AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

114TACD2023

Between:

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against Notices of Amended Assessment to Income Tax and of Notices of Assessment to Value Added Tax (hereinafter "VAT") raised on 8 January 2017 for the tax years 2008, 2009, 2010 and 2011 (hereinafter the "relevant years") by the Revenue Commissioners (hereinafter the "Respondent").

2. The total amount of tax under appeal is €266,547.

Background

3. Mr [redacted] (hereinafter the "Appellant") is a taxpayer who, during the relevant years, traded as [redacted] having two [redacted] and [redacted] [redacted]s in [redacted], one in [redacted] [redacted] and one in [redacted].

4. During the relevant periods the Appellant filed Income Tax self-assessment returns disclosing net taxable income and net liability to income tax (to include Universal Social Charge (hereinafter "USC"), Pay as You Earn Tax (hereinafter "PAYE") and Pay Related Social Insurance (hereinafter "PRSI")) along with VAT returns disclosing, on an annual basis, a net liability to VAT as follows as follows:

Year	Taxable Income returned €	Income Tax Liability returned €	VAT Liability returned (annual basis) €
2008	65,369	19,056.69	63,428
2009	10,767	1,183.58	79,899
2010	20,539	3,748.53	57,665
2011	14,727	3,987.40	47,759
Total	111,402	27,977.20	248,751

5. In May and June 2012, two of the Respondent's Officers received and paid for services, one in each of the Appellant's [redacted] The Officers retained their receipts for the payments made and retained those as records of payments made to the Appellant.

6. By letter dated 22 August 2012 the Respondent informed the Appellant that he had been selected for an audit. The audit commenced in September 2012.

7. The audit established that the Appellant used an Electronic Point of Sales (hereinafter an "EPOS") system called Phorest. The Respondent downloaded the Appellant's Phorest data for 2010 and 2011 and for the first six months of 2012. The Appellant subsequently made further hand-written daily summary records available to the Respondent.

8. The audit established that the Appellant's VAT returns were completed by the Appellant's Accountant using the SAGE accounting system (the SAGE system being the software system which the Appellant's accountant uses to prepare financial statements, tax and VAT returns) and information provided by the Appellant to the Accountant. The information provided by the Appellant to his accountant took the form of handwritten cash sheets. These sheets set out a daily summary of the Appellant's sales. This was the information which the accountant input into the SAGE system to calculate the Appellant's Income Tax and VAT liabilities.

9. The Respondent analysed the data recovered from the Appellant in relation to May and June 2012 and compared the Phorest and SAGE systems for that period. This established differences between the Phorest and SAGE system sales records as follows:

Week Commencing	Phorest sales €	SAGE sales €	Difference €
30 April 2012	19,426.17	16,864.84	2,561.33
7 May 2012	17,783.03	14,426.72	3,356.31
14 May 2012	16,929.7	14,785.41	2,143.86
21 May 2012	20,229.42	17,196.74	3,032.68
28 May 2012	16,968.39	14,573.62	2,394.77
4 June 2012	16,059.22	13,937.96	2,121.96
11 June 2012	15,667.79	13,507.8	2,160.61
18 June 2012	16,772.59	14,867.36	1,905.23
25 June 2012	20,875.78	18,728.1	2,146.87

10. Following engagement with the Appellant, the Respondent was not satisfied with the explanation given by the Appellant in relation to the differences which arose in the data. As a result, on 4 January 2017 the Respondent raised Notices of Amended Assessments to Income Tax (to include USC, PRSI and Income Levy) and the following Assessments

to VAT in relation to the Appellant. These Notices of Amended Assessments contained the following additional amounts of Income, Income Tax liability and VAT liability:

Year	Income €	Additional Income Tax liability €	Additional VAT liability €
2008	107,482	49,836	14,510
2009	107,482	49,029	14,510
2010	107,482	53,343	14,510
2011	116,609	58,566	12,243
Total	439,055	210,774	55,773

11. The Notices of Amended Assessment to Income Tax raised contained a total additional liability to Income Tax for the relevant years of €210,774.

12. The Notices of Assessment to VAT raised contained a total additional liability to VAT for the relevant years of €55,773.

13. The Appellant submitted a Notice of Appeal to the Commission dated 31 January 2017 appealing the Notices of Amended Assessment to Income Tax and the Notices of Assessment to VAT raised by the Respondent on 4 January 2017.

14. As part of an investigation process initiated by the Respondent 2012, the Respondent removed some of the Appellant's computer and cash register / till hardware along with other documentation most of which was returned in 2014 with the balance being returned in September 2022. The investigation process undertaken by the Respondent included a criminal investigation which resulted in a decision by the Respondent not to prosecute the Appellant. The result of the investigation by the Respondent has no impact on the Commissioner's decision in this determination which is focussed solely on the Notices of Amended Assessment to Income Tax and the Notices of Assessment to VAT raised by the Respondent and on the charge to tax.[1]

[1] The scope of the jurisdiction of an Appeal Commissioner has been set out in a number of cases decided by the Courts, namely; *Lee v Revenue Commissioners* [IECA] 2021 18*, Stanley v The Revenue Commissioners* [2017] IECA 279*, The State (Whelan) v Smidic* [1938] 1 I.R. 626*, Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 *and the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.

Legislation and Guidelines

15. The legislation relevant to this appeal is as follows:

Section 955 of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") (as enacted from 1 January 2005 to 30 January 2008):

> "*(1)Subject to subsection (2) and to section 1048, an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.*
>
> *(2)(a)Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and*
>
> *(i)no additional tax shall be payable by the chargeable person after the end of that period of 4 years, and*
>
> *(ii)no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,*
>
> *by reason of any matter contained in the return.*
>
> *(b)Nothing in this subsection shall prevent the amendment of an assessment -*
>
> *(i)where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),*
>
> *(ii)to give effect to a determination on any appeal against an assessment,*

(iii)to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(iv)to correct an error in calculation, or

(v)to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of section 804(3).

(3)A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be, by reason of subsection (2) may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine -

(a)that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, or

(b)that the inspector was not so precluded, the assessment or the assessment as amended shall stand, except to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.

(4)(a)Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for tax purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

(b)This subsection shall not apply where the inspector is, or on appeal the Appeal Commissioners are, not satisfied that the doubt was genuine and is or are of the

opinion that the chargeable person was acting with a view to the evasion or avoidance of tax, and in such a case the chargeable person shall be deemed not to have made a full and true disclosure with regard to the matter in question.

(5)(a)In this subsection, "relevant chargeable period" means -

(i)where the chargeable period is a year of assessment for income tax, the year 1988-89 and any subsequent year of assessment,

(ii)where the chargeable period is a year of assessment for capital gains tax, the year 1990-91 and any subsequent year of assessment, and

(iii)where the chargeable period is an accounting period of a company, an accounting period ending on or after the 1st day of October, 1989.

(b)Sections 919(5)(b) and 924 shall not apply in the case of a chargeable person for any relevant chargeable period, and all matters which would have been included in an additional first assessment under those sections shall be included in an amendment of the first assessment or first assessments made in accordance with this section.

(c)For the purposes of paragraph (b), where any amount of income, profits or gains or, as respects capital gains tax, chargeable gains was omitted from the first assessment or first assessments or the tax stated in the first assessment or first assessments was less than the tax payable by the chargeable person for the relevant chargeable period concerned, there shall be made such adjustments or additions (including the addition of a further first assessment) to the first assessment or first assessments as are necessary to rectify the omission or to ensure that the tax so stated is equal to the tax so payable by the chargeable person."

Section 955 of the Taxes Consolidation Act 1997 (as enacted from 31 January 2008 to 31 December 2012):

"*(1)Subject to subsection (2) and to section 1048, an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary, notwithstanding that tax may have been paid or repaid in respect of the assessment and notwithstanding that he or she may have amended the assessment on a previous*

occasion or on previous occasions, and the inspector shall give notice to the chargeable person of the assessment as so amended.

(2)(a)Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of 4 years commencing at the end of the chargeable period in which the return is delivered and

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(ii)no tax shall be repaid after the end of a period of 4 years commencing at the end of the chargeable period for which the return is delivered,

by reason of any matter contained in the return.

