



**AC Ref: 11TACD2016**

**NAME REDACTED**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Background**

1. The Appellant is a self-employed courier covering the Dublin area who commenced trading and who registered for income tax and VAT with effect from DATE REDACTED. Prior to commencing as a sole trader, the Appellant was in receipt of Schedule E income as an employee of COMPANY X Limited.
2. On 10 December 2014 the Appellant was assessed to VAT in the sum of €SUM REDACTED in respect of the period 1 January 2010 to 20 March 2014. The matter at issue related to the validity of invoices received by the Appellant and whether various payments made by the Appellant on foot of those invoices were deductible as VAT input credit.

**Legislation**

Section 66(1)(a)(ii) of the VATCA2010 (*Issue of invoices and other document*) provides;

66.[(1)(a) *An accountable person—*

*(i) who supplies goods or services to—*



*(I) another accountable person,*

*(II) a public body,*

*(III) a person who carries on an exempted activity,*

*(IV) a person (other than an individual) in another Member State in such circumstances that tax is chargeable at any of the rates specified in section 46(1), or*

*(V) a person in another Member State who is liable to pay value-added tax pursuant to the VAT Directive on such supply,*

*or*

*(ii) who supplies goods to a person in another Member State in the circumstances referred to in section 30(1)(a)(ii),*

*shall issue to the person so supplied, in respect of each such supply, an invoice, in paper format or subject to subsection (2) in electronic format, and containing such particulars as may be specified by regulations.*

*(b) Notwithstanding paragraph (a), an accountable person who supplies goods or services to—*

*(i) another accountable person,*

*(ii) a public body, or*

*(iii) a person who carries on an exempted activity in the State, may instead issue to the person so supplied, a simplified invoice to the amount of €100 or less, in respect of each such supply and in such form and containing such particulars as may be specified by regulations.*

*(c) An accountable person who supplies goods or services, which if an invoice (in accordance with paragraph (a)) were issued at the time of each separate supply of those goods or services would become chargeable to tax within the same calendar month, may instead issue a summary invoice detailing those supplies of goods or services to the person so supplied for that calendar month, in such form and containing such particulars as may be specified by regulations.]<sup>1</sup>*





*[(2) An invoice or other document issued in electronic format by an accountable person is deemed to be so issued for the purposes of subsection (1), if—*

*(a) each such invoice or other document is issued and received by prior agreement between the person who issues the invoice or other document and the person who is in receipt of that invoice or document, and*

*(b) the electronic system used to issue or receive any such invoice or other document conforms with such specifications as are required by regulations.*

*(2A)(a) An accountable person who issues or receives an invoice or other document under this Chapter, and for the purposes of section 84(1), shall apply business controls to each such invoice or other document to ensure—*

*(i) the authenticity of the origin of that invoice or other document,*

*(ii) the integrity of the content of that invoice or other document, and*

*(iii) that there is a reliable audit trail for that invoice or other document and the supply of goods or services as described therein.*

*(b) The accountable person shall furnish evidence of the business controls used to comply with paragraph (a) as may be required by the Revenue Commissioners and such evidence shall be subject to such conditions as may be specified in regulations (if any).]<sup>1</sup>*

*(3) Where a taxable person who carries on a business in the State supplies greenhouse gas emission allowances (within the meaning of section 16(2)) to a recipient (within the meaning of section 16(2)), the person shall issue a document to the recipient indicating—*

*(a) that the recipient is liable to account for the tax chargeable on that supply, and*

*(b) such other particulars as would be required to be included in that document if that document were an invoice required to be issued in accordance with subsection (1) but excluding the rate at which tax is chargeable and the amount of tax payable*

#### Relevant Regulations

*S.I. No. 723/2003 – Value-Added Tax (Invoices and other documents) (Amendment) Regulations 2003*





*S.I. No 354/2012 – European Union (Value-Added Tax) Regulations 2012*

### **Submissions**

3. The matter in issue in this case was whether deductions claimed by the Appellant on foot of invoices furnished, constituted allowable VAT deductions. The putative deductions arose on foot of delivery services provided to the Appellant and carried out by drivers who were paid on a per job basis and who invoiced the Appellant in respect of these deliveries. The Respondent suggested that the drivers were employees and thus no VAT deduction arose and this was refuted by the Appellant who submitted that the drivers were not employees.

#### *VAT invoicing*

4. The Respondent highlighted the fact that the invoices were furnished after the audit had taken place and submitted that there was no evidence that the invoices were furnished at the time of supply. The Respondent submitted that the invoices did not fully comply with the requirements of the VAT legislation and regulations in relation to the detail to be contained on VAT invoices. The Respondent cited *Statutory Instrument no. 723/2003* which stipulates specific information to be contained on VAT invoices. The Respondent claimed that the invoices furnished failed to show the address of the customer and supplier, failed to show specific details of the service provided and failed to show the date of supply of the service and date of issuing of the invoice. The Appellant submitted that the invoices contained the names and VAT numbers of the suppliers and that the dates on the invoices were annual dates as the invoices were annual invoices. It was emphasised by the Appellant that the invoices contained an aggregate figure for the services provided per each calendar year. Copies of the invoices were handed in during the hearing and I have reviewed and considered same. The Appellant contended that while there was an absence of strict technical compliance with the regulation, the invoices contained the principal elements of the information required to be contained therein and should not be regarded as invalid.



