delivers ██████████ training it is clearly supplying vocational training services and they are VAT exempt services.

In support of its appeal the Appellant also cites the EU principle of fiscal neutrality of VAT which means that goods or services which are the same or similar cannot be subject to different VAT treatments because that would distort competition between traders.

Withholding VAT exemption from educational subcontractors favours larger education suppliers because smaller ones cannot handle large contracts on their own. By imposing VAT, instead of VAT exemption on a subcontractor simply because a subcontract arrangement has been entered into places smaller businesses at a considerable disadvantage in the market to larger businesses and cannot be sustained under the principle of fiscal neutrality.

The Appellant reserves the right to add additional grounds of Appeal if the Respondents advance further grounds for refusing its repayments in the course of this appeal.”

Preliminary Objection

18. At the oral hearing the Appellant introduced, for the first time in these appeals, a ground of appeal which relied on the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of Value Added Tax (hereinafter “the VAT Consolidation Directive”).

19. Article 132 of the VAT Consolidation Directive provides that:

“Member States shall exempt the following transactions:

...

(i) the provision of children’s or young people’s education , school or university education , vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State as having similar objects;

...” (emphasis added) (hereinafter the “closely related matter”).

20. The Respondent made a preliminary objection to the Commissioner in relation to the Appellant introducing a ground of appeal based on the closely related matter for the first time at the oral hearing of these appeals.

21. The Respondent submitted that the Appellant did not include this ground of appeal in either of its Notices of Appeal. In addition, the Respondent submitted that the Appellant had not referred to this ground of appeal in its Statement of Case or in its Outline of Arguments submitted in support of these appeals. The first time that the Appellant raised this ground was at the opening of the oral hearing of these appeals.

22. The Respondent submitted that, the Commissioner should not permit the introduction of this new ground of appeal by the Appellant and in support of this the Respondent relied on the provisions of section 949I of the Taxes Consolidation Act 1997 (hereinafter the “TCA1997”) in support of its preliminary objection.

23. The Commissioner has considered whether the Appellant should be permitted to introduce and rely on the closely related matter ground of appeal which it first introduced at the hearing of these appeals on 22 September 2022.

24. Section 949I(2) of the TCA1997 provides that:

“(2) A notice of appeal shall specify –

...

(d) the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds,

...”

25. Section 949I(6) of the TCA1997 provides that:

“(6) A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice.”

26. The Appellant’s Notices of Appeal in these appeals were delivered on 24 April 2020 and 20 May 2020 and neither Notice of Appeal contained a ground of appeal in relation to the closely related matter.

27. In addition, the Appellant submitted a consolidated Statement of Case in these appeals on 9 November 2020 which did not reference the closely related matter as a ground of appeal.

28. A consolidated Outline of Arguments was submitted by the Appellant in these appeals on 8 March 2021 which did not reference the closely related matter as a ground of appeal.

29. The powers of the Commissioner derive from statute and the test contained in section 949I(6) of the TCA1997 must be met if the Appellant is to be permitted to introduce an additional ground of appeal after the submission of a Notice of Appeal. The question which the Commissioner must decide on is whether the new ground of appeal, in these appeals the closely related matter, could not reasonably have been stated in the Notices of Appeal submitted by the Appellant on 24 April 2020 and 20 May 2020.

30. The Commissioner notes that the Notices of Appeal, the Statement of Case and the Outline of Arguments submitted by the Appellant in these appeals did reference Article 132(i) of the VAT Consolidation Directive but not in relation to the closely related matter. The Appellant first raised the closely related matter as a ground of appeal on which it wished to rely at the opening of the oral hearing of these appeals on 22 September 2022.
31. The Commissioner notes that the Appellant was in ongoing, lengthy and detailed correspondence with the Respondent, both directly and through its Tax Agent, in relation to the question of a VAT exemption in relation to the [REDACTED] Agreement from 16 July 2015 when it first informed the Respondent about the [REDACTED] Agreement up until it submitted the claim for a refund of VAT the subject matter of these appeals.
32. The Commissioner further notes that, in its Notices of Appeal, the Appellant inserted a proviso to its grounds of appeal which stated: *“The Appellant reserves the right to add additional grounds of Appeal if the Respondents advance further grounds for refusing its repayments in the course of this appeal.”*
33. The Appellant has not set out or identified to the Commissioner any reason which tends to establish that the new ground of appeal, the closely related matter, could not reasonably have been stated in the Notices of Appeal.
34. The Appellant has not set out that the Respondent has advanced further grounds for its decision refusing the refund of VAT since the decision was made by the Respondent on 31 March 2020.
35. As a result, the Commissioner finds that the Appellant has not satisfied the Commissioner that the closely related matter could not reasonably have been stated in the Notice of Appeal submitted by the Appellant on 24 April 2020 and 20 May 2020.
36. The Commissioner therefore determines that the Appellant is not entitled to introduce the new ground of appeal, the closely related matter, in these appeals.
37. This determination will therefore not address the closely related matter.

Legislation and Guidelines

38. The legislation relevant to this appeal is appended to this determination at **Annex 2** of this determination.

Submissions and Witness Evidence

Appellant's Submissions

39. The Appellant submitted that Article 132(1)(i) of the VAT Consolidation Directive provides for the exemption of VAT on the following transactions:

"...the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects"

40. In addition, the Appellant submitted that Schedule 1 of the VATCA2010 which is entitled "*Exempt Activities*" is relevant and that paragraph (4)(3) of Schedule 1 of the VATCA2010 provides for the exemption from VAT of the following activities in relation to education:

"The provision by educational establishments recognised by the State of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), and the provision by other persons of education, training or retraining of a similar kind, but excluding instruction in the driving of mechanically propelled road vehicles other than— (a) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or (b) vehicles designed or constructed for the carriage of more than 9 persons (including the driver)."

41. The Appellant submitted that it is a body established by statute and as a result it is a body governed by public law for the purposes of the VAT Consolidation Directive and Article 132(1)(i) thereof.

42. [REDACTED]
[REDACTED]
[REDACTED] This, the Appellant submitted, necessitates it providing ongoing high quality vocational training to [REDACTED] and to [REDACTED] trainees [REDACTED].

43. [REDACTED]
[REDACTED]

████████████████████. The Appellant submitted that, ██████████
████████████████████, the Appellant is the only body authorised to physically
perform ██████████ training in ██████████
████████████████████

44. The Appellant submitted that, in order to assist it in meeting all of its ██████████ obligations,
it entered into the ██████████ Agreement with ██████████ in December 2013. The Appellant
describes the ██████████ Agreement as a comprehensive outsourcing arrangement
under which it has contractually outsourced the delivery of all of its ██████████
████████████████████ requirements, including its ██████████ training, to ██████████.