(b)Nothing in this subsection shall prevent the amendment of an assessment -

(i)where a relevant return does not contain a full and true disclosure of the facts referred to in paragraph (a),

(ii)to give effect to a determination on any appeal against an assessment,

(iii)to take account of any fact or matter arising by reason of an event occurring after the return is delivered,

(iv)to correct an error in calculation, or

(v)to correct a mistake of fact whereby any matter in the assessment does not properly reflect the facts disclosed by the chargeable person,

and tax shall be paid or repaid (notwithstanding any limitation in section 865(4) on the time within which a claim for a repayment of tax is required to be made) where appropriate in accordance with any such amendment, and nothing in this section shall affect the operation of section 804(3).

(3)A chargeable person who is aggrieved by an assessment or the amendment of an assessment on the grounds that the chargeable person considers that the inspector was precluded from making the assessment or the amendment, as the case may be,

by reason of subsection (2) may appeal against the assessment or amended assessment on those grounds and, if on the hearing of the appeal the Appeal Commissioners determine -

(a)that the inspector was so precluded, the Tax Acts shall apply as if the assessment or the amendment, as the case may be, had not been made, and the assessment or the amendment of the assessment as appropriate shall be void, or

(b)that the inspector was not so precluded, the assessment or the assessment as amended shall stand, except to the extent that any amount or matter in that assessment is the subject of a valid appeal on any other grounds.

(4)(a)Where a chargeable person is in doubt as to the application of law to or the treatment for tax purposes of any matter to be contained in a return to be delivered by the chargeable person, that person may deliver the return to the best of that person's belief as to the application of law to or the treatment for tax purposes of that matter but that person shall draw the inspector's attention to the matter in question in the return by specifying the doubt and, if that person does so, that person shall be treated as making a full and true disclosure with regard to that matter.

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(i)where the chargeable period is a year of assessment for income tax, the year 1988-89 and any subsequent year of assessment,

(ii)where the chargeable period is a year of assessment for capital gains tax, the year 1990-91 and any subsequent year of assessment, and

(iii)where the chargeable period is an accounting period of a company, an accounting period ending on or after the 1st day of October, 1989.

(b)Sections 919(5)(b) and 924 shall not apply in the case of a chargeable person for any relevant chargeable period, and all matters which would have been included in an

additional first assessment under those sections shall be included in an amendment of the first assessment or first assessments made in accordance with this section.

(c)For the purposes of paragraph (b), where any amount of income, profits or gains or, as respects capital gains tax, chargeable gains was omitted from the first assessment or first assessments or the tax stated in the first assessment or first assessments was less than the tax payable by the chargeable person for the relevant chargeable period concerned, there shall be made such adjustments or additions (including the addition of a further first assessment) to the first assessment or first assessments as are necessary to rectify the omission or to ensure that the tax so stated is equal to the tax so payable by the chargeable person."

Section 30 Value Added Tax Act 1972 (as enacted from 1 November 2003 to 12 March 2008)

"(4)(a)…

(ii)In relation to any taxable period commencing on or after 1 May 2003, and on or after 1 January 2005 in relation to any other taxable period, an estimation or assessment of tax under section 22 or 23 may be made at any time not later than four years after the end of the taxable period to which the estimate or assessment relates or, where the period in respect of which the estimate or assessment is made consists of two or more taxable periods, after the end of the earlier or earliest taxable period comprised in such period.

(aa)Notwithstanding paragraphs (a) (i) and (a) (ii) in a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to tax, an estimate or assessment as aforesaid may be made at any time for any period for which, by reason of the fraud or neglect, tax would otherwise be lost to the Exchequer.

(b)In this subsection "neglect" means negligence or a failure to give any notice, to furnish particulars, to make any return or to produce or furnish any invoice, monthly control statement, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations:

Provided that a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Revenue

Commissioners may have allowed; and where a person had a reasonable excuse for not doing anything required to be done, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

Section 30 Value Added Tax Act 1972 (as enacted from 13 March 2008 to 23 December 2008):

"(4)(a)…

(ii)In relation to any taxable period commencing on or after 1 May 2003, and on or after 1 January 2005 in relation to any other taxable period, an estimation or assessment of tax under section 22 or 23 may be made at any time not later than four years after the end of the taxable period to which the estimate or assessment relates or, where the period in respect of which the estimate or assessment is made consists of two or more taxable periods, after the end of the earlier or earliest taxable period comprised in such period.

(aa)Notwithstanding paragraphs (a) (i) and (a) (ii) in a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to tax, an estimate or assessment as aforesaid may be made at any time for any period for which, by reason of the fraud or neglect, tax would otherwise be lost to the Exchequer.

(b)In this subsection "neglect" means negligence or a failure to give any notice, to furnish particulars, to make any return or to produce or furnish any invoice, monthly control statement, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations:

Provided that a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Revenue Commissioners may have allowed; and where a person had a reasonable excuse for not doing anything required to be done, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

Section 30 Value Added Tax Act 1972 (as enacted from 24 December 2008 to 2 April 2010)

"(4)(a)…

(ii)In relation to any taxable period commencing on or after 1 May 2003, and on or after 1 January 2005 in relation to any other taxable period, an estimation or assessment of tax under section 22 or 23 may be made at any time not later than four years after the end of the taxable period to which the estimate or assessment relates or, where the period in respect of which the estimate or assessment is made consists of two or more taxable periods, after the end of the earlier or earliest taxable period comprised in such period.

(aa)Notwithstanding paragraphs (a) (i) and (a) (ii) in a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to tax, an estimate or assessment as aforesaid may be made at any time for any period for which, by reason of the fraud or neglect, tax would otherwise be lost to the Exchequer.

(b)In this subsection "neglect" means negligence or a failure to give any notice, to furnish particulars, to make any return or to produce or furnish any invoice, monthly control statement, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations:

Provided that a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Revenue Commissioners may have allowed; and where a person had a reasonable excuse for not doing anything required to be done, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

Section 30 Value Added Tax Act 1972 (as enacted from 3 April 2010 to 31 October 2010)

"(4)(a) An estimation or assessment of tax under section 22 or 23 may be made at any time not later than 4 years -

(i)after the end of the taxable period to which the estimate or assessment relates, or

(ii)if the period for which the estimate or assessment is made consists of 2 or more taxable periods, after the end of the earlier or earliest taxable period within that period.

(aa)Notwithstanding paragraphs (a) (i) and (a) (ii) in a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in

relation to tax, an estimate or assessment as aforesaid may be made at any time for any period for which, by reason of the fraud or neglect, tax would otherwise be lost to the Exchequer.

(b)In this subsection "neglect" means negligence or a failure to give any notice, to furnish particulars, to make any return or to produce or furnish any invoice, monthly control statement, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations:

Provided that a person shall be deemed not to have failed to do anything required to be done within a limited time if he did it within such further time, if any, as the Revenue Commissioners may have allowed; and where a person had a reasonable excuse for not doing anything required to be done, he shall be deemed not to have failed to do it if he did it without unreasonable delay after the excuse had ceased."

Section 113 VATCA2010 (as enacted from 23 November 2010 to 20 December 2021)

"(1)An estimation or assessment of tax under section 110 or 111 may be made at any time not later than 4 years -

(a)after the end of the taxable period to which the estimate or assessment relates,

or

(b)if the period for which the estimate or assessment is made consists of 2 or more taxable periods, after the end of the earlier or earliest taxable period within that period.

(2) (a)Subject to paragraphs (b) and (c), in this subsection "neglect" means negligence or a failure to give any notice, to furnish particulars, to make any return or to produce or furnish any invoice, credit note, debit note, receipt, account, voucher, bank statement, estimate or assessment, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations.

(b)A person shall be deemed not to have failed to do anything required to be done within a limited time if the person did it within such further time (if any) as the Revenue Commissioners may have allowed.

(c)Where a person had a reasonable excuse for not doing anything required to be done, he or she shall be deemed not to have failed to do it if he or she did it without unreasonable delay after the excuse had ceased.

