



Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a decision by the Revenue Commissioners (hereinafter the "Respondent") made on 7 September 2022 disallowing an application by ██████████ ██████████ (hereinafter the "Appellant") pursuant to section 65 of the Value Added Tax Consolidation Act 2010 (hereinafter the "VATCA2010") seeking to register for Value Added Tax (hereinafter "VAT").

Background

2. The Appellant is a limited liability company which was registered with the Companies Registration Office on ██████████ with a registered number ██████████ and having its registered address at ██████████.
3. On 18 July 2022 the Appellant submitted an application to the Respondent seeking to register for VAT. The Respondent requested supporting documentation from the Appellant and on receipt of same decided that a pre-registration visit to the Appellant be carried out.

4. On 23 August 2022 the Respondent met with the Appellant and its Tax Agents. Following this meeting the Respondent issued its decision to disallow the Appellant's registration for VAT on 7 September 2022.
5. The Appellant appealed the Respondent's decision to the Commission by way of a Notice of Appeal dated 28 September 2022.
6. Statements of Case were received by the Commission from the Appellant on 2 December 2022 and from the Respondent on 20 December 2022. On 4 January 2023 the Commission directed the Parties to submit Outlines of Argument in the appeal and same were received from the Respondent on 18 January 2023 and from the Appellant on 24 January 2023.
7. On 4 January 2023 the Commission wrote to the Parties indicating its intention to determine the within appeal pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and allowed the Parties 21 days to indicate their disagreement with same. Neither Party has objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the TCA1997.

Legislation and Guidelines

8. The legislation relevant to the within appeal is as follows:

Section 5 of the VATCA2010 – "Persons who are, or who may become, accountable persons":

"(1)(a) Subject to paragraph (c), a taxable person who engages in the supply, within the State, of taxable goods or services shall be—
(i) an accountable person, and
(ii) accountable for and liable to pay the tax charged in respect of such supply.

(b) Subject to paragraph (c), in addition, the persons referred to in sections 9, 10, 12, 15, 17(1), 94(3), 108C, 109A and 91J(10) shall be accountable persons.

(c) A person not established in the State who supplies goods in the State only in the circumstances set out in section 10, or supplies a service in the State only in the circumstances set out in section 16(3), shall not be an accountable person.

(2) Where, by virtue of section 6(1) or 7, a person has not been an accountable person and a change of circumstances occurs from which it becomes clear that the person is likely to become an accountable person, he or she shall be deemed, for the

purposes of this Act, to be an accountable person from the beginning of the taxable period commencing next after such change.”

Section 65 of the VATCA2010 – “Registration”:

“(1)The Revenue Commissioners shall set up and maintain a register of persons—

(a)who are, or who may become, accountable persons, or

(b)who are persons who dispose of goods or supply services which pursuant to section 22(3) or 28(4) or (5) are deemed to be supplied by an accountable person in the course or furtherance of his or her business.

(2)The Revenue Commissioners shall assign a registration number to each person registered in accordance with subsection (1).

(2A)The Revenue Commissioners may cancel the registration number which has been assigned to a person in accordance with subsection (2), where that person does not become or ceases to be an accountable person.

(3)Every accountable person shall, within the period of 30 days beginning on the day on which the person first becomes an accountable person, furnish in writing to the Revenue Commissioners the particulars specified in regulations as being required for the purpose of registering the person for tax.

(4)Every person who disposes of goods or supplies services which pursuant to section 22(3) or 28(4) or (5) are deemed to be supplied by an accountable person in the course of his or her business shall, within 14 days of the disposal or the supply of a service, furnish in writing to the Revenue Commissioners the particulars specified in regulations as being required for the purpose of registering the person for tax.”

Submissions

Appellant’s Submissions

9. The Appellant submitted the following in support of this appeal in its Notice of Appeal:

“VAT registration was denied as per notification via My Enquiries - as per the notification Revenue outline that they are “not satisfied that there is objective evidence that taxable supplies are being made. Accordingly, as the conditions for VAT registration as set out in Section 5(1)(a) of the VAT Consolidation Act 2010 have not been met, I am disallowing your application for registration”.

██████████ at the point of attempting to VAT register has not traded but has however a business plan, entered into a lease for a 'hot desk' in a co working space – all documentation in relation to the business plan and the lease agreement were provided to Revenue. Based on this it is clear that ██████████ is an intending trader. From a VAT perspective the company would be considered an intending trader and it is our understanding that under s.65 VAT CA 2010 that Revenue is obliged to allow VAT registration in a start up situation.