45. The Appellant submitted that ██████████ is obliged to subcontract the performance and delivery
of the ██████████ training straight back to the Appellant in order for ██████████ to
fulfil the ██████████ Agreement. This, the Appellant submitted, is because the Appellant
is the only party legally authorised to deliver ██████████ training in
Ireland.

46. The Appellant submitted that it relies on the following three issues in support of its appeal:

- *Under the ██████████ Agreement it provides vocational training services to ██████████;*
- *It does not provide personnel to ██████████ and the ██████████ Agreement does not allow for the Appellant to provide personnel to ██████████; and*
- *The closely related matter. The Commissioner has already determined that the Appellant is not entitled to rely on the closely related matter as a ground of appeal in this appeal.*

Witness 1 – ██████████

47. The Commissioner heard evidence from ██████████ who is the Appellant's ██████████
████████████████████. ██████████ stated that the Appellant is ██████████
████████████████████
████████████████████

- ██████████
████████████████████
- █ ██████████
████████████████████

[REDACTED]

48. [REDACTED]

- [REDACTED]

- [REDACTED]

49. [REDACTED] referred to Paragraph [REDACTED] of the Appellant's Memorandum of Association which sets out its' main objects and reflects the objects contained in section [REDACTED] of the [REDACTED] Act.

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]

50 [REDACTED] stated that the [REDACTED] industry is highly regulated. [REDACTED] stated that before anyone can [REDACTED] and [REDACTED] they have to be appropriately qualified. She stated that the Appellant recruits trainee [REDACTED] and awards them training contracts. Under the training contracts, which are between the Appellant and the trainees, it is made clear that the training is being managed by [REDACTED] on the Appellant's behalf.

51. [REDACTED] stated that the training [REDACTED] consists of the following stages:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

52 [REDACTED] stated that the [REDACTED] phase and the [REDACTED] Training phases fall within the [REDACTED] Agreement in that they must be delivered by the Appellant as the course materials are both specific to the Appellant and are also specific to the [REDACTED] at which the trainee will eventually work.

53. [REDACTED] also stated that [REDACTED] falls within the [REDACTED] Agreement and consists of a trainee shadowing an [REDACTED] working in a live situation. As a result, this training can only be delivered by the Appellant and by the Appellant's own

instructors. Once this training is complete and the requisite examinations have been passed the trainees are offered contracts of employment with the Appellant.

54. [REDACTED] also stated that following qualification, [REDACTED] are required to undergo [REDACTED] Training [REDACTED]. She stated that [REDACTED] Training must also be delivered by the Appellant. A final stage of training is also available to [REDACTED] who wish to become [REDACTED] or attain management skills.

55. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

56. [REDACTED] stated that [REDACTED], which was already providing training solutions to other [REDACTED] companies in Europe, offered a solution for this issue to the Appellant and as a result the Appellant engaged with [REDACTED] and explored whether they could offer the same training solutions to the Appellant. [REDACTED]
[REDACTED]
[REDACTED]

57. [REDACTED]
[REDACTED] The Appellant engaged with [REDACTED] with a view to ensuring that its training would meet the standards required [REDACTED]. The Appellant subsequently entered into the [REDACTED] Agreement with [REDACTED] on [REDACTED] to provide all of its training requirements, [REDACTED]
[REDACTED].

58. [REDACTED] stated that when contracting [REDACTED] to provide all of its training, the Appellant was aware that [REDACTED] could not provide certain types of training [REDACTED]
[REDACTED]. She stated that as a result the Appellant entered into the [REDACTED] Agreement with [REDACTED] whereby [REDACTED] would ensure that the training materials which were used by the Appellant for the [REDACTED] Training were structured in a manner such that they were compliant [REDACTED]. In that regard, [REDACTED] supplied standardised and [REDACTED] compliant templates for the training. In addition, they added a dimension of quality to the training ensuring that the delivery of the training was compliant with the relevant regulations.

59. [REDACTED] stated that the Appellant was aware that the [REDACTED] Agreement of [REDACTED] between it and [REDACTED] was creating a circular arrangement as reflected at page [REDACTED] of the contract [REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

60. [REDACTED] stated that this circular arrangement made complete sense to the Appellant as the [REDACTED] Agreement ensured that the training delivered by the Appellant would be fully compliant with [REDACTED]. [REDACTED] stated that the contract between the Appellant and [REDACTED] subcontracted the training which only the Appellant could deliver back to the Appellant. These training services which the Appellant would deliver to [REDACTED] were set out at [REDACTED] of the [REDACTED] Agreement.

61. In particular, [REDACTED] highlighted the following provisions of [REDACTED] of the [REDACTED] Agreement which states:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

█ [REDACTED]
[REDACTED]

█ █

█ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

62. █ stated that, recognising the importance of training to its business and also recognising the importance of its relationship with █, the Appellant permits █ to occupy its premises at both its training centres █. █ stated that the Appellant owns the training centre premises █ on which the █ Training is carried out. In terms of what trainees see when they enter the training centre, █ stated that in order to gain access to the training centre trainees pass through the Appellant's █, all of the employees that trainees encounter are █ employees.

63. █ stated that the instructors, as defined in the █ Agreement, are █ employed by the Appellant as █ and as part of that employment they are qualified as instructors who participate in the delivery of the Appellant's training services to █.

64. "Training Services" as defined in the █ Agreement, █ stated, are █ training services which are set out in █ of the █ Agreement and are also the Appellant's training services which █ have subcontracted the Appellant to provide to █. She stated that █ require to subcontract the Appellant for the provision of its training services in order for █ to complete and fulfil its contract to provide a full suite of training services to the Appellant.