(d)Notwithstanding subsection (1), in a case in which any form of fraud or neglect has been committed by or on behalf of any person in connection with or in relation to tax, an estimate or assessment as referred to in that subsection may be made at any time for any period for which, by reason of the fraud or neglect, tax would otherwise be lost to the Exchequer.

(3) (a)Where a person dies, an estimation or assessment of tax under section 110 or 111, as the case may be, may be made on the person's personal representative for any period for which such an estimation or assessment could have been made on him or her immediately before his or her death, or could be made on him or her if he or she were living, in respect of tax which became due by the person before his or her death, and the amount of tax recoverable under any such estimation or assessment shall be a debt due from and payable out of the estate of the person.

(b) (i)No estimation or assessment of tax shall be made by virtue of this subsection later than 3 years after the expiration of the year in which the deceased person died, in a case in which the grant of probate or letters of administration was made in that year.

(ii)No such estimation or assessment shall be made later than 2 years after the expiration of the year in which such grant was made in any other case.

(c)Notwithstanding paragraphs (a) and (b), where the personal representative -

> *(i)after the year in which the deceased person died, lodges a corrective affidavit for the purposes of the assessment of estate duty, or delivers an additional affidavit under section 48 of the Capital Acquisitions Tax Consolidation Act 2003, or*
>
> *(ii)is liable to deliver an additional affidavit under section 48 of the Capital Acquisitions Tax Consolidation Act 2003, has been so notified by the Revenue Commissioners and did not deliver such additional affidavit in the year in which the deceased person died,*

the estimation or assessment under section 110 or 111 may be made at any time before the expiration of 2 years after the end of the year in which the corrective affidavit was lodged or the additional affidavit was or is delivered.

(4)Subject to section 116(10), proceedings for the recovery of any penalty under this Act may be commenced at any time within 6 years next after the date on which it was incurred."

Regulation 27 of the Value Added Tax Regulations 2010:

"(1) *The full and true records of all transactions that affect or may affect the accountable person's liability to tax and entitlement to deductibility, which every accountable person is required to keep in accordance with Chapter 7 of Part 9 and section 124(7) of the Act, shall be entered up to date and include –*

…

(h)in relation to services deemed to be supplied by a person in the course or furtherance of business in accordance with section 27(1) of the Act -

(i)a description of the services in question, and

(ii)particulars of the cost, excluding tax, to the accountable person of supplying the services and of the consideration, if any, receivable by him or her in respect of the supply,

…

(l)in relation to discounts allowed, or price reductions made, to unregistered persons -

(i)a daily total of the amount so allowed, and

(ii)a cross-reference to the goods returned book, cash book or other record used in connection with the matter,

…"

Submissions and Witness Evidence

16. There is no disagreement between the Parties as to the legal principles which apply to this appeal in relation to interpretation or application of the relevant provisions of the TCA1997 or of the VATCA2010.

Preliminary Issue

17. The Appellant argued in his Outline of Arguments that the Notice of Amended Assessment to Income Tax and the Notices of Assessments to VAT raised by the Respondent were

out of time. In that regard the Appellant submitted that it is his case that he had made a full and true disclosure of all material facts when submitting his Income Tax and VAT returns for the relevant years. The Appellant submitted that there had been no negligence or fraud in the making of his returns to the Respondent for the relevant years.

18. In that regard the Appellant relied on the provisions of sections 955 and 956 of the TCA1997 in relation to the relevant Income Tax returns. The Appellant also relied on the provisions of section 30 of the Value Added Tax Act 1972 and section 113 of the VATCA2010.

19. The Respondent submitted that section 955 of the TCA1997 provides that nothing shall prevent the Respondent from amending an assessment where a return does not contain a full and true disclosure of all material facts. The Respondent submitted that if, for any particular year, the Appellant fails to satisfy the Commission that the income and income tax liability were as per his original return, then it follows that the return for that particular year failed to disclose a full and true account of the Appellant's sales for that year. It therefore follows that the amendment of the assessments was not prevented by section 955 of the TCA1997.

20. The Respondent further submitted that section 30 of the Value Added Tax Act 1972 and section 113 of the VATCA2010 provide that an assessment to VAT may be made at any time where by reason of fraud or neglect tax would otherwise be lost to the exchequer. It is the Respondent's submission that unless the Appellant establishes that his original VAT returns were correct, it follows that he was under-reporting his sales. The Respondent submitted that any such underreporting can only be explained by neglect or fraud, and would inevitably cause a loss to the exchequer.

21. On foot of the preliminary issue raised by the Appellant and on foot of the form the Respondent's investigation took, the Respondent was first to present its case at the oral hearing of this appeal with the Appellant then putting forward his evidence. The Appellant and the Commissioner agreed with this approach.

Respondent's Witness Evidence

Witness 1 – Ms [redacted]

22. The Commissioner heard evidence on behalf of the Respondent from Ms [redacted] who is a retired Revenue Officer. She stated that on 27 June 2012 she called the Appellant's [redacted] at [redacted] and made an appointment to have a

half head of [redacted] and received an appointment for the following day at 2pm.

23. She stated that she attended at the Appellant's [redacted] on 28 June 2012 at 2pm where she received the services of [redacted] for which she paid €96 and in addition she bought some product for €14.99 totalling €110.99. She paid the receptionist with cash of €120.00 and received change of €9.01 and a receipt. The receipt which Ms [redacted] received stated the name of the [redacted] who provided the service along with the service and product details.

24. Ms [redacted] stated that she had previously used the services of the Appellant's [redacted] and that she had not used the Appellant's loyalty scheme as payment for the services received or the product purchased on 28 June 2012.

Witness 2 – Mr [redacted]

25. The Commissioner heard evidence from Mr [redacted] who is an audit manager with the Respondent and has extensive experience in auditing cash businesses. He stated that he has considerable experience in auditing [redacted] businesses including those which use the Phorest system which, he stated, is commonly used in the [redacted] and [redacted] business in Ireland.

26. Mr [redacted] stated that he attended with the Appellant and his accountant on 24 September 2012 where he learned that the Appellant used the Phorest system. He stated that the Phorest system is an EPOS which is used to manage a [redacted] business. He stated that it has a diary attached to it which manages bookings. He stated that the Phorest system also manages customer check-ins and payments. He stated that the Phorest system when used in a business usually replaces a traditional cash register or till and provides end of day reports which were previously known as "z-reads". The end of day reports contain a record of all of the transactions on the Phorest system for a particular day including records of payments and methods of payments received.

27. Mr [redacted] stated that all services and the cost of those services are normally pre-populated in the Phorest system along with relevant time requirements for those services. In addition, he stated that, existing customer details are normally input into the Phorest system when the customer first attends at a [redacted] stated that the Appellant's Phorest system listed details of over 1000 different services and products.

28. Mr [redacted] stated that he has never come across a situation where [redacted] used the Phorest system for booking, check in and check out without it also using the Phorest system to record the receipt of money.

29. He stated that when reviewing a business he would normally expect to see a weekly cash sheet populated with daily transaction totals and with the end of day reports attached to that cash sheet. He further stated that when he attended with the Appellant and his accountant in September 2012 the end of day reports which the Phorest system creates were not made available to him. He stated that he was provided with sheets of paper which purported to be cash sheets which contained handwritten amounts relating to each day's transactions but without any supporting documentation attached. He stated that since the commencement of the audit he has never been provided with end of day reports by the Appellant for any of the years 2008, 2009, 2010 and 2011.

30. Mr [redacted] stated that he obtained copies of the Appellant's Phorest system data and SAGE system data. He stated that the information input by the accountant into the SAGE system was based on the handwritten cash sheets which the Appellant provided to the accountant. It was not based on the data contained in the Appellant's Phorest system. He stated that the data from the Appellant's Phorest system contained between 3,000 and 4,000 pages of data, samples of which were submitted to the Commissioner during the course of this appeal.

31. He stated that a software programme was used by the Respondent to analyse the data for 2010 and 2011 contained in the Appellant's Phorest system which produced a report that showed that the Appellant's gross turnover from the two [redacted] in 2010 was €877,901.88 and in 2011 was €878,774.37.

