AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

60TACD2022

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter "the Commission") as an appeal against assessments to Value Added Taxation ("VAT") raised by the Revenue Commissioners ("the Respondent") on the 3rd October 2018.

2. The assessments cover the periods 1st May 2014 to 30th April 2017 inclusive and the total VAT due on the assessments amounts to €28,508. The Appellant is appealing the assessments in accordance with section 119 (1) Value-Added Tax Consolidation Act 2010, as amended ("VATCA 2010").

Background

3. The Appellant's business is the wholesale supply of kegs, bottled beers and minerals to public houses and hotels.

4. Subsequent to the issue of an audit notification letter, the Appellant made a disclosure covering the three year period to 30th April 2017. The disclosure related mainly to the Appellant's failure to reduce VAT on purchases by the amount of VAT attaching to purchase credit notes issued to him by suppliers.

5. During the course of the audit, an examination of the Appellant's purchase ledger revealed a number of other purchase credit entries which were neither disclosed prior to the audit nor accounted for in the original VAT returns made by the Appellant.

6. It was accepted by the Respondent that some of these purchase credit entries did not have any VAT implications and accordingly did not form any part of the assessments raised. However, there were a number of other purchase credit entries relating to two suppliers where either no or limited paperwork was available to detail the transaction.

7. In respect of the first supplier, the sum of [redacted] was received in credits and there was no paperwork made available to the Respondent to detail the nature of the credits and in particular whether the sum received was subject to VAT.

8. The sum of [redacted] in credits was received from the second supplier during the period. The Appellant's position was that these credits related to settlement discounts and there was no VAT chargeable on them.

9. The Appellant failed to produce copies of the second supplier's credit notes with the exception of one dated 17th September 2015.

10. During the course of the audit, the Appellant did not produce the day books supplier credit summary covering the period from 1st January 2016 to 31st December 2016 to facilitate an examination of credit notes for this period. In their absence, the Respondent when raising the assessments under appeal included an estimated sum of €12,000 which they felt was representative of additional VAT due for that period.

11. The Respondent requested the additional credit notes from both the first and second supplier from the Appellant. The Appellant produced nothing in respect of the first-named supplier and advised that the second supplier did not issue documentation for discounts other than a deduction or allowance from their monthly statement.

12. The Appellant advised he obtained a sample document from the second supplier and this showed that VAT did not apply to the discount.

13. The Respondent did not agree with the Appellant and was of the view that the credits received from the suppliers included VAT at the standard rate (23% for the period under review). Accordingly, they raised VAT assessments on the total credits received from both suppliers in the sum of €16,508, which when combined with the estimated sum of €12,000 gave total additional VAT due for the period of €28,508.

14. The Appellant appealed the assessments to the Commission on the 23rd October 2018.

Legislation and Guidelines

15. Section 39 VATCA 2010, provides:

> *"(1) Where the consideration actually received in relation to the supply of any goods or services exceeds the amount that the person supplying the goods or services was entitled to receive, the amount on which tax is chargeable shall be the amount actually received (excluding tax chargeable in respect of the supply).*
>
> *(2) Subject to subsection (3), where, in a case not coming within section 38, the consideration actually received in relation to the supply of any goods or services is less than the amount on which tax is chargeable or no consideration is actually received, such relief may be given by repayment or otherwise in respect of the deficiency as may be provided by regulations.*
>
> *(3) Subsection (2) shall not apply in the case of the letting of immovable goods which is a taxable supply of goods in accordance with section 95.*
>
> *(4) Where, following the issue of an invoice by an accountable person in respect of a supply of goods or services, the accountable person allows a reduction or discount in the amount of the consideration due in respect of that supply, the relief referred to in subsection (2) shall not be given until he or she issues the credit note required in accordance with section 67 (1) (b) in respect of that reduction or discount."*

16. Section 67 VATCA 2010, provides:

> "*(1) Where, subsequent to the issue of an invoice by a person to another person in accordance with section 66 (1), the consideration as stated in that invoice is increased or reduced, or a discount is allowed, whichever of the following provisions is appropriate shall have effect:*
>
> > *(a) if the consideration is increased, the person shall issue to that other person another invoice in such form and containing such particulars as may be specified by regulations in respect of the increase;*
> >
> > *(b) if the consideration is reduced or a discount is allowed—*
> >
> > > *(i) the person shall issue to that other person a document (in this Act referred to as a "credit note") containing particulars of the reduction or discount in such form and containing such other particulars as may be specified by regulations, and*

(ii) if that other person is an accountable person, the amount which the accountable person may deduct under Chapter 1 of Part 8 shall, in accordance with regulations, be reduced by the amount of tax shown on that credit note.