65. █ stated that █ are tasked as part of their engagement with the Appellant to ensure that all of the training contained in the █ Agreement is approved by the █. █
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

66. In circumstances where both the Appellant and [REDACTED] understand that [REDACTED] cannot deliver [REDACTED] Training, the Appellant bore an obligation to deliver the [REDACTED] Training and to deliver this training [REDACTED]. This training, [REDACTED] states, was facilitated by [REDACTED] and was pursuant to the obligation to ensure that all of the training contained in the [REDACTED] Agreement is approved [REDACTED]. [REDACTED]. As a result, the Appellant provides [REDACTED] Training to [REDACTED]
67. [REDACTED] stated that [REDACTED] cannot provide the training manuals relating to [REDACTED] Training because this training relates specifically to the Appellant's [REDACTED]. [REDACTED] stated that at the beginning of every year the Appellant and [REDACTED] agree a training plan and the Appellant agrees to cooperate in the delivery of that training particularly in relation to [REDACTED] Training and the provision of instructors for those modules.
68. [REDACTED] stated that nothing had changed in terms of the delivery of the training by the Appellant as a result of the [REDACTED] Agreement with [REDACTED] in that the Appellant's employees still prepare the technical content of [REDACTED] Training and the Appellant's instructors still deliver this training. [REDACTED] stated that what had changed as a result of the Cooperation Agreement was the templates relating to, and the structure of, that training. [REDACTED] stated that the "pulling together" of that training has changed and that in order to be fully compliant [REDACTED], [REDACTED] deliver the quality assurance in relation to training to ensure that the training which the Appellant delivers is presented in a manner which is consistent with [REDACTED] and [REDACTED] best practice.
69. In relation to invoicing, [REDACTED] stated that the Appellant raises invoices to [REDACTED] for the particular training which it prepares and delivers to [REDACTED]. [REDACTED] referred to Invoice No.: [REDACTED] dated 31 December 2016 from the Appellant to [REDACTED] in the amount of [REDACTED] plus VAT at 23% of [REDACTED] totalling [REDACTED] and relating to the period 1 November 2016 to 31 December 2016. [REDACTED] stated that this invoice relates to a series of approximately 20 courses delivered by the Appellant under the [REDACTED] Agreement with [REDACTED]. The invoice was calculated with reference to the number of days that the Appellant's employees spent on preparing the material for the courses, as well as planning and delivering the courses. In addition, [REDACTED] stated, within that charge there is an allocation of cost in relation to a fixed base of training.

70. ██████ stated that at the beginning of the arrangement with ██████ the Appellant had approached the Respondent and at that time the Respondent indicated that it was of the view that the Appellant was providing personnel as distinct from services to ██████ and that Vat was chargeable on those services. In that regard ██████ referred to a letter from the Appellant to the Respondent dated 10 June 2015. ██████ stated that she had written the letter to the Respondent as part of their ongoing relationship and explained that the Appellant had entered into the ██████ Agreement with ██████ for operational and strategic reasons. The letter went on to state that ██████ would provide the Appellant's training and that the Appellant was being subcontracted to provide training that ██████ was not able to provide, that is to say ██████ Training.
71. ██████ stated that the letter set out that, in the Appellant's view, the services which it was supplying to ██████ were vocational and that they were being delivered as training necessary for the qualification and employment of students and employees. On that basis the letter sought confirmation from the Respondent that the training services which the Appellant was delivering to ██████ were VAT exempt.
72. Following the letter of 10 June 2015 the Appellant and Respondent entered into a series of correspondence in relation to the details of the ██████ Agreement with ██████, the services which the Appellant would be delivering to ██████ and the reasons behind same.
73. On 16 July 2015 the Respondent informed the Appellant by way of email that the Respondent was of the opinion that the Appellant's training services were no longer of a vocational nature as the contract was now between the Appellant and ██████. The Respondent advised the Appellant that it should therefore charge VAT at 23% on its charges to ██████ who, it stated, could claim this VAT as an input credit.
74. Further correspondence ensued between the Appellant and the Respondent and on 22 January 2016 the Respondent wrote to the Appellant and confirmed that the services being supplied by the Appellant to ██████ are subject to VAT on the basis that ██████ are the provider of training services and the Appellant is providing trainers to ██████ and such services are subject to VAT. The Respondent further stated in the letter of 22 January 2016 that as ██████ is providing the training services, the Appellant does not qualify for the exemption in paragraph 5 of the Respondent's guidance. As a result of this the Appellant included VAT on its invoices to ██████ and has been doing so ever since.

Witness 2 – ██████

75. The Commissioner heard direct evidence from ██████ ██████ who is ██████ ██████ for the Appellant. ██████ is in charge of the Appellant's

training budget and is the Appellant's point of contact with [REDACTED] in relation to financial matters. [REDACTED] has completed training with the Appellant and was also a qualified instructor with the Appellant. [REDACTED] was appointed as [REDACTED] Training manager for the Appellant in [REDACTED].

76. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
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[Redacted text block]

[Redacted text block]

- 77. [Redacted list item]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

78. As a result of these provisions, [REDACTED] stated, it would be impossible to provide [REDACTED] Training [REDACTED] without the instructor having up to date access to the Appellant's procedures. [REDACTED] stated that [REDACTED] therefore cannot carry out this type of training without the Appellant's instructors developing and updating the courses by way of having access to the Appellant's system and the Appellant's current procedures.

79. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] stated that [REDACTED]
Training can only be provided by the Appellant's staff and the Appellant's knowledge within the Appellant.

80. [REDACTED] stated that [REDACTED] training is delivered by [REDACTED] under the [REDACTED] Agreement. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

81. As a result, [REDACTED]
[REDACTED], that is to say [REDACTED] personnel cannot deliver [REDACTED]
[REDACTED] Training. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

82. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

83. [REDACTED] stated that the Appellant's staff who carry out training under the [REDACTED] Agreement with [REDACTED] are under the control of the [REDACTED] manager [REDACTED]. [REDACTED] stated that these staff see themselves as the Appellant's staff and that they see carrying out the training as part of their function with the Appellant. [REDACTED]
[REDACTED]

84. [REDACTED] stated that over [REDACTED] courses take place each year under the [REDACTED] Agreement. Each [REDACTED] the Appellant provides an indication to [REDACTED] of its training needs for the following [REDACTED], following which a number of meetings between the Appellant and [REDACTED] take place and [REDACTED] then submit a quotation for the training and internal meetings within the Appellant establish approval for the budget for this training. Thereafter sales orders are signed and arrangements are made by the Appellant to make instructors available and to ensure that [REDACTED] to allow the instructors carry out the training. Finally at the beginning of each [REDACTED] a training plan is agreed between the Appellant and [REDACTED].

85. [REDACTED] stated that [REDACTED] has no input into how the Appellant's instructors do their jobs. [REDACTED] stated that the Appellant completes a training need specification on which a course is based, the Appellant determines the content of the course, the Appellant provides the content of the course, the Appellant frees up instructors to develop the course and the Appellant frees up instructors to deliver the course.

