AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

56TACD2023

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter "the Commission") as an appeal against an assessment to Value Added Taxation ("VAT") raised by the Revenue Commissioners ("the Respondent") on 12th February 2020.

2. The assessment covers the periods November/December 2016 and November/December 2017. The VAT due on the assessment is €30,514 in respect of the period November/December 2016 and €66,446 in respect of the period November/December 2017. The Appellant makes its appeal in accordance with the provisions of section 119 Value-Added Tax Consolidation Act 2010 ("VATCA 2010").

3. The hearing took place remotely on 9th November 2022. The Appellant was represented by [redacted] and [redacted] (the Appellant Directors), who were articulate and well prepared and the Respondent was represented by Counsel. The Commissioner heard evidence and submissions on

behalf of the Appellant and submissions on behalf of the Respondent and had the benefit of written submissions from both parties in advance of the hearing date.

Background

4. The Appellant's business is to recruit overseas students ("the client"), for schools, colleges and universities ("the school") primarily situated in the State.

5. The Appellant Directors explained that a potential client ordinarily wishes to learn or advance their [redacted] skills and contacts them via a website where they have completed a questionnaire. This questionnaire discloses which course of study the client wishes to undertake and the Appellant provides a list of suitable schools which it feels fulfils its client's requirements. The Appellant Directors further explained that when the client agrees to avail of the Appellant's services, the client pays the Appellant a fee. This fee covers transfers from the airport, assistance with VISA's (if required), in most cases a week's accommodation, in some cases medical insurance cover and in the majority of cases payment for the relevant school's tuition fees. The Appellant Directors advised that upon receipt of the fee from the student they disburse the tuition fees to the relevant school, appropriate the applicable transport, accommodation and medical insurance fees and the Appellant retains the resultant sum. This resultant sum equates to the commission receivable by the Appellant for the provision of its services.

6. The Appellant Directors advised that while some of the students were placed in third-party schools, the Appellant also placed students in a separate school, [redacted] which the Appellant Directors' owned and operated in a separate limited company. In addition, the Appellant Directors advised that they placed some of the clients in third-party accommodation but also had two houses in their own names which they sometimes placed students in.

7. During the course of an audit conducted by the Respondent, the Respondent noted that the Appellant did not maintain sales or purchase ledgers but rather recorded summaries of its transactions on excel spreadsheets. As no sales invoices or similar documentation was available to explain the source of the Appellant's lodgements, the Respondent sought copies of the contracts entered into between the Appellant and the schools for which it recruited students.

8. Following a review of these contracts, the Respondent formed the view that the Appellant was engaged by the schools to provide student recruitment services and was paid a commission for such services.

9. While the Respondent accepted that VAT did not apply to the fees received from the client for the disbursements in respect of tuition fees, transport, accommodation and medical insurance fees, where applicable, ("the disbursements") it formed the view that VAT was due on the commissions ("the commissions") received by the Appellant. As the Appellant was not registered for VAT at the commencement of the audit conducted by the Respondent, the Respondent compulsory registered the Appellant for VAT and proceeded to issue the notice of assessment to VAT on 12th February 2020. The VAT payable on the assessment, in the total sum of €96,960, purportedly represented the VAT due on the commission element of the fees received by the Appellant in the tax years 2016 and 2017.

10. The Appellant who was not in agreement with the notice of assessment filed a notice of appeal with the Commission on 15th April 2020. While this notice of appeal was outside the statutory timeframe for the making of an appeal (30 days), the Respondent advised that they were not objecting to the Commission's late acceptance of the appeal as the Appellant Directors were outside Ireland, with one of them undergoing treatment for [redacted] when the notice of assessment issued. The Commissioner accepts that the Appellant had reason to file the notice of appeal late in these circumstances.

Legislation

11. The legislation relevant to this appeal is as follows*:*

Domestic Legislation

Section 3 VATCA 2010

> *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.

Section 25 (1) VATCA 2010

In this Act 'supply', in relation to a service, means the performance or omission of any act or the toleration of any situation other than –

(a) the supply of goods, and

(b) a transaction specified in section 20 or 22(2).

