116TACD2021

Between/

[redacted] LIMITED

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeal Commission as a result of a dispute between the Appellant and the Respondent as to whether the former is an accountable person for the purposes of Value Added Tax as defined by the Value Added Tax Consolidation Act, 2010 (hereinafter "**VATCA 2010**").

2. More particularly, the Appellant has appealed against assessments to VAT made by the Respondent on 4 February 2015 for the years 2010 to 2012 inclusive, and which amount in total to €226,863.

3. In essence, the Appellant claims that it is engaged in the business of providing taxi and hackney services through a mixture of employee and self-employed drivers, and that it is providing transport services as a principal entity. It submits that the said services are exempt from VAT and accordingly the Appellant is not an accountable person for VAT under VATCA 2010.

4. The Respondent submits that the Appellant is not acting as a principal but rather as an agent in the supply of taxi and hackney services, that the Appellant is providing a taxable supply of services and that the Appellant is liable for VAT at the standard rate on these services.

B. Grounds of Appeal

5. The grounds of appeal as stated in the AH1 are that the Appellant is acting in a principal capacity. It is not providing a VATable supply of services and therefore does not have a vat liability.

C. Background

6. An original hearing took place and was adjourned to allow the parties to produce further written submissions. Subsequently, following a number of adjournments, a further hearing took place in the course of which I heard evidence from an expert consultant engaged by the Appellant and from one of the owners and directors of the Appellant. I further heard submissions on questions of fact and law on behalf of the Appellant and the Respondent.

*D. **Submissions of the Appellant***

7. The Appellant is a company having its registered office at [redacted], Co. [redacted] and is limited by shares. The Appellant is 100% owned by [redacted] and [redacted], who are also its directors. The Appellant's Memorandum of Association provides that the Appellant was established "[t]*o carry on the business of hackney and taxi radio controllers giving service to drivers of hackney and taxi cabs, mini car, bus and all other mechanically propelled vehicles and of operating the same for public or private hire*".

8. The Appellant is engaged in the business of supplying a taxi and hackney service in Co. [redacted]. The Appellant provides a 24-hour call centre with a computer dispatch system. The majority of the business is generated by phone calls from customers to the Appellant's call centre. The calls are allocated to drivers though a computerised radio system. The Appellant operates both taxi and hackney (private hire) vehicles. Hackneys cannot use bus lanes, pick up passengers on the street or at a taxi rank. All hackney work must come through the Appellant's office, while the taxi drivers can also pick up passengers at a rank or on the street without going through the Appellant's office.

9. Drivers who supply their own vehicle remit an agreed amount per week to the Appellant for work they get from the Appellant. Typically, depending on the arrangement, these drivers pay €70-€160 per week, with most of the drivers paying €140 per week to the Appellant. Some 20 to 30 drivers who own their own vehicles are affiliated to the Appellant.

10. Drivers who are supplied with a vehicle by the Appellant pay a higher weekly amount to the Appellant. The price paid by these drivers is in the region of €350 to €400 per week. These drivers are also self-employed. Vehicles are only supplied to drivers who undertake work for the Appellant and not to third parties. The number of vehicles supplied during the periods under appeal were 14 taxis and 7 hackneys.

11. Certain drivers are employed by the Appellant and are paid a weekly salary by the Appellant. These employed drivers are registered for PAYE.

12. In the early years of the Appellant's business, drivers brought their takings to the Appellant's office on a weekly basis to be checked and counted. The Appellant then paid the driver an amount based on their performance that week. Over the years, the system evolved and during the years under appeal the Appellant set a weekly rate which it collected from drivers, which it submitted was equivalent to the Appellant's estimated gross profit margin on the takings.

13. The Appellant's call centre operates on 24/7 basis. The Appellant's office use a taxi dispatch system called [redacted]' to assign and allocate work.

14. The Appellant has about 40 account holders to whom credit is given by the Appellant. The Appellant submitted that these account customers make up about

20% of the jobs dispatched by the Appellant's office. The non-account customers pay by cash or by credit or debit card directly to the drivers.

