



Ref: 109TACD2020

BETWEEN/

APPELLANT

Appellant

V

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal pursuant to section 119(1)(h) Value Added Tax Consolidation Act 2010 (VATCA 2010) against a refusal by the Respondent to refund the Value Added Tax (VAT) claimed by the Appellant.
2. This appeal centres on whether the Appellant is entitled to claim a refund of VAT in respect of a number of transactions carried out in 2013 relating to the purchase of entitlements to EU-related farm support payments.
3. This case is adjudicated with a hearing, held on **4 March 2020**, in accordance with Chapter 4 Part 40A Taxes Consolidation Act 1997 (TCA 1997).

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Background

Single Payment Scheme (SPS) Entitlements

4. The Single Payment Scheme (SPS) operated up to 2014 as the main EU income support for farmers. All SPS entitlements expired on 31 December 2014. Payment entitlements were, in general, given to farmers who actively farmed during all or any of the three reference years 2000,2001 and 2002 and who received livestock premia and / or arable aid payments at that time. Having acquired a payment entitlement, a farmer became entitled to a single payment each year if he or she complied with the terms of the scheme in respect of a particular year. These entitlements could be sold with or without related land.
5. The Basic Payment Scheme (BPS) commenced in 2015 as part of the new measures agreed for the reform of the Common Agricultural Policy. It replaced the Single Payment Scheme (SPS) as the main EU income support for farmers.





6. This appeal relates to transactions which took place in 2013 relating to SPS entitlements.
7. The Appellant purchased a number of these entitlements in 2013. She received a number of invoices in respect of these purchases. The Appellant is a VAT taxable person in Ireland. She submitted a VAT repayment claim to the Respondent for the May / June 2013 period.
8. This appeal relates to the amount of input credit the Appellant is entitled to in respect of these purchases.
9. The total refund claimed, relating to this appeal, was €12,905. The Respondent refused the refund sought of €12,905 in a letter dated 22 June 2015.
10. The Appellant duly appealed the refusal to the Tax Appeals Commission.

Legislation

11. The relevant legislative provisions are;

Section 59 Value-Added Tax Consolidation Act 2010

Section 66 Value-Added Tax Consolidation Act 2010

Regulation 20 Value-Added Tax Regulations 2010 (S.I. No. 639 of 2010)

Relevant extracts are set out in Appendix 1

Matters not in Dispute

12. It was agreed between the parties at the hearing that the Auctioneer, Mr. W was acting as an agent or facilitator for the four farmers who sold the entitlements to the Appellant.





Documentary Evidence

13. Mr. W, a director of REDACTED Auctioneers, REDACTED, facilitated the purchase (from farmers) and sale of agricultural entitlements to the Appellant. He sourced 33 entitlements from three persons – Mr. A, Mr. B, and Mr. C. He arranged the sale of these entitlements to the Appellant and charged her the appropriate transaction fees. The details are as follows:
14. Three entitlements were purchased from Mr A, at a total cost of €5,930.54, inclusive of commission fees. This purchase transaction was not subject to VAT. However, Mr. W applied VAT of 23% on his commission fee of €171.58, which amounted to VAT of €39.46. No Vat was charged by Mr. W in respect of the entitlement consideration of €5,719.49.
15. Fifteen entitlements were purchased from Mr. B for a total cost of €39,640.93, inclusive of commission fees. This transaction is represented by two invoices, (€26,211.85 and €13,429.08). Mr. W did apply VAT at 23% to the commission he charged. The only charge relating to VAT on this transaction, which was passed on to the APPELLANT, was the €419.15 representing the 23% VAT fee on Mr. W's commission of €1822.38 (€1096.11 + €726.27). VAT was not charged on the portion of the purchase consideration for the entitlements, amounting to €37,399.40 (€24,863.63 +€12,535.77).
16. Fifteen (15) entitlements were purchased from Mr C, at a cost of €23,442.55, inclusive of commission fees. Mr. W did apply VAT at 23% to the commission he charged which amounted to VAT of €156. VAT was not charged on the portion of the purchase consideration for the entitlements, amounting to €22,608.30.
17. In documents submitted to the Tax Appeals Commission, it is suggested that the reason Mr. W did not charge the Appellant VAT was because the farmers selling the entitlements were not VAT registered for those transactions.
18. Mr. W sent to the Appellant by email the four invoices relating to her purchase of farm entitlements, totalling €69,014.02.

Witness Evidence

Ms. M





19. **Ms. M**, the Appellant gave the following sworn evidence. The Appellant explained her desire to purchase farm income entitlements in 2013.
20. Under cross examination, it was put to the witness that she had submitted an invalid invoice, headed "**W**, Auctioneers", a copy of which was included in the documentary submissions presented at the Hearing by the Respondent, in the amount of €69,014.07 (gross), with VAT of €12,905.07 and a net amount of €56,108.02, in support of her claim for input credit.
21. The witness said she had no recollection of this invoice. She accepted that the invoice in question as constituted and seen by her was not a valid VAT invoice.
22. The witness confirmed that the four invoices referred to in the documentary evidence were the invoices she received at the time from Mr **W**.

