



**06TACD2021**

**APPELLANTS**

**BETWEEN/**

**Appellant**

**V**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal against a decision by the Respondent to refuse to issue a refund of VAT in respect of the VAT period Nov/Dec 2018. The VAT amount in dispute is €3,926 and it relates to the purchase of a **REDACTED** van ('the van') on 6 May 2017, for use in the Appellants' farm partnership trade.
2. By agreement of the parties this appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

**Background**

3. The Appellants' are jointly assessed. Mr **HUSBAND** is registered as a sole trader for income tax purposes. Mr **HUSBAND** returns income from his trade as a farmer in his Form 11 Income Tax Return, as well as the profits from both Appellants' farm partnership.
4. The Appellants' are registered for VAT under the partnership name "**HUSBAND & WIFE**" ('the Partnership').



5. On 20 July 2017, the Appellants' submitted the Partnership's VAT return for the period May/June 2017, seeking a refund of €4,505. This included the input credit of €3,926 in respect of the van.
6. Following an aspect query by the Respondent, the Appellant submitted the purchase invoice for the van as evidence of the validity of the claim. The invoice was dated 6 May 2017 and was addressed to "HUSBAND/WIFE".
7. The Appellant registered the van with the Department of Transport in HUSBAND's name only. The Appellant's were advised by the Department of Transport that the vehicle could not be registered in "the name of more than one registered owner". The Respondent refused to refund the amount of €3,926 "as the vehicle is not registered to the partnership 'HUSBAND & WIFE' ". The Respondent has submitted that they "require the vehicle be registered in the name of the partnership, being a single entity and the single registered owner".
8. On 20 December 2018, the Respondent informed the Appellants' that the input credit for the van was being disallowed as neither the van or the invoice were in the partnership's name.
9. On 18 January 2019 the Appellants' claimed an input credit for the same van in the VAT return for Nov/Dec 2018. After corresponding with the Agent for the Appellants', the Respondent informed the Appellants' on 9 May 2019 of their decision to disallow the input credit claimed of €3,926, claimed in the Nov/Dec 2018 period, in respect of the same van. The Appellant's duly appealed this decision to the Tax Appeals Commission on 29 May 2019.
10. Subsequent to this decision, the supplier, who sold the van to the Appellants', provided the Respondent with a copy of the original invoice for the sale. This invoice is in the sole name of HUSBAND and the Respondent submits that it is different to the one supplied by the Appellants' to them. The Respondent submits that the invoice supplied by the Appellants' is an 'amended invoice' and as a result, it is not a valid



invoice as invoices cannot be amended without following the relevant Regulations provided in the VAT Acts.

11. Subsequent to submitting their appeal to the Tax Appeals Commission, the Appellants' submitted a copy of their joint bank account statement showing the payment of €21,000 for the van on 25 May 2017. The Appellants' submit that this is evidence of payment by and for the partnership. The Respondent disputes this.
12. Whether the Appellants' were entitled to reclaim the VAT paid in respect of the van on the basis that it is used as part of a Vatable trade, is not in dispute. The matters that are in dispute and that require adjudication by the Tax Appeals Commission are:
  - Whether the input credit should be refused on the basis that the van has been registered with the Department of Transport in **HUSBAND**'s sole name.
  - Whether the input credit should be refused on the basis that the invoice is not in the Partnerships name and the Respondent submits that the invoice submitted as evidence is not the original valid invoice.
  - Whether the joint bank account statement submitted by the Appellant showing the payment of the €21,000 for the van is compelling evidence of payment by and for the partnership.

## Legislation

See Appendix 1

## Appellant's Submissions

13. Included in the Appellant's submissions were the following:

*"As previously discussed, a refund of VAT for the purchase of Vehicle reg. no. **REDACTED** is being disallowed as the vehicle is not registered to the partnership **"HUSBAND & WIFE"**.*



### *Grounds for appeal*

- 1. Bought a van for work in the name of the partnership.*
- 2. Paid for the van out of the partnership bank account.*
- 3. The invoice for the van was in the name of the partnership.*

*The reason my VAT refund was refused is because the vehicle is not registered to the partnership **HUSBAND & WIFE**. I attach a letter from the Department of Transport confirming that the vehicle cannot be registered in 2 names.*

*“Please be aware that recording of registration of ownership on the National Vehicle and Driver License File (NVDF) database is not permitted in the name of more than one registered owner”*

