33TACD2022

Between/

[redacted]

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

1. Outline of the issues

1. This appeal comes before the Tax Appeals Commission by way of an appeal against a Notice of Assessment to VAT issued by the Respondent to the Appellant on 7 September 2016. The Assessment assessed the Appellant's liability in the total sum of €47,109 in respect of the years 2012 to 2016 inclusive, made up as follows:-

1/1/2012 to 31/12/2012	€ 6,156.27
1/1/2013 to 31/12/2013	€11,944.40
1/1/2014 to 31/12/2014	€12,432.29
1/1/2015 to 31/12/2015	€12,432.29

1/1/2016 to 30/06/2016 € 4,144.10

2. The Appellant by his agent appealed against the said Notice of Assessment by Notice of Appeal dated 7 October 2016.

2. Factual Background

3. The Appellant originally registered for VAT during the 1998 tax year in connection with property transactions. In or about 20[redacted], he began providing certain medical services to clients.

4. In January 2007, the Respondent commenced a tax audit of the Appellant's VAT and income tax liabilities for the 2005 tax year. In March 2014, the Appellant made an offer to settle his VAT affairs for the tax years 2004 to 2007 inclusive in the amount of €31,113 excluding interest and penalties. Each of the tax returns for 2004 to 2007 described the business activity of the Appellant as "*Acupuncturist*". The financial accounts for the year ended 31 December 2007 submitted to the Respondent by the Appellant's then agent noted that:-

> *"Turnover comprises the amount net of VAT in respect of the provision of acupuncture services and health coaching."*

5. The tax return submitted by the Appellant for 2014 described the Appellant's business activity as "*Acupuncture/Chiropractor*" for the first time. The Appellant had not, as of the hearing of this appeal, submitted income tax returns for the years 2015 and 2016.

6. The position taken by the Appellant was that he was primarily a practitioner of Traditional Chinese Medicine. This was a group term for a broad spectrum of treatment methodologies, which were sometimes grouped together and described as the "*four branches*" of Traditional Chinese Medicine. The Appellant stated that he was one of the very few practitioners in Ireland who had trained in and was qualified in all four branches of Traditional Chinese Medicine.

7. The four branches of Traditional Chinese Medicine practised by the Appellant were:-

(a) Acupuncture and Moxibustion;

(b) Herbal Medicine and Nutrition;

(c) Medical Qigong and Shengong; and,

(d) Tui Na Massage and Chiropractic.

8. Following a meeting with the Respondent, the Appellant carried out a review of his treatment records in respect of 2014, which he said was a typical and representative year. He said that his treatment approaches could be categorised under five headings:-

(a) psychology only;

(b) chiropractic only;

(c) acupuncture only;

(d) composite including acupuncture; and,

(e) composite including only VAT exempt services.

9. The Appellant's view was that the psychology and chiropractic services he provided were clearly VAT exempt, and he had also asserted in correspondence that acupuncture services ought also to be exempted. His review indicated that where a composite service including acupuncture was provided, the acupuncture element would constitute some 2 to 3 minutes out of an overall treatment period of 30 to 40

minutes spent in his clinic. During that overall time, he would spend most of his time dealing with the psychological part of the overall healing process. He stated that the acupuncture element of the treatment period was at the very most 15% of the time that he spent with a patient. The vast majority of his time with patients was devoted to VAT exempt services, particularly psychology, which was the most time consuming.

10. Based on the foregoing, the Appellant's agent calculated that out of the Appellant's turnover of €104,523 during 2014;-

(a) 37.71% or €39,419 related to psychology only, chiropractic only or a combination of the two;

(b) 8.36% or €8,717 related to acupuncture only; and,

(c) 53.93% or €56,367 related to patients who were provided with a combination of acupuncture and other treatments.

11. The Appellant's agent said that this analysis indicated that the portion of the Appellant's turnover attributable to acupuncture, which was a VAT-able activity according to the Respondent, amounted at most to €17,172, which was significantly below the VAT registration threshold. This apportionment was made without prejudice to the Appellant's argument that the acupuncture treatment he provided was supplied as part of a composite supply of services, where the principal supply was of an exempt medical service.

12. The Appellant was of the view that most, if not all, of the services he provided were exempt medical services for VAT purposes and that he was therefore not liable to VAT. He therefore appealed the Notice of Assessment to VAT issued by the Respondent on 7 September 2016.

3. ***Grounds of Appeal***

13. The grounds of appeal contained in the Notice of Appeal submitted to the Tax Appeals Commission on 7 October 2016 were as follows:-

(a) The Appellant is a designated professional for the purposes of section 4(1) of the Health and Social Care Professionals Act 2005 and his activities were exempt from VAT under the Value Added Tax Consolidation Act 2010 (hereinafter referred to as "**VATCA 2010**"), Schedule 1 Part 1 Paragraph 2 and Article 132(1) of EU Council Directive 2006/112/EC;

(b) Even if some of the Appellant's activities were subject to VAT, not all of them were subject to VAT;

(c) Given the small scale of the Appellant's activities and that some or all of them are exempt, the Appellant was not an Accountable Person within the meaning of section 6(1)(d) of VATCA 2010 as his turnover from taxable activities was below the services threshold of €37,500 as set out in section 2 of VATCA 2010;

(d) The amount of VAT assessed for the period from 1 January 2015 to 31 December 2015 was identical to the amount assessed for the prior period and was therefore estimated and excessive;

(e) To the extent that the Appellant partly supplied taxable services, they were supplied as part of a composite supply within the meaning of section 2 of VATCA 2010 and the principal supply within the meaning of that section was an exempt medical service within the meaning of Schedule 1 Part 1 Paragraph 2(3) of the Act; and,

(f) The amounts assessed for 2012, 2013 and 2014 had been based on the income tax return submitted for those years and had computed VAT and turnover without any deduction for VAT incurred, contrary to sections 59 and 61 of VATCA 2010.

4. ***Relevant Legislation***

14. Section 2 of VATCA 2010 provides that the "*services threshold*" for the purposes of that Act is €37,500 and section 6(1) states *inter alia* that:-

> *Subject to subsections (2) and (3) and sections 9, 10, 12, 14(1) and 17(1), and notwithstanding section 5(1), the following persons shall not, unless they otherwise elect and then only during the period for which such election has effect, be accountable persons:*
>
> *…*
>
> *(d) A person (other than a person to whom paragraph (a), (b) or (c) applies) for whose supply of taxable goods and services the total consideration has not exceeded, and is not likely to exceed, the services threshold in any continuous period of 12 months.*

15. Section 47(1) of VATCA 2010 provides that:-

> *Subject to section 41 –*
>
> *(a) in the case of a composite supply, the tax chargeable on the total consideration which the accountable person is entitled to receive for that composite supply shall be at the rate specified in section 46(1) which is appropriate to the principal supply, but if that principal supply is an exempted activity, tax shall not be chargeable in respect of that composite supply.*

16. Part 1 of Schedule 1 of VATCA 2010 sets out the exemptions for certain activities in the public interest in accordance with Chapter 2 of Title IX of the VAT Directive. Paragraph 2 thereof includes the following medical and related services:-

(1) Hospital and medical care or treatment provided by a hospital, nursing home, clinic or similar establishment.

(2) Services closely related to medical care covered by section 61 or 61A of the Health Act 1970 which are undertaken by or on behalf of the Health Service Executive or by homecare providers duly recognised by that Executive under section 61A of that Act.