86. [REDACTED] stated that very little changed in terms of the content of courses from before the [REDACTED] Agreement implementation and after the [REDACTED] Agreement implementation. The reason for this, [REDACTED] stated, is that the content of a course is

always determined by the Appellant's [REDACTED] department and that content of a course evolves [REDACTED]. The Appellant, [REDACTED] stated, is responsible for updating course materials and manuals which are updated every [REDACTED]. [REDACTED] stated that the structure of courses changes substantially in [REDACTED] following the implementation of the [REDACTED] Agreement both to match [REDACTED] and document control which [REDACTED] introduced. [REDACTED] stated that [REDACTED] were excellent in the area of document control and introduced systems of review and formatting of documents. [REDACTED] stated that [REDACTED] took the existing training and reformatted it making it much better and ensuring that it complied [REDACTED].

Witness 3 – [REDACTED]

87 [REDACTED] stated that [REDACTED] is the Appellant's [REDACTED] and [REDACTED]. [REDACTED] stated that [REDACTED] is the accountable manager for [REDACTED] training [REDACTED], that [REDACTED] manages [REDACTED] staff, that [REDACTED] is in charge of training forecasts and budgeting, [REDACTED] ensures [REDACTED], [REDACTED] is involved in planning the courses for the [REDACTED] in conjunction with the Appellant. He stated that he had previously worked [REDACTED] with the Appellant [REDACTED]. [REDACTED] stated that in [REDACTED] was [REDACTED] within the Appellant and in [REDACTED].

88. In [REDACTED] capacity as [REDACTED], [REDACTED] stated the following in relation to the role that [REDACTED] currently performs. [REDACTED] stated that based on the [REDACTED] Agreement, [REDACTED] delivers [REDACTED] Training to the Appellant and, because [REDACTED] are not able to deliver [REDACTED] Training and [REDACTED] Training, it subcontracts the Appellant to deliver that training [REDACTED].

89. [REDACTED]
[REDACTED]
[REDACTED]. [REDACTED] stated that it was clear that [REDACTED] required that the Appellant's training needed to be restructured [REDACTED].

90. [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

91. [REDACTED] stated that the Appellant was aware, [REDACTED], that other [REDACTED] have already restructured their training to be in compliance with the [REDACTED] requirements [REDACTED]. As a result the Appellant approached [REDACTED] who indicated that if the Appellant [REDACTED], then [REDACTED] would assist the Appellant in its training needs and would put a structure in place which would ensure compliance [REDACTED]. [REDACTED] stated that if the Appellant were to have attempted to amend its training to ensure compliance [REDACTED] at that time, it would have required the Appellant to allocate operational resources to that project. [REDACTED]. Therefore, [REDACTED] stated, the Appellant was unable to dedicate [REDACTED] personnel to this matter.

92. Because [REDACTED] training requirements are the same [REDACTED] [REDACTED] stated, had received approval in relation to its [REDACTED] Training product from the [REDACTED]. [REDACTED] describes the [REDACTED] training product as being “on the shelf” and not requiring [REDACTED] approval. This, [REDACTED] stated, meant that the [REDACTED] Training workload was then removed from the Appellant.

93. [REDACTED] stated that in or around [REDACTED] he was a member of the Appellant’s project team involved in discussions with [REDACTED] and the Appellant travelled to visit [REDACTED] to view their set up, course materials, structures and to be educated on their training philosophy. [REDACTED] stated that [REDACTED] were [REDACTED] Training experts based on their prior involvement [REDACTED].

Respondent’s Submissions

94. The Respondent did not adduce any witness evidence to the Commissioner.

Substantive Submissions

95. The Respondent submitted that the Appellant is not a body providing vocational training services in accordance with the requirements of the exemption contained in the VAT Consolidation Directive or in the VATCA2010. The Respondent submitted that [REDACTED] is the body providing vocational training services and that the Appellant is providing a suite of services to [REDACTED] to enable [REDACTED] to provide vocational training service to the students and employees of the Appellant. As a result, the Respondent submitted, the Appellant's services are subject to VAT.

96. The Respondent submitted that there is no legal impediment preventing an educational provider from subcontracting its services to another provider. However, the subcontractor can only qualify for the education exemption where it can demonstrate that it has the necessary organisational framework to be considered to be a body providing vocational training services. In this case, the Respondent submitted, certain appropriately qualified employees of the Appellant provide certain services to [REDACTED] to enable [REDACTED] to provide vocational training services to the students and employees of the Appellant. The Respondent submitted that the Appellant is therefore not a body providing vocational training services.

97. The Respondent submitted that the [REDACTED] Agreement between the Appellant and [REDACTED] shows that [REDACTED] is acting as principal in relation to the provision of the training while the Appellant is providing a suite of services to [REDACTED] to enable [REDACTED] to deliver the overall training services to the students. Some of the key points from the [REDACTED] Agreement, which, in the Respondent submission, support this view are as follows:

- [REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

98. The Respondent submitted that the contract, the sales order and subsequent invoicing reflect the commercial reality of the situation which is that the Appellant provides services to [REDACTED] to enable [REDACTED], as principal, to provide exempt vocational training. The Respondent submitted that, in order for the exemption to apply, the provider must be the principal provider of training bearing the associated risks and responsibilities and, in this instance, [REDACTED] is the principal provider of the training services. The Appellant is reimbursed for the provision of its services to [REDACTED].

99. The Respondent submitted that it is important to distinguish the difference between the Appellant providing a suite of services to [REDACTED] to enable [REDACTED] to provide educational services to students and the Appellant providing the overall educational service to the students. Only in the latter case, which the Respondent submitted does not persist in this appeal, would the education exemption to VAT apply.

100. The Respondent submitted that as the Appellant is not a qualifying body providing vocational training services in, it cannot qualify for the education exemption. The Appellant is therefore required to charge VAT at the standard rate to the [REDACTED] for the services provided.

Legality of Appellant's provision of training

101. The Respondent submitted during the course of the oral hearing that the Appellant has not been legally permitted to be a [REDACTED] providing training services [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

102. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

103. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Material Facts

104. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner and to whether the taxpayer has shown that the relevant tax is not payable."