*I also attach the invoice in the names of **HUSBAND & WIFE**. Payment for this vehicle was made from the bank account of **HUSBAND & WIFE**.*

### *An Outline of the Relevant Facts*

- 1. Evidence vehicle cannot be registered in both names.*
- 2. Invoice in both names.*
- 3. Bank Statement in **HUSBAND & WIFE** sharing payment of €21,000.*

*Our client **HUSBAND & WIFE** wish to appeal the decision not to allow the VAT on a Ford Van in the VAT return May/June 2017.*

*The invoice for the Van was in the name of the partnership and paid out of the partnership bank account.*

*When this Van was bought only one name was allowed by the Department of Transport on the vehicle registration book.*

*This Van is being used wholly, exclusively and necessarily for the purpose of the business.*

*We believe that our clients are entitled to claim back the VAT on the **REDACTED** Van.*



## Respondent's Submission

14. Included in the Respondent's submissions were the following:

*...**HUSBAND** and **WIFE** are in a partnership "**HUSBAND & WIFE**" which is registered for VAT under Registration number **REDACTED**.*

*May/Jun '17 VAT 3 claim filed by the partnership on 20/07/17 for €4,505.*

*...*

*Section 59(2)(a) VATCA 2010 states*

*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,"*

*... The schedule of purchases for the period May/Jun '17 was requested and reviewed. A copy of invoice no 4556 from **REDACTED** Car Sales Ltd was requested. A copy of this invoice was received on 05/12/18 ...The following issues then arose;*

### **1. The Van is registered to Mr. **HUSBAND****

*The purchase of the van was returned on the VAT3 of the Partnership "**HUSBAND & WIFE**". The VAT registration number of the Partnership is **REDACTED**.*



*Copy Invoice received as part of the verification check ... in Joint names **HUSBAND & WIFE** – appears to have been altered ...*

*Per Revenue records the van was registered to Mr. **HUSBAND**. A copy of the Vehicle Registration as received from Mr. **HUSBAND** on 10/12/18 C...*

*Mr. **HUSBAND**, as an individual, is not registered for VAT and is therefore not entitled to claim VAT input credits on purchases made by him as either a sole trader or a private individual.*

*The appellant's agent, Mr. **REDACTED**, was advised that the portion of the claim for the purchase of the van was being disallowed.*

*On 18/01/19 an amended return was submitted for the period Nov/Dec '18. The return had been amended to include the VAT on invoice **REDACTED** at Appendix B which had been disallowed in the period May/Jun '17. A copy of the letter received by Mr. **HUSBAND** from the Dept of Transport was then submitted – Appendix D.*

*The letter provided by the appellant from the Department of transport states that,*

*"A transfer of ownership notification indicating that the above vehicle was acquired by two persons was received.*

*Please be aware that recording of registration of ownership on the National Vehicle and Driver License File (NVDF) database is not permitted in the name of more than one registered owner"*

*The Revenue website states*

*"The owner to be named at registration is:*

- the person, or the legal entity by whom the vehicle is to be Kept"*

*It further states that a*

*"Legally accountable entity"*



*This phrase includes:*

- *other entities, for example, Local Authorities, trusts and suchlike.*

*It is not possible to give an exhaustive list of acceptable legal entities. The name under which the declared owner is registered for tax purposes should be acceptable."*

*Revenue would consider that a partnership is a legally accountable entity, it has a unique tax reference number and a unique VAT number which distinguishes it from the partners and any additional trades which the partners might engage in as sole traders.*

*The Van is still registered in the sole name of Mr **HUSBAND**.*

*The claim was again refused. ..*

## **2. The Invoice**

*A copy of the invoice that was submitted to verify the VAT claim. This is invoice no. **REDACTED** in the names **HUSBAND & WIFE**. As previously stated, the claim was rejected as this invoice is not in the partnership name and the vehicle referred to on the invoice is registered in the sole name **HUSBAND**...*

*The original invoice is in the sole name **HUSBAND** which matches the vehicle registration. This invoice has also been amended to reflect VRT, which reduces the amount of VAT.*

*The invoice in joint names submitted to verify the VAT claim is therefore not considered a valid invoice.*

*Amendments to Invoices are set out in the VATCA 2010 Section 67 (1) to (6) – Appendix A. Revenue, on its website, has set out the conditions under which a VAT invoice can be amended.*



*The change to this invoice does not meet Revenue's published criteria, the amended invoice is therefore not considered a valid invoice.*