(3) Professional medical care services recognised as such by the Department of Health and Children (other than dental or optical services), but only if those services are not supplied in the course of carrying on a business that wholly or partly consists of selling goods.

…

(7) Other professional medical care services that, on 1 January 2010, were recognised by the Revenue Commissioners as exempt activities.

17. Schedule 3 of VATCA 2010 provides for goods and services chargeable at the reduced rate of VAT and includes under the miscellaneous services detailed in paragraph 21(1):-

Services consisting of the care of the human body, including services supplied in the course of a health studio business or similar business, but not including exempted activities referred to in Part 1 of Schedule 1 or hairdressing services referred to in paragraph 13(3).

18. Chapter 2 of Title IX of Council Directive 2006/112/EC provides for exemptions from VAT for certain activities in the public interest and provides in Article 132(1)(c) that:-

Member States shall exempt the following transactions:

…

(a) the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned;

19. The Health and Social Care Professionals Act 2005 was enacted to establish the Health and Social Care Professionals Council as well as Registration Boards for certain designated health and social care professions. This Act provided in section 3 that a "*designated profession*" was a health or social care profession that was designated in section 4(1) or designated by regulation under section 4(2).

20. The relevant subsections of section 4 provided as follows:-

(1) For the purposes of this Act, the following health or social care professions are designated:

(a) clinical biochemist;

(b) dietitian;

(c) medical scientist;

(d) occupational therapist;

(e) orthopaedist;

(f) physiotherapist;

(g) podiatrist;

(h) psychologist;

(i) radiographer;

(j) social care worker;

(k) social worker;

(l) speech and language therapist.

(2) After consulting the Council, the Minister may, by regulation, designate for the purposes of this Act any health and social care profession not already designated under subsection (1), but only if-

(a) the fitness of the members to practice their profession is not regulated by or under another Act of the Oireachtas,

(b) the Minister has given interested persons, organisations and other bodies an opportunity to make representations to him or her concerning the proposed designation,

(c) the Minister considers that it is appropriate and in the public interest that the profession be designated under this Act, and

(d) the steps in subsection (8) have been taken.

(3) A health or social care profession is any profession in which a person exercises skill or judgement relating to any of the following health or social care activities:

(a) the preservation or improvement of the health and well-being of others;

(b) the diagnosis, treatment or care of those who are injured, sick, disabled or infirm;

(c) the resolution, through guidance, counselling or otherwise, of personal, social or psychological problems;

(d) the care of those in need of protection, guidance or support.

21. Section 79(1) of the Act provides that:-

A registrant of a profession designated in section 4 (1) is entitled to use the title specified in the applicable paragraph of that section for that profession.

22. Part 9 of the Act deals with transitional provisions and section 91 therein provides as follows in subsection (1):-

[T]*he registration Board of a designated profession listed in the second column of Schedule 3 shall grant registration to a person who, at any time during the period of five years ending on the relevant date, was engaged in the practice of that profession and who-*

(a) applies during the transitional period to that board for registration,

(b) complies with section 37 (2) and with any requirement imposed on, or request made to, him or her under section 37 (3) is applied by the section,

(c) either-

(i) holds-

(I) a qualification listed opposite that profession in the third column of that Schedule or a corresponding qualification, or

(II) a qualification that, in the opinion of the Board, is sufficiently relevant to that profession and is of a standard not lower than a qualification listed opposite the profession in the third column of that Schedule,

or

(ii) successfully completes an assessment of professional competence set by the board in accordance with any guidelines issued by the Council,

(d) satisfies the board that he or she is fit and proper person to engage in the practice of that profession, and

(e) pays the required fee to the Council.

23. Section 90 defines "*corresponding qualification*" as:-

a qualification that has been awarded in another member state and that, before or after the passing of this Act, has been recognised by or on behalf of the State pursuant to directive or other relevant measure as corresponding to-

(a) in the case of a designated profession listed in the second column of Schedule 3, a qualification listed opposite that profession the third column of that Schedule, and

(b) in the case of any other designated profession, a qualification standing at the time of application for registration prescribed under section 95 for that profession.

24. Schedule 3 includes psychologists as one of the professions listed in the second column and the qualification listed opposite that profession in the third column is stated to be:-

> *A recognised University degree or diploma obtained with first or second class honours in which psychology was taken as a major subject and honours obtained in that subject.*

5. Evidence of the Appellant

25. The Appellant gave evidence on oath at the hearing of the appeal before me. I found his evidence to be truthful and generally accurate.

26. The Appellant testified that there was really no such thing as a typical consultation with a patient. He said that his approach to treating his patients was a combination approach and that he had no predetermined method or system. Every patient was considered and treated individually. He considered a patient's well-being from a combination mind/physical body/exercise/misalignment perspective.

27. He confirmed that he was a practitioner of Traditional Chinese Medicine. He said that the Revenue viewed this as treatment with herbs, etc., but he said that this was incorrect. Instead, Traditional Chinese Medicine included treatment with acupuncture, herbal remedies, Qigong, Shengong (psychology) and chiropractic work.

28. He said that he was initially described as an acupuncturist by his then accountant and said that this was at best an incomplete description; very often there was no

acupuncture involved in his treatment of a patient. He accepted in cross-examination that acupuncture was a significant part of his activity.

29. He said that he had met with Revenue in 2014 and then carried out an analysis of his clients to give an indicative split of the type of treatments he was providing. He confirmed the breakdown and analysis of patients and treatments detailed in paragraphs 8 to 10 inclusive above. He was firmly of the view that all of the treatments he provided were purely health-related. He clarified that he could frequently have 2 to 3 patients being treated at the same time in his clinic.

30. He said the Revenue began their investigation of his business affairs in 2007. He said his then accountant had indicated that VAT was due to Revenue. The Appellant took me through correspondence he had exchanged with the Respondent in subsequent years, in which he had consistently maintained that the services he provided were exempt from VAT.

31. In relation to acupuncture, the Appellant testified that needles could be inserted reasonably quickly but could then stay in for 20 to 30 minutes. He gave evidence that many physiotherapists used acupuncture ("*dry needling*") as part of their treatments.

32. In relation to the fact that he was described as an acupuncturist in his tax returns, the Appellant said that this was merely a professional title and not his business activity, or not exclusively his business activity.

33. Dealing with his training and qualifications, the Appellant said that he had studied [redacted] in [redacted] from [redacted] to [redacted].

34. He also studied acupuncture with the [redacted] and had received a Diploma in Acupuncture. This was at the end of a three-year course, was an Irish qualification and he submitted that it was the only relevant Irish qualification. He received his Diploma in about 20[redacted].

35. He also studied thought-field therapy in Ireland. He said that this was a short course and he was granted a Certificate at the conclusion.

36. In Europe, he had studied Neurolinguistic Programming with one [redacted]. He said that this was a psychological methodology; he had studied it for two years in [redacted] but not in an academic institution. He received a Certificate as a qualified Neurolinguistic Practitioner and said that he had studied this at around the same time as he was studying acupuncture.

37. He also studied outside Europe. After training in Traditional Chinese Medicine with the [redacted] for approximately two years, he went to China where he worked in hospitals for approximately two months at a time. He explained that you needed to study Traditional Chinese Medicine in order to qualify as an acupuncturist. At the same time as he was studying with the [redacted] he also studied medical Qigong and Shengong in [redacted], [redacted]. He said that he had spent about five weeks over a two-year period in [redacted] and said that this qualified him as a Master of Medical Qigong/Shengong and that he received a Practitioner Certificate.

