



104TACD2020

BETWEEN/

[APPELLANT]

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal against a Notice of Assessment to Value-Added Tax (VAT) dated 1 June 2016 for taxable period 1 January 2014 to 31 December 2014 in the amount of €7,562 and 1 January 2015 to 31 December 2015 in the amount of €754. The Appellant appealed the assessment on 19 June 2016.

Background

2. The Appellant registered for VAT and other taxes as an ‘agricultural consultant’ with effect from 1 January 2007. The tax registration number was [redacted]. By notification dated 28 January 2008 the Appellant requested the Revenue Commissioners to change the description of the business to ‘international carriage of goods’ with effect from 1 August 2007.



3. The parties agree that the Appellant purchased a tractor from a UK business in 2014 for €32,878 (the euro equivalent of the sterling price). The assessment of €7,562 is VAT at 23% on €32,878. An invoice was produced from [redacted] dated 22 August 2014 which describes the sale of a [redacted] tractor bearing registration number [redacted] for a price of Stg£26,000 to [redacted]. The invoice included VAT number [redacted]. There is no VAT included on the invoice.
4. The parties agree that the Appellant purchased a hedge-cutter from a UK business in 2015 for €3,279 (the euro equivalent of the sterling price). The assessment of €754 is VAT at 23% on €3,279. No invoice was produced.
5. A Vehicle Purchase Details Form (VRTVPD2) dated 22 November 2015 was presented at the National Car Testing Service centre and signed by [redacted]. The signature of [redacted] appears under the following:

‘I, the undersigned, declare that I purchased the vehicle detailed above, and that the information contained on this form is correct’.

The vehicle details on the form is a [redacted] tractor bearing registration number [redacted] purchased from [redacted] for Stg£26,000.

6. In or around February 2016 the Appellant completed a Tax Registration Cancellation Notification (TRCN1) which described the customer as ‘[redacted]’ and the business as ‘transport’. The notification requested the cancellation of tax registration number [redacted] for VAT and income tax. The date of cessation was given as 1 October 2013. The notification described the assets and equipment as ‘sold’, the reason for cancellation as ‘getting hard to get paid from customers’ and the current means of livelihood as ‘employed by company from [redacted]’.

Legislation

7. Section 3 of the Value-Added Tax Consolidation Act, 2010 provides:

Charge of value-added tax

3. *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 in 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.*
8. Section 5 of the Value-Added Tax Consolidation Act, 2010 provides:

Persons who are, or who may become, accountable persons

5. (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.*



9. Section 24 of the Value-Added Tax Consolidation Act, 2010 provides:

Intra-Community acquisitions of goods

24. (1) *In this Act “intra-Community acquisition”, in relation to goods, means the acquisition of –*
- (a) *movable goods (other than new means of transport) –*
- (i) *supplied by –*
- (I) *a person registered for value-added tax in a Member State,*
- (II) *a person obliged to be registered for value-added tax in a Member State;*
- (III) *a person who carries on an exempted activity in a Member State, or*
- (IV) *a flat-rate farmer in a Member State,*
- (ii) *supplied to a person in another Member State (other than an individual who is not a taxable person or who is not entitled to elect to be a taxable person, unless the individual carries on an exempted activity), and*
- (iii) *which has been dispatched or transported from the territory of a Member State to the territory of another Member State as a result of such supply,*

...

10. Section 59 of the Value-Added Tax Consolidation Act, 2010 provides:

- (2) *Subject to subsection (3), in computing the amount of tax payable by an accountable person in respect of a taxable period, that person may, in so far as the goods or services are used by him or her for the purposes of his or her taxable supplies or of any of the qualifying activities, deduct –*



- (a) ...
- (b) ...
- (c) *subject to such conditions (if any) as may be specified in regulations, the tax chargeable during the period, being tax for which he or she is liable in respect of intra-Community acquisitions of goods,*
- (d) ...

11. Regulation 7(1) of the Vehicle Registration and Taxation Regulations, 1992 as amended by the Vehicle Registration and Taxation (Amendment) Regulations 2010 provide:

- (1)
 - (a) ...
 - (b) ...
 - (c) *in respect of the person in whose name the vehicle is to be registered:*
 - (i) ...
 - (ii) ...
 - (iii) ...
 - (iv) *where the vehicle is being presented by a person (the first mentioned person) other than the person in whose name the vehicle is to be registered (the second mentioned person), a document in such form as the Commissioners may specify –*
 - (I) *authorising the first mentioned person to register the vehicle on behalf of the second mentioned person,*
and
 - (II) *signed by the second mentioned person,*
 - (v) ...