### **3. Copy Bank Statement.**

*...a copy bank statement which was provided as part of the Statement of Case on behalf of the Appellant showing the payment out for the purchase of the van by the partnership.*

*The account appears to be a joint personal Account of Mr. **HUSBAND** and his spouse Mrs. **HUSBAND**.*

*The account appears to be in use for purposes other than just the Partnership. An examination of the Partnership's schedule of purchases, which was submitted as part of the May/June 2017 VAT claim verification, includes only 3 of the 23 transactions listed on the bank statement, in view of this Revenue would not consider the bank statement as evidence that the van was purchased by and, or, for the Partnership alone.*

### **Analysis and findings**

15. The fact that the invoice (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 noncompliance 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.
16. The Respondent has put forward arguments as to why the Appellant is being disallowed the VAT input credit in respect of the van purchased.





17. I cannot accept the Respondent's argument that the van registration for VRT is in the sole name of Mr. **HUSBAND** forms a basis for disallowing the input credit. I accept the submission of the Appellant, that the Department of Transport will not allow registration in more than one name.
18. I accept the Respondent's argument that payment from the couple's joint bank account is not conclusive that the partnership paid for the van. However, it can arise for small businesses to co-mingle business and private transactions in a single bank account and rely on their accountant to extract the relevant business transactions. I accept the submission from the Appellant in this case that the purchase was made by the partnership, particularly given the nature of the farm trading activities.
19. The Appellant has submitted an amended invoice in the correct name of the partnership. The Respondent has sought to disallow this because the Appellant has not followed the procedures laid down for submitting the amended invoice. In the spirit of the Pannon case I believe this should not be an impediment to allowing the VAT input credit.

### **Determination**

20. 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 VAT input claimed of €3,926 in respect of the van should be allowed.
21. This appeal is hereby determined in accordance with section 949AL TCA 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**Designated Public Official**

**3 DECEMBER 2020**



## Appendix 1

### Section 59 VATCA10, as amended, provides as follows: -

*“(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,*

.....

*(5) Where, in relation to any taxable period, the total amount deductible under this Chapter exceeds the amount which, but for this Chapter, would be payable in respect of such period, the excess shall be refunded to the accountable person in accordance with section 99(1), but subject to section 100.”*

### The relevant subsections of section 66 VATCA10 provide that: -

*“(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."*

.....

*(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).*

The relevant subsections of Section 76 VATCA2010 provides that: -



*Returns and remittances.*

- (1) *Subject to subsection (2) [and sections 91C(3) and 91E(3), an accountable person shall, within 9 days immediately after the 10th day of the month immediately following a taxable period—*
- (a) furnish to the Collector-General a true and correct return, prepared in accordance with regulations, of—*
- (i) the amount of tax which became due by the person during that taxable period (other than tax already paid by him or her in relation to goods imported by him or her),*
  - (ii) the amount (if any) which may be deducted in accordance with Chapter 1 of Part 8 in computing the amount of tax payable by the person in respect of that taxable period, and*
  - (iii) such other particulars as may be specified in regulations,*
- and*
- (b) remit to the Collector-General, at the same time as so furnishing such return, the amount of tax (if any) payable by the person in respect of that taxable period.*

The relevant subsections of Section 120 VATCA2010 provides that: -

- (9) *As regards Part 9, regulations may provide for—*
- (a) the particulars required for registration and the manner in which registration may be effected and cancelled,*
  - (b) the following:*
    - (i) the form of invoice, credit note, debit note and settlement voucher (including electronic form) required to be used for the purposes of this Act;*



- (ii) the particulars required to be inserted in such documents or electronically recorded;*
- (iv) the period within which such documents or electronic data are required to be issued or transmitted;*
- (iv) such other conditions in relation to the issue or receipt, in any form, of an invoice, credit note, debit note and settlement voucher as may be imposed by the Revenue Commissioners; and*
- (v) the conditions to which the evidence of the business controls used to comply with paragraph (a) of section 66(2A) shall be subject as referred to in paragraph (b) of that provision,*

S.I. No. 639 2010 - Section 20 of the VAT Regulations 2010 provides that: -

*“Invoices and other documents*

*20 (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*

*(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.*

.....

*(10) Any person issuing (other than by electronic means in accordance with Regulation 21(2)(a)) an invoice, credit note or debit note in accordance with Chapter 2 of Part 9 of the Act is required to keep an exact copy of it and references in this Regulation to any such document include references to that copy."*