105. The following material facts are not at issue between the parties and the Commissioner accepts same as material facts:

- The Appellant was established under the [REDACTED] Act [REDACTED] and is an Irish incorporated and Irish tax resident company [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- The Appellant is a public body for the purposes of Schedule 1 paragraph 4 of the VATCA2010.
- The training of [REDACTED] is vocational training for the purposes of Schedule 1 paragraph 4 of the VATCA2010.
- [REDACTED] is an Irish incorporated and Irish tax resident [REDACTED]
[REDACTED].
- [REDACTED] specialises in providing [REDACTED] training [REDACTED].
- [REDACTED]
- The Appellant entered into a [REDACTED] Agreement with [REDACTED] on [REDACTED]
[REDACTED] under which [REDACTED] agreed to provide [REDACTED] training and retraining services to the Appellant for its students and employees.
- On 10 June 2015 the Appellant advised the Respondent that it had entered into the [REDACTED] Agreement with [REDACTED] and requested confirmation from the Respondent that the VAT exemption contained in Paragraph 4(3) of Schedule 1 of VATCA2010 applied to certain training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement.
- On 16 July 2015 the Respondent informed the Appellant that it was of the opinion that the training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement were not of a vocational nature. The Respondent advised the Appellant that it should levy VAT at 23% on its charges to [REDACTED] who, the Respondent stated, could claim this VAT as an input credit.
- The Appellant began charging VAT at the standard rate on its services to [REDACTED] from that point onwards.
- Following further communication between the Parties, the Respondent wrote to the Appellant on 22 January 2016 and repeated its position that the training services provided by the Appellant to [REDACTED] are subject to VAT.

- The Parties continued in correspondence in relation to the VAT treatment of the training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement and by letter dated 23 November 2018 the Respondent again reiterated its opinion that the Appellant's services to [REDACTED] under the [REDACTED] Agreement do not come within the VAT exemption contained in Paragraph 4(3) of Schedule 1 of the VATCA2010.
- On 12 February 2019 the Appellant requested a local review of the Respondent's handling of the matter under the Respondent's Complaint and Review Procedures. On 2 April 2019 the Respondent informed the Appellant of the outcome of the local review the outcome of which was that the reviewing officer confirmed that she was satisfied that there was no basis to confirm that the VAT exemption contained in Paragraph 4(3) of Schedule 1 of the VATCA2010 applies to the Appellant's services to [REDACTED] under the [REDACTED] Agreement.
- By letter dated 18 February 2020, the Appellant notified the Respondent that, in accordance with Regulation 36 of the VAT Regulations 2010, it wished to claim a refund of VAT for the relevant VAT periods on the basis that the training services supplied by it to [REDACTED] are exempt from VAT

106. The following material facts are at issue in this appeal:

- The Appellant is the only body authorised to deliver [REDACTED] Training [REDACTED];
- The Appellant has been, and is, legally permitted to be [REDACTED] providing training services to student [REDACTED], or ongoing training to already-qualified [REDACTED]; and
- The effect of the [REDACTED] Agreement is that the Appellant is delivering vocational training services to [REDACTED] and is not simply providing personnel to [REDACTED].

The Appellant is the only body authorised to deliver [REDACTED] Training [REDACTED]:

107. [REDACTED] gave evidence to the Commissioner relating to the basis on which [REDACTED] [REDACTED] training in Ireland is carried out. [REDACTED]
[REDACTED]
[REDACTED]. The details of this evidence have been set out previously in this determination.

108. [REDACTED]

109. [REDACTED]

110. The [REDACTED] Agreement is dated [REDACTED] and these appeals relate to a claim for repayment of VAT charged by the Appellant for VAT periods in 2015 to 2019 inclusive.

111. Therefore the Commissioner must first consider whether the Appellant was the only body authorised to [REDACTED] training [REDACTED]

112. [REDACTED]

113.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

114.

[Redacted]

[Redacted]

[Redacted]

[Redacted text block]

[Redacted text block]

115. [Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

116. [Redacted text block]

[Redacted text block]

[REDACTED]

[REDACTED]

117. At the oral hearing the Commissioner heard evidence that, during the periods under appeal, the Appellant was the only body which was certified to deliver [REDACTED] Training. [REDACTED]

[REDACTED]

118. [REDACTED]

119. [REDACTED]

120. [REDACTED]

121. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

122. The uncontested evidence adduced to the Commissioner, both direct evidence and evidence under cross-examination, was that the certification issued to [REDACTED] granted [REDACTED] for [REDACTED] Training and [REDACTED] Training only.

123. The Commissioner has no reason not to accept the evidence adduced by the Appellant in this regard.

124. [REDACTED]

125. As a result of the foregoing the Commissioner finds as a material fact that the Appellant is the only body authorised to deliver [REDACTED] Training [REDACTED]. Therefore this material fact is accepted.

The Appellant has been, and is, legally permitted to be [REDACTED] providing training services to student [REDACTED], or ongoing training to already-qualified [REDACTED]

126. The Respondent has raised an issue as to whether the Appellant has been legally permitted to be a [REDACTED] providing training services [REDACTED]

127. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

128. [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

129. The Respondent submitted that, [REDACTED]
[REDACTED]
[REDACTED], the Appellant has no longer, [REDACTED], been entitled to be a [REDACTED]
[REDACTED] providing training services [REDACTED]
[REDACTED]

130. The Appellant strongly disputes the Respondent's submission [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

131. [REDACTED]

132. The Commissioner has considered the submissions in this regard [REDACTED]

133. Therefore the Commissioner finds that the Appellant has been, and is, legally permitted to be a [REDACTED] providing training services [REDACTED]. This material fact is accepted.

The effect of the [REDACTED] Agreement is that the Appellant is delivering educational services and is not simply providing personnel to [REDACTED].

134. On the one hand the Appellant submits that the effect of the [REDACTED] Agreement is that it is delivering educational services and that it is not simply providing personnel to [REDACTED]. On the other hand, the Respondent submits that the effect of the [REDACTED] Agreement is that the Appellant is providing personnel to [REDACTED] who then deliver educational services to the Appellant.

135. The correct approach to interpreting the construction of a contract has been set out by the Supreme Court in the judgment of *Analog Devices B.V. v Zurich Insurance Company* [2005] 1 IR 274 and was expressed by Laffoy J in *UPM Kymmene Corporation v BWG* unreported, High Court, Laffoy J, 11 June 1999 (hereinafter “*Kymmene*”) as follows:

“[T]he basic rules of construction which the Court must apply in interpreting the documents which contain the parties agreement are not in dispute. The Court’s task is

to ascertain the intention of the parties and that intention must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. Moreover, in attempting to ascertain the presumed intention of the parties, the Court should adopt an objective, rather than a subjective approach, and should consider what would have been the intention of reasonable persons in the position of the parties.”