REDACTED

23. **Mr. O**, who is knowledgeable about the operation of farm entitlements, acted for the Appellant in discussions with **Mr. W** about the purchase of entitlements. Neither the Appellant nor **Mr. O** met with the farmers selling the entitlements. The entitlements were advertised in the local media and discussions were held by phone and email with Mr. **W**.
24. **Mr. O** accepted that the Auctioneer, **Mr. W** was selling the entitlements as agent for the four named farmers and was not selling the entitlements in his own name.
25. **Mr. O** argued that VAT should have been charged in respect of some of the invoices issued in respect of the farmers as their aggregate value exceeded their threshold for VAT registration.

Submissions by the Appellant

26. The Appellant argued, through **REDACTED**, acting for the Appellant, that as Mr. **W** had sold the entitlements, he was responsible for the VAT chargeable in respect of the transactions. The amount in question was €69,000; the issue of VAT due was not based on invoicing; the issue was, is this a vatable transaction above the threshold for charging VAT?; that there was a statutory obligation for **Mr. W** to raise VAT on a vatable transaction. If the invoices were wrong that does not impact on the VAT position. The question is, was the transaction vatable and the Appellant says it is vatable.





Submissions by the Respondent

27. The Respondent argues that the Appellant has not supplied a proper VAT invoice relating to her purchase of the entitlements and as such she is not entitled to the VAT input credit claimed.
28. Each of the four suppliers (farmers) was not registered for VAT. The Auctioneer had presented the Appellant with four invoices, showing no VAT on the proceeds for the entitlements. Instead the Auctioneer had correctly charged VAT at the standard rate on his fee or commission for the transaction.
29. The Appellant had submitted an invoice purporting to be from the Auctioneer, showing Vat of €12,905.07 charged. This was not a valid invoice and during the hearing this invoice was in effect withdrawn by the Appellant, as the Appellant expressed "no recollection" in relation to the document.
30. The Appellant has argued that **Mr. B** should have been registered for VAT as the amount of the proceeds exceeded the VAT registration threshold. The Respondent argued that the requirement for **Mr. B** to register for VAT or not is not a matter for consideration by the Appellant.

ANALYSIS

VAT treatment

31. In order to better understand the context of this appeal, the following is a brief summary of the VAT treatment of entitlements (SPS entitlements) (based on the Revenue Operational Manual (23.01.35: Taxation of Farm Payments) and Tax Briefing No 61 (2005)).
32. A single payment does not represent consideration for any supply to the farmer and the State and is therefore, outside the scope of Vat. The receipt of such a payment does not:
 - i) give rise to a VAT Liability or an entitlement / requirement to register for VAT,





- ii) be taken into account for the purposes of the VAT registration threshold,
or
- iii) give entitlement to deductibility where a farmer incurs expenditure in
relation to the payment

33. The sale by a farmer of his payment entitlement (SPS entitlement) only (without land) is considered to be the supply of a service for VAT purposes and liable to VAT at the standard rate (currently 23%), subject to the normal rules. The service is not considered to be an agricultural service and is therefore not within the flat rate VAT scheme applicable to farmers. On this basis it will be chargeable to VAT if:

- i) The farmer is already an accountable person making taxable supplies for VAT purposes or
- ii) The amount received from the sale of his entitlements exceeds the VAT registration threshold. In such circumstances the treatment of the sale price received will be ring fenced for the purposes of VAT registration and the farmer will only be required to register for VAT in respect of that single transaction. Non-VAT-registered farmers who purchase payments entitlement and suffer VAT will not be permitted to register solely in respect of that single transaction, but will have the normal registration option open to them.

34. In respect of claiming a deduction for tax borne or paid, an accountable person is entitled to a credit for the;

"the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations" (section.59 (2)(a) VATCA 2010), and

"containing such particulars as may be specified by regulations." (S.66 (1) (a) VATCA2010)

35. The regulations referred to in the above sections are set out in the Value-Added Tax Regulations 2010 (S.I. No. 639 of 2010). Regulation 20 relates to Invoices and other documents. Relevant extracts of the above legislation are set out in Appendix 1.





36. It is most odd that the Appellant had, under sworn evidence, "no recollection" of the document sent to the Respondent, purporting to be the invoice which formed the basis of her claim for VAT input credit. I did not find this evidence credible.

The burden of proof

37. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessments are incorrect. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that it falls within the relief, see Revenue Commissioners v Doorley [1933] 1 IR 750 and McGarry v Revenue Commissioners [2009] ITR 131. In the High Court case of Menolly Homes Ltd v Appeal Commissioners and another, [2010] IEHC 49, 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.'