38. He then studied Qigong in China as a postgraduate and said that this was the most significant part of his training. He had studied at the [redacted] Hospital in [redacted]. He had qualified in America before going to China. He also studied at the [redacted] University in China.

39. He said that he had started his business in Ireland in or around 20[redacted]. He was a [redacted] and he accepted that acupuncture was a significant element of his work. He lived [redacted] and had three treatment rooms. He had two plates outside his premises, one of which described him as "Consultant in Traditional Chinese Medicine" and the other said "Acupuncture".

40. The Appellant testified that he had written two books, [redacted] and [redacted]. The former was handed in and was reviewed by me subsequent to the appeal hearing. The Appellant said that his business took off after he wrote his [redacted] book in 20[redacted]. He pointed out that the [redacted] book does not mention acupuncture.

41. The Appellant further gave evidence that he had set up a website ([redacted]) and brochures for his services were available outside the clinic.

42. He further gave evidence that many of his patients were referred to him by doctors. The Appellant said that he had worked with SIMS, supporting the fertility work that they were doing.

43. In terms of the records he maintained, he said that he had an intake form and a file for every client. The file recorded the initial consultation and the treatment plan. He made appointments from the file and kept records of every visit.

44. In terms of receipts for payments, he said that he was one of the few practitioners with a credit card machine. 90% of his patients paid him by card. He said that his patients were usually covered by the VHI or another private insurer.

45. In relation to medical insurance, he said that he was registered with Traditional Chinese Medicine of Ireland and therefore the VHI covered his acupuncture and chiropractic work. However, this obviously depended on the patient's scheme.

46. He said that chiropractic work is part of Traditional Chinese Medicine. He said that he has a Certificate in Qigong and chiropractic work was part of Qigong.

47. The Appellant accepted that he was not recognised by the Chiropractors Association of Ireland. He said that approximately 20% of chiropractors in this country were not registered with the CAI. He said that his view was that the Traditional Chinese Medicine Council of Ireland was a more prestigious body. He gave evidence that he put his membership of the Traditional Chinese Medical Council of Ireland on receipts. He said his receipts also identified the service provided, such as "acupuncture".

48. He said that the psychology of health recovery was a major part of his treatment approach and methodology. He said this doesn't have a professional qualification. He said that while he could occasionally have an idea before first seeing a patient what their complaint was, generally almost all of the initial consultation was spent learning about a patient's condition. He submitted that even diagnosis constitutes medical treatment.

6. <u>Submissions of the Appellant</u>

49. It was submitted on behalf of the Appellant that the Respondent in this appeal was "*putting all their eggs in one basket*" and that they were in essence saying that most of the services provided by the Appellant comprised in large part of acupuncture and

were therefore liable to VAT. The agent submitted that the description of the Appellant as an acupuncturist in earlier tax returns and financial records was not definitive and was simply a convenient description which had been allowed to continue from year to year. He further submitted that this was not an "all or nothing" appeal; even if the Appellant had provided some services which were liable to VAT, the value of those services was below the registration limit.

50. The Appellant's agent submitted that the relevant legislative provisions were Article 132(1)(c) of Council Directive 2006/112/EC and Schedule 1, Paragraphs 2(3) and 2(7) of VATCA 2010.

51. He referred me to the Respondent's 2011 Leaflet on VAT and Medical Services which referred to the foregoing provisions and noted that it stated that:-

> *"Professional medical care services recognised by the Department of Health and Children, and which qualify for VAT exemption, are generally taken as referring to those medical care services supplied by health professionals who are enrolled, registered, regulated, or designated on the appropriate statutory register provided for under the relevant legislation in force in the state or equivalent legislation applicable in other countries. The exemption also applies to a number of other professional medical care services that, on 1 January 2010, were recognised by the Revenue Commissioners as carrying on exempt activities."*

52. The Appellant's agent pointed out that the Leaflet stated that certain services supplied by persons designated under the Health and Social Care Professionals Act 2005 also qualified for exemption, and the list of these contained in Appendix A included psychologists. The agent further pointed out that the Leaflet also stated that services provided by chiropractors were recognised as exempt by the Respondent on 1 January 2010.

53. The Leaflet further stated the following in relation to composite supplies:-

"If the registered medical practitioner supplies a service that is not recognised under the Health and Social Care Professionals Act, such as homeopathy or acupuncture, then that supply will, when supplied separately or when supplied in conjunction with the supply of goods, not qualify for exemption but will be treated as taxable.

However in certain circumstances the whole supply, consisting of the exempt medical service and the taxable service, may qualify for exemption if it can be shown that a composite supply, of which the exempt medical service is the principal supply, is involved.

A composite supply is defined in the VAT Act as a supply made by taxable person to a customer comprising two or more supplies of goods or services or any combination of these supplied in conjunction with each other one of which is a principal supply.

In the case of a composite supply the tax chargeable on the total consideration which the person is entitled to receive for that composite supply shall be at the rate appropriate to the principal supply but if the principal supply is exempt then tax shall not be chargeable on that composite supply.

If a qualifying medical professional makes a composite supply for a single consideration of exempt services and taxable services and the exempt services are regarded as the principal supply then the entire supply is treated as exempt. An example would be a doctor provides qualifying professional exempt medical services and as part of that service also supplies a taxable homeopathic service.

If it can be shown that the homeopathic services supplied is part of a composite supply of exempt and taxable services and the exempt service is the principal supply then the entire supply can be treated as exempt."

54. The Appellant's agent submitted that the Respondent had accepted that the Appellant provided both psychologist services and chiropractor services, but did not accept that he was entitled to a VAT exemption in respect of his income from those activities. The representatives of the Respondent took strong exception to this submission and said that no such concession had been made by the Respondent.

55. The Appellant's agent was also critical of the Respondent for not having sought advice from the Respondent's Technical Division on the application of VAT to the services provided by the Appellant, notwithstanding their having indicated in correspondence an intention of so doing.

56. The Appellant's agent said that it appeared that the application of VAT to psychologist services and chiropractor services primarily hinged on whether a person was regarded as a psychologist and/or a chiropractor.

57. In relation to psychologist, the Appellant's agent submitted that psychologists were designated under section 4(1) of the Health and Social Care Professionals Act 2005. He submitted, however, that while other branches of the medical profession had clear requirements for qualification and admission, psychologists did not. He submitted that Schedule 3 of the 2005 Act, which governed the qualifications required by existing practitioners, set out details of the qualifications required for various medical practitioners and stated that it did not reference psychologists. However, I note in this regard that paragraph 8 of Schedule 3 does in fact reference psychologists and provides that the necessary qualification is "[a] *recognised University degree or*

diploma obtained with first or second class honours in which psychology was taken as a major subject and honours obtained in that subject."

58. The Appellant's agent stated that 12 professions were to be regulated under section 4(1) of the 2005 Act and a further three were added by section 6 of the Health (Miscellaneous Provisions) Act 2014. He submitted that the Department of Health had written to the Health and Social Care Professionals Council in May 2016 indicating that the Department would also designate the professions of counsellor and psychotherapist under the Act.

59. The Appellant's agent further submitted that the Department had stated that the Health and Social Care Professionals Council was established to provide statutory registration of many categories of health and social care professions. It was anticipated that registration for such professionals would become a requirement over the following years but at the time of the hearing a registration Board for psychologists had not been established and it was therefore simply not possible for the Appellant to be registered. He referred me in this regard to a newspaper article from May 2017 which stated that a Psychologists Registration Board was expected to be established in the coming weeks and it would then prepare the necessary by-laws to enable it to establish a register, which process was likely to take some 12 to 18 months. The article further noted that the Psychological Society of Ireland provided a register of its members, all of whom had attained a certain level of qualification. However, membership of the PSI was not compulsory for a practising psychologist and the body was self-regulating.