136. The principles of interpretation applicable to contracts or agreements generally are well known having been recorded by Lord Hoffman in *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 which was confirmed in the UK Supreme Court decision in *Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 and subsequently confirmed by Kelly J in *Dunnes Stores v Holtglen Limited* [2012] IEHC 93 (hereinafter “*Dunnes*”) and summarised by Gross LJ in *Al Sanea Saad Investments Co Limited* [2012] EWCA Civ 313 where he stated as follows:

“ ...

- *The ultimate aim of contractual construction is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. The reasonable person is taken to have all the background knowledge which would have reasonably been available to the parties in this situation in which they were in at the time of the contract.*
- *The Court has to start somewhere and the starting point is the wording used by the parties in the Contract.*
- *It is not for the Court to rewrite the party’s bargain. If the language is unambiguous, the Court must apply it.*
- *Where a term of a contract is open to more than one interpretation, it is generally appropriate for the Court to adopt the interpretation which is most consistent with the business common sense. A Court should always keep in mind the consequences of a particular construction and should be guided throughout by the context in which the contractual provision is located.*
- *The contract is to be read as a whole and an ‘iterative process’ is called for: ‘... involving checking each of the rival meanings against other provisions of the document and investigating its commercial consequences’.*”

137. In interpreting the [REDACTED] Agreement the Commissioner must start by looking at the wording of the document.

138. The title of any document is an indication of its contents and is a distinguishing description given to the document at hand. The Agreement entered into between the Appellant and [REDACTED] contains the following words as the title:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

139. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

140. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

141. [REDACTED]

[REDACTED]
[REDACTED]

142. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

143. The Commissioner has considered the wording of [REDACTED] the [REDACTED] Agreement.

144. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

145. [REDACTED]

- i. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

146. [REDACTED]

147. [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- █ [REDACTED]
[REDACTED]
[REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

148. [REDACTED]

[REDACTED]

- █ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- █ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]
[REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

- █ [REDACTED]

[REDACTED]

- █ [REDACTED]

[REDACTED]

[Redacted text]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

- [Redacted list item]

■ [REDACTED]
[REDACTED]
[REDACTED]

■ [REDACTED]
[REDACTED]
[REDACTED]

■

149. Taking the Title of the [REDACTED] Agreement together with [REDACTED] along with [REDACTED] of the [REDACTED] Agreement, the language sets out that [REDACTED] is a training academy which offers, *inter alia*, [REDACTED] Training and Development [REDACTED] Training. The language further sets out that, prior to the [REDACTED] Agreement, the Appellant had provided its own training covering [REDACTED] Training, [REDACTED] Training, [REDACTED] Training and Development Training. The language sets out that [REDACTED] and the Appellant have agreed that [REDACTED] shall provide the Appellant with standardised and cost effective training services for [REDACTED] personnel. In addition, the language sets out that [REDACTED] needs to supplement its training services with training services it acquires from other parties, including the Appellant, and that recognising the Appellant's experience and capability to deliver the training services, [REDACTED] requires, and the Appellant is able to provide, support by means of the provision of a range of services to [REDACTED].

150. The language of [REDACTED] of the [REDACTED] Agreement specifies the [REDACTED] training services as being (i) [REDACTED] Training, (ii) [REDACTED] Training being [REDACTED] Training at [REDACTED] and [REDACTED] Training at [REDACTED], (iii) [REDACTED] Training and (iv) Development Training.

151. The language of [REDACTED] of the [REDACTED] Agreement specifies the Appellant's training services and states that, in order to enable [REDACTED] to fulfil its obligations under the [REDACTED] Agreement, the Appellant would, based on its pre-[REDACTED] Agreement in-house training activities, provide a range of training services to [REDACTED], such services to be incorporated by [REDACTED] into the [REDACTED] Training Service.

152. [REDACTED] of the [REDACTED] Agreement also provides that it is agreed that the following resources would be used by the Appellant in the delivery of services to [REDACTED]:

- [redacted] *in-house trainers* [redacted]
- [redacted] *manuals*
- [redacted] *Training Plan* [redacted]
- *Use of* [redacted] *equipment* [redacted] *and IT systems) and* [redacted] *premises*
- *Student Psychological support during training*
- [redacted] *HR evaluation during training*
- *Input to develop the* [redacted] *training course.*

153. [redacted] of the [redacted] Agreement further sets out, *inter alia*, that the Appellant shall maintain full responsibility as employer in respect of the instructors used by the Appellant to deliver its services under the [redacted] Agreement.

154. The Commissioner finds that the meaning of the language in the [redacted] Agreement is clear and means that it was the intention of the Parties that [redacted] would deliver (i) [redacted] Training, (ii) [redacted] Training [redacted] Training at [redacted] [redacted] and [redacted] Training at [redacted] [redacted], (iii) [redacted] Training and (iv) Development Training.

155. The Commissioner finds that the meaning of the language in the [redacted] Agreement is clear and means that it was the intention of the Parties that the Appellant would provide a range of training services to [redacted].

156. The Commissioner also finds that the meaning of the language in the [redacted] Agreement is clear and means it was the intention of the Parties that, as part of the delivery of the training services to [redacted], the Appellant would act as employer in respect of the instructors which it used to deliver those training services to [redacted].

157. The Commissioner has already found as a material fact that the Appellant was the only body authorised to deliver [redacted] Training [redacted]. [redacted] [redacted]

158. As a result of the findings in relation to the meaning of the language in the [redacted] Agreement and the finding that the Appellant was the only body authorised to deliver [redacted] [redacted] Training [redacted], the Commissioner finds as a material fact that the effect of

the [REDACTED] Agreement is that the Appellant is delivering vocational training services to [REDACTED] and is not simply providing personnel to [REDACTED]. Therefore this material fact is accepted

Findings of Material Fact

159. For the avoidance of doubt, the Commissioner finds the following as material facts in this appeal:

- The Appellant was established under the [REDACTED] Act [REDACTED] and is an Irish incorporated and Irish tax resident company [REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
- The Appellant is a public body for the purposes of Schedule 1 paragraph 4 of the VATCA2010.
- The training [REDACTED] is vocational training for the purposes of Schedule 1 paragraph 4 of the VATCA2010.
- [REDACTED] is an Irish incorporated and Irish tax resident [REDACTED] of [REDACTED]
[REDACTED].
- [REDACTED] specialises in providing [REDACTED] training [REDACTED].
- [REDACTED]
- The Appellant entered into a [REDACTED] Agreement with [REDACTED] on 19 December 2013 under which [REDACTED] agreed to provide [REDACTED] training and retraining services to the Appellant for its students and employees.
- On 10 June 2015 the Appellant advised the Respondent that it had entered into the [REDACTED] Agreement with [REDACTED] and requested confirmation from the Respondent that the VAT exemption contained in Paragraph 4(3) of Schedule 1 of VATCA2010 applied to certain training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement.
- On 16 July 2015 the Respondent informed the Appellant that it was of the opinion that the training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement were not of a vocational nature. The Respondent advised

the Appellant that it should levy VAT at 23% on its charges to [REDACTED] who, the Respondent stated, could claim this VAT as an input credit.