Submissions on behalf of the Appellant

12. At the hearing, the Appellant stated that he was originally from [redacted] but presently resided in [redacted] with his spouse. The Appellant stated that he operated a transport business from in or around 2007 to 2013. Since [redacted] 2013 the Appellant has been employed as a full-time sales manager with [redacted] in [redacted] and his only source of income is Schedule E income remitted by his employer through the PAYE system. The Appellant stated that his work involved travel within Ireland and abroad. The Appellant had flexible work arrangements which allowed the Appellant to work from home in [redacted] at times. The Appellant stated that he would stay with family when working in [redacted].
13. The Appellant stated that his employment as a sales manager was such that he had time available to pursue other activities, and given his experience in the agricultural sector, the Appellant stated that the tractor and hedge-cutter were purchased with the intention of commencing a hedge-cutting business in or around [redacted]. The Appellant stated that he had not commenced a hedge-cutting business by the time the Revenue Commissioners notified the Appellant in February 2016 of his failure to deliver VAT returns for 2014 and 2015. The Appellant submits that it is not unusual to purchase equipment for a hedge-cutting business in advance of commencing the business and then not use the equipment given the seasonal nature of the business.
14. The Appellant stated that he purchased the tractor with cash which he had accumulated and retained from his time working in [redacted] in 2002 and 2003. The Appellant stated that he would have returned to Ireland during that time with amounts less than €10,000, being amounts below the cash control limit for customs declaration. The Appellant stated that he exchanged a euro sum equivalent to Stg£30,000 at a bureau de change to purchase the tractor. The Appellant stated that the tractor was advertised for Stg£28,000, however, he negotiated a price of



- Stg£26,000 as the tractor required repairs. The Appellant purchased the tractor from [redacted] in the UK. The Appellant stated that he gave his tax registration number [redacted] to [redacted]. The invoice from [redacted] dated 22 August 2014 describes the sale of a [redacted] tractor bearing registration number [redacted] for a price of Stg£26,000 to [redacted] and includes [redacted]. No VAT was charged by the supplier.
15. The Appellant stated that the tractor was not imported into the State until November 2015. The Appellant stated that he had a personal relationship with a person in [redacted] as they both attended the same third-level institution in the UK. As a result of this personal relationship, the tractor was stored at the premises of [redacted] in the UK from the date of purchase in August 2014 until the date of importation in November 2015. The Appellant stated that there was no immediacy to importing the tractor as he had not commenced the hedge-cutting business. The Appellant arranged to import the tractor at the same time as transporting the hedge-cutter. The Appellant stated that the hedge-cutter was purchased in the UK in 2015 and the Appellant gave his tax registration number [redacted] when purchasing the hedge-cutter. No VAT was charged by the supplier.
16. The Appellant stated that as he intended operating the hedge-cutting business in or around [redacted] the tractor and hedge-cutter were transported to [redacted]. The Appellant stated that he contacted the National Car Testing Service centre in [redacted] to ascertain whether a person other than the Appellant could attend the National Car Testing Service centre in [redacted] to register the tractor on importation, as the Appellant did not wish to incur the cost of transporting the tractor to [redacted] and then to [redacted], given that the Appellant intended carrying on the hedge-cutting business in or around [redacted]. At the hearing, the Appellant stated that he was unavailable to attend the National Car Testing Service centre in [redacted] in November 2015 for personal reasons. [Redacted], a distant cousin of the Appellant, attended the National Car Testing Service centre on 22