15. Customers of the Appellant request a taxi or hackney service by ringing the office to make a booking or by using a mobile app. Account customers of the Appellant are afforded credit and are charged a pre-negotiated fare rate. There are discounts on the taximeter fare or fixed fares for specific journeys for certain customers

16. The Appellant's turnover during the relevant periods was based on:-

(a) Radio Rental

The majority of drivers have their own vehicle and they pay €140.00 weekly to the Appellant. There are no written agreements in place governing these payments. This income is referred to as "*Rent for Radio*" or "*Radio Rent*" in the Appellant's Cash Book and on receipts given to these drivers. Similarly, I was furnished with a Profit & Loss account for one of the said drivers which itemised the charge as "*radio rental*"; likewise, an analysis of fees for another driver referred to the payment as "*radio control fees*". All of these drivers pay the same amount weekly regardless of their level of activity. The Appellant submitted that all of these drivers were self-employed, had their own insurance and covered their own fuel costs.

(b) Vehicle Hire

For €350 per week, drivers could hire a vehicle from the Appellant. This charge also covered insurance, maintenance and repairs. No written agreements were in place governing the vehicle hire arrangements and all the drivers paid the same amount weekly, irrespective of their level of activity.

(c) Corporate Clients

The Appellant has a number of corporate clients who have an account with the Appellant. These clients pay the Appellant directly for the services rendered by the Appellant's drivers.

17. It was common case between the parties that the legislation centrally relevant to this appeal was Schedule 1 of VATCA 2010, which details activities exempt from VAT, and in particular paragraph 14(3) thereof, which provides that amongst the activities exempt from VAT is "*Transporting passengers and their accompanying baggage.*"

18. The Appellant pointed out that an identically worded exemption was contained in paragraph (xiv) of Schedule 1 to the Value Add Tax Act 1972. Until 2010, paragraph (ix) (but originally paragraph (xii)) of the First Schedule to that Act also exempted "*agency services in regard to – (a) the arrangement of passenger transport or accommodation for persons…*"

19. The Appellant submitted that, because taxi services provide "*transport in the State of passengers and their accompanying baggage*", taxi charges to customers are exempt from VAT. It further submitted that the previous exemption for agency services meant that the Respondent had not sought to recover VAT from taxi companies on payments made by drivers to such companies from 1972 to 2010.

20. The Appellant submitted that it was the principal in the supply of the service to a customer leading to a taxi journey. The evidence given before me was that the contract was between the Appellant and the customer. If the customer had a complaint, it was made to the Appellant and dealt with by the Appellant. Mr [redacted] gave evidence in this regard that the Appellant would, for example, have to pay for the cleaning of clothes that had been soiled in a taxi, would reimburse customers for

the cost of alternative transport if a taxi failed to show up when agreed, and would reimburse customers if there had been an overcharge. All drivers displayed the Appellant's sign, irrespective of whether they were self-employed or salaried drivers. The Appellant assumed full responsibility for all services provided. Customers were issued receipts with the Appellant's details thereon. Drivers had no control over the fares they charged. The risks and rewards remained with the Applicant. However, if a driver picked up a customer off the street or from a taxi rank, that fare was not part of the arrangement with the Appellant.

21. The Appellant submitted that it obtained a gross margin on the sale price to the customer less the cost of having the job undertaken by its sub-contractor, the driver. It submitted that the gross margin was often expressed by taxi companies such as the Appellant as a fixed weekly amount payable by the driver, and the evidence given by the expert consultant on behalf of the Appellant supported this.

22. The Appellant further submitted that as a business operating a VAT-exempt service, it was unable to recover the VAT payable on its purchases of goods or services.

23. The Appellant also referred me to a ruling which issued from the Respondent's VAT Interpretation Branch in October 2012 in relation to another taxi operator, '[redacted]", which stated as follows:-

> '[redacted] *are providing passenger transport as a principal. The fee, termed an affiliation fee, which is paid by a taxi driver to* [redacted] *is not consideration for the supply of any service but represents in effect the margin achieved by* [redacted] *in supplying taxi services. As such, no VAT implications arise concerning this fee".*

24. The Appellant submitted that it operates in accordance with accepted industry practice and was being unfairly targeted by the Respondent. It submitted that the Respondent was seeking to adopt a new interpretation of the legislation which was not being applied to competitors in the sector. It submitted that the ruling in the [redacted] case was clear evidence that the Respondent acknowledged that businesses such as that carried on by the Appellant were providing VAT-exempt services.

25. The Appellant further submitted that all taxpayers must be given fair and equal treatment by the Respondent. It was a matter of established practice that where the Respondent sought to fundamentally change its interpretation of legislation, it would allow the affected business sector sufficient time to change their structures accordingly and the new interpretation would only be applied to future periods in cases where taxpayers were otherwise tax compliant - the Appellant submitted that it was so compliant.