(2) Where a person who is entitled to receive a credit note under subsection (1) (b) from another person issues to that other person, before the date on which a credit note is issued by that other person, a document (in this subsection referred to as a "debit note") in such form and containing such particulars as may be specified by regulations, then, for the purposes of this Act—

(a) the person who issues the debit note shall, if the person to whom it is issued accepts it, be deemed to have received from the person by whom the note was accepted a credit note containing the particulars set out in that debit note, and

(b) the person to whom the debit note is issued shall, if he or she accepts it, be deemed to have issued to the person from whom the debit note was received a credit note containing the particulars set out in that debit note.

(3) Notwithstanding subsection (5) and section 69 (1), where a person issues an invoice in accordance with section 66 (1) which indicates a rate of tax and subsequent to the issue of that invoice it is established that a lower rate of tax applied, then—

(a) the amount of consideration stated on that invoice shall be deemed to have been reduced to nil,

(b) subsection (1)(b) shall have effect, and

(c) following the issue of a credit note in accordance with subsection (1)(b), the person shall issue another invoice in accordance with this Act and regulations.

(4) Where, subsequent to the issue of an invoice by a person to another person in accordance with section 66 (1) in respect of an amount received by way of a deposit, and section 74 (4) applies, then—

(a) the amount of the consideration stated on that invoice is deemed to be reduced to nil,

(b) the person shall issue to that other person a document to be treated as if it were a credit note containing particulars of the reduction in such form and containing such other particulars as would be required to be included in that document if that document were a credit note, and

(c) if that other person is an accountable person, the amount which that other person may deduct under Chapter 1 of Part 8 shall be reduced by the amount of tax shown on the document as if that document were a credit note.

(5) Notwithstanding subsection (1) but subject to subsection (6), where, subsequent to the issue to a registered person of an invoice in accordance with section 66 (1), the consideration stated in that invoice is reduced or a discount is allowed in such circumstances that, by agreement between the persons concerned, the amount of tax stated in the invoice is unaltered, then—

(a) paragraph (b) of subsection (1) shall not apply in relation to the person by whom the invoice was issued,

(b) the reduction or discount concerned shall not be taken into account in computing the liability to tax of the person making the reduction or allowing the discount,

(c) section 69 (1) shall not apply, and

(d) the amount which the person in whose favour the reduction or discount is made or allowed may deduct in respect of the relevant transaction under Chapter 1 of Part 8 shall not be reduced.

(6) Subsection (5) shall not apply in any case where—

(a) subsection (4) applies, or

(b) the person who issued the invoice referred to in subsection (5) was, at the time of its issue, a person authorised, in accordance with section 80 (1), to determine that person's tax liability in respect of supplies of the kind in question by reference to the amount of moneys received".

17. Section 80 VATCA 2010 provides:

"(1) A person who satisfies the Revenue Commissioners that—

(a) taking one period with another, at least 90 per cent of the person's turnover is derived from taxable supplies to persons who are not registered persons, or

(b) the total consideration which the person is entitled to receive in respect of the person's taxable supplies has not exceeded and is not likely to exceed €1,000,000 in any continuous period of 12 months,

may, in accordance with regulations, be authorised to determine the amount of tax which becomes due by the person during any taxable period (or part thereof) during which the authorisation has effect by reference to the amount of the moneys which the

person receives during that taxable period (or part thereof) in respect of taxable supplies."

18. Section 84 VATCA 2010 provides:

"*(1) Every accountable person shall, in accordance with regulations, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility.*

(2) Every person (other than an accountable person) who supplies goods or services in the course or furtherance of business shall keep all invoices issued to him or her in connection with the supply of goods or services to him or her for the purpose of such business.