60. The Appellant's agent submitted that the title "psychologist" was not protected by law. There were many classifications of psychologist that provided medical services and the Respondent did not appear to specify a particular classification. He submitted

that the form of psychology which the Appellant had trained and qualified in had its origins in Traditional Chinese Medicine, and therefore the logical forum for his current registration was the Traditional Chinese Medicine Council of Ireland, of which the Appellant was a current member and [redacted]. The Appellant's agent submitted that when a registration Board for psychologists, counsellors and/or psychotherapists was established, it was intended that the Traditional Chinese Medicine Council of Ireland would seek to be part of that process and the Appellant intended to be involved in those discussions.

61. In relation to the chiropractic services provided by the Appellant, his agent noted that there was no statutory regulation of chiropractors in Ireland. He submitted that this clearly meant that chiropractors were not regulated by any independent Government approved agency. He further submitted that the Chiropractors Association of Ireland self-regulated its own members but had never been recognised by the Department of Health as the statutory body for registration and/or regulation of the industry.

62. The Appellant's agent further submitted that the title "chiropractor" was also not protected by law in Ireland. He submitted that many chiropractors who were not members of the Chiropractic Association of Ireland currently provided chiropractic services in the state which were delivered as VAT exempt.

63. The Appellant's agent referred me to the website of the Chiropractic Association of Ireland and said it was clear therefrom that the Association recognised only graduates from European Council of Chiropractic Education-approved colleges. These colleges were located only within Europe and South Africa, and so the CAI did not provide a register for those who qualified through colleges from locations in the US, Canada, Australia or China, where the chiropractic industry educational standards were some of the highest in the world. He submitted that many chiropractors in

Ireland had trained in colleges in these countries and were not registered with the CAI. However, they were not adversely affected because their services were VAT exempt.

64. The Appellant's agent further pointed out that the CAI website stated that the earliest recordings of spinal corrections were depicted in ancient Chinese medical writings dating back over 4000 years. Chiropractic was an important modality of Traditional Chinese Medicine in which the Appellant had trained, and it was therefore appropriate for him to be registered with the Traditional Chinese Medicine Council of Ireland.

65. As in the case of a register of psychologists, the Traditional Chinese Medicine Council of Ireland intended to seek to be involved in the establishment of a registration Board for chiropractors and the Appellant intended to be involved in those discussions.

66. The Appellant's agent submitted that it was unreasonable for the Respondent to require the Appellant to be a member of the CAI, an organisation that neither the Department of Health nor the Respondent recognised as the register or regulatory body for the chiropractic industry.

67. The Appellant's agent further submitted that any concessions made by or on behalf of the Appellant in relation to his liability for 2004 to 2007 had to be considered in light of the fact that the VAT legislation in force in respect of those years had been amended by section 130 of the Finance Act 2010, and different considerations and legislation applied to the years comprising the instant appeal.

68. He further submitted that the establishment in July 2017 of the Psychologist Registration Board under the 2005 Act was irrelevant as the instant appeal related to periods prior to 2017.

69. The Appellant's agent referred me to the decision of the European Court of Justice in ***d'Ambrumenil –v- Commissioners of Customs and Excise*** **Case C-307/01** and noted that the Court had held at paragraph 68 that Article 13A(1)(c) [now Article 132(1)(c)] had to be interpreted as meaning that the exemption from VAT applied to medical services "*… where those services are intended principally to protect the health of the person concerned.*" He submitted that the services provided by the Appellant clearly fell within this definition.

70. The Appellant's agent further referred me to paragraph 18 of the ECJ's decision in ***D. –v- W.*** **Case C-384/98**, and said it was authority for the proposition that if the Appellant was providing services for the purposes of *"diagnosing, treating and, insofar as possible, curing diseases or health disorders*", then he was entitled to be exempt from VAT in respect of those services.

7. <u>Submissions of the Respondent</u>

71. The Respondent submitted that the assessments for VAT under appeal were correctly made in accordance with the statutory powers contained in Part 13 of VATCA 2010, and in particular section 111.

72. The Respondent agreed with the Appellant that the legislative provisions most relevant to this appeal were Article 132(1)(c) of Council Directive 2006/112/EC and Schedule 1, Paragraphs 2(3) and 2(7) of VATCA 2010 which transposed the European provision into domestic law.

73. The Respondent submitted that there were three elements necessary for exemption from VAT under Paragraph 2(3):-

(a) there had to be a provision of medical care services;

(b) the medical care services had to be professional in nature; and,

(c) the medical care services had to be recognised - the Respondent submitted that this meant that the Department of Health had to recognise both the services provided and the profession.

74. The Respondent submitted that there was no legal definition in the legislation of "*professional*" or "*medical care*". It further submitted that it could not accept without evidence that medical services had been provided by the Appellant.

75. Turning to the question of whether the Appellant had provided services as a psychologist, the Respondent took issue with the Appellant's submission that there was no regulation of the title "psychologist" and referred me to section 79 of the Health and Social Care Professionals Act 2005. They reiterated that the health and care profession of psychologist was listed as a "designated profession" pursuant to section 4 of that Act. They further pointed out that the Minister for Health had established the Psychologist Registration Board in July 2017.

76. The Respondent further submitted that the provision of psychologist medical care services was exempt from VAT only where those services were "recognised" by the Department of Health and Children, and only if those services were not supplied during the carrying on of a business that wholly or partly consisted of selling goods. It was the Respondent's position that psychologist medical services had to be provided by a professional with "approved" or "corresponding" qualifications and/or a member of the profession's governing body, association or society, in order to grant a claim for VAT exemption.

77. The Respondent referred me in this regard to an extract from the gradireland.com website, which stated that training as a psychologist normally took three years and was full-time, inclusive of academic holidays. It consisted of an integrated programme of research, academic study and supervised clinical practice in a variety of clinical settings.

78. In relation to the chiropractic services provided by the Appellant, the Respondent submitted that the health and care profession of chiropractor was not listed as a designated profession pursuant to section 4 of the 2005 act. However, the professional medical services of a chiropractor were treated by the Respondent as an exempted activity. These exempt services had to be supplied by a professional who possessed the necessary qualifications. The Respondent submitted that the Chiropractic Association of Ireland was a voluntary self-regulating body and only graduates of the European Council on Chiropractic Education and the Council on Chiropractic Education International accredited institutions were permitted to join the Association. The Respondent submitted that it was for the Appellant to prove that he possessed the necessary qualifications for all relevant tax periods.

79. The Respondent referred me in this regard to a further extract from the gradireland.com website, which stated that there were no chiropractic courses available in the Republic of Ireland or Northern Ireland - degree courses lasting 4 to 5 years could be undertaken in England and Wales. Following a course, students had to spend one year working and training for a chiropractor. This could be done in the Republic of Ireland or Northern Ireland.

80. In relation to acupuncture services, the Respondent submitted that the medical service of acupuncture was not an exempted activity and was included in the list of

taxable activities specified in the appendix to the Respondent's Leaflet on VAT and Medical Services.

81. The Respondent further submitted that the practice of Traditional Chinese Medicine was not an exempted activity unless the service provider held a professional medical qualification to practice medicine and the professional medical care service was recognised as such by the Department of Health and Children.