- November 2015. The Appellant submits that [redacted] had endeavoured to registered the tractor in the name of the Appellant, however, as [redacted] did not have the required documentation from the Appellant the tractor was registered in the name of [redacted]. At the hearing, the Appellant stated that he had not given [redacted] a signed letter authorising him to register the tractor on behalf of the Appellant. The Appellant confirmed that the tractor continues to be registered in the name of [redacted] and he acknowledged that he would have difficulty in establishing his ownership of the tractor. The Appellant repaired the tractor following importation, which involved six or seven hours work. The Appellant stated that the tractor is stored on the farm of [redacted] and may be used occasionally around the farm. The hedge-cutter has not been used.
17. The Appellant submits that he contacted revenue online service technical support on 15 February 2016 and, based on the statement from the Appellant that he ceased his business in 2013, it was suggested to the Appellant that he cancel his VAT registration. Thereupon, the Appellant completed the Tax Registration Cancellation Notification (TRCN1). At the hearing, the Appellant stated that he appealed the assessment because he was given incorrect advice by the Revenue Commissioners and wished to reinstate his VAT number in order to deliver VAT returns for 2014 and 2015. The Appellant acknowledged that the advice given by revenue online service technical support was based on the statement from the Appellant that he ceased business in 2013 and that the Appellant had not informed revenue online service technical support of the transactions in 2014 and 2015. The Appellant acknowledged that this would have influenced the advice given to him.
18. At the hearing, the Appellant confirmed that he was responsible for delivering VAT returns for the transport business. The Appellant stated that he would complete the returns from information downloaded from a computer-based accounts programme. The Appellant stated that he would complete the payment details at the end of the returns to transfer payment to the Revenue Commissioners. The Appellant stated



that during the course of his transport business he would have acquired goods/services from businesses in Northern Ireland and the UK and would have accounted for these transactions in his VAT returns. The Appellant stated that he understood his obligations to account for VAT and deliver returns. With regard to the purchase of the tractor and the hedge-cutter, the Appellant accepted that he gave his tax registration number to the suppliers in the UK but proceeded on the basis that any purchase outside the State using an Irish tax registration number did not give rise to a payment of VAT to the Revenue Commissioners as it was purchased using the tax registration number of a business.

19. The Appellant stated that the transport business ceased in 2013 and he closed the bank accounts by year end to avoid bank charges. A communication from the Appellant to the Revenue Commissioners dated 24 November 2014 stated:

“I spoke with you on the phone on last tuesday regarding my tax return for 2013. I was explaining that I have received some letter’s during the year and every time I rang up about it and was told that no one had been assigned to me yet. My tax due for 2012 is 3200. I finished my business in 2013 and am now working for a company in [redacted]. I have not been able to pay this 2012 tax yet as I haven’t had the money to do so. I am waiting a pay increase which was due last march, my employer’s have said each month I will probably get it end of this year. I have not been able to pay my accountant for doing last year’s taxes yet and until I can do so they will not do 2013 taxes for me. Hopefully I can get this all resolved in December. My accountant did say it look’s like maybe I will be due some amount of a tax refund for 2013 so hopefully this will offset some of my 2012 amount due. I will contact you as soon as I have an update.”

At the hearing, the Appellant stated that he had not finalised his tax position and payment arrangements for 2012 and 2013 as he wished to have his tax position with regard to the cessation of his transport business resolved before dealing with the



matter. The Appellant stated that although he had cash remaining from his time working in [redacted], he had other personal expenses in recent years, including fertility treatment and funeral costs for his mother.

20. At the hearing, the Appellant accepted that the amount of the assessment was correct, however, he appealed the assessment as the Revenue Commissioners had informed him of a right of appeal to the Appeal Commissioners. The Appellant stated that on receiving communications from the Revenue Commissioners, he would contact the Revenue Commissioners to seek information and discuss the matter. The Appellant stated that the absence of advice and engagement from the Revenue Commissioners contributed to his failure to finalise his tax position. Furthermore, the Appellant had not finalised his tax position to date as he was waiting for the appeal process to be concluded. The Appellant stated that he understood the appeal process would address the advice given by the Revenue Commissioners on the cancellation of his tax registration number and lead to a resolution on the reinstatement of his tax registration number.
21. No documentary evidence was produced by the Appellant at the hearing.

Submissions on behalf of the Revenue Commissioners

22. The Revenue Commissioners submit that at the time of the purchase of the tractor in 2014 and the hedge-cutter in 2015, the Appellant was registered for VAT and an accountable person. The Revenue Commissioners submit that the purchase of the tractor and hedge-cutter by the Appellant was an intra-Community acquisition of movable goods supplied by a person registered for VAT in another Member State of the European Union. The Revenue Commissioners submit that the Appellant is not entitled to a deduction for the VAT chargeable in respect of the intra-Community acquisition of the goods as the goods were not used by Appellant for the purposes of his taxable supplies.