Section 28 (1) VATCA 2010

The supply of services through a person (in this subsection referred to as the 'agent') who, while purporting to act on his or her own behalf, concludes agreements in his or her own name but on the instructions of, and for the account of, another person, shall be deemed, for the purposes of this Act, to constitute a supply of the services to and simultaneously by the agent

Section 46 VATCA 2010

Tax shall be charged, in relation to the supply of taxable goods or services, the intra-Community acquisition of goods and the importation of goods, at whichever of the following rates is appropriate in any particular case:

(a) subject to subsection (1A), 23 per cent of the amount on which tax is chargeable other than in relation to goods or services on which tax is chargeable at any of the rates specified in paragraphs (b), (c), (ca) and (d)…

Schedule 1 VATCA 2010 – Paragraph 4 (3)

"(a) The provision of –

(i) children's or young people's education, school or university education, or

(ii) vocational training or retraining (subject to any conditions as may be specified in regulations), 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 the instruction of a kind to which clause (c) relates, by –

(I) a public body,

(II) a provider in receipt of Exchequer funds for the purposes of that provision from a body specified in regulations,

(III) a recognised school within the meaning of the Education Act 1998,

(IV) a college within the meaning of section 2 of the Regional Technical Colleges Act 1992, or

(V) a university mentioned in section 3 of the Universities Act 1997.

(b)The provision by a body of any of the following –

(i) a programme of education and training within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012 which is validated under section 45 of that Act;

(ii) a course which is considered by the Minister for Justice and Equality as an acceptable basis for the granting of an immigration permission, where such body is included on a list published by that Minister;

(iii) a course accredited by an approved college, within the meaning assigned by section 473A of the Taxes Consolidation Act 1997;

(iv) 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 determined by the Minister for Education and Skills in accordance with that Act (subject to any conditions as may be specified in regulations);

(v) vocational training or retraining (subject to any conditions as may be specified in regulations), 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 the instruction of a kind to which clause (c) relates. ….

European Legislation

SIXTH VAT DIRECTIVE

Article 13A (2)

a) Member States may make the granting to bodies other than those governed by public law of each exemption provided for in [Article 13A(1)(i)] subject in each individual case to one or more of the following conditions:

– they shall not systematically aim to make a profit, but any profits nevertheless arising shall not be distributed, but shall be assigned to the continuance or improvement of the services supplied,

– they shall be managed and administered on an essentially voluntary basis by persons who have no direct or indirect interest, either themselves or through intermediaries, in the results of the activities concerned,

– they shall charge prices approved by the public authorities or which do not exceed such approved prices or, in respect of those services not subject to approval, prices lower than those charged for similar services by commercial enterprises subject to value added tax,

– exemption of the services concerned shall not be likely to create distortions of competition such as to place at a disadvantage commercial enterprises liable to value added tax.

(b) The supply of services or goods shall not be granted exemption as provided for [Article 13A (1) (i)] if:

– it is not essential to the transactions exempted,

– its basic purpose is to obtain additional income for the organisation by carrying out transactions which are in direct competition with those of commercial enterprises liable for value added tax.

Submissions

Appellant

12. The Appellant advised that it had sought advice from a specialist tax agent before it commenced trading operations. The Appellant submitted that it had been advised by this agent as all its activities were "closely related" to educational services then the services which it provided were exempt from VAT and they were not required to register for VAT nor charge VAT on any of its activities.

13. In support of this contention, the Appellant produced schedule 9, group 6, item 4 of the United Kingdom ("UK") Value-Added Tax Act 1994, which defines "closely related" from an educational perspective as follows:

> "*In general terms, closely related refers only to goods and services that are:*
>
> - *for the direct use of the pupil, student or trainee*
> - *necessary for delivering the education to that person*
>
> *An eligible body should treat any of the following provided to it …as closely related:*
>
> - *accommodation*
> - *catering*
> - *transport*
> - *school trips*
> - *field trips"*

14. The Appellant noted that the Respondent was not seeking to impose VAT on the ancillary services it provided (and was in agreement with same) but contested that VAT was due on the commissions it received from its clients. The Appellant submitted as the commissions were in respect of the procurement and placement of students in schools, then by virtue of the nature of that activity, they were "closely related" to educational activities.