32. Mr [redacted] referred to a receipt for a transaction on 29 June 2012 whereby another employee of the Respondent, [redacted], received a [redacted] service and purchased product from the Appellant's [redacted] for €64.99. She paid cash of €100 and received change of €35.01.

33. Mr [redacted] stated that he was satisfied of the accuracy and integrity of the Phorest data relating to both of the Appellant's [redacted] he had downloaded because the data from both of the Revenue Officials purchases on 28 and 29 June 2012 were contained in the downloads. He stated that the information contained in the downloaded Phorest data led him to believe that the Appellant was using the Phorest system as an EPOS system and not simply a booking system because there would be no way that the Appellant or his staff would have known in advance that a client would purchase a particular product in

addition to receiving a particular service. He stated that the Phorest system does not record a reservation in advance for the purchase of a product by a customer.

34. Mr [redacted] stated that the Phorest system also records any discount given to a client on a particular day and in that regard referred the Commissioner to page 312 of the Booklet of Documents submitted in advance of the hearing which contained a selection of printouts of the Appellant's Phorest data printout. The Commissioner notes that page 312 of the Booklet of Documents recorded a discount on the purchase of product on 31 December 2010.

35. Mr [redacted] also referred to page 318 of the Booklet of Documents submitted which contained a selection of printouts of the Appellant's Phorest data printout and which recorded details of a rewards scheme which the Appellant operated. He stated that clients who availed of the rewards scheme were booked in to the Phorest system in the normal way and that their payment amount was recorded as €0.00. The Phorest data printout contained in pages 318 and 319 of the Booklet of Documents contained a separate section entitled "Rewards" which contained rewards scheme transactions from 14 January 2010 to 6 March 2010 and detailed the staff member, the service delivered, the client and the amount charged as being €0.00. Mr [redacted] stated that in the two and a half year period of data which was recovered there were approximately 2,000 rewards scheme transactions recorded on the Appellant's Phorest data which recorded the service delivered at a cost of €0.00.

36. Mr [redacted] referred to page 322 of the Booklet of Documents which is a printout from the Appellant's Phorest data which recorded sundry cash payments made from the Appellant's till in relation to payment for milk, towels and other matters and which totalled €42,203.37 for the two and a half year period of recovered Phorest data. Mr [redacted] stated that the information contained in this section of the printout is indicative of the Appellant using the Phorest system to record all financial information relating to all transactions including sundry or incidental cash amounts in granular detail.

37. Mr [redacted] stated that one of the most important aspects of an EPOS system is to exercise control over staff. To that end, the end of day report generated by the Phorest system is an important report. The end of day report details the general sales for the day and the cash register / till's estimated state. A staff member will enter the cash register / till's actual state and the end of day float amount into the Phorest system. Following this, the Phorest system generates the cash register / till's closing float report, the cash register / till's stated differences report, the staff's end of day report for services, the staff's end of

day report for products and a sundries report. An example of an end of day report was contained at pages 293 and 294 of the Booklet of Documents.

38. Mr [redacted] referred to page 322 of the Booklet of Documents which contained a payment breakdown report which he stated was the end of the report downloaded from the Appellant's Phorest system. This report recorded the following payments received for the period 1 January 2010 to 30 June 2012 in the Appellant's [redacted] from the Phorest data which was available to be downloaded by the Respondent:

Cash Receipts	€309,600.51
Credit Card Receipts	€134,165.13
Debit Card Receipts	€408,841.40
Cheque Receipts	€ 271.00
Voucher Receipts	€ 17,268.28
Account Receipts	€ 140.50
Internet Receipts	€ 40.30

39. Mr [redacted] stated that he compared the Phorest system amounts with those contained in the Appellant's SAGE system prepared by his accountant. This comparison found that for the six months commencing January to June 2012 there was an average difference of €2,459.59 per week exclusive of VAT between the gross sales recorded on the Phorest system and the gross sales which were used for the purpose of preparing the Appellant's tax returns. He stated that he was satisfied that for the first six months of 2012 the Appellant's VAT amounts on the Phorest system and on the SAGE system matched precisely. He referred to a report which he had prepared for the first six months of 2012 which is set out at **Annex 1** of this determination.

40. He stated that when given the opportunity to explain the differences between the Phorest system data and the SAGE data, the Appellant claimed that loyalty scheme transactions had been incorrectly recorded as a cash sales. Mr [redacted] stated that this did not make sense to him and stated that if this had happened he would have expected there to have been "massive discrepancies" when the staff ran the end of day reports on a daily basis and that this would have given rise to cash register / till shortages. In addition, Mr [redacted]

stated that no document other than the Phorest data was produced to him by the Appellant which recorded loyalty scheme transactions.

41. Mr [redacted] stated that he had asked the Appellant to identify loyalty transactions which had been incorrectly recorded as sales during the period May to June 2012. He stated that the Appellant had submitted a document to him which the Appellant claimed contained all of the loyalty scheme transactions which took place in the period May to June 2012. He stated that he did not accept the accuracy of this list as Ms [redacted]'s [redacted] of €96 on 28 June 2012 was included in the list of transactions which the Appellant had claimed were incorrectly identified as sales transactions when they should have been identified as loyalty scheme transactions.

42. Mr [redacted] stated that during the course of the investigation the details of both of the [redacted] credit and debit card transactions by way of merchant acquirer data had been acquired by the Respondent. He stated that, although the merchant acquirer data which the Respondent received did not include the cardholders' names, an analysis of the transactions which the Appellant claimed were loyalty scheme transactions and which the Phorest system recorded had been paid by credit or debit card was carried out. He stated that it had been possible to match all of the claimed loyalty scheme transactions for May to June 2012 with the merchant acquirer data. He also stated that there was a caveat with this analysis in that it was not possible to precisely match each card with the relevant client name included on the list as the cardholder names had not been submitted to the Respondent when it received the merchant acquirer data.

43. He stated that this analysis eliminated all but 16 of the disputed loyalty transactions for May 2010 to June 2012 as the analysis could not find matching credit or debit card transactions for those 16 transactions. Mr [redacted] stated that he believed that these 16 transactions had been paid for and were not loyalty scheme transactions.

44. Mr [redacted] stated that the analysis carried out showed that the Appellant's explanation that transactions had been incorrectly recorded on the Phorest system as sales instead of being recorded as loyalty scheme transactions was incorrect. He stated that the analysis showed that the transactions had in fact been correctly recorded on the Phorest system as sales.

45. He stated that analysis of the Phorest system data showed differences between the sales recorded on the Phorest system and those included in the Appellant's tax returns as follows:

	Phorest system turnover (ex VAT) amount	Appellant's tax return turnover (ex VAT)	Difference
2010	€770,560	€664,627	€105,933
2011	€780,998	677,851	€103,147
2012 (January – June)	€436,863	€394,038	€42,835

46. He stated that the average understatement of turnover by the Appellant had continued at in or around the amount of €2,500 per week over the period from January 2010 to June 2012 for which the Appellant's Phorest data was available. He stated that he had no reason to believe that this understatement of turnover had not also been made by the Appellant prior to 2010 as the same system was in place for the preparation of the Appellant's tax returns prior to 2010. This, he stated, was the basis for his raising the amended assessments for 2008 and 2009.

47. Mr [redacted] stated that the Appellant's turnover increased significantly from when the Appellant's business first opened in 2007 until it ceased as a sole trade in 2014 from €394,021 in 2007 to €677,851 in 2011 and €872,565 in 2014. He stated as a result he did not accept the Appellant's explanation that the economic crash in 2008 had negatively affected the Appellant's business.

Respondent's Submissions

48. The Respondent submitted that there are no legal issues to be decided in the substantive matter.

49. The Respondent submitted that it has relied on the analysis of the Appellant's own Phorest data in raising the relevant Notices of Amended Assessment to Income Tax and Notices of Assessment to VAT.