82. The Respondent next referred me to the decision of the European Court of Justice in ***D. –v- W.*** **Case C-384/98** where the Court stated that:-

> *"15. First of all, it should be borne in mind that the terms used to specify the exemptions provided for by Article 13 of the Sixth Directive are to be interpreted strictly, since they constitute exceptions to the general principle that turnover tax is to be levied on all services supplied for consideration by a taxable person…*
>
> *18. Clearly, therefore, the concept of 'provision of medical care' does not lend itself to an interpretation which includes medical interventions carried out for a purpose other than that of diagnosing, treating and, insofar as possible, curing diseases or health disorders.*
>
> *19. So, services not having such a therapeutic aim must, having regard to the principle that any provision establishing an exemption from VAT is to be interpreted strictly, be excluded from the scope of Article 13A(1)(c) of the Sixth Directive and are therefore subject to VAT."*

83. The Respondent further referred me to the decision in ***Kügler*** **Case C-141/00**, where the ECJ stated as follows:-

"27. On a literal interpretation, [Article 13A(1)(c) of the Sixth Directive] *does not require medical services to be supplied by a taxable person endowed with a particular legal form in order for them to be exempt. Just two conditions need to be met: medical services must be involved and they must be supplied by persons who possess the necessary professional qualifications.*

28. That interpretation is not contradicted by the Court's case-law according to which the exemptions envisaged in Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for consideration by taxable person.

29. Exemption of medical services supplied by legal persons is consistent with the objective of reducing the cost of medical care … and with the principle of fiscal neutrality, inherent in the common system of VAT, in compliance with which the exemptions provided for in Article 13 of the Sixth Directive must be applied…

30. The principle of fiscal neutrality precludes, inter alia, economic operators carrying on the same activities from being treated differently as far as the levying of VAT is concerned. It follows that that principle would be disregarded if the possibility of relying on the exemption which is envisaged for the provision of medical care referred to in Article 13A(1)(c) were dependent on the legal form in which the taxable person carries on his activity…"

84. The Respondent further referred me to the decision of the ECJ in ***d'Ambrumenil***, cited above, where the Court stated:-

"52. According to the Court's case-law, the exemptions envisaged in Article 13 of the Sixth Directive are to be interpreted strictly since they constitute exceptions to the general principle that VAT is to be levied on all services supplied for

consideration by taxable person… Those exemptions constitute independent concepts of Community law whose purpose is to avoid divergences in the application of the VAT system from one Member State to another…

53. As the Commission has correctly observed, Article 13A(1)(c) does not exempt all the services which may be effected in the exercise of the medical and paramedical professions, but only "provision of medical care", which constitutes an independent concept of Community law. It follows that services effected in the exercise of those professions remain subject to the general rule making them subject to VAT set out in Article 2(1) of the Sixth Directive, if they do not correspond to the concept of the "the provision of medical care", or to the terms of any other exemption provided for by that directive.

54. Even if other services provided by doctors may share characteristics of activities in the public interest, it follows from the Court's case-law that Article 13A of the Sixth Directive does not exempt from VAT every activity performed in the public interest, but only those which are listed and described in great detail…

60. As the Advocate General correctly pointed out in paragraphs 66 to 68 of her Opinion, it is the purpose of the medical service which determines whether it should be exempt from VAT. Therefore, if the context in which a medical service is effected enables it to be established that its principal purpose is not the protection, including the maintenance or restoration, of health but rather the provision of advice required prior to the taking of a decision with legal consequences, the exemption under Article 13A(1)(c) does not apply to the service."

85. The Respondent further referred me to the linked decisions of the ECJ in ***Solleveld*** **Case C-443/04** and ***van den Hout – van Eijnsbergen*** **Case C-444/04**, where the Court stated as follows:-

> *"23. According to a literal interpretation of Article 13A(1)(c) of the Sixth Directive, the practitioner must satisfy two conditions to benefit from the exemption laid down in that provision, which are, first, that he must provide "medical care" and, second, that this must be carried out "in the exercise of the medical and paramedical professions as defined by the Member State concerned"…*
>
> *37. In this respect, concerning, first, the objective pursued by Article 13A(1)(c) of the Sixth Directive, it should be noted that the condition laid down by that provision, that medical care must be provided in the exercise of the paramedical professions as defined by the Member State concerned, is to ensure that the exemption applies only to medical care provided by practitioners with the required professional qualifications (*Kügler, *paragraph 27). Consequently, not all medical care falls within the scope of such an exemption, the latter concerning only that of sufficient quality having regard to the professional training of the providers…*
>
> *51. The answers to the questions referred must therefore be that:*
> *- Article 13A(1)(c) of the Sixth Directive must be interpreted as meaning that it confers on the Member States the discretion to define the paramedical professions and the medical care coming within the scope of such professions for the purpose of the exemption laid down by that provision. However, the Member States must, in the exercise of that discretion, comply with the objective pursued by the said provision, which is to ensure that the exemption applies solely to*

services provided by persons with the required professional qualifications, and the principle of fiscal neutrality."

86. Finally, the Respondent reminded me that the onus of proof in this appeal lay on the Appellant and not the Respondent, and referred me in this regard to the decisions in ***Menolly Homes –v- The Appeal Commissioners*** **[2010] IEHC 49** and ***Eagerpath –v-Edwards*** **[2000] All ER (D) 2276**.

8. Analysis and Findings

87. I believe that the appropriate manner in which to approach the issues in this determination is firstly to consider whether the Appellant is providing services which are exempt from VAT because they fall within the exempt activities detailed in Part 1 of Schedule 1 of VATCA 2010, or whether, as the Respondent contends, they are instead liable to VAT at the reduced rate under Part 4 of Schedule 3 of that Act. If I find that some or all of the services provided by the Appellant are not exempt from VAT under the domestic legislation, I will then consider whether the failure to exempt the services provided by the Appellant from VAT is contrary to the provisions of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and/or in breach of the principle of fiscal neutrality.

88. It is clear that the Appellant in this appeal asserts that he is entitled to an exemption from liability to VAT by reason of the nature of the services which he provides to his patients. I believe that the appropriate approach to take when determining whether the Appellant is entitled to the exemption claimed is that given by the Supreme Court

in ***Revenue Commissioners –v- Doorley*** **[1933] IR 750** at p765, where Kennedy CJ stated:-

> *"I have been discussing taxing legislation from the point of view of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable."*

89. I would further note that this approach is consistent with the principles applicable to the interpretation of exemptions from VAT given by the European Court of Justice in ***d'Ambrumenil*** and other cases.

90. I agree with the Respondent's submission that the onus of proof lies on the Appellant to satisfy me that he is entitled to an exemption from VAT in respect of the services he provides.