(3) The following:

(a) records kept by a person pursuant to this Chapter or section 124 (7) and that are in the power, possession or procurement of the person;

(b) any books, invoices, copies of customs entries, credit notes, debit notes, receipts, accounts, vouchers, bank statements or other documents whatsoever which relate to the supply of goods or services, the intra-Community acquisition of goods, or the importation of goods by the person and that are in the power, possession or procurement of the person; and

(c) in the case of any such book, invoice, credit note, debit note, receipt, account, voucher, or other document, which has been issued by the person to another person, any copy thereof which is in the power, possession or procurement of the person,

shall, subject to subsection (4), be retained in that person's power, possession or procurement for a period of 6 years from the date of the latest transaction to which the records, invoices, or any of the other documents, relate…."

19. Chapter 1 of Part 8 at section 59(2) VATCA 2010 provides:

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

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

20. Chapter 2 of Part 9 at section 69 VATCA provides:

"*(1) Where an accountable person—*

(a) issues an invoice stating a greater amount of tax than that properly attributable to the consideration stated therein, or

(b) issues a credit note stating a lesser amount of tax than that properly attributable to the reduction in consideration or the discount stated therein,

the accountable person shall be liable to pay to the Revenue Commissioners the excess amount of tax stated in the invoice or the amount of the deficiency of tax stated in the credit note."

21. Section 9 S.I. No. 639/2010 - Value-Added Tax Regulations 2010 (Taxable Amount. Adjustments for returned goods, discounts and price alterations) – (The "Regulations") provide:

"*(1) Paragraphs (2) to (4) apply where, in a case in which section 39(2) of the Act applies and section 67(5) of the Act does not apply, by reason of the allowance of discount, a reduction in price or the return of goods other than the return of goods in an early termination of a hire purchase agreement—*

(a) the consideration exclusive of tax actually received by an accountable person in respect of the supply by the accountable person of any goods or services is less than the amount on which tax has become chargeable in respect of such supply, or

(b) no consideration is actually received.

(2) The amount of the deficiency in respect of any supply shall be ascertained by deducting from the amount on which tax has become chargeable in respect of such supply, the consideration actually received exclusive of tax.

(3) (a) Subject to subparagraph (b), the sum of the deficiencies ascertained in accordance with paragraph (2), incurred in each taxable period and relating to consideration chargeable at each of the various rates of tax (including the zero rate) specified in section 46(1) of the Act, shall be deducted from the amounts ascertained in accordance with Chapter 1 of Part 5 of the Act which would otherwise be chargeable with tax at each of those rates, and the net amounts as so ascertained shall be the amounts on which tax is chargeable for the taxable period during which the deficiencies are ascertained.

(b) For the purposes of subparagraph (a), where the sum of the deficiencies as ascertained in accordance with that subparagraph in relation to tax chargeable at any

of the rates so specified in section 46(1) of the Act exceeds the amount on which, but for this Regulation

(i) tax would be chargeable at that rate, or

(ii) no tax is chargeable at that rate,

then, the tax appropriate to the excess or to the sum of the deficiencies, if no tax is chargeable, shall be treated as tax deductible in accordance with Chapter 1 of Part 8 of the Act for that taxable period.

(4)(a) Where, in accordance with Chapter 2 of Part 9 of the Act, a credit note is issued by an accountable person in respect of an adjustment under this Regulation, then the accountable person to whom the credit note is issued shall reduce the amount which would otherwise be deductible under Chapter 1 of Part 8 of the Act for the taxable period during which the credit note is issued (in this paragraph referred to as the "tax deduction") by the appropriate amount of tax shown thereon (in this paragraph referred to as the "tax reduction").

(b) Where the tax reduction exceeds the tax deduction, then the excess shall be carried forward and deducted from the tax deductible under Chapter 1 of Part 8 of the Act for the next taxable period and so on until the tax reduction is exhausted.

(5)(a) Where, in accordance with section 68(2)(b) of the Act, a farmer credit note is issued by a flat-rate farmer, then the accountable person to whom the credit note is issued shall reduce the amount which would otherwise be deductible under section 59(2)(o) of the Act for the taxable period during which the farmer credit note is issued (in this paragraph referred to as the "flat-rate deduction") by the amount of the appropriate flat-rate addition shown thereon (in this paragraph referred to as the "flat-rate reduction").

(b) Where the flat-rate reduction exceeds the flat-rate deduction, the excess shall be carried forward and deducted from the amount deductible under section 59(2)(o) of the Act for the next taxable period and so on until the flat-rate reduction is exhausted."

Submissions

Appellant

22. The Appellant advised that based upon quantities of stock purchased he was entitled to discounts from a number of suppliers. He was of the view that VAT was not chargeable on these discounts.