50. The Respondent submitted that five strands of evidence support its case that the Appellant has under-reported his sales and that the Appellant received payments in the amounts calculated as set out in this determination. The five strands of evidence on which the Respondent relies are:

    i. the Appellant's own Phorest records;

ii. the lack of any other sales records;

iii. the inclusion of cash sales in the loyalty scheme transaction list;

iv. the inclusion of credit card sales in the loyalty scheme transaction list; and

v. the level of turnover of the business in the post-intervention period.

51. The Respondent submitted that the Phorest system was the only EPOS operated by the Appellant. The Respondent submitted that as a system, Phorest maintains a complete record of all sales entered on that system. It was submitted that the Appellant used the Phorest system to manage appointments, record payments, issue receipts, manage the loyalty scheme, produce reports and issue messages to customers.

52. In addition the Respondent submitted that as an EPOS, Phorest is what the Appellant's cash register / till was controlled with. Each customer was given a unique identifier, so that when a reservation was made, it was made in the name of a pre-existing customer or, if a new customer, a new customer ID was created. The reservation was made for a particular service, with the cost for services having been pre-entered in the system. On completion of the service, the staff member calculated the total due as per the system, with provision made for discounting and for complementary and loyalty scheme services. On tendering of payment by the customer, the staff member entered the payment type and amount into the Phorest system at the cash register / till, recording the sale, and the system produced a receipt in accordance with the sale recorded. The Respondent submitted that the Phorest system facility for recording complementary sales and discounts was used by the Appellant's staff.

53. The Respondent submitted that the Phorest records are the only sales records retained by the Appellant, and the Notices of Amended Assessment to Income Tax and the Notices of Assessment to VAT under appeal were calculated in accordance with those sales records.

54. In relation to the lack of other records available, the Respondent submitted that Regulation 27 of the Value Added Tax Regulations 2010 require an accountable person to keep a full and accurate record of each transaction that affects the person's liability to tax. The Respondent submitted that receipt of consideration from an unregistered person for services liable to VAT is such a transaction and therefore a record must be maintained of each such transaction. Where the accountable person uses an EPOS system, the relevant record of the transaction is created by the system at the point of sale, with the

sequential number, date, and time of the entry recorded. The Phorest system therefore keeps a record of the relevant transactions.

55. The Respondent submitted that as at the date of the oral hearing no other record of the relevant transactions for the purposes of VAT has been produced by the Appellant.

56. The Respondent submitted that the hand-written end of day summaries which were used by the Appellant's Accountant in calculating his income tax and VAT liabilities, by entering them into the SAGE system are not a record of each sale, but a purported summary of the daily and weekly sales.

57. The Respondent submitted that the Appellant's explanation in relation to the discrepancy between the Phorest system records and the records used by his Accountant is not credible. The Respondent submitted that the Appellant's explanation that this discrepancy resulted from loyalty scheme transactions being incorrectly maintained as sales is not supported by documentation. The Respondent submitted that the Appellant has not submitted any documentation to support this claim.

58. It was submitted that the Appellant's explanation that the hand-written end of day summaries were based on the dockets which staff completed and handed the receptionist after each service is not supported by documentation and that no evidence of the existence of such dockets has been submitted by the Appellant.

59. The Respondent submitted that no other sales records which document the individual sales made by the Appellant and which detail the payment method has been submitted by the Appellant. The Respondent also submitted that the Appellant has not submitted any such hand-written end of day reports for the relevant years.

60. The Respondent submitted that the Appellant's contention that the SAGE records are an accurate reflection of the sales, despite not containing a record of the actual sales transactions, is not credible.

61. The Respondent submitted that the Appellant's explanation that the discrepancies between the Phorest system records and the SAGE records result from human error is not credible. The Respondent submitted that a sale is only recorded in the Phorest system after a member of staff has entered the amount tendered by the customer along with the method of payment received. The Respondent submitted that the Appellant has not produced any evidence of the loyalty scheme or of the loyalty scheme points accumulated by customers.

62. The Respondent submitted that the Appellant's loyalty scheme transaction list of customers who had been given free services under the loyalty scheme for the period of May to June 2012 included one of the test purchases carried out by the Respondent's officials. The Officer in question obtained services without use of any loyalty scheme and paid cash for the services.

63. The Respondent submitted that it has analysed the data on the tender type (cash or credit/debit card) for transactions and has compared it to the loyalty scheme transaction list. The Respondent submitted that it is clear from the comparison that some of the other customers on that list paid for their services.

64. In addition, the Respondent submitted that it has also received merchant acquirer data, which is a record of the credit and debit card payments processed on behalf of the Appellant. Whilst this data does not include the name of the card-holder, the Respondent submitted that these transactions can be matched by date and amount to the transactions on the loyalty scheme transaction list. The Respondent submitted that this is further evidence that the Appellant's loyalty scheme transaction list is not credible and that the explanation for the discrepancies proffered by the Appellant is not credible. As a result the Respondent submitted that the contents of the Appellant's loyalty scheme transaction list are not credible.

65. The Respondent submitted that it has analysed the trading of the businesses in subsequent tax years, first by the Appellant personally and subsequently since 2014 as a private limited company. The Respondent submitted that the net turnover figures contained in the Appellant's Phorest system for the relevant tax years are consistent with the level of sales in 2012, 2013 and 2014 and are also on a consistent graph with sales from 2012 to 2017.

Appellant's Witness Evidence

Witness 3 – Mr [redacted]

66. The Commissioner heard direct evidence from the Appellant. He stated that he opened his [redacted] in [redacted] in [redacted] and his [redacted] in [redacted] in [redacted]. He stated that [redacted] which necessitated the business temporarily moving location for approximately 8 weeks. He stated that this [redacted] along with his wife taking time off, impacted on the turnover of the business.

67. He stated that he pays his staff by bank transfer and calculates their salaries using the industry standard pay rates which were in place during the relevant periods. He stated

that a full time [redacted] would have received a basic salary plus [redacted] commission of their takings or if they hit their target they would have received a [redacted] of commission taking as their total pay. Staff pay, he stated, is a percentage of turnover.

68. The Appellant stated that the purpose of buying the Phorest system was to manage his customer database as previously everything had been managed on a paper based system.

69. The Appellant stated that the Phorest system has a customer database module which contains all information relating to an individual customer. He stated that all customers' information is entered into the customer database on Phorest and that each customer receiving a treatment is allocated a number straight away. Once a customer receives a treatment that information is also reflected into a the loyalty scheme module on Phorest and this earns the customer loyalty points which during the relevant periods equated to 1 point per €1 spent on treatments. He stated that during the relevant periods each loyalty point gave a customer a 10% discount value and that for every €1,000 spent a customer received 10% of that in loyalty value. He stated that a rough overview of that would mean that where annual turnover was €800,000, 10% of that inclusive of VAT was approximately €80,000 to €100,000. He stated that the approximately €100,000 per annum variance identified by the Respondent equated approximately to the loyalty scheme value.

70. He stated that the end of day procedure which is used in his is that either he, his wife or the receptionist in the [redacted] balance the customer payments against the Phorest system. The card payments are balanced against the merchant card services. Petty cash, vouchers and loyalty transactions are taken account of and all of this information is put into an envelope. The information in the envelopes is then input into a spreadsheet by the Appellant once a week and given to the accountant. He stated that he keeps copies of all cash pay outs and invoices.

71. The Appellant stated that, when running the end of day process, a batch report is created by the merchant services terminal from which any transactions are directly lodged into his bank account. The Appellant estimated that for the periods 2008 to 2011 approximately 70% of his turnover was by way of card transaction.

72. He stated that, when a treatment was complete, the [redacted] fill in a docket sheet in their docket book which would be the staff member's record of the treatments they had carried out in any particular day. This is passed to the receptionist who then charges the customer and updates the Phorest system with details of the treatment. He stated that

there are approximately 100,000 transactions per annum on the Phorest system for his business.

73. The Appellant stated that there are controls in place which review the work of the receptionists. In particular he stated that the end of day balancing of the Phorest system and the cash register / till is one control. Another control which is in place is that the individual [redacted] is part paid on a commission basis but that loyalty transactions do not form part of the commission calculation. He stated that if the treatment information on the Phorest system was incorrect then this would effect a [redacted] pay. He stated that he had previously had an issue with a receptionist amending the Phorest system and reducing the treatments which the system recorded for the purpose of under recording treatments and taking cash for herself. He stated that a number of [redacted] had noticed this and brought it to his attention. As a result the receptionist's employment had been terminated.