15. In further support of this submission, the Appellant advised it was responsible for refunding a student's fees or providing a suitable remedy in the event that the school where the student was placed went out of business. The Appellant stated that a number of [redacted] schools went out of business during the period under

appeal and provided the Commission with numerous media articles confirming same. The Appellant advised that one such school which it had placed students in did cease trading for the period under appeal and the Appellant was required to recruit [redacted] to allow the affected students complete their studies. The Appellant advised the Commission that it provided this service to the affected students without any additional charge and provided the Commission with *curriculum vitaes* of the teachers it has recruited and copies of wage slips showing payments paid to those teachers. Furthermore, the Appellant advised in a separate instant where another school went out of business, during the period under appeal, it was required to refund its clients the fees paid by them in respect of tuition fees.

16. The Appellant opened both paragraph 4(3) (a) schedule 1, VATCA 2010 and Article 132 of the European Union ("EU") Sixth Directive both of which exempt educational services and activities "closely related" thereto. The Appellant submitted that as the commissions received by it were "closely related" to educational services and as both domestic and European legislation exempts such activities from the charge to VAT, then the Respondent had erred in issuing the VAT assessments.

17. The Appellant explained that following the issuance of the notice of assessment, it sought the advice of a "leading" tax specialist. The Appellant provided a copy of this letter to the Commission which firstly stated that the Appellant was only liable to VAT on European Union ("EU") sales. It continued that as some 80% of the Appellant's sales were to clients outside the EU, the Respondent could only seek to impose VAT on those taxable sales which occurred in the EU. The letter detailed calculations based on the alleged non-EU sales and stated that the maximum VAT liability due and owing by the Appellant for the period under appeal was €5,609.

18. Further or in the alternative, the author of the letter stated that he was of the view that the services provided by the Appellant were VAT exempt as it operated as an "undisclosed agent" (see paragraph 22 below) in relation to the purchase and re-sale of VAT-exempt educational courses and ancillary services.

19. In summation, the Appellant submitted that the Respondent erred in holding that its activities were within the charge to VAT as the commission it received was considered an exempt activity under both domestic and European legislation. Further or in the alternative, the Appellant submitted that VAT was only chargeable on the portion of its sales within the EU or that its services were VAT exempt by virtue of being an undisclosed agent. In those circumstances the Appellant requested that the Commission allow the within appeal or reduce the quantum of VAT sought on the

assessment to the lesser figure of €5,609 as computed by its tax specialist or nil if it was held to provide exempt activities or operate as an undisclosed agent.

Respondent

20. The Respondent's Counsel ("Counsel") confirmed that it only sought to apply VAT to the commission element of the Appellant's turnover and confined its submissions in that regard. Counsel submitted that the Appellant's activity (the receipt of commissions) is subject to VAT at the standard rate in accordance with the provisions of section 46 VATCA 2010.

21. Counsel stated that the place of supply rules are governed by Section 34 (g) (a) VATCA 2010 and that the supplies of a kind under appeal were deemed to occur where the educational course was delivered. Thus, as the educational courses were primarily delivered in Ireland, Counsel submitted it was irrelevant that the Appellant's clients were sourced from outside the European Union and VAT was correctly applied by the Respondent.

22. Counsel stated the Respondent disagreed with the Appellant's submission that it was an undisclosed agent (an "undisclosed agent" is an entity which holds itself out as a principal, even though it is in fact acting on behalf of an undisclosed and unnamed principal).

23. Counsel submitted that in order for the Appellant to be considered an undisclosed agent, the Appellant would need to be simultaneously receiving education services from the school and supplying those services to its client without the client having the knowledge that it was not dealing directly with the school. While those circumstances would exempt the commissions received by the Appellant from VAT (since the effect of being an undisclosed agent would render the commissions received by the Appellant as being liable to the same VAT treatment as the school i.e. exempt), Counsel submitted that the Appellant was not an undisclosed agent within the meaning of section 28(1) VATCA 2010.

24. As the supply of education services was deemed not to made by the Appellant, Counsel submitted that the Appellant was operating as a disclosed agent (a "disclosed agent" is an entity who discloses/represents to its customers that it is acting on behalf of a disclosed named principal and the agent is paid a commission on its sales. The VAT treatment (under section 28 VATCA 2010) of disclosed agents is that the supply of services is between the principal and the customer. Hence, the principal raises the

invoice to the customer for the supply of the services and the commission charged by the agent is a separate vatable supply of services to the principal).