23. The Appellant advised that his suppliers did not issue documentation for discounts other than a deduction or allowance on their monthly statement.

24. The Appellant stated he contacted his second ("main") supplier and they provided a sample document illustrating that VAT did not apply to the provided discount. The Appellant submitted that this position was accepted by the Respondent after they viewed the document.

25. The document dated 17th September 2015 was presented to the Commission. It contained details of the supplier's name, address and VAT registration number, was addressed to the Appellant and was titled "credit note". The narrative section of the credit note contained a product description "Lager Trade Term Settlement" and the line value excluding VAT was €25,076.70. At the bottom right of the credit note, it showed under taxable value the sum of €25,076.70 a tax rate of 0%, a tax amount of nil and in the total columns the following:

Net Due	25,076.70
Total VAT	0.00
Total Due	25,076.70

26. The Appellant submitted as his suppliers did not ordinarily produce credit notes in respect of purchase credits and he had resort to arduous measures in order to obtain a sample credit note from his main supplier, that this documentation ought to be sufficient to demonstrate that VAT was not chargeable in respect of discounts and the VAT assessments should be vacated accordingly.

27. After the hearing concluded and at the request of the Commissioner, the Appellant produced a number of additional documents as follows:

    - A copy of "typical" sales invoices from his main supplier dated 1st May 2015 and 6th May 2016.
    - Email correspondence which exchanged between the Appellant and his main supplier dated between 6th February 2020 and the 19th April 2021.
    - A written narrative containing a worked example of the how the invoices and settlement discount worked in practice. The invoice used for the purpose of the illustrative example was dated 17th August 2018 and was annexed to the workings.

28. Aside from the product description and monetary amount, the invoices furnished contained identical information. In addition to the statutory information required, they showed the

product code, description of the product, quantity purchased, net price and the applicable VAT rate charged. The Commissioner observed that VAT was charged on all products acquired by the Appellant at the standard rate. At the bottom of the invoice, it showed the net amount due, total VAT charged and total due for payment by the Appellant.

29. On the right hand side of the invoices there was a box labelled "information only". Within this box, it showed accumulated discounts under three headings being promotional, commercial and settlement. The figure column entry in respect of both promotional and commercial were empty and various figures were outlined under the settlement line in respect of each category of product purchased. The Appellant's provided written narrative explained that the settlement discount was not a credit note for the return of goods but rather a discount offered by the supplier for payment of the invoice by the due date.

30. The Appellant then outlined a typical product order from the additional invoice dated 17th August 2018 which showed that VAT was charged on the individual product at the standard rate and a separate column which showed the discount for the individual product with no VAT applying on the figures entered in the settlement column. The Appellant then detailed narrative from the supplier's invoice which stated "*A settlement discount of €119.90 will apply to the amount due net of VAT if the payment is received by the due date. Where the settlement discount applies the amount due is reduced to €5,779.02. Due to VAT law there will be no change to the amount of VAT that has been invoiced*".

31. The Appellant submitted as their main supplier did not issue any other paper work and that while the invoice dated 17th August 2018 was outside the period of the appeal, the VAT treatment and narrative contained on that invoice was not only proof that VAT did not apply to that settlement discount but also to all credits received by the Appellant not only from his main supplier but also the first-named supplier.

32. In further support of this argument, the Appellant enclosed email correspondence between his accountant and the credit team of his main supplier. The email correspondence ranged between various dates spanning 6th February 2020 to 19th April 2021 and in essence was a request by the Appellant for his main supplier to "put on paper something" to explain the settlement discounts and in particular to specify that VAT did not attach to them. The reply from the credit team was that "*all of the below (settlement discounts) (bar the €25,076.70) don't carry credit notes. They are internal credit transfers. The one that is the exception (€25,076.70) is a Lager Trade Term credit. This does carry a credit note and I have attached this...*"

33. The Appellant responded to the above email thanking the credit team for their reply and requesting that someone in the accounts department confirm that there was no VAT chargeable on the settlement discounts. Despite further email exchanges the credit team did not provide the assurance the Appellant required.

Respondent

34. The Respondent advised that the Appellant failed to produce credit notes for the periods under review with the exception of the one dated 17th September 2015. The Respondent stated they that accepted the one credit note provided did not contain a VAT component.