91. Furthermore, in considering the proper interpretation of the legislation relevant to this appeal, I have applied the judgment of the Supreme Court given by McKechnie J in ***Dunnes Stores -v- Revenue Commissioners*** **[2019] IESC 50**, where he stated:-

> *"As has been said time and time again, the focus of all interpretive exercises is to find out what the legislature meant: or as it is put, what is the will of Parliament. If the words used are plain and their meaning self-evident, then save for compelling reasons to be found within the instrument as a whole, the ordinary, basic and natural meaning of those words should prevail. 'The words themselves alone do in such cases best declare the intention of the lawmaker' (Craies on Statutory Interpretation, 7th ed., Sweet & Maxwell, 1971 at pg. 71). In conducting this approach '… it is natural to enquire what is the subject matter with respect to which they are used and the object in view' – Direct United States Cable Company –v- Anglo-American Telegraph Company [1877] 2 App. Cas. 394. Such will inform the meaning of the words, phrases or provisions in question – McCann Limited –v- O'Culachain (Inspector of Taxes) [1986] 1 I.R. 196, per McCarthy J at 201. Therefore, even with this approach, context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that.*
>
> *Where however the meaning is not clear, but rather is imprecise or ambiguous, further rules of construction come into play. Those rules are numerous both as to their existence, their scope and their application. It can be very difficult to try and identify a common thread which can both coherently and intelligibly explain why, in any given case, one particular rule rather than another has been applied, and why in a similar case the opposite is also occurred. Aside from this however, the aim, even when*

invoking secondary aids to interpretation, remains exactly the same as that with the more direct approach, which is, insofar as possible, to identify the will and intention of Parliament.

When recourse to the literal approach is not sufficient, it is clear that regard to a purposeful interpretation is permissible. There are many aspects to such method of construction: one of which is where two or more meanings are reasonably open, then that which best reflects the object and purpose of the enactment should prevail. It is presumed that such an interpretation is that intended by the lawmaker."

92. The foregoing passage was cited with approval by O'Donnell J giving the Supreme Court's decision in ***Bookfinders Ltd –v- Revenue Commissioners*** **[2020] IESC 60** where, having found that section 5 of the Interpretation Act should not be applied in the interpretation of taxation statutes, he went on to state in paragraph 54:-

"However, the rest of the extract from the judgement [of McKechnie J] *is clearly applicable and provides valuable guidance. It means, in my view, that it is a mistake to come to a statute - even a taxation statute - seeking ambiguity. Rather, the purpose of interpretation is to seek clarity from words which are sometimes necessarily, and sometimes avoidably, opaque. However, in either case, the function of the court is to seek to ascertain their meaning. The general principles of statutory interpretation are tools used to achieve a clear understanding of the statutory provision. It is only if, after the process has been concluded, a court is genuinely in doubt as to the imposition of a liability, that the principle against doubtful penalisation should apply and the text construed given a strict construction so as to prevent a fresh and unfair imposition of liability by the use of oblique or slack language."*

93. I believe it is clear that the services provided by the Appellant do not fall within subparagraph (1) of paragraph 2 of Schedule 1 (hospital and medical care or treatment provided by hospital, nursing home, clinic or similar establishment), nor do they fall within subparagraph (2), which covers homecare services. Accordingly, the Appellant can only succeed in an argument that he is exempt from VAT if I am satisfied on the balance of probabilities that he provides "*professional medical care services recognised as such by the Department of Health and Children*" within the meaning of subparagraph (3) and/or if I am satisfied that he provides professional medical care services that, on 1 January 2010, were recognised by the Revenue Commissioners as exempt activities, within the meaning of subparagraph 7.

94. Considering first the question of whether the services provided by the Appellant are professional medical care services, I believe it cannot be denied that the services which the Appellant provides to his patients amount to medical care within the plain and ordinary meaning of those words. On the evidence before me, I am satisfied that the services provided are for the purpose of "*diagnosing, treating and, insofar as possible, curing diseases or health disorders*", to use the formula of words adopted by the ECJ in ***D. –v- W.***, and their principal purpose is "*the protection, including the maintenance or restoration, of health*", to use the wording in ***d'Ambrumenil***. I therefore find as a material fact that the services provided by the Appellant to his patients are medical care services.

95. I must next consider whether, on the evidence before me, the medical care services provided by the Appellant constitute professional medical care services. The word "*professional*" is not defined in the VAT legislation and so I must give it its plain and ordinary meaning. In the context of medical care services, I understand it to mean services provided by somebody who has undergone specialist training or education in relation to the provision of those services. I believe this interpretation is supported

by the wording of section 4(3) of the 2005 Act, which provides *inter alia* that "*A health … profession is any profession in which a person exercises skill or judgement relating to … the preservation or improvement of the health or wellbeing of others* [and] *the diagnosis, treatment or care of those who are injured, sick, disabled or infirm…"*

96. I accept as correct the evidence of the Appellant that the services which he provided can be broken down into three main areas, namely acupuncture, chiropractic services and what the Appellant described as psychology services. I further accept the Appellant's evidence that many patients were treated with a combination of therapies from more than one of those principal areas.

97. Looking first at the acupuncture services provided by the Appellant, I note that he studied acupuncture with the [redacted] and had received a Diploma in Acupuncture in 20[redacted] following a three-year course. I am therefore satisfied as a material fact that the Appellant had received specialist education and training in relation to acupuncture and I therefore find that the acupuncture services he provided were professional medical care services within the meaning of paragraph 2 of Part 1 of Schedule 1 of VATCA 2010.

98. The next question therefore is whether those acupuncture services are "*recognised as such by the Department of Health and Children.*" As I observed in a recent Determination, I confess to finding the wording used by the legislature in this phrase to be somewhat curious. Prior to 2010, paragraph (ii) of the First Schedule to the Consolidated VAT Acts 1972-2009 exempted from VAT "*professional services of a medical nature, other than services specified in paragraph (iiib), but excluding such services supplied in the course of carrying on a business which consists in whole or in part of selling goods*." It is clear therefrom that there was then no requirement for the professional services to be recognised by the Department of Health.

99. A new Schedule 1 was inserted by section 130 of the Finance Act 2010 with effect from 3 April 2010, and this introduced for the first time the requirement for recognition by the Department of Health.

100. The Respondent effectively submits that the phrase "*recognised as such by the Department of Health and Children*" should be interpreted in the case of the Appellant as meaning "*provided by a member of a designated profession within the meaning of the Health and Social Care Professionals Act 2005."* As the Respondent's Leaflet on VAT and Medical Services puts it, professional medical care services "*are generally taken as referring to those medical care services supplied by health care professionals who are enrolled, registered, regulated or designated on the appropriate statutory register provided for under the relevant legislation in force in the state or equivalent legislation applicable in other countries."*

101. I believe this to be an overly narrow interpretation, and one that cannot be reconciled with the literal meaning of paragraph 2(2) of Part 1 of the First Schedule. I further believe that it is founded upon a misinterpretation of the 2005 Act; that Act does not "*recognise*" any professions, but rather provides for their being made "*designated professions*" for the purposes of the Act. Recognition by the Department of Health is not in my view synonymous with designation under the 2005 Act, and I believe that the Respondent has fallen into error in seeking to treat them as meaning the same for VAT purposes.

102. In this regard, I believe it is significant that at the time the legislature amended Schedule 1 and introduced a requirement that exempt professional medical care services be "*recognised as such by the Department of Health and Children*", the Health and Social Care Professionals Act 2005 had been enacted. It would have been possible

for the Oireachtas to make reference to that Act in delimiting the professional medical care services which are exempt, but it chose not to do so.