26. The Appellant further submitted that even if it was not successful on the main ground of appeal detailed above, the VAT assessments were incorrect in their quantum as the Respondent had based the claimed VAT liability on total turnover of the Appellant, without making allowance for income from drivers employed directly by the Appellant, income derived from account customers and input credit to the Appellant.

27. The Appellant submitted, prior to, at and subsequent to the hearing before me, extensive documentation in support of the foregoing submissions and evidence, including but not limited to insurance details, accounts of the Appellant and certain drivers, receipts, price lists, job dockets and details of complaints and the response thereto. I do not believe it necessary to recite the detail of these documents on an

item by item basis but I have had full and careful regard to same in conducting my analysis of this appeal and reaching the conclusions set forth below.

28. In summary, the Appellant submitted that it was at all material times acting in a principal capacity. It was not providing a taxable supply of services and therefore did not have a VAT liability. The Appellant contracted directly with customers for the supply of taxi and hackney services and those supplies are exempt from VAT. Even if the Appellant was unsuccessful in this argument, it submitted that the quantum of the assessments was incorrect as detailed in paragraph 26 *supra*.

*E. **Submissions of the Respondent***

29. The Respondent submitted that the Appellant was not acting as a principal but was instead acting as an agent in the supply of taxi and hackney services, that the Appellant was therefore providing a taxable supply of services and was consequently liable for VAT at the standard rate.

30. The Respondent submitted that the Appellant operated as an agent in the supply of taxi services and provided taxi booking facilities to drivers in exchange for a weekly fee paid by the driver. It submitted that the [redacted] ruling was distinguishable on the facts, because that company charged its drivers a fixed weekly fee plus a percentage of the account work.

31. The Respondent submitted that, based on the facts of the case, the Appellant was not acting in a principal capacity in relation to the income it received from radio rental

and vehicle hire. Therefore, this element of the Appellant's business was subject to VAT at the standard rate pursuant to section 46(1)(a) of VATCA 2010.

32. The Respondent accepted that the Appellant acted as principal in relation to the services provided to its corporate clients, and therefore accepted that this element of the Appellant's business was exempt from VAT. The Respondent did not, however, accept the Appellant's estimation of the quantum of income derived from this aspect of the Appellant's business.

33. The Respondent further accepted that income from drivers employed directly by the Appellant was exempt from VAT.

34. The Respondent further accepted that the Appellant was entitled to a credit in respect of an apportioned amount of the VAT it incurred on valid VAT invoices.

35. In summary, the Respondent's position at the hearing before me was as follows:-

(i) the Appellant's income from radio rental was subject to VAT at the standard VAT rate;

(ii) the Appellant's income from vehicle hire was subject to VAT at the standard rate;

(iii) any element of the vehicle hire income that refers to insurance was exempt;

(iv) corporate client work was exempt from VAT;

(v) any element of turnover that referred to transport provided by employees of the Appellant was exempt from VAT; and,

(vi) a portion of input credits should be allowed with a valid VAT invoice.

36. The Respondent therefore submitted that:-

(a) the Appeal should be refused in relation to points **(i)** and **(ii)** above, *i.e.* in relation to radio rental and vehicle hire;

(b) the assessments should be reduced by the exempt elements in points **(iii)**, **(iv)** and **(v)**, once the relevant information was provided by the Appellant; and,

(c) the assessments should also be reduced by a portion of the VAT incurred on production of valid VAT invoices in relation to point **(vi)** above.

F. Analysis and Findings

37. The Appellant disputes that it is providing VATable services and disputes that it is an accountable person for VAT purposes pursuant to VATCA 2010.

38. VATCA 2010 provides that a charge to VAT will arise in the supply for consideration of services by a taxable person acting in that capacity when the place of supply is the State (pursuant to section 3). A person who supplies taxable goods or services within the State for the purposes of that Act (pursuant to section 5).