35. The Respondent submitted that a credit note was required by an accountable person under Regulation 9(4) (a) of the Regulations to enable them to claim a reduction in VAT credits claimed on purchases.

36. The Respondent submitted absent the Appellant having a credit note verifying that the taxable status of the transaction, that they could neither prove or maintain that the credit appearing in the Appellant's purchase ledger was eligible to be charged VAT at zero percent.

37. The Respondent stated that they wrote to the Appellant on a number of occasions looking for the missing credit notes or a letter from the suppliers confirming the non-application of VAT to the transactions and when same was not furnished, raised assessments seeking to recover VAT on the credits identified in their examination of the Appellant's purchase ledger.

38. During the review of the Appellant's records, the Respondent advised that they had not been provided with a copy of the purchase ledger for the calendar year 2016. As they were unable to inspect the ledger for this year to determine if there were credits arising on which VAT was not accounted for, they had raised as part of the assessments under appeal an amount of €12,000 to cover what they considered was a reasonable estimate of the liability which could have arisen in this period.

39. The Respondent advised that the summaries for the calendar year 2016 were subsequently produced by the Appellant after the conclusion of the audit and the appeal being lodged. They stated that following a review of these records, it was accepted that no credits entered in the ledger for that year had any VAT implications. In the circumstances, the Respondent sought to reduce down the amount of the assessments raised by the amount estimated by them for the calendar year 2016, €12,000 which had the effect of reducing the assessment under appeal from €28,508 to €16,508.

40. In summation, the Respondent was of the view that the onus of proof was on the Appellant to show that he was not liable to VAT on the credits received by him in the period and as he had failed to do so, the balance of the assessment in the sum of €16,508 should stand.

Material Facts

The Commissioner found the following material facts.

- The Appellant did not receive a direct payment from any of his suppliers who provided rebates in the form of a bank transfer, cheque or similar form of payment. In place, the Appellant's suppliers reduced down the amount owed by the Appellant to them in respect of goods purchased from them.
- VAT was charged on all observed purchases at the standard rate.
- The singular credit note supplied by the Appellant did not have any VAT charge attaching to the credit and was classified at the Zero percentage rate.
- The Appellant's main supplier seemed to seek to distinguish between "credit notes" and "internal credit transfers".
- The documentation given by the Appellant after the hearing of the matter, while dated outside the period of the assessments, was relevant and pertinent to the matter under appeal.
- The Appellant's second-named supplier is a multinational plc and prides itself on being one of the world's largest producers of spirits and beers. As such, it is likely that its turnover exceeds €1,000,000 in any continuous 12 month period and unlikely that 90% or more of its taxable supplies are supplied to persons who are not registered for VAT.
- The Appellant was unable to produce any documentation from his first-named supplier.

Analysis

41. While the Appellant's main supplier purported that there was a distinction between a "credit note" and an "internal credit transfer" in email correspondence to the Appellant, the Commissioner does not see any notable differences between the two terms and proposes to treat them interchangeably. In forming this view, the Commissioner took account that the Appellant's main supplier did not issue him with a cheque or other form of payment and the only use of the credit received was to reduce down the amount owed by the Appellant to the supplier in respect of goods purchased from them.

42. In terms of statutory interpretation, the approach to be applied is a literal one based on the relevant jurisprudence including inter alia, *Bookfinders Limited v Revenue Commissioners* [2020] IESC 60, *Dunnes Stores v Revenue Commissioners* [2019] IESC 50, *Inspector of Taxes v Kiernan* [1982] ILRM 13 and *Revenue Commissioners v Doorley* [1933] IR 750.

43. Both sections 39(4) and 67 (1) (b) VATCA 2010 require the accountable person (in this case the Appellant's supplier) when providing a reduction or discount to the amount owed in respect of a supply to issue a credit note in respect of that reduction or discount. It is noted by the Commission that the Appellant's suppliers largely failed to issue credit notes as required under the legislation or in the alternative that these credit notes were not produced by the Appellant during the course of the hearing (save the single credit note issued by the Appellant's main supplier).

44. Absent this paperwork, the Commissioner is required to look at the substance of the transaction and in so doing for the reasons outlined in paragraph 41 has formed the view that the settlement discounts shown on the main supplier's statements equates to a credit note for the purpose of the Act.