From an EU case law perspective there are numerous cases that support the position that economic activity must be given a wide scope. In the case “INZO” *Intercommunale voor Zeewaterontzitting (in liquidation) v Belgian State (C-110/94)* it was held that a company which was set up to investigate the feasibility of building a water purification plant was carrying on an economic activity even though it did not proceed with the project because of negative results of its study. This is because the company had the intention to trade.

In *Rompelman and Rompelman - Van Deelan v Minister Van Financien (C-268/83)* this case further enshrines the right of intending traders to recover input VAT in so far as the goods or services acquired, upon which the VAT arises, will be used at some future date for the purpose of making taxable supplies. In this case the CJEU held that “the acquisition of a right to the future transfer of property rights in part of a building yet to be constructed with a view to letting the property in due course may be regarded as an economic activity.

It was explained in great detail to Revenue that ██████████ wishes to trade immediately. The company is the provider of online services - e-commerce B2C of ██████████ – therefore all activity is carried out online and therefore all payments are received through an online payment service provider (PSP). The PSP will not provide a Merchant Account unless the company has a VAT number (see email from ██████████ attached again demonstrating intention to commence trading) – therefore Revenue are in fact obstructing our client from trading as the company cannot trade without the service of a PSP.

The above case law and position with the PSP was outlined to the Revenue representative in an in person meeting on August 23rd however she refused to take account of any of the case law or pertinent facts, continued to talk over both our firms representatives and our client. On the same day the same Revenue representative advised our client that the company could go ahead and purchase equipment (laptop etc) prior to VAT registration and was vehement that VAT on these purchases could be reclaimed – this is completely incorrect. When further representations were made to the same Revenue representative regarding the VAT registration via My Enquiries

on September 1st – the enquiry was deleted from the My Enquiries section of ROS. It should also be noted that [REDACTED] projects its income in the first 12 months of trading to far exceed the VAT registration threshold – therefore under s.6 VAT CA 2010 [REDACTED] must register for VAT.

It is our belief that the above case law supports our clients case for VAT registration, the fact that our client has demonstrated its intention to commence trading, and needs a PSP due to the nature of their activities (all online) and that the PSP absolutely requires our client to have a VAT number to work with the company that not allowing our client to VAT register is obstructing our client from trading.”

10. The following was submitted in support of this appeal in the Appellant’s Statement of Case:

“VAT registration was denied to our clients company as per notification received via Revenues My Enquiries - as per the notification Revenue outlined that they were “not satisfied that there is objective evidence that taxable supplies are being made. Accordingly, as the conditions for VAT registration as set out in Section 5(1)(a) of the VAT Consolidation Act 2010 have not been met, I am disallowing your application for registration”.

[REDACTED] at the point of attempting to VAT register has not traded but has however a business plan, entered into a lease for a 'hot desk' in a co working space – all documentation in relation to the business plan and the lease agreement were provided to Revenue. Based on this it is clear that [REDACTED] is an intending trader. From a VAT perspective the company would be considered an intending trader and it is our understanding that under s.65 VAT CA 2010 Revenue is obliged to allow VAT registration in a start up situation.

It was explained in great detail to Revenue that [REDACTED] wishes to trade immediately. The company is the provider of online services - e-commerce B2C of [REDACTED] – therefore all activity is carried out online and therefore all payments are received through an online payment service provider (PSP). The PSP will not provide a Merchant Account unless the company has a VAT number (see email from [REDACTED] attached again demonstrating intention to commence trading) – therefore Revenue are in fact obstructing our client from trading as the company cannot trade without the service of a PSP.

From an EU case law perspective there are numerous cases that support the position that economic activity must be given a wide scope. In the case “INZO” Intercomunale voor Zeewaterontziltling (in liquidation) v Belgian State (C-110/94) it was held that a

company which was set up to investigate the feasibility of building a water purification plant was carrying on an economic activity even though it did not proceed with the project because of negative results of its study. This is because the company had the intention to trade.

In Rompelman and Rompelman - Van Deelan v Minister Van Financien (C-268/83) this case further enshrines the right of intending traders to recover input VAT in so far as the goods or services acquired, upon which the VAT arises, will be used at some future date for the purpose of making taxable supplies. In this case the CJEU held that “the acquisition of a right to the future transfer of property rights in part of a building yet to be constructed with a view to letting the property in due course may be regarded as an economic activity.