Appellant's Submissions

74. The Appellant submitted that the assessments raised are excessive.

75. In his Outline of Arguments to the Commission, the Appellant submitted that during the tax years 2008 to 2011 sales were recorded by each staff member who performed a treatment in each [redacted] filling in a paper docket. This docket outlined the treatment or treatments performed by the staff member on the customer. The customer presented this docket to the receptionist at the cash register / till who then charged the customer for the treatment at the till. The receptionist at the cash register / till who charged the customer was independent of the employee who completed the paper docket. The cash or credit / debit card sale was then entered and recorded on the cash register / till. Sales were recorded in both [redacted] a similar manner during the tax years 2008 to 2011.

76. The Appellant submitted that at the end of each day in each [redacted] the cash registers / tills were reconciled and end of day summaries produced. The summaries from the daily cash register / till rolls (or "Z-reads") were then entered onto a daily cash book by the Appellant or a member of staff. He submitted that on a weekly basis the Appellant's Accountant would perform, on a test basis, a reconciliation between the dockets presented by the staff members to the daily cash register / till rolls, in addition to reconciling the daily cash register/ till rolls to the daily cash book. In addition the daily cash book was reconciled to the Appellant's bank account. Once satisfied that the tests and reconciliations were in order the Appellant's Accountant would then enter the sales data onto the Appellant's SAGE system.

77. The Appellant submitted that the only sales data that should be considered is that of the paper dockets completed by the staff, the cash register / till end of day reports (or "Z-reads") , the daily cash books, bank statements and the data entered into SAGE system by the Appellant's Accountant.

78. The Appellant submitted that the Phorest system was not used by the Appellant or the Appellant's Accountant as a mechanism to recognise or record sales data, during the tax years 2008 to 2011. Further, the Phorest system was not integrated with the cash register / till systems operating in each [redacted] during the tax years 2008 to 2011.

79. The Appellant submitted that at the commencement of the Respondent's audit on 24 September 2012, the Respondent was provided with all of the Appellant's books and records including bank statements, till rolls (or "Z-reads"), petty cash analysis, cash books, nominal ledgers, financial accounts, revenue returns, bank reconciliations and control accounts.

80. The Appellant submitted that the Respondent's audit was focused on a particular test period being the two month period between May and June 2012 and focused primarily on the data produced from the Phorest system. The Appellant submitted that the Respondent did not focus on the books and records that were actually provided and used in the business by the Appellant to record sales.

81. The Appellant submitted that Phorest was first implemented into his business in late 2007. He submitted that Phorest was not an EPOS system used in the Appellant's business during the tax years 2008 to 2011, that it was not integrated with the cash register / till system in each [redacted] and was not used by the Appellant in his business to record cash or credit sales. In addition the Appellant submitted that Phorest was not integrated with the Appellant's accounting package SAGE.

82. The Appellant submitted that during the period 2008 to 2011 Phorest had multiple uses in his business with its primary uses being to record customer information and data, to be used as the primary way to track customer bookings and to track and manage the customer loyalty scheme.

83. The Appellant submitted that Phorest would collate all of the basic customer information such as name, address and contact information. Phorest was also used to collate treatment information such as the types of treatments received by individual customers, the frequency of such treatments, which would allow the [redacted] make contact with the customer anticipating future treatment needs and requirements. This information was

tracked and stored usually through bookings. As such, the Appellant submitted, Phorest was a tool used to help generate and maintain business with existing customers.

84. The Appellant submitted that Phorest would also record all bookings from customers who either walked into the [redacted] who rang to make a booking or who booked online. The Appellant submitted that during the years 2008 to 2011 Phorest contained within it the financial amounts of each treatment. This meant that when a booking was made on Phorest for a specific treatment or treatments, the Phorest system assigned a value for that treatment based on the prices charged in the [redacted] at the time. This was important, as customers when booking usually enquired as to the cost of the total treatment or treatments.

85. By maintaining all of the booking information and customer data, Phorest in turn would then track and control the customer loyalty scheme. This was a scheme used by the Appellant to reward loyal customers with free treatments dependent upon the amount previously spent in the [redacted] The customer loyalty scheme was a commercial means of retaining customers and was commonly deployed by rival competitors throughout the industry.

86. The Appellant submitted that the Phorest system was only as good as the data entered into it by staff. Differences arose between the data entered onto Phorest and the cash register / till rolls / daily cash books for varying different and legitimate reasons. For example, a customer making an online booking could enter the wrong treatment they wanted in error. In addition, an employee could enter the incorrect treatment information when taking a booking over the phone or in person. Alternatively, a staff member could enter the correct treatment information from the initial booking, but whilst in the [redacted] a customer could decide to not get the treatments they originally booked. Finally, customers could decide to get an alternative treatment or treatments when in the [redacted] irrespective of what they had originally booked. The Appellant submitted that the Phorest system was not updated to reflect these changes.

87. It is the Appellant's case that for the purposes of recording sales, it was not important whether the information on Phorest was up to date and accurate, as all sales whether by cash or card were charged through the cash register / till system and all treatments were charged for.

88. The Appellant submitted that Phorest was also used to calculate the customer loyalty scheme. Customers of the Appellant were allowed build up customer loyalty points in

[redacted] depending on the number of treatments obtained over time. The Appellant submitted that notwithstanding the inherent flaws in the data entered in the Phorest system as highlighted above, Phorest remained the only system within the Appellant's business to track sales by customer to allow it calculate customer loyalty points.

89. Having highlighted the flaws in the data entered into the Phorest system, the Appellant submitted that it is important to note that if bookings changed whilst customers were in the shop, the Phorest system was not updated to reflect the revised treatment. Further if a customer received a treatment under the customer loyalty scheme, the value of that treatment was still reflected in the Phorest system. The Appellant submitted that the differences highlighted by the Respondent, during the course of its audit where it highlighted the differences in the sales figures contained within Phorest and in the SAGE system (for the test period May to June 2012), were primarily on account of the treatment values provided by the Appellant to customers on the loyalty scheme that were retained within the Phorest system and not updated.

90. The Appellant submitted that Phorest was also used to help partly track employee commissions. During the tax years 2008 to 2011, the Appellant's [redacted] approximately [redacted] the majority of whom worked on commission. During the period in question the Appellant's staff had the option of receiving a basic pay based on a 39.5 hour week and commission of 12.5% of takings after VAT. Alternatively staff could elect to take a flat rate of commission of 30% of takings after VAT. As most of the staff worked less than a standard 39.5 hours per week they preferred to utilise the option of a flat commission rate of 30%.

91. The Appellant submitted that given the inherent flaws in the data that was not only entered directly into Phorest at the booking stage, but also the data that remained there after a customer visit staff were aware that Phorest was not a reliable system for the calculation of their weekly commissions. The Appellant submitted that staff relied on the paper dockets which they completed at the end of each treatment, which reflected the actual treatment performed. The paper dockets were then handed to the receptionist and used to charge the customer. Whilst Phorest was used by the employees as a frame of reference for calculating their commissions, it was the paper dockets that served as the primary source they relied upon to calculate the commission owing.

92. The Appellant submitted that if the Respondent is correct that the real sales figures for the [redacted] are the sales figures contained within the Phorest system, then is follows that

the staff's commission payments which were calculated and paid during the tax years 2008 to 2011 were also undervalued.