25. In support of this submission, Counsel stated that as the legal relationship is between the Appellant and the schools and as the Appellant was paid a recruitment commission by the school, then it was evident that the Appellant was operating as a disclosed agent. Counsel further submitted that it was irrelevant that fees were paid by the Appellant's clients to it first and then the Appellant paid the school an amount, minus its commission, since this equated to the school paying the Appellant a commission.

26. Counsel stated that the Respondent had formed this view following a review of the Appellant's website which described its activities as including "*programme advisory and student recruitment to high quality, recognised colleges and universities worldwide*". Counsel added during the course of the audit conducted by the Respondent that the Appellant's activities, recruitment services, were confirmed following a review of the contracts it had entered into with schools. Counsel advised that these contracts stated that the Appellant was engaged by the schools as a partner or agent and payment for the provision of the Appellant's services was either in the form of commission or discounted course fees.

27. Counsel advised that the Appellant further provided the Respondent with a copy of a typical student contract. Counsel stated that these contracts stipulated that the Appellant would chiefly enrol its client into a general [redacted]. Counsel submitted as the Appellant's function was to enrol its client into such course, it was evident that the Appellant itself did not provide any educational services but rather operated as a student recruitment agency.

28. Counsel opened the case of *Commission v Germany* [2002] ECR I-5811 where it was held at paragraph 43, that any VAT exemptions are to be interpreted strictly, since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by a taxable person. Counsel submitted that as the provisions of VATCA 2010 are derived from EU directives, then those rules applied similarly to interpreting domestic provisions, and as the Appellant did not fall into any exemption provisions then it was incumbent on the Commission to uphold the assessments.

29. Counsel further opened the Court of Justice of the European Union ("COJEU") judgment dated 14th June 2007 of *Stichting Regionaal Opleidingen Centrum Noord-Kennemerland/West-Friesland (Horizon College) v Staatssecretaris van Financiën C-434/05 ("Horizon").* In *Horizon*, the COJEU examined the Sixth Vat Directive and the

exemptions contained in Article 13A (1) (i) and 13A (2) of that directive (which are worded similarly to Article 132 of the VAT Consolidation Directive in domestic law). The case concerned a college which was an educational establishment and it made available some of its teachers to other educational establishments each of which assumed responsibility for the teachers working there. *Horizon* was paid a fee by the educational establishments and from that fee, *Horizon* paid the seconded teachers' salaries. The fees received from the educational establishments equated to the seconded teachers' salaries and as such there was no profit element on the transaction undertaken by *Horizon*. While *Horizon* did not charge VAT on the transaction, as it considered the supply of the teachers was exempt from VAT, the local tax authority considered that VAT was applicable on the transaction and raised an assessment accordingly. Ultimately the matter presented itself to the COJEU by means of a preliminary reference who were asked to consider whether the supply of teachers by *Horizon* was a service "closely related to education" and accordingly exempt under the provisions of Article 13A of the Sixth VAT Directive.

30. The COJEU held that Article 13A of the Sixth 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, to another educational establishment and accordingly the supply of teachers was properly brought within the charge to VAT. Central to the Court's findings, (at paragraphs 27-28 of that judgment) in acknowledging that there is no definition in Article 13 of the Sixth VAT Directive of the term "closely related", is that for an activity to be deemed "educational" within the terms of the Directive, the service provided must be **directly** closely related to the actual provision of the educational activity being provided to the student. Thus, as the matter under consideration related to the supply of teachers from one educational establishment to another, and not directly to the student, the COJEU held that the transaction was therefore not closely related to education and accordingly liable to VAT.

31. Counsel proceeded to open the COJEU judgment of *HMRC v Brockenhurst*, Case C-699/15 which stated at paragraph 26, that for a supply to be considered "closely related" to education, it was required to fulfil three conditions laid down in part in Articles 132 and 134 of Directive 2006/112. These conditions stipulate, firstly, both the principal supply and the supplies of services closely related to it must be provided by bodies referred to in Article 132(1)(i) of that directive (broadly this refers to VAT exemptions for certain activities in the public interest which includes educational

activities); secondly, those supplies of services must be essential to the exempt activities; and, thirdly, the basic purpose of those supplies of services must not be to obtain additional income for those bodies by carrying out transactions which are in direct competition with those of commercial enterprises liable for VAT.