- The Appellant began charging VAT at the standard rate on its services to [REDACTED] from that point onwards.
- Following further communication between the Parties, the Respondent wrote to the Appellant on 22 January 2016 and repeated its position that the training services provided by the Appellant to [REDACTED] are subject to VAT.
- The Parties continued in correspondence in relation to the VAT treatment of the training services which the Appellant provides to [REDACTED] under the [REDACTED] Agreement and by letter dated 23 November 2018 the Respondent again reiterated its opinion that the Appellant's services to [REDACTED] under the [REDACTED] Agreement do not come within the VAT exemption contained in Paragraph 4(3) of Schedule 1 of the VATCA2010.
- On 12 February 2019 the Appellant requested a local review of the Respondent's handling of the matter under the Respondent's Complaint and Review Procedures. On 2 April 2019 the Respondent informed the Appellant of the outcome of the local review the outcome of which was that the reviewing officer confirmed that she was satisfied that there was no basis to confirm that the VAT exemption contained in Paragraph 4(3) of Schedule 1 of the VATCA2010 applies to the Appellant's services to [REDACTED] under the [REDACTED] Agreement.
- By letter dated 18 February 2020, the Appellant notified the Respondent that, in accordance with Regulation 36 of the VAT Regulations 2010, it wished to claim a refund of VAT for the relevant VAT periods on the basis that the training services supplied by it to [REDACTED] are exempt from VAT
- The Appellant is the only body authorised to deliver [REDACTED] Training [REDACTED];
- The Appellant has been, and is, legally permitted to [REDACTED] providing training services [REDACTED] [REDACTED]; and
- The effect of the [REDACTED] Agreement is that the Appellant is delivering training services to [REDACTED] and is not simply providing personnel to [REDACTED].

Analysis

160. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

161. Article 132 of the VAT Consolidation Directive provides that “*Member States shall exempt the following transactions:*

...

(i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects”

162. Chapter VIII of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (recast) sets out certain measures regarding certain VAT exemptions. Section 1, Article 44, of Chapter VIII thereof, pertaining to exemptions for certain activities in the public interest (Articles 132, 133 and 134 of the VAT Consolidation Directive 2006) provides that:

“Vocational training or retraining services provided under the conditions set out in point (i) of Article 132(1) of Directive 2006/112/EC shall include instruction relating directly to a trade or profession as well as any instruction aimed at acquiring or updating knowledge for vocational purposes. The duration of a vocational training or retraining course shall be irrelevant for this purpose.”

163. Schedule 1 paragraph (4)(3) of the VATCA2010 sets out that an exemption to VAT applies to the following:

“4(3)(a) The provision by a recognised body of children's or young people's education, school or university education, or vocational training or retraining (including the supply of goods and services incidental to that provision, other than the supply of research services), but excluding instruction in the driving of mechanically propelled road vehicles other than—

(i) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or

(ii) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

(b) In this subparagraph—

'recognised body' means—

(i) a public body,

(ii) any of the following bodies:

(I) a recognised school within the meaning of the Education Act 1998 ;

(II) an education or training provider within the meaning of the Education and Training Boards Act 2013 , to which section 22 of that Act applies;

(III) a body in receipt of moneys advanced under section 21 of the Further Education and Training Act 2013 ;

(IV) a body providing training for initial or continued access to a regulated profession, within the meaning of the Recognition of Professional Qualifications (Directive 2005/36/EC) Regulations 2008 (S.I. No. 139 of 2008);

(V) a body providing a course leading to an award which is recognised within the National Framework of Qualifications;

(VI) a body, included for the time being on a list published by the Minister for Justice and Equality from time to time, which provides a course, attendance at which, that Minister considers provides an acceptable basis for the granting of an immigration permission;

(VII) a body providing a course leading to an award by an approved college,

within the meaning assigned by section 473A of the Taxes Consolidation Act 1997 ;

(VIII) a provider of a programme of education and training, within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012 which is, for the time being, validated under section 45 of that Act;

(IX) a body, providing education to children or young people which, if provided by a recognised school within the meaning of section 10 of the Education Act 1998 , would be the curriculum prescribed under section 30 of that Act.”

164. The issue which arises between the Parties in this appeal is whether the exemption to VAT contained in Schedule 1 paragraph (4)(3) of the VATCA2010 is applicable to the Appellant for the training services which it delivers to █████ under the █████ Agreement.
165. The Commissioner has considered the evidence received, the submissions both written and oral made on behalf of both Parties along with the relevant legislation and the material facts.
166. There is no dispute between the Parties as to the provisions of Schedule 1 paragraph 4(3) of the VATCA2010 and the exemption to VAT contained therein relating to the provision by a recognised body of children’s or young people’s education, school or university education, or vocational training or retraining . The dispute between the Parties in these appeals is whether the Appellant is providing vocational services to █████.
167. Both Parties to this appeal have relied on the case of *Stichting Regionale Opleidingen Centrum Nord-Kennemerland / West-Friedland (Horizon College) v Staatsvan Financien C434/05* (hereinafter “*Horizon*”) in this appeal.
168. The *Horizon* case was a reference for a preliminary ruling to the Court of Justice of the European Union (hereinafter the “CJEU”) and concerned the Sixth Council Directive 77/388/EEC on the harmonisation of laws of the Member States relating to turnover taxes – Common system of value added tax : uniform basis of assessment (hereinafter the “Sixth VAT Directive”). Article 13 of the Sixth VAT Directive was similarly worded to Article 132 of the VAT Consolidation Directive. The facts of that case were:
- Horizon College made some of its teachers available to other host educational establishments, each of which assumed responsibility for the teachers working there.

- Contracts were concluded between Horizon College, the teacher and the host establishment.
- Under the relevant terms of those contracts it was for the host establishment to define the teacher's duties having regard to the duration of placement and the role assigned to each teacher in Horizon College.
- The host establishment was required to pay statutory liability insurance for the period of the teacher's placement.
- The teacher's salary continued to be paid by Horizon College.
- The host establishment was required to reimburse Horizon College in respect of the teacher's salary, without any profit uplift.
- Horizon College did not charge VAT.