The above case law and position with the PSP was outlined to the Revenue representative in an in person meeting on August 23rd however she refused to take account of any of the case law or pertinent facts, continued to talk over both our firms representatives and our client. On the same day the same Revenue representative advised our client that the company could go ahead and purchase equipment (laptop etc) prior to VAT registration and was vehement that VAT on these purchases could be reclaimed – this is completely incorrect. When further representations were made to the same Revenue representative regarding the VAT registration via My Enquiries on September 1st – the enquiry was deleted from the My Enquiries section of ROS.

It should also be noted that [REDACTED] projects its income in the first 12 months of trading to far exceed the VAT registration threshold – therefore under s.6 VAT CA 2010 [REDACTED] must register for VAT.

Our client as outlined wishes to commence trading immediately but due to the issue with the PSP is unable to do so, therefore the company they can only be considered an intending trader. It is our belief that the above case law supports our clients case for VAT registration, the fact that our client has demonstrated its intention to commence trading, and needs a PSP due to the nature of their activities (all online) and that the PSP absolutely requires our client to have a VAT number to work with the company that not allowing our client to VAT register is obstructing our client from trading.”

11. The following was submitted in support of this appeal in the Appellant’s Outline of Arguments:

“ [REDACTED] at the point of attempting to VAT register has not traded but has however a business plan, entered into a lease for a 'hot desk' in a co working

space – all documentation in relation to the business plan and the lease agreement were provided to Revenue. Based on this it is clear that [REDACTED] is an intending trader. From a VAT perspective the company would be considered an intending trader and it is our understanding that under s.65 VAT CA 2010 Revenue is obliged to allow VAT registration in a start up situation.

It was explained in great detail to Revenue that [REDACTED] wishes to trade immediately. The company is the provider of online services - e-commerce B2C of [REDACTED] – therefore all activity is carried out online and therefore all payments are received through an online payment service provider (PSP). The PSP will not provide a Merchant Account unless the company has a VAT number (see email from [REDACTED] attached again demonstrating intention to commence trading) – therefore Revenue are in fact obstructing our client from trading as the company cannot trade without the service of a PSP.

The case law outlined below and the position with the PSP was outlined to the Revenue representative in an in-person meeting on August 23rd however she refused to take account of any of the case law or pertinent facts, continued to talk over both our firm's representatives and our client. On the same day the same Revenue representative advised our client that the company could go ahead and purchase equipment (laptop etc) prior to VAT registration and was vehement that VAT on these purchases could be reclaimed – this is completely incorrect. When further representations were made to the same Revenue representative regarding the VAT registration via My Enquiries on September 1st – the enquiry was deleted from the My Enquiries section of ROS.

It should also be noted that [REDACTED] projects its income in the first 12 months of trading to far exceed the VAT registration threshold – therefore under s.6 VAT CA 2010 [REDACTED] must register for VAT.

Our client as outlined wishes to commence trading immediately but due to the issue with the PSP is unable to do so, therefore the company can only be considered an intending trader. It is our belief that the below case law supports our client's case for VAT registration. The fact that our client has demonstrated its intention to commence trading, and needs a PSP due to the nature of their activities (all online) and that the

PSP absolutely requires our client to have a VAT number to work with the company, that not allowing our client to VAT register is obstructing our client from trading. s.65 VATCA 2010.

From a VAT perspective the company would be considered an intending trader and it is our understanding that under s.65 VAT CA 2010 Revenue is obliged to allow VAT registration in a start-up situation”

12. The Appellant submitted the following documentation in support of this appeal:

- (i) Appellant’s Business Plan
- (ii) Marketing Agreement between Appellant and [REDACTED] dated 12 May 2022
- (iii) Email from [REDACTED] (Payment Service Provider) dated 22 September 2022

13. In addition, in its Outline of Arguments the Appellant submitted the following comments on facts upon which the parties to this appeal differ :

“I refer to the Statement of Case presented by Revenue specifically where it is implied that Revenue had arranged to meet at the registered office of the company and other matters raised.

On August 16th 2022, our client [REDACTED] received a letter from Revenue with numerous questions the majority of which were answered through the registration process, and the request for a visit to the premises. On Thursday August 18th 15:15hrs, as Agents we made contact with the Revenue representative [REDACTED] to arrange a visit to the premises and arranged to meet on Tuesday August 23rd at 4:30 at [REDACTED] (the business address of the client – not the registered address as the company does not operate any activities from the registered address). It was explained to [REDACTED] that there were 2 [REDACTED] premises and it was not the [REDACTED] one (the better known of the 2 premises) but the premises at [REDACTED].