32. Counsel submitted as the Appellant does not supply education services but rather provides student recruitment services, that such activities fall foul of the education exemption afforded under the VAT legislation for closely related services. Counsel further submitted as the Appellant was unable to provide approved educational services to its students by virtue of not being a body of a type entitled to avail of the educational exemption, then the assessments should be upheld.

33. In summation, the Respondent submitted that the Appellant's place of supply for its services was correctly in Ireland, that it was not entitled to avail of any exemption from VAT and as it operated as a disclosed agent VAT was properly chargeable at the standard rate on its activities. In those circumstances, the Respondent requested that the Commission uphold the assessments and deny the Appellant's appeal.

Material Facts

34. The Commissioner finds the following material facts:-

    34.1 The Appellant is paid a fee from its clients.

    34.2 This fee usually includes transport from the airport, accommodation costs, medical insurance cover and tuition fees. For the purpose of convenience the Commissioner refers to these payments as "outlays".

    34.3 The Respondent agrees that these outlays are not subject to VAT.

    34.4 After the outlays are discharged the Appellant retains the resultant sum. This resultant sum equates to a commission ("commission") for placing its clients into third party schools.

    34.5 The Respondent contends that this commission is subject to VAT at the standard rate.

    34.6 The Appellant maintained inadequate books and records which, in part, failed to properly explain its financial transactions.

    34.7 While the Appellant submitted its appeal outside the statutory timeframe permitted to lodge a valid appeal, the Respondent has not objected to the Commission accepting the appeal.

34.8 While the Appellant provided limited educational services (when a third party provider went out of business), it was not approved to deliver such courses under schedule 1, paragraph 4(3) (b) VATCA 2010.

34.9 The Appellant was not paid a fee for the limited delivery of that course.

34.10 For the period under appeal a second third-party school went out of business. This necessitated the Appellant refunding its affected clients the portion of monies paid by those clients in respect of tuition fees.

34.11 The Appellant's clients were made aware at the outset that the Appellant itself was (ordinarily) not delivering the educational aspect of the service provided and that the educational aspect was to be provided by third-party schools.

Analysis

35. Before turning to the substantive issues, during the course of the appeal hearing and in response to questions raised by the Commissioner, the Appellant advised that the fee it received from its client consisted of a number of constituents. These constituents, as previously noted included accommodation, medical insurance and transport costs in addition to the payment of its client's third party tuition fees ("the outlays") and the commission element retained by the Appellant.

36. While the Respondent stated it was not seeking to apply VAT on the outlay element of the fees received by the Appellant, the Commissioner noted that the Respondent's notice of assessment for the periods under appeal was calculated by taking the total amounts received from the students and deducting the payments made to the schools simpliciter without applying any apparent reduction in respect of some or all of the other outlays i.e. the accommodation, medical insurance and transport costs.

37. The Respondent's concession in not seeking to apply VAT on the outlays stems from Schedule 1 VATCA 2010 which classifies the third-party accommodation, medical insurance and transport costs of a type provided by the Appellant to be exempt from VAT. However, the Commissioner notes following his review of the Respondent's documentation that this concession appears to been incorrectly applied by the Respondent when calculating the figures giving rise to the quantum of assessment under appeal as the Respondent may have failed to deduct some or all of the accommodation, medical insurance and transport costs from the amounts received from students?

38. Furthermore, while the Appellant is not entitled to any reduction in the assessment by virtue of it providing teaching services to those students affected by the third-party school's closure (as the Appellant was not it was not approved to deliver such courses under schedule 1, paragraph 4(3) (b) VATCA 2010 and provided those services free of charge), the Commissioner considers that the Respondent's assessment may need to be further adjusted. The quantum of this additional adjustment is to be calculated by reducing the student's fees received by the amount refunded to students when the (second) school went out of business.