93. The Appellant referred to section 23 (1) of the Value Added Tax Act 1972 and stated that in *Viera Limited v The Revenue Commissioners* [2009] IEHC 431, O'Neill J considered the meaning of the phrase "reason to believe" as contained within s23 of the Value Added Tax Act 1972. O'Neill J stated:

> *"The equivalent statutory provision in the U.K. is s.73 (1) of the Value Added Tax Act 1994 which provides that where a taxable person has, inter alia, failed to make any returns or where the returns are incomplete or incorrect the Customs and Excise Commissioners "may assess the amount of VAT due from him to the best of their judgement" and notify this to the taxable person"*

94. Further the Appellant submitted that O'Neill J considers the phrase "*best of their judgement*" as explored by Woolfe J. in *Van Boeckel v. Customs and Excise Commissioners* [1981] S.T.C. 290 (hereinafter "*Viera*") at pages 292 – 293:

> *"..it should be recognised, particularly bearing in mind the primary obligation, to which I have made reference, of the taxpayer to make a return himself, that the commissioners should not be required to do the work of the taxpayer in order to form a conclusion as to the amount of tax which, to the best of their judgement, is due…….…What the words 'best of their judgement' envisage, in my view, is that the commissioners will fairly consider all material placed before them and, on that material, come to the decision which is one which is reasonable and nor arbitrary as to the amount of which is due. As long as there is some material on which the commissioners can reasonably act then they are not required to carry out investigations which may or may not result in further material being placed before them."*

95. In addition, the Appellant submitted that O'Neill J stated the following in *Viera*:

> *"The concept of having "reason to believe" involves an analysis of the subjective state of mind of the respondent's inspector based on the information before him. The reason which gives him to believe that tax is due and payable must be based on facts which are known to him. I am satisfied that the correct test is not dissimilar to that enunciated by Woolf J. in Van Boeckel v. Customs*

and Excise Commissioners [1981] S.T.C. 290 in respect of "to the best of their judgement".

96. The Appellant submitted that the test period in which the Respondent carried out its investigation was the two month period between May to June 2012. Having informed the Appellant in writing that the period under audit was 2010 and 2011, the Appellant retrospectively applied its test findings conducted over a two month period in 2012 to the financial years 2008 and 2009 absent making any adjustment for the actual trading figures that were reported by the Appellant in those trading years. The Respondent has justified this method of calculation based on its belief that the Appellant had understated its sales from 2008. The Appellant submitted that no basis for the Respondent's belief has been provided.

97. Therefore, the Appellant submitted, an identical assessment was raised by the Respondent in 2008 and 2009 as was raised in 2010, based on test findings conducted in 2012. No allowance, adjustments, consideration or commercial nuance has been used to reflect the fact that the Appellant's trading in 2008 and 2009 was lower than in 2010. No adjustments were made by the Respondent in its assessments for the fact that the [redacted] only opened in [redacted] 2007 and that it was therefore a new business trying to build a brand and trade, with new staff, trying to attract new customers in a new unproven location, from 2008 onwards. Further, no adjustments were made by the Respondent in its calculations that from 2008 onwards, commenced one of the most severe recessions in this country's history which affected the trading of all businesses. It is the Appellant's submission that not all the facts were fairly considered by the Respondent in arriving at the assessments for 2008 and 2009 as articulated by O'Neill J. in his decision in *Viera*.

Material Facts

98. The following material facts are not at issue between the Parties and the Commissioner accepts same as material facts:

    i. The Appellant is a businessman who for the relevant years operated two [redacted]

    ii. During the relevant years the Appellant filed Income Tax self-assessment returns disclosing net taxable income and net liability to income tax (to include USC, PAYE and PRSI) as follows:

Year	Taxable Income returned €	Income Tax Liability returned €
2008	65,369	19,056.69
2009	10,767	1,183.58
2010	20,539	3,748.53
2011	14,727	3,987.40

iii. During the relevant years the Appellant file VAT returns disclosing, on an annual basis, a net liability to VAT as follows:

Year	VAT Liability returned €
2008	63,428
2009	79,899
2010	57,665
2011	47,759

iv. In June 2012 two of the Respondent's Officers received and paid for services, one in each of the Appellant's [redacted] The Officers retained their receipts for the payments made and retained those as records of payments made to the Appellant;

v. During the relevant years the Appellant used an EPOS system called Phorest;

vi. The Appellant used the Phorest system as a customer database;

vii. The Appellant used the Phorest system to manage a loyalty rewards scheme for his customers;

viii. The Respondent undertook an audit of the Appellant's business which began in September 2012;

ix. As part of the audit, the Respondent downloaded the Appellant's Phorest data for 2010 and 2011 and the first six months of 2012;

x. The audit established that the Appellant's VAT returns were completed by the Appellant's Accountant using the SAGE accounting system and information provided by the Appellant to the Accountant;

xi. The information provided by the Appellant to his accountant took the form of handwritten cash sheets which set out a daily summary of the Appellant's sales. This was the information which the accountant input into the SAGE system to calculate the Appellant's Income Tax and VAT liabilities;

xii. The Respondent analysed the Phorest data recovered from the Appellant in relation to the first six months of 2012 and compared that data with the SAGE system data for that period. This established differences between the Phorest and SAGE system sales records as set out in **Annex 1** below and in particular differences in relation to the period May to June 2012 as follows:

Week Commencing	Phorest sales €	SAGE sales €	Difference €
30 April 2012	19,426.17	16,864.84	2,561.33
7 May 2012	17,783.03	14,426.72	3,356.31
14 May 2012	16,929.7	14,785.41	2,143.86
21 May 2012	20,229.42	17,196.74	3,032.68
28 May 2012	16,968.39	14,57362	2,394.77
4 June 2012	16,059.22	13,937.96	2,121.96
11 June 2012	15,667.79	13,507.8	2,160.61
18 June 2012	16,772.59	14,867.36	1,905.23
25 June 2012	20,875.78	18,728.1	2,146.87

xiii. Following engagement with the Appellant, the Respondent was not satisfied with the explanation given by the Appellant in relation to the differences which arose in the data;

xiv. On 4 January 2017 the Respondent raised the following Amended Assessments to Income Tax (to include USC, PRSI and Income Levy) and the following Assessments to VAT in relation to the Appellant which contained the following additional amounts of Income, Income Tax liability and VAT liability:

Year	Income €	Income Tax liability €	VAT liability €
2008	107,482	49,836	14,510
2009	107,482	49,029	14,510
2010	107,482	53,343	14,510
2011	116,609	58,566	12,243

99. The following material facts are at issue between the Parties:

i. The Appellant operated the Phorest system as a financial module to include a till for his [redacted] during the relevant years;

ii. The Appellant's turnover for the relevant years was as submitted in his returns to the Respondent.

<u>The Appellant operated the Phorest system as a full EPOS system for his [redacted] during the relevant years;</u>

100. Both Parties accept that during the relevant years the Appellant was using the Phorest system in his [redacted]

101. The question which arises for the Commissioner is whether the Appellant used the Phorest system as a full EPOS system, to include the recording of customer payments, during the relevant years.

102. The Appellant has submitted in his Outline of Arguments and orally that the Phorest system was not used by the Appellant or the Appellant's Accountant as a mechanism to recognise or record sales data, during the tax years 2008 to 2011. Further the Appellant has submitted that the Phorest system was not integrated with the cash register / till systems operating in each [redacted] during the tax years 2008 to 2011.

103. In his direct evidence to the Commissioner the Appellant stated that the purpose of purchasing the Phorest system was to manage his customer database as previously everything had been managed on a paper based system. The Appellant stated that the Phorest customer database module contains all information relating to an individual customer. He stated that all customers' information is entered into the customer database on Phorest and each customer receiving a treatment is allocated a number straight away. In addition, he stated that Phorest operates a customer loyalty module and that every

customer who received treatments in [redacted] would receive 1 customer loyalty point for every €1 spent.

104. In relation to customer payments, the Appellant stated that the end of day procedure in each [redacted] entailed balancing the customer payments received with the Phorest system. The card payments are balanced against the merchant card services. Petty cash, vouchers and loyalty transactions are taken account of and all of this information is put into an envelope and then into a spreadsheet which was given to the Appellant's Accountant for inclusion on the SAGE system.

105. There is no divergence between the Parties in relation to the use of Phorest as a customer database and it is agreed that customers' information was input into Phorest along with details of their treatments received which would then in turn record loyalty points based on the customer's monetary spend.