103. The legislation in this jurisdiction can be contrasted with the position in England and Wales, where Paragraph 1 of Group 7 (Health and Welfare) of Part II of Schedule 9 of the Value Added Tax Act 1994 exempted from VAT:-

> *The supply of services by a person registered or enrolled in any of the following-*
>
> *(a) the register of medical practitioners or the register of medical practitioners with limited registration;*
>
> *(b) either of the registers of ophthalmic opticians or the register of dispensing opticians kept under the Opticians Act 1989 or either of the lists kept under section 9 of that Act or bodies corporate carrying on business as ophthalmic opticians or as dispensing opticians;*
>
> *(c) the register kept under the Healthcare Professions Order 2001;*
>
> *(ca) the register of osteopaths maintained in accordance with the provisions of the Osteopaths Act 1993;*
>
> *(cb) the register of chiropractors maintained in accordance with the provisions of the Chiropractors Act 1994;*
>
> *(d) the register of qualified nurses and midwives maintained under article 5 of the Nursing and Midwifery Order 2001;*
>
> *(e) the register of dispensers of hearing aids or the register of persons employing such dispensers maintained under section 2 of the Hearing Aid Council Act 1968.*

104. It is clear from the English legislation that exemption from VAT was only available in respect of health and welfare services provided by persons registered or enrolled in the statutory registers detailed in Paragraph 1 of Group 7. An equivalent provision could have been inserted in the Irish legislation by limiting the exemption

from VAT to registered medical professionals and registered members of designated health and social care professions; instead, however, the Oireachtas chose a significantly different formula of words which, in my view, must be interpreted as extending the exemption from VAT under paragraph 2(3) to professional medical care services provided by persons not registered on a statutory professional register, provided those services are recognised as professional medical care services by the Department of Health.

105. However, the Appellant has not satisfied me that acupuncture services were recognised as professional medical services by the Department of Health and Children during the years under appeal. I accept as correct his evidence that he has had patients referred to him by medical doctors and that certain medical insurers will cover the cost of acupuncture treatment in the case of patients with appropriate levels of cover. However, this evidence does not in my view enable me to find that acupuncture services are recognised as professional medical services by the Department of Health, and the Appellant has tendered no evidence which would enable me to make such a finding.

106. Accordingly, I find that the acupuncture service provided by the Appellant are professional medical care services but they are not recognised as such by the Department of Health and Children. Accordingly, they are not exempt from VAT pursuant to Paragraph 2(3) of Part of 1 of Schedule 1 to VATCA 2010. I also find that acupuncture services were not recognised as exempt activities by the Respondent on 1 January 2010, and therefore the acupuncture services provided by the Appellant are not exempt from VAT pursuant to Paragraph 2(7) of Part of 1 of Schedule 1 to VATCA 2010.

107. I agree with the Respondent's submission that the acupuncture services provided by the Appellant constitute "*services consisting of the care of the human body*" within the meaning of Paragraph 21(1) of Schedule 3 of VATCA 2010 and find that they are therefore liable to VAT at the reduced rate.

108. The question therefore arises as to whether the failure to exempt acupuncture from VAT in domestic legislation is contrary to the provisions of the VAT Directive. I am satisfied that I can, and indeed must, consider this issue in accordance with the decision of the ECJ in **Case C-378/17** ***Minister for Justice and Equality –v- Workplace Relations Commission***.

109. As stated above, Article 132(1)(c) requires Member States to exempt from VAT "*the provision of medical care in the exercise of the medical and paramedical professions as defined by the Member State concerned.*"

110. I believe it is clear from the decision in ***van den Hout – van Eijnsbergen*** **Case** that the Irish legislature had a discretion to exclude providers of acupuncture or the services they provided from the exemption from VAT on medical and related services provided that it did so to ensure that the exemption applied solely to services provided by persons with the required professional qualifications, and provided that the exclusion did not breach the principle of fiscal neutrality. I note that the ECJ concluded in that case that:-

> *"In this respect, concerning, first, the objective pursued by Article 13A(1)(c) of the Sixth Directive, it should be noted that the condition laid down by that provision, that medical care must be provided in the exercise of the paramedical professions as defined by the Member State concerned, is to ensure that the exemption applies only to medical care provided by practitioners with the required professional qualifications (*Kügler, *paragraph 27). Consequently, not all medical care falls within the scope of such an exemption, the latter concerning*

only that of sufficient quality having regard to the professional training of the providers.

It follows that the exclusion of a particular profession or a specific medical-care activity from the definition of the paramedical professions adopted by the national legislation for the purpose of the exemption laid down by Article 13A(1)(c) of the Sixth Directive must be capable of justification on objective grounds based on the professional qualifications of the care providers and, therefore, by considerations relating to the quality of the services provided.

As regards, secondly, the principle of fiscal neutrality, which is inherent in the common system of VAT, it must be remembered that, according to case-law, that principle precludes treating similar supplies of services, which are thus in competition with each other, differently for VAT purposes (Case C-109/02 Commission v Germany*, paragraph 20; and* Kingscrest Associates and Montecello*, paragraph 54)."*

111. I am satisfied on the evidence before me that the legislature was entitled not to include acupuncturists among the exempt providers of professional medical care services in circumstances where there is no state regulation of that profession and where anyone, regardless of qualification and experience, can describe themselves as an acupuncturist. I believe it is also relevant that there is no single, recognised organisation which governs the registration and regulation of the profession; there are instead a number of such bodies, including the Acupuncture Foundation of Ireland, the Traditional Chinese Medical Council of Ireland, the Professional Register of Traditional Chinese Medicine, the Acupuncture Foundation Professional Association and the Acupuncture Council of Ireland. These are, in my view, objective grounds to exclude the profession from exemption from VAT.

112. Furthermore, the Appellant adduced no evidence to suggest that the exclusion of acupuncture from VAT-exempt professional medical care services gave rise to a breach of fiscal neutrality.

113. Accordingly, I find that the exclusion of acupuncture from VAT exemption under VATCA 2010 is not contrary to the provisions of the VAT Directive and it does not breach the principle of fiscal neutrality.

114. Turning next to the chiropractic services provided by the Appellant, I am, as stated above, satisfied that they constitute medical care services within the meaning of Paragraph 2 of Part 1 of Schedule 1 to VATCA 2010. I accept as correct the Appellant's evidence that chiropractic is a key element of Traditional Chinese Medicine, and in particular the Qigong branch of same.

115. I further accept the Appellant's evidence that he trained in Traditional Chinese Medicine with the [redacted] for approximately two years, carried out further study in the United States, where he received a Practitioner Certificate in Medical Qigong, and subsequently underwent further training in Qigong in China at the [redacted] and [redacted] Hospitals.

116. I find as a material fact on the above evidence that the Appellant received significant specialist education and training in Qigong and, applying the same criteria as I have used in relation to acupuncture services, I therefore find that the chiropractic services he provided were professional medical services within the meaning of Paragraph 2 of Part 1 of the First Schedule.

117. It was common case between the parties that the Revenue Commissioners recognised chiropractors as providers of exempt professional medical services on 1

January 2010. In the instant appeal, however, the Respondent submitted that the Appellant could not be recognised as a chiropractor because he was not registered as such with the Chiropractic Association of Ireland. The Respondent's written submissions contended that exempt chiropractic services "*must be supplied by a professional who possesses the necessary qualifications.*"

118. I do not accept the Respondent's submission that only members of the Chiropractic Association of Ireland can be said to possess the necessary qualifications. There is no legislative basis for such a limitation. The CAI is, I fully accept, a long-established and highly-regarded organisation but it is entirely voluntary and self-regulating. I accept as correct the Appellant's submission that there are chiropractors in Ireland who are not members of the CAI but who have professional training and qualifications which enables them to offer professional medical care services of a standard equivalent to those provided by registered members of CAI.

119. Accordingly, I am satisfied and I find as a material fact that the Appellant has sufficient skills, training and qualifications to provide professional medical care in the form of chiropractic services. He is entitled to hold himself out as a qualified chiropractor, notwithstanding that he is not a member of the Chiropractic Association of Ireland.