On Tuesday 23rd shortly after 16:30, [REDACTED] phoned us to say there was nobody at [REDACTED] (the registered address) for the meeting and pretended that it was never arranged to go to [REDACTED] (something the same Revenue representative did on another visit to another company in October even when it was expressly sent to her on My Enquiries to ensure she went to the correct location). When this Revenue representative arrived to [REDACTED] location, she was rude and spoke over us as Agents and our client when answering various questions. She requested to

see the company's website which is live and appeared to have a complete lack of business/commercial acumen as she couldn't understand why one couldn't purchase any downloadable material on the website, even though it was explained that no sale could go through on the website without a PSP (payment service provider) and the PSP required VAT registration to provide the service to the company. She also struggled to comprehend that a 9-5 Monday to Friday office space was not required to operate the business of the company even though it was explained as the material was downloadable it did not require constant monitoring once the business was up and going. [REDACTED] also appeared to believe that our client needed to be a full time employee of the business to operate it. She also appeared to struggle with the fact that the director had another employment (something that is normal in a start up situation with any business), especially as the company had made no sale it was unlikely to be paying wages.

Further to the meeting additional information had to be provided to satisfy the queries raised (even though our client advised all this information was previously supplied by them prior to the meeting). The information was supplied on August 25th, and a further My Enquiry was submitted on Thursday September 1st (sent to the same Revenue representative) when checking for a response to this on Monday September 5th, no response was received, however on checking again for a response on September 7th the My Enquiry raised by us as Agents had been deleted presumably by that Revenue representative. In 15 years dealing with Revenue on a daily/weekly basis, I have never seen anything as preposterous as this to happen."

Respondent's Submissions

14. The following was submitted in the Respondent's Statement of Case:

"Case Summary:

[REDACTED] submitted an application for Vat registration on 18/07/2022. Caseworker requested supporting documentation from the company and on receipt of a response, made the decision to refer the case to the local Revenue district in [REDACTED] requesting that a pre registration visit be carried out. A pre registration visit was carried out by Revenue officers, however the company did not provide sufficient evidence to show that taxable supplies are being made. As the conditions for VAT registration as set out in Section 5(1)(a) of the VAT Consolidation Act 2010 have not been met, the Vat registration application was disallowed.

Reasons for Disallowing Vat registration:

* [REDACTED] have not yet commenced trading. There are no sales to date.

* [REDACTED] business activity is described as "E commerce B2C [REDACTED]
[REDACTED]" and agent advised that the company website is not yet live.

* *Business Premises:* The registered address of the company is [REDACTED]
[REDACTED]. On arrival at this premises for a pre arranged meeting Revenue officers were unable to get a response or gain access to the building. Also there was no evidence to suggest that [REDACTED] was in anyway connected with the premises (no sign and no answer to doorbell).

Following a phone call to the agent, the officers were advised that the meeting was being held at [REDACTED] [REDACTED] and informed that this is the trading address and Revenue officers proceeded to the [REDACTED] space.

[REDACTED] Space offers members options to book desks for use on a flexible basis or as a dedicated office. It also offers a virtual office, postal address, registered business address, mail forwarding, access to meeting rooms, meeting room hire, broadband and Wi-Fi.

Agent advised that there is no contract/lease and [REDACTED] will use the Flexi Desk membership which is described in the Terms of Use as: "Flexi Desk: [REDACTED] + Vat per day for people interested in simply dropping in for the day can do so for a day rate, provided there is sufficient space. Contact us ahead of time for availability."

Invoice no [REDACTED] dated 01st August 2022 supplied as proof of rental is made out to [REDACTED] for a Virtual office membership costing [REDACTED] plus 23% VAT [REDACTED].

* Company has no employees.

* Company has no insurances in place.

** Company Assets – Laptop*

15. The following was submitted in the Respondent's Outline of Arguments:

“In order to be regarded as an accountable person in accordance with Section 5(1)(a) or S 9 of the VAT Consolidation Act 2010 and be entitled to register for vat an applicant must be involved in a vatable business activity in the state, to be granted a domestic vat registration, and in business with other member states where an Intra EU Vat Registration is sought. Applicants are required to provide substantive evidence of trade or capacity to trade at the time of application.

██████████ submitted an application for Vat registration on 18/07/2022. The caseworker requested further documentation, supporting the application, from the company. On receipt of the response, the case was referred to the local Revenue district in ██████████ requesting that a pre-registration visit be carried out.