45. The practical effect of Section 67 (b) (ii) VATCA 2010 is that in circumstances where a credit note or discount is received by the Appellant, he is required to account for the amount of VAT attaching to such credit by means of reducing the VAT reclaimable on the original or subsequent purchase invoices. This section is supplemented by section 4(a) of the Regulations which provides in circumstances where a credit note is received by the Appellant that he shall reduce down the amount of VAT reclaimable on subsequent purchase VAT.

46. Section 67(5) VATCA 2010 provides an opt out of this default position in circumstances where after the original invoice is issued, the amount owing in respect of that invoice is reduced or a discount is allowed and with the agreement of the parties, they agree to leave the amount of VAT charged on the original invoice unaltered.

47. However, section 67(6) VATCA 2010 states that this opt out is only available in situations where the person who issued the invoice (the Appellant's supplier) was eligible to account for VAT on the cash receipts basis. As the Commissioner is not satisfied that the Appellant's main supplier would qualify for the cash receipts basis this exemption is not available to the parties in the instant appeal.

48. Section 84 VATCA 2010 imposes an obligation on the Appellant to obtain and retain accounting records which would include credit notes. In circumstances were no paperwork was provided to the Commission in respect of the Appellant's first-named supplier, the

Commissioner having regard to the legislation finds that the assessments raised in respect of the VAT element of the credits received from the first-named supplier must stand.

49. In relation to the credits received from the Appellant's main supplier, the Commissioner is not satisfied that the Appellant's (or indeed his main supplier's) contention that the discounts received are not chargeable to VAT and finds that the VAT element of the credits received from the Appellant's main supplier must also stand.

50. In upholding the assessments, the Commissioner had regard to the Court of Justice of the European Union's ("CJEU") ruling of the 28th May 2020 in *World Comm* (case C-684/18) which addressed the VAT consequences of rebates. In that case the CJEU ruled that if a business is granted a volume discount that relates to multiple prior transactions, the discount should be allocated to all of the transactions it relates to. They CJEU also held that even if the business granting the retroactive discount does not issue a (credit) invoice (or other document) the rule still applies. The CJEU further referred to its earlier decision in *Kreissparkasse Wiedenbruck* (case c-186/15) where the CJEU reiterated that where an adjustment proves to be necessary because of the change in one of the factors used to determine the amount of VAT to be deducted, the amount of that adjustment must be calculated in such a way that the final amount to be deducted corresponds to that which the taxable person would have been entitled if that change had initially been taken into account.

51. In essence the CJEU in interpreting the relevant VAT Directive (Article 185/Directive 2006/112), which is consistent with the provisions of the VATCA 2010 (and would override them in any event), held in the above cases that two comparables must be studied; what amount did a taxpayer initially deduct and what amount is the taxpayer entitled to deduct based on the change in factors. Applying this to the Appellant's case would suggest that as the Appellant was entitled to a full VAT deduction based upon the VAT component of the original purchase price of the product, at the later stage when the purchase price of that product was reduced by the amount of the discount, then the VAT deduction must be similarly reduced as a failure to do so would result in the zero percent rate of VAT being applicable to the purchase of goods ordinarily liable at the standard rate.

52. As the Appellant in this appeal has not succeeded in showing that the additional VAT is not payable, the Commissioner finds that the assessments raised by the Respondent should stand. However, as the assessments raised by the Respondent for the period 1st May 2014 to 30th April 2017, included an estimated amount of €12,000 which the Respondent states it is satisfied is not due, those assessments should be reduced from

the amount originally assessed, €28,508 to a revised amount excluding the estimated sum to €16,508.

Determination

53. The burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, is on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:- *"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*

54. Having considered the legislation, facts and circumstances of this appeal, together with the evaluation of the documentary evidence as well as the submissions from both Parties, the Commissioner has concluded that the Appellant has not succeeded in discharging the burden of proof in relation this appeal.

55. As a result, the Commissioner determines that the Appellant's assessment to VAT for the period 1st May 2014 to 30th April 2017 should stand. However, as the Respondent has agreed that the estimated amount, €12,000 included in the original assessments is no longer due, the Commissioner directs that the amount of the original assessment, €28,508 should be reduced to €16,508.

56. It is understandable that the Appellant might be disappointed with the outcome of this appeal but the Commissioner has no discretion to stray beyond the legislation.

57. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular, section 949AK thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

Andrew Feighery
Appeal Commissioner
14 April 2022