39. While noting that the Appellant did not maintain proper books of account, it would be remiss of the Commissioner not to direct the Respondent to revisit the assessments as a failure to do so would result in the Appellant potentially being overcharged VAT for the periods under appeal. Therefore the Respondent is directed to re-calculate the quantum assessable to VAT for the periods under appeal with reference to the following formula (the Commissioner is unable to assist the parties populate the formula as he does not have access to the full books of account for the periods under review):

Total Amount Received from Students			XX
Less: Amounts Paid to Schools		XX	
Accommodation Costs		XX	
Medical Insurance Costs		XX	
Transport Costs		XX	
Amounts Refunded to Students		XX	XX
Amount Referable to Commissions			XX

40. Turning to the substantive issues, the Appellant submits based upon advices which it received that VAT should not be charged on the element of commissions received from students located outside the EU. Section 34 (g) (a) VATCA 2010 provides the place of supply of services and any ancillary services in respect of or related to educational services and where the supply is to a non-taxable person, is where the course is delivered. While not binding in this jurisdiction, the UK first-tier tribunal considered the place of supply rules in respect of educational services in *University of Newcastle upon Tyne v HMRC* [2017] UKFTT 0145 (TC) – *("the university case*") and held that the place of supply of such services was the UK. Having considered section 34 (g) (a)

VATCA 2010, and concurring with the first-tier decision in the *university case*, the Commissioner finds that the place of supply of the outlays is Ireland.

41. As the place of supply of the outlays is Ireland, it follows that the place of supply of the commissions, as they are derived after discharging the outlays is also Ireland. As commissions received by an agent are liable to VAT (which was also held in *the University* case) at the standard rate, it follows that the Appellant is liable to VAT under section 28 VACTA 2010 on the commissions it received if it was acting in the capacity of a disclosed agent.

42. In considering whether the Appellant was acting in the capacity of a disclosed or undisclosed agent, the Commissioner firstly had regard to the agreements (variously described to as collaboration agreements, letter of agreement, agent contract, partnership or partners agreement and agreement of representation) entered into between the Appellants and the schools. These agreements provide that the Appellant is to be paid a commission or is entitled to a course discount by the schools in return for the enrolment of students into courses offered by the schools. Furthermore, these agreements represent that the Appellant is to operate as an agent on behalf of the school and is prohibited from representing itself as the school itself.

43. In addition, the Commissioner had regard to the evidence of the parties regarding the contracts entered into between the Appellant and its clients. In primary consideration that the Appellant's clients were aware at the outset that it was the various schools and not the Appellant who was delivering the educational courses it follows that the Appellant disclosed to its clients that it was acting on behalf of the various schools. Furthermore, it is of note that the Appellant was not authorised to provide the educational aspect of the service provided to its clients under schedule 1, paragraph 4(3) (b) VATCA 2010 and hence, could not have fulfilled that element of the service.

44. As the Appellant disclosed and/or represented to its clients that it was acting on behalf of the various schools and was paid a commission by those schools the Commissioner finds that the Appellant was acting in the capacity of a disclosed agent. In applying the provisions of section 28 VATCA 2010, this means that the Appellant is deemed to have provided a separate service to the schools and is liable to VAT on the receipt of commissions at the rate provided for under section 46(1) VATCA 2010, that is 23%.

45. In an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of

Menolly Homes Ltd v Appeal Commissioners and another [2010] IEHC 49 where at para. 22, Charleton J. stated

> "*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 Commissioners as to whether the taxpayer has shown that the relevant tax is not payable*"

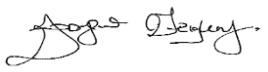
46. The Commissioner determines while the Appellant has not discharged the necessary burden of proof to satisfy the Commission that the assessment should be vacated, the quantum of the assessments should be reduced by reference to the calculations detailed at paragraph 39 of this determination. Based upon those calculations the quantum of tax assessed by the Respondent should be reduced accordingly.

Determination

47. For the reasons set out above, the Commissioner determines that the Appellant's appeal has partly succeeded. As the Commissioner has not been provided with adequate documentation to determine the reduced quantum of VAT payable by the Appellant, he directs that the Respondent obtains the requisite paperwork and/or liaises with the Appellant to carry out the calculations detailed at paragraph 39 of this determination. When the calculations are finalised, the Respondent should charge the VAT payable by the Appellant by reference to these figures and amend its assessment accordingly.

48. The Commissioner anticipates that this decision will be of benefit to the Appellant and wishes it every success in the future. Furthermore, the Commissioner wishes the Appellant Director continued success on her road to recovery from her illness and hopes the finalisation of the appeal will aid to that journey.

49. The appeal is determined in accordance with section 949AK TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
16th February 2023