Revenue are not satisfied that the applicant has provided substantive evidence of trade or capacity to trade in Ireland from the evidence or information provided to date, either on the application form, or in the correspondence that followed with the case worker, or resulting from the information gleaned from the pre-registration visit that took place. Accordingly, the decision was made that the applicant could not be regarded as an accountable person in Ireland and the Vat registration application was disallowed accordingly. Whereas no one factor leads directly to the decision, in looking at the whole case facts as outlined in the Statement of Case would support the decision made.

The application was refused as applicant could not be regarded as an accountable person in Ireland in accordance with S5 (1) and S 9 of Vat Act 2010.”

16. The Respondent submitted the following documentation to the Commission:

- (i) Copy of Content Agreement between Appellant and ██████████ dated 12 May 2022;
- (ii) Copy of Gateway Services Agreement between Appellant and ██████████ dated 20 May 2022;
- (iii) ██████████ office agreement with Appellant 1 July 2022;
- (iv) ██████████ Invoice issued to ██████████ dated 1 August 2022;

- (v) Copies of correspondence between Respondent and Appellant in relation to progression of application dated July and August 2022;
- (vi) Letter from Respondent to Appellant dated 16 August 2022 notifying Appellant of pre-registration visit;
- (vii) Copy of Respondent's interview notes with Appellant;
- (viii) Copies of post-interview correspondence between Respondent and Appellant dated August and September 2022.

Material Facts

17. The following material facts are not at issue in the within appeal and the Commissioner accepts same as a material fact:

- (i) The Appellant is a limited liability company which was registered with the Company Registration Office on [REDACTED] with a registered number [REDACTED] and having its registered address at [REDACTED];
- (ii) The Appellant has a Business Plan which it submitted to the Respondent;
- (iii) The Appellant entered into a Marketing Agreement with [REDACTED] dated 12 May 2022;
- (iv) The Appellant entered into a Content Agreement with [REDACTED] dated 12 May 2022;
- (v) The Appellant entered into a Gateway Services Agreement with [REDACTED] dated 20 May 2022;
- (vi) The Appellant entered into an Office Agreement with [REDACTED] dated 1 July 2022;
- (vii) On 18 July 2022 the Appellant submitted an application to the Respondent seeking to register for VAT;
- (viii) The Appellant has a live website [REDACTED];
- (ix) The Appellant has sought to engage the services of a Payment Service Provider, [REDACTED], which confirmed to the Appellant on 21 September 2022 that the

Appellant is not eligible for a merchant account with it if the Appellant does not have a valid VAT number.

18. The following material fact is at issue in the within appeal:

- (i) The Appellant is, or may become, an accountable person pursuant to section 5(1)(a) of the VATCA2010.

19. Part 2 of the VATCA2010 and specifically Section 5 of the VATCA2010 defines an accountable person and/or a person who may become an accountable person as being “... a taxable person who engages in the supply, within the State, of taxable goods or services.”

20. The Appellant submits that it intends to become an accountable person once it begins to trade. In support of its intention to trade the Appellant has submitted a business plan which sets out that the Appellant is a company specialising in digital content [REDACTED]. The business plan includes a target market description, pricing details, a marketing strategy description, details of partners and a financial overview and projection for year 1 of trading.

21. In addition, the Commissioner has received copies of the following agreements which the Appellant has entered into: a Marketing Agreement with [REDACTED] dated 12 May 2022; a Content Agreement with [REDACTED] dated 12 May 2022; a Gateway Services Agreement with [REDACTED] dated 20 May 2022 and an Office Agreement with [REDACTED] dated 1 July 2022.

22. The website [REDACTED] which the Appellant has created with the intention of using as its sales tool is live on the internet.

23. The Appellant has submitted correspondence from a Payment Service Provider, [REDACTED], dated September 2021 which confirms that the Appellant is not eligible for a merchant account with it if the Appellant does not have a valid VAT number.

24. The Appellant has submitted that, as its business will be 100% internet based and as all of its sales will be generated through the website [REDACTED], it cannot trade without a Payment Service Provider. As the Appellant cannot obtain the services of a Payment Services Provider without a VAT number it cannot trade.