5. The Appellant cited the European case of *Gábor Tóth Case C-324/11* where a Member State denied the right to deduct VAT paid by a taxable person to a trader, on grounds of the trader's employment of undeclared workers. The case is authority for the proposition that the right to deduct VAT may be refused only where it is established, on the basis of objective evidence, the addressee of the invoice knew or should have known, that the transaction relied on as a basis for the right to deduct, was connected with a fraud committed by the issuer of the invoice or by another operator supplying inputs in the chain of supply. The aspect of fraud did not form part of this case and it was not contended by the Respondent that fraudulent activity was involved in the chain of supply thus the authority of *Gábor Tóth* is not directly instructive. Also cited by the Appellant, though addressing different factual scenarios were the cases of *Véleclair V Ministre du Budget Case C-414/10* and *Nidera Handelscompagnie BV v Valstybiné Case C-385/09*.

*Payment of invoices*

6. In support of the claim as to validity of the invoices, the Appellant submitted that they had furnished the Respondent with bank statements evidencing payment in respect of the invoices, the subject matter of the disputed deduction. The bank statements showed that remittances issued on a monthly basis. The Respondent accepted that the invoices had been discharged by the Appellant therefore payment of the sums on foot of which deductions were sought, was not in dispute.

*Vatable Service v Employees*

7. The Respondent submitted that the main issue between the parties was the question of whether the drivers carrying out deliveries on behalf of the Appellant were self-employed subcontractors or were employees. The Respondent alleged that the drivers were employees of the Appellant and thus no VAT deduction could arise. The Respondent claimed that if it could be established that the drivers were not registered owners of a motor vehicle at a particular time during the tax years in



question, then they could not have provided the Appellant with a vatable service and thus the invoices could not form the basis of a VAT deduction. The Respondent presented no evidence in support of its contention that the drivers were employees but did challenge the Appellant under cross examination.

### **Evidence**

8. The Respondent submitted that the Appellant's incorrect VAT returns came to light during the audit and suggested a lack of engagement by the Appellant at this time. Under cross examination by the Respondent, the Appellant stated that during the relevant tax years they prepared and filed their own VAT returns through the ROS system. The Appellant stated that when filling out the returns, they wrongly reduced the T1 figure by the T2 figure and entered the net VAT payable amount in T1 in error.
9. On the issue of vehicle ownership, the Appellant stated in evidence that all of the drivers who carried out deliveries on their behalf had vehicles of their own or had access to vehicles to carry out said deliveries. The Appellant stated that they did not provide vehicles to the drivers and that the drivers were not employees. The Appellant stated that if they had no driver available they would be obliged to pay a courier service approximately €250 to transport a package at short notice.
10. The Respondent questioned the Appellant in relation to those drivers who were not, it was alleged, registered as owners of motor vehicles at various intervals. The Respondent submitted that where the drivers were not registered as owners of a motor vehicle at a given point in time, such drivers were not capable of providing a vatable service and thus were more likely to have been employees. The Appellant answered that they were not necessarily aware of drivers' arrangements and that they would not be obliged to check these details as the drivers were not employees. The Appellant gave evidence that the van drivers bore the cost of their own fuel and servicing of their vans and this was not contradicted by the Respondent.



### **Analysis and Conclusion**

11. The fact that the invoices (in respect of which input credit was sought) did not bear full technical compliance with the statutory instrument does not necessarily render them invalid. The ECJ case of *Pannon, Case C-368/09* is authority for the proposition that national legislation should not prevent the legal right to deduct input VAT on the basis of minor invoice errors. In that case the errors related to the dating and sequential numbering of the invoices and I note that in this case the technical non-compliance is more significant than in *Pannon* however, guided by the principle in *Pannon* (and for the additional reasons set out below) I determine the VAT inputs to be allowable.
  
12. The claim by the Respondent that the drivers who furnished the invoices to the Appellant were employees of the Appellant is not a claim which was supported by evidence on behalf of the Respondent. While the taxpayer bears the onus of proof in tax cases, the Appellant in this case discharged the invoices (this was accepted by the Respondent) and provided evidence that the drivers were subcontractors and not employees. The Appellant stated that they did not provide vehicles, pay for fuel or pay for vehicle servicing and this evidence was not contradicted by the Respondent. The assertion of the Respondent that these individuals were employees was unsupported by any independent evidence. There is a good deal of law on the distinction between contract *of* and *for* services, none of which was cited or opened. While there is no doubt that the Appellant bears the onus of proof in tax cases, the paucity of evidence in support of the Respondent's submission that the drivers were employees renders me unable to accept this submission. The VAT invoices in this case were furnished, were paid (this was accepted) and the Appellant gave evidence in relation to the arrangements with the drivers. The arrangements involved calling drivers to see who might be available to deliver packages on a given day in circumstances where the Appellant did not provide vehicles for the drivers.





13. Based on the evidence and submissions in this case as set out above, together with the relevant legislation and European Law, I determine that the taxpayer has discharged the onus of proof on the balance of probabilities and that the assessments should be reduced by such amount so as to allow for VAT inputs to be claimed in respect of the invoices furnished over the period of the relevant tax years.
14. Accordingly the Appeal is determined in accordance with sections 933(5) TCA 1997 and section 119 VATCA2010.

APPEAL COMMISSIONER

July 2016