23. The Revenue Commissioners submit that the stated position of the Appellant should be viewed in context; in November 2014 the Appellant informed the Revenue Commissioners that he did not have the funds to discharge his declared tax liability of €3,200 for 2012, however in August 2014 the Appellant had exchanged a euro sum equivalent to Stg£30,000 at a bureau de change to purchase a tractor for a hedge-cutting business that remains to be commenced. The Revenue Commissioners submit that the Appellant delivered tax returns and made payments to the Revenue Commissioners during the course of his transport business and the submission of the Appellant that the advice from revenue online service technical support prevented the Appellant from finalising his tax position with regard to the purchase of the tractor and hedge-cutter was untenable, particularly given his previous knowledge and experience of operating within the tax system.
24. The Revenue Commissioners submit that the stated position of the Appellant regarding the registration of the tractor should also be viewed in context; the statutory provision allows for a vehicle to be presented by a person other than the person in whose name the vehicle is to be registered on providing a letter authorising the registration by the other person. Furthermore, the Revenue Commissioners have published information online which describes the procedure at the National Car Testing Service centre where a person wishes for another person to register the vehicle.

Analysis and Findings

25. It is accepted that the Appellant purchased a tractor from a UK business in 2014 and a hedge-cutter from a UK business in 2015. It is accepted that VAT on the tractor is €7,562 and VAT on the hedge-cutter is €754. The Appellant accepts that he gave his tax registration number to the UK businesses and no VAT was charged by the suppliers.



26. The Appellant proceeded on the basis that any purchase outside the State using an Irish tax registration number did not give rise to a payment of VAT to the Revenue Commissioners as it was being purchased using the tax registration number of a business. However, the legislative framework operates by the Appellant, as purchaser and an accountable person, being liable for VAT on the acquisition of the tractor and hedge-cutter and accounting for the VAT in his VAT return. If the goods are used by the Appellant for the purposes of his taxable supplies, the Appellant may deduct the VAT for which he is liable in respect of the acquisition of the tractor and hedge-cutter in computing the amount of VAT payable. Therefore, only if the Appellant used the tractor and hedge-cutter for the purposes of his taxable supplies would the Appellant be entitled to a corresponding deduction for the VAT. The Appellant's understanding of the tax consequences of using an Irish tax registration number to acquire goods outside the State is based on a position of being entitled to a VAT deduction on an intra-Community acquisition regardless of the purpose for which the goods will be used. This understanding does not accord with the legislative framework.
27. The Appellant accepts that he had experience of the tax system through his transport business and understood the manner of dealing with acquisitions from outside the State in his VAT returns.
28. It is not within the jurisdiction of the Appeal Commissioners to consider the nature of any advice given to the Appellant by the Revenue Commissioners and to determine the consequences, if any, of reliance on advice. In any event, the Appellant acknowledges that the advice given to him was affected by his failure to inform revenue online service technical support of the transactions in 2014 and 2015.



29. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 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*”. The Appellant accepts that the amount of the assessment is correct.
30. I am satisfied that the purchase of the tractor and hedge-cutter was an intra-Community acquisition of a movable good by an accountable person. I am satisfied that the tractor and hedge-cutter were acquired by the Appellant from a person registered for VAT in the UK and that the UK supplier did not include VAT on the supply as the Appellant had given the UK supplier his Irish tax registration number. I am satisfied that the tractor and hedge-cutter were not used by the Appellant for the purposes of his taxable supplies to allow a deduction for the VAT which the Appellant was liable in respect of the intra-Community acquisition of the tractor and hedge-cutter. Consequently, the Appellant is liable for VAT on the acquisition of the tractor and hedge-cutter.

Determination

31. For the reasons outlined above, in respect of the appeal against the Notice of Assessment to Value-Added Tax dated 1 June 2016, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I determine that the assessment of €8,316 shall stand.
32. This appeal is hereby determined in accordance with section 949AK of the Taxes Consolidation Act, 1997.



FIONA McLAFFERTY
APPEAL COMMISSIONER

10 MARCH 2020