25. The Respondent has submitted that the Appellant’s VAT registration has been disallowed as the Respondent is not satisfied that the Appellant has provided substantive evidence

of trade or capacity to trade in Ireland from the evidence or information provided to date, either on the application form, or in the correspondence that followed with the case worker, or resulting from the information gleaned from the pre-registration visit that took place for the following reasons:

- (i) The Appellant has not yet commenced trading;
- (ii) The Appellant's business activity is described as "E commerce B2C [REDACTED]" and agent advised that the company website is not yet live;
- (iii) The Appellant's registered address is [REDACTED]. On arrival at this premises for a pre-arranged meeting the Respondent's officers were unable to get a response or gain access to the building. Also there was no evidence to suggest that [REDACTED] was in anyway connected with the premises;
- (iv) The Appellant's Tax Agents advised the Respondent that there was no contract/lease and [REDACTED] would use the Flexi Desk membership which is described in the Terms of Use as: "Flexi Desk: [REDACTED] + Vat per day for people interested in simply dropping in for the day can do so for a day rate, provided there is sufficient space. Contact us ahead of time for availability."
- (v) The invoice 1 August 2022 which the Appellant supplied as proof of rental is made out to a different company for a Virtual office membership costing [REDACTED] plus 23% VAT [REDACTED];
- (vi) The Appellant had no employees;
- (vii) The Appellant had no insurances in place;
- (viii) The Appellant only asset was a laptop.

26. The Commissioner is therefore presented with a circular argument whereby the Appellant cannot trade without the services of a Payment Services Provider; the Appellant cannot obtain the services of a Payment Services Provider without a VAT number and the Respondent is not satisfied that the Appellant has traded and/or maybe become a person who may trade and there disallowed the Appellant's application to become VAT registered.

27. Having considered all of the documentation provided, the Commissioner is satisfied that the Appellant is a person who may become an accountable person, that is to say the Appellant is a person who may engage in the supply, within the State, of taxable goods or services. This is on the basis that the Appellant has a business plan, has entered into a Marketing Agreement, a Content Agreement, a Gateway Services Agreement, an Office Agreement and has a live website. The Commissioner is satisfied that the Appellant may become an accountable person pursuant to section 5(1)(a) of the VATCA2010.

28. The Appellant has discharged the burden of proof in relation to this material fact and has established that it may become an accountable person pursuant to section 5(1)(a) of the VATCA2010.

29. Therefore this material fact is accepted.

30. For the avoidance of doubt the Commissioner finds the following material facts in this appeal:

- (i) The Appellant is a limited liability company which was registered with the Company Registration Office on [REDACTED] with a registered number [REDACTED] and having its registered address at [REDACTED];
- (ii) The Appellant has a Business Plan which it submitted to the Respondent;
- (iii) The Appellant entered into a Marketing Agreement with [REDACTED] dated 12 May 2022;
- (iv) The Appellant entered into a Content Agreement with [REDACTED] dated 12 May 2022;
- (v) The Appellant entered into a Gateway Services Agreement with [REDACTED] dated 20 May 2022;
- (vi) The Appellant entered into an Office Agreement with [REDACTED] dated 1 July 2022;
- (vii) On 18 July 2022 the Appellant submitted an application to the Respondent seeking to register for VAT;
- (viii) The Appellant has a live website [REDACTED];
- (ix) The Appellant has sought to engage the services of a Payment Service Provider, [REDACTED], which confirmed to the Appellant on 21 September 2022 that the

Appellant is not eligible for a merchant account with it if the Appellant does not have a valid VAT number;

- (x) The Appellant may become an accountable person pursuant to section 5(1)(a) of the VATCA2010.

Analysis

31. 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.”

32. Section 65(1)(a) of the VATCA2010 provides that the Respondent shall set up and maintain a register of persons who are, or who may become, accountable persons.

33. Section 65(2) of the VATCA2010 provides that the Respondent shall assign a registration number to each person registered in accordance with section 65(1) of the VATCA2010.

34. The use of the word “*shall*” as set out in sections 65(1) and 65(2) of the VATCA2010 indicates an absence of discretion in the application of these provisions.

35. Having found that the Appellant may become an accountable person pursuant to section 5 of the VATCA2010, it therefore follows that the provisions sections 65(1) and 65(2) of the VATCA2010 apply to the Appellant. Therefore, in accordance with section 65(1) of the VATCA2010 the Respondent shall place the Appellant on its register of persons who may become accountable persons and, in accordance with section 65(2) of the VATCA2010 the Respondent shall assign a registration number to the Appellant.

Determination

36. For the reasons set out above, the Commissioner determines that the within appeal has succeeded and as a result the Respondent shall, in accordance with section 65(1) of the VATCA2010, place the Appellant on its register of persons who may become accountable persons and, in accordance with section 65(2) of the VATCA2010 the Respondent shall assign a registration number to the Appellant..

37. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949U 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
22 February 2023