Determination

38. For the reasons set out above, I determine that the Appellant has not satisfied the requisite statutory conditions necessary to claim entitlement to a VAT repayment of €12,905.07

39. This Appeal is hereby determined in accordance with s.949AL TCA 1997.

PAUL CUMMINS
APPEAL COMMISSIONER
16 APRIL 2020





Appendix I – Legislation

Section 59 Value-Added Tax Consolidation Act 2010

Deduction for tax borne or paid.

S 59 (1)In this subsection and subsection (2)—...

(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 and 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)the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations, in respect of supplies of goods or services to him or her,

Section 66 Value-Added Tax Consolidation Act 2010

Issue of invoices and other documents.

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.

Section 20 Value-Added Tax Regulations 2010 (S.I. No. 639 of 2010)

Invoices and other documents

20.(1) In this Regulation "reverse charge supply" means a supply of goods or services to a person in another Member State who is liable to pay value-added tax under the VAT Directive on such supply.





(2) The following particulars are specified for purposes of section 66(1) of the Act and are required to be included in every invoice issued, or deemed to be issued, by an accountable person:

- (a) the date of issue of the invoice,
- (b) a sequential number, based on one or more series, which uniquely identifies the invoice,
- (c) the full name, address and registration number of the person who supplied the goods or services to which the invoice relates,
- (d) the full name and address of the person to whom the goods or services were supplied,
- (e) in the case of a reverse charge supply, the value-added tax identification number of the person to whom the supply was made and an indication that a reverse charge applies,
- (f) in the case of a supply of goods, other than a reverse charge supply, to a person registered for value-added tax in another Member State, the person's value-added tax identification number in that Member State and an indication that the invoice relates to an intra-Community supply of goods,
- (g) the quantity and nature of the goods supplied or the extent and nature of the services rendered,
- (h) the date on which the goods or services were supplied or, in the case of supplies specified in section 70(2) of the Act, the date on which the payment on account was made, in so far as that date differs from the date of issue of the invoice,
- (i) in respect of the goods or services supplied—
 - (i) the unit price exclusive of tax,
 - (ii) any discounts or price reductions not included in the unit price, and
 - (iii) the consideration exclusive of tax,
- (j) in respect of the goods or services supplied, other than reverse charge supplies—
 - (i) the consideration exclusive of tax per rate of tax, and





and

(ii) the rate of tax chargeable,

(k) the tax payable in respect of the supply of the goods or services, except—

(i) in the case of a reverse charge supply, or

(ii) where section 87(9) or 89(5) of the Act applies,

and

(l) in the case where a tax representative is liable to pay the value-added tax in another Member State, the full name and address and the value-added tax identification number of that representative.

[(2A) Notwithstanding paragraph (2), every simplified invoice issued by an accountable person in accordance with section 66(1)(b) of the Act is required to include the following particulars:

(a) the date of issue,

(b) a sequential number that uniquely identifies the invoice,

(c) the full name, address and registration number of the person who supplied the goods or services,

(d) a description of the goods or services supplied, and

(e) the tax payable or the consideration exclusive of tax in respect of the supply of the goods or services.]³

(3) An invoice, credit note or debit note issued by an accountable person in accordance with Chapter 2 of Part 9 of the Act relating to an intra-Community supply of a new means of transport (within the meaning given by section 2 of the Act) is required to include the details necessary to identify the goods as a new means of transport.

(4) Every invoice issued by an accountable person in accordance with section 67(1)(a) of the Act in respect of an increase in consideration is required to include the particulars specified in subparagraphs (a) to (f) of paragraph (2), and shall indicate—

(a) the amount, exclusive of tax, of the increase in consideration for the supply,

(b) the rate or rates of tax and the amount of tax at each rate appropriate to that increase in consideration, and





(c)a cross-reference to every other invoice issued by the accountable person in respect of the total consideration for the supply.

(5)Every credit note or debit note issued by a person in accordance with section 67(1)(b) or 67(2) of the Act is required to include the following particulars:

(a)the date of issue of the note,

(b)a number which uniquely identifies the note,

(c)the full name, address and registration number of the person issuing the note,

(d)the full name, address and registration number of the person to whom the note is being issued,

(e)in the case of a supply to a person who is registered for value-added tax in another Member State, the person's value-added tax identification number in that Member State,

(f)the reason why the note is being issued and a cross-reference to the invoice which was issued for the supply in respect of which the consideration was reduced,

(g)the amount of the consideration, exclusive of tax, in respect of which the note is being issued, and

(h)the rate or rates of tax current when the invoice referred to in subparagraph (f) was issued and the amount of tax at each rate as appropriate to the consideration shown on the note.