39. It is trite law that the onus is on the Appellant to establish and prove its case in these regards. Thus, in ***Menolly Homes -v- Appeal Commissioners*** **[2010] IEHC 49** Charlton J stated:-

> *"Under the Value Added Tax, Act, 1972 the burden of proof that the amount due is excessive rests on the taxpayer. This reversal of the burden of proof onto the taxpayer is common to all forms of taxation appeals in Ireland. Powers are given to the inspector to be present, to produce evidence and to give reasons in support of the assessment. The Appeal Commissioners, if the taxpayer proves over-charging, must abate or reduce the assessment accordingly but otherwise an order must be made*

that the assessment shall stand. The Appeal Commissioners are also given the power to charge the taxpayer to tax in an amount exceeding that contained in the assessment. So their powers indicate that the amount due may go up or down or remain the same."

and later in the judgment:-

"The burden of proof in this appeal process is as in all taxation appeals is on the tax payer. 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 absence of mutuality in this form of appeal procedure is illustrated by the decision of Gilligan J, in TJ V Criminal Assets Bureau {2008] IEHC 168."

40. The Appellant urged me to accept that the ruling given by the Respondent's VAT Interpretation Branch in the [redacted] case was essentially determinative of the primary point in this appeal. I cannot accept this submission. The Respondent submitted that there was a clear factual distinction between the Appellant's case and that which pertained in the case of [redacted]. The evidence before me was not sufficient to enable me to reach a safe conclusion on this point. While the expert who gave evidence on behalf of the Appellant had a professional involvement in, and was very familiar with the details of, the [redacted] ruling, and testified that the Appellant was operating in a similar fashion, his evidence was seriously challenged by the Respondent in cross-examination. I accept that, at a minimum, there may be grounds for distinguishing the [redacted] ruling on its facts and therefore I do not accept that the ruling can, of itself, entitle the Appellant to succeed in this appeal. I do, however, accept that the ruling is supportive of the Appellant's argument that the payment of an affiliation fee by a driver to a taxi company might not, in the appropriate circumstances, constitute consideration for the supply of a service.

41. Having heard all the evidence adduced at hearing and carefully considered the documentation submitted and the submissions made for and on behalf of the parties herein I am satisfied that, and find as material facts, the following:

(a) the contracts for taxi and hackney services arranged through the Appellant were made between the Appellant and the customer;

(b) if a driver picked up a customer off the street or from a taxi rank, that fare did not form part of the driver's arrangement with the Appellant;

(c) if the customer had a complaint, it was made to the Appellant and it was resolved by the Appellant;

(d) the Appellant assumed full responsibility to customers for all services provided;

(e) the risks and rewards of the contracts remained with the Appellant;

(f) drivers had no control over the fares they charge – these were set by the Appellant;

(g) customers were issued receipts with the Appellant's details thereon;

(h) all drivers displayed the Appellant's sign and branding, irrespective of whether they were self-employed or salaried drivers;

(i) the Appellant supervised and oversaw the cleanliness and condition of the vehicles used by drivers; and,

(j) the Appellant was responsible for and dealt with complaints made to the Commission for Taxi Regulation.

42. I note and understand the points made by the Respondent in relation to the weekly amounts being paid to the Appellant being fixed amounts, and not calculated in whole or in part by reference to the work carried out at the Appellant's direction, and being described as "*radio rent*" or "*radio control fees*". However, I am satisfied on the evidence before me and find as material facts that the fixed weekly payments arose as a matter of practical and administrative convenience and represented an estimate of the Appellant's gross margin on the sale price to the customer; they were not

simply payments made by the drivers in exchange for services provided to them by the Appellant. I also accept as correct the Appellant's submission that the descriptions of the payments were a misnomer and did not accurately characterise the nature of the payments.

43. Having regard to the foregoing findings of fact, I am satisfied and find that the Appellant was at all material times the principal supplying transport services to its taxi and hackney customers, and the drivers who carried out those services (whether self-employed or employed) were sub-contractors operating on behalf of the Appellant.

G. Determination

44. For the reasons outlined above, I find that the Appellant was not acting as an agent in the supply of taxi and hackney services and was not providing a taxable supply of services liable to VAT at the standard rate. The Appellant was instead providing taxi and hackney services as a principal, and those services are exempt from VAT pursuant to paragraph 14(3) of the First Schedule to VATCA 2010.

45. The Appellant is therefore entitled to succeed in this appeal. I find that the Appellant has been overcharged to VAT by reason of the assessments dated the 4th of February 2015 and therefore determine pursuant to section 949AK(1)(a) of the Taxes Consolidation Act 1997 as amended that those assessments be reduced accordingly.

Dated the 2nd of July 2021

MARK O'MAHONY
APPEAL COMMISSIONER