169. The CJEU was asked a number of questions about the interpretation of the Sixth Directive and the exemptions to VAT contained in Article 13A(1)(i) thereof as follows:

- Whether the provision of educational services includes the making available, for consideration, of a teacher to an educational institution in order that they may temporarily provide teaching services there within the area of responsibility of that educational establishment?
- ...
- Are the answer to Questions 1 and 2 affected by the fact that the body which makes the teacher available is itself an educational institution?

170. In answering the first question (read together with the third question), the CJEU held at paragraphs 20 and 22 of its judgment that Article 13A(1)(i) of the VAT Directive is to be interpreted as meaning that the expression "*children's or young people's education, school or university education, vocational training or retraining*" does not cover the making available, for consideration, of a teacher to an educational establishment, within the meaning of that provision, in which that teacher temporarily carries out teaching duties under the responsibility of that establishment, even if the body which makes the teacher available is itself a body governed by public law that has an educational aim, or another organisation defined by the Member State concerned as having similar objects.

171. The CJEU found that the educational activity referred to in Article 13A(1)(i) comprises "*a combination of elements which include, along with those relating to the teacher/student relationship, also those which make up the organisational framework of the establishment*"

concerned”, and a contractual arrangement that “*aims, at most, simply to facilitate the provision of education by the host establishment*” cannot “*be regarded, of itself, as an activity capable of being covered by the term ‘education’, within the meaning of Article 13A(1)(i)*”.

172. The Commissioner considers that the facts in these appeals are materially different than those provided by Horizon College for the following reasons:

- i. The Appellant is the only body which is permitted to provide the training;
- ii. The Appellant was not making available, for consideration, teachers, or in this instance instructors, to an educational establishment in which that teacher temporarily carries out teaching duties under the responsibility of that establishment;
- iii. The effect of the [REDACTED] Agreement is that the Appellant is delivering training services to [REDACTED] and is not simply providing personnel to [REDACTED].

173. The Commissioner has already found as a material fact, and it is not in dispute between the Parties, that the provision of training services [REDACTED] is vocational training for the purposes of Schedule 1 paragraph 4(3) of the VATCA2010.

174. The Commissioner has also already found as a material fact that the effect of the [REDACTED] Agreement is that the Appellant is delivering training services to [REDACTED] and is not simply providing personnel to [REDACTED].

175. As a result of the foregoing the Commissioner finds that for the purposes of these appeals the Appellant is:

- i. A public body and therefore a recognised body;
- ii. Involved in the provision vocational training or retraining.

176. It therefore follows that the Appellant is entitled to the exemption available to it pursuant to Schedule 1 paragraph 4(3) of the VATCA2010.

Determination

177. The Commissioner determines that the Appellant has discharged the burden of proof in this appeal and that it has succeeded in showing that the relevant tax was repayable by the Respondent.

178. The Commissioner determines that the Respondent shall repay the following amounts of VAT to the Appellant in relation to the following periods:

Year	VAT Return Period	Amount of VAT Repayable
2015	Sep / Oct	1,312,008
2015	Nov / Dec	125,431
2016	Mar / Apr	144,558
2016	May / Jun	116,620
2016	Jul / Aug	103,221
2016	Sep / Oct	101,681
2016	Nov / Dec	132,201
2017	Jan / Feb	137,353
2017	Mar / Apr	136,974
2017	May / Jun	104,807
2017	Jul / Aug	93,397
2017	Sep / Oct	153,489
2017	Nov / Dec	123,067
2018	May / Jun	381,286
2018	Jul / Aug	100,012
2018	Sep / Oct	137,702
2018	Nov / Dec	156,710
2019	Jan / Feb	154,808
2019	Mar / Apr	149,881
2019	May / Jun	93,233
2019	Jul / Aug	135,526
2019	Sep / Oct	51,762
2019	Nov / Dec	219,576
		4,365,302

179. This Appeal is determined in accordance with Part 40A of the TCA1997 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 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll
Appeal Commissioner
19 April 2023

No request for a case stated has been received in this appeal.

Annex 1 – [REDACTED] Agreement

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Annex 2

Article 132(1)(i) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

“Member States shall exempt the following transactions:

...

- (i) the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects”*

Section 3 of the Value-Added Tax Consolidation Act 2010 (hereinafter the “VATCA2010”):

“Except as expressly otherwise provided by this Act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions:

- (a) the supply for consideration of goods by a taxable person acting in that capacity when the place of supply is the State;*
- (b) the importation of goods into the State;*
- (c) the supply for consideration of services by a taxable person acting in that capacity when the place of supply is the State;*
- (d) the intra-Community acquisition for consideration by an accountable person of goods (other than new means of transport) when the acquisition is made within the State;*
- (e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State.”*

Schedule 1 of the VATCA2010 – Exempt Activities (as inserted by section 54(b)(i) and (ii) of the Finance Act 2015):

“4(3)(a) The provision by a recognised body of children's or young people's education, school or university education, or vocational training or retraining

(including the supply of goods and services incidental to that provision, other than the supply of research services), but excluding instruction in the driving of mechanically propelled road vehicles other than—

(i) vehicles designed or constructed for the carriage of 1.5 tonnes of goods or more, or

(ii) vehicles designed or constructed for the carriage of more than 9 persons (including the driver).

(b) In this subparagraph—

'recognised body' means—

(i) a public body,

(ii) any of the following bodies:

(I) a recognised school within the meaning of the Education Act 1998 ;

(II) an education or training provider within the meaning of the Education and Training Boards Act 2013 , to which section 22 of that Act applies;

(III) a body in receipt of moneys advanced under section 21 of the Further Education and Training Act 2013 ;

(IV) a body providing training for initial or continued access to a regulated profession, within the meaning of the Recognition of Professional Qualifications (Directive 2005/36/EC) Regulations 2008 (S.I. No. 139 of 2008);

(V) a body providing a course leading to an award which is recognised within the National Framework of Qualifications;

(VI) a body, included for the time being on a list published by the Minister for Justice and Equality from time to time, which provides a course, attendance at which, that Minister considers provides an acceptable basis for the granting

of an immigration permission;

(VII) a body providing a course leading to an award by an approved college, within the meaning assigned by section 473A of the Taxes Consolidation Act 1997 ;

(VIII) a provider of a programme of education and training, within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012 which is, for the time being, validated under section 45 of that Act;

(IX) a body, providing education to children or young people which, if provided by a recognised school within the meaning of section 10 of the Education Act 1998 , would be the curriculum prescribed under section 30 of that Act.”