120. I therefore find that the Appellant is entitled to exemption from VAT in respect of the chiropractic services he provides to patients pursuant to paragraph 2(7) of Part 1 of Schedule 1 of VATCA 2010.

121. Turning next to the psychological services which the Appellant contends he provides to patients, it is appropriate to note that psychologist is a designated profession pursuant to section 4(1) of the Health and Social Care Professionals Act

2005. While the Psychologists Registration Board was established by the Minister for Health in July of 2017, the Board had not established a register of members of the psychology profession as of the date of the hearing of this appeal and, indeed, a register has still not been established as of the date of this determination. I therefore accept the Appellant's submission that it was not possible for him to be a registered psychologist during the years the subject matter of this appeal.

122. The Respondent's submission is that even if the Appellant could not be formally registered as a psychologist, he still had to have "*approved*" or "*corresponding*" qualifications and/or be a member of the profession's governing body, association or society to ground a claim for VAT exemption pursuant to Paragraph 2(3) of Part 1 of Schedule 1 of VATCA 2010.

123. The Respondent's submission in this regard is primarily grounded in the provisions of Part 9 of the Health and Social Care Professionals Act 2005. Section 91 governs the registration by registration boards of existing practitioners and provides that existing practitioners shall be so registered if, *inter alia*, they hold the relevant qualification detailed in the third column of Schedule 3 to the Act, or a corresponding qualification (being a qualification granted in another EU Member State which is recognised in this jurisdiction), or a qualification which is sufficiently relevant to the profession and is of a standard not lower than the relevant qualification detailed in the third column of Schedule 3.

124. In the case of psychologists, the relevant qualification detailed in Schedule 3 is "*a recognised University degree or diploma obtained with first or second class honours in which psychology was taken as a major subject and honours obtained in that subject.*"

125. While the provisions of section 91 are clearly not determinative of the question of whether the Appellant can be said to be providing professional medical

care psychology services, they do, in my view, provide some indirect assistance in ascertaining what psychology services can be said to be recognised as professional medical care services by the Department of Health and Children. I believe it is relevant that the view of the legislature when enacting the 2005 Act was that only existing practitioners who held a relevant recognised degree or diploma at honours level, or a corresponding EU qualification, or an equivalent qualification from another jurisdiction, would be *prima facie* entitled to registration once a register was in operation.

126. In the instant appeal, the Appellant testified that he provided psychological medical care as part of his treatment of patients. He stated that the psychology of health recovery was a major part of his treatment approach and methodology. I note that this view is echoed in his book, [redacted] He accepted that he did not have a professional qualification in psychology but said that he was qualified in Shengong, and said that psychology formed an important part of this treatment. I note in this regard that the only formal qualification the Appellant had in relation to Shengong was the Practitioner Certificate he received from [redacted] in [redacted]. I have also taken into consideration in this regard the training the Appellant undertook in relation to neurolinguistic programming and thought-field therapy.

127. While I accept that there is some element of psychology treatment in the medical care services provided by the Appellant, he did not persuade me that those services could be said to amount to professional medical psychological care. The Appellant placed particular emphasis on his Shengong treatment of patients when asserting that he provided psychological care, yet such treatment appears to me to consist of physical exercises designed to promote spiritual wellbeing and development.

128. Having carefully considered the evidence and submissions made in the course of the appeal, I am not satisfied that the Appellant carries on the profession of psychologist within the meaning of the Health and Social Care Professions Act 2005. I am also not satisfied that the psychology element of treatments provided by the Appellant to patients constitutes professional medical care services recognised as such by the Department of Health and Children.

129. I therefore find that the Appellant is not entitled to an exemption from VAT pursuant to paragraph 2(3) of Part 1 of Schedule 1 of VATCA 2010 in respect of the psychology treatment services he provides to his patients.

130. I find instead that the psychology services provided by the Appellant constitute "*services consisting of the care of the human body*" within the meaning of Paragraph 21(1) of Schedule 3 of VATCA 2010 and find that they are therefore liable to VAT at the reduced rate.

131. I further find that on the evidence before me the Irish legislature did have objective grounds for excluding practitioners of Shengong and/or Traditional Chinese Medicine from the exemption from VAT while at the same time affording such an exemption to qualified psychologists. I believe that the distinction drawn is justifiable having regard to the need to ensure an appropriate level and standard of professional qualification of the care providers and a consistent and appropriate quality of service provided.

132. I am not satisfied on the evidence before me that the differing treatment for VAT exemption purposes of qualified psychologists and Shengong or Traditional Chinese Medicine practitioners gives rise to a breach of the principle of fiscal neutrality. There is, in my view, a significant and material difference in the type of

treatment provided to patients by the two professions and they are therefore not supplies of similar services which could be said to be in competition with one another.

133. Accordingly, I find that the exclusion of the psychological element of medical care treatments supplied by the Appellant from VAT exemption under VATCA 2010 is not contrary to the provisions of the VAT Directive and it does not breach the principle of fiscal neutrality.

134. For the reasons set out above, I find that:-

(a) the acupuncture services provided by the Appellant are not exempt from VAT;

(b) the chiropractic services provided by the Appellant are exempt from VAT pursuant to paragraph 2(7) of Part 1 of Schedule 1 of VATCA 2010; and,

(c) the psychology services provided by the Appellant are not exempt from VAT.

135. I further find that the Appellant is correct in his submission that section 47(1) of VATCA 2010 may be of relevance and applicable in the instant appeal. Where the Appellant has provided a composite supply of services in which chiropractic treatment is the principal supply, he is entitled to an exemption from VAT in respect of the total consideration which he receives in respect of that composite supply.

136. I further accept the Appellant's submission that he is *prima facie* entitled to a deduction from his liability to VAT for the years under appeal pursuant to Part 8 of VATCA 2010 in respect of VAT paid by him in respect of goods and services used by him for the purposes of his taxable supplies of services.

137. The evidence before me is insufficient to enable me to make a determination of the quantum of the Appellant's liability to VAT for the years the subject matter of this appeal. Nonetheless, it follows from my findings above that the amount in which

the Appellant has been assessed to VAT for the years under appeal should be reduced by deducting **(a)** the amount of VAT assessed on the Appellant's supplies of chiropractic services, **(b)** the amount of VAT assessed on the Appellant's composite supplies of services where chiropractic treatment was the principal supply, and **(c)** any amount which the Appellant is entitled to deduct pursuant to the provisions of Part 8 of VATCA 2010.

138. I expect that the findings of principle outlined above should enable the Appellant and the Respondent to establish and agree the quantum of the Appellant's liability to VAT for the years under appeal. If it is not possible for the parties to reach agreement in this regard, I will conduct a further hearing at which I will hear evidence and submissions in relation to the issue of quantum and will deliver a supplemental Determination thereafter.

9. Conclusion

139. For the reasons outlined above, I find that the Appellant has been overcharged to VAT by the Notice of Assessment dated 7 September 2016 and determine pursuant to section 949AK(1)(a) of the Taxes Consolidation Act 1997 as amended that the assessment be reduced accordingly.

140. If the parties are unable to reach agreement on the amount by which the assessment is to be reduced to give effect to this Determination, I will hold a further hearing in relation to the issue of quantum and will deliver a supplemental Determination specifying the amount by which the Notice of Assessment is to be reduced.

Dated the 17th of February 2022

_____

MARK O'MAHONY
APPEAL COMMISSIONER