106. There is also no divergence between the Parties in relation to the use of Phorest to manage the Appellant's loyalty rewards scheme for his customers. The Commissioner notes that under cross examination the Appellant stated that there was no parallel system in use for recording loyalty points or for operating the loyalty scheme.

107. On cross examination, the Appellant stated that he handwritten end of day reports which were given to his Accountant were based on end of day information contained in Phorest. Counsel for the Respondent asked the Appellant whether the end of day reports in Phorest for 2008 to 2011 were available and the Appellant stated that, in 2012 when the audit commenced, the IT department of Phorest required additional time to retrieve the information. He stated that Mr [redacted] refused to wait until Phorest retrieved the information and instead Mr [redacted] took a download of the Phorest data. He stated that Phorest have subsequently informed him that the information for 2008 and 2009 was not stored on the Phorest system. In addition, he stated that it is possible that the information for 2010 and 2011 is available on the Phorest system.

108. Under cross examination, the Appellant confirmed that he had not given his Accountant the Phorest data for the purposes of preparing accounts and returns but that he had given him information by way of the hand-written reports which he claims contained the correct information in relation to the business.

109. The Respondent submits that the only documentary evidence in relation to the day to day operation of the Appellant's business is that which is contained in Phorest. The Respondent submits that the Appellant has not produced any other documentation which suggests that there was any separate systems in use in the Appellant [redacted] in relation

to the recording of sales and payment receipts or in relation to the operation of a loyalty scheme.

110. Having considered all of the evidence along with the submissions received, the Commissioner is satisfied that the Appellant operated the Phorest system as a full EPOS system in the relevant years. The Commissioner is satisfied, based on the Appellant's own evidence, that the Phorest system was used to record and manage the Appellant's customer database, to manage and operate the loyalty rewards scheme and to record sales and payment receipts for the relevant years.

111. Therefore this material fact is accepted.

112. The Commissioner has considered the submission contained in the Appellant's Outline of Arguments that the Phorest system was not used by the Appellant or the Appellant's Accountant as a mechanism to recognise or record sales data, during the relevant years and that the Phorest system was not integrated with the till systems operating in each [redacted] during the tax years 2008 to 2011. The Commissioner notes that no documentary evidence to support this claim has been submitted by the Appellant. In particular the Commissioner notes that the Respondent's investigation into the Appellant's business began in September 2012 and a taxpayer is obliged under the provisions of Regulation 27 of the Value Added Tax Regulations 2010 to maintain records of each transaction which gives rise to a VAT event. In those circumstances, the Commissioner considers it reasonable to expect that if the Appellant was operating a cash register / till system separate and apart from Phorest, documentary evidence of a separate cash register / till system in the form of till roll or some other information recording each individual sale would be available. The Appellant has not submitted any documentary evidence of a separate cash register / till system other than Phorest being in use for the relevant years to the Commissioner.

<u>The Appellant's correctly returned his sales for the relevant years:</u>

113. The Appellant's position in this appeal is that the handwritten end of day reports which he gave to his Accountant were a true and accurate reflection of the sales position in his [redacted] There is no dispute between the Parties that the Appellant's Accountant used the precise information which was given to him by the Appellant for the preparation of the Appellant's accounts and returns.

114. The Appellant has not submitted any documentation which establishes his sales position in the relevant years to the Commissioner. The only sales position

documentation which has come from the Appellant is the download of the Phorest system for 2010, 2011 and the first six months of 2012 which the Respondent downloaded during the course of the audit which commenced in September 2012.

115. The Appellant does not agree with the analysis carried out by the Respondent on which the Notices of Amended Assessment to Income Tax and the Notices of Assessment to Vat raised by the Respondent in relation to the relevant years were based.

116. 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:-

> "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner and to whether the taxpayer has shown that the relevant tax is not payable.*"

117. As the burden of proof lies with the Appellant, the Commissioner considers is reasonable to expect that he would provide some form of documentary evidence which tends to establish his sales position within his [redacted] for the relevant years. Such evidence could take the form of records of individual sales, cash register / till rolls, the paper dockets which the Appellant's staff submitted and used for the calculation of the commission which they were paid or some other form of documentation. No such documentation has been submitted to the Commissioner.

118. The Commissioner notes that the Appellant has submitted documentation entitled "Accountant's Workings" for each of the relevant years. These documents included documents relating to the Appellant's Accountant's work papers which were utilised in the preparation of the Appellant's accounts for the relevant years and includes work papers relating to the Appellant's fixed assets, stock schedule, debtors schedule and control, bank schedule and control, creditors schedule and VAT reconciliation.

119. The Appellant has not submitted any documentation relating to individual sales records or transactions. Nor has the Appellant submitted the handwritten end of day reports on which his Accountant based his preparation of the Appellant's accounts to the Commissioner.

120. Having not received any supporting documentation which tends to support the Appellant's position that he correctly returned his sales for the relevant years, the

Commissioner is left with no option but to find as a material fact that the Appellant did not correctly return his sales for the relevant years.

121. Therefore the Commissioner finds as a material fact that the Appellant did not correctly return his sales for the relevant years.

122. For the avoidance of doubt the Commissioner finds the following as material facts in this appeal:

i. The Appellant is a businessman who for the relevant years operated two [redacted]

ii. During the relevant years the Appellant filed Income Tax self-assessment returns disclosing net taxable income and net liability to income tax (to include USC, PAYE and PRSI) as follows:

Year	Taxable Income returned €	Income Tax Liability returned €
2008	65,369	19,056.69
2009	10,767	1,183.58
2010	20,539	3,748.53
2011	14,727	3,987.40

iii. During the relevant years the Appellant file VAT returns disclosing, on an annual basis, a net liability to VAT as follows:

Year	VAT Liability returned €
2008	63,428
2009	79,899
2010	57,665
2011	47,759

iv. In June 2012 two of the Respondent's Officers received and paid for services, one in each of the Appellant's [redacted] The Officers retained their receipts for the payments made and retained those as records of payments made to the Appellant;

v. During the relevant years the Appellant used an EPOS system called Phorest;

vi. The Appellant used the Phorest system as a customer database;

vii. The Appellant used the Phorest system to manage a loyalty rewards scheme for his customers;

viii. The Respondent undertook an audit of the Appellant's business which began in September 2012;

ix. As part of the audit, the Respondent downloaded the Appellant's Phorest data for 2010 and 2011 and the first six months of 2012;

x. The audit established that the Appellant's VAT returns were completed by the Appellant's Accountant using the SAGE accounting system and information provided by the Appellant to the Accountant;

xi. The information provided by the Appellant to his accountant took the form of handwritten cash sheets which set out a daily summary of the Appellant's sales. This was the information which the accountant input into the SAGE system to calculate the Appellant's Income Tax and VAT liabilities;

xii. The Respondent analysed the Phorest data recovered from the Appellant in relation to the first six months of 2012 and compared that data with the SAGE system data for that period. This established differences between the Phorest and SAGE system sales records as set out in **Annex 1** below and in particular differences in relation to the period May to June 2012 as follows:

Week Commencing	Phorest sales €	SAGE sales €	Difference €
30 April 2012	19,426.17	16,864.84	2,561.33
7 May 2012	17,783.03	14,426.72	3,356.31
14 May 2012	16,929.7	14,785.41	2,143.86
21 May 2012	20,229.42	17,196.74	3,032.68
28 May 2012	16,968.39	14,57362	2,394.77

4 June 2012	16,059.22	13,937.96	2,121.96
11 June 2012	15,667.79	13,507.8	2,160.61
18 June 2012	16,772.59	14,867.36	1,905.23
25 June 2012	20,875.78	18,728.1	2,146.87

xiii. Following engagement with the Appellant, the Respondent was not satisfied with the explanation given by the Appellant in relation to the differences which arose in the data;

xiv. On 4 January 2017 the Respondent raised the following Amended Assessments to Income Tax (to include USC, PRSI and Income Levy) and the following Assessments to VAT in relation to the Appellant which contained the following additional amounts of Income, Income Tax liability and VAT liability:

Year	Income €	Income Tax liability €	VAT liability €
2008	107,482	49,836	14,510
2009	107,482	49,029	14,510
2010	107,482	53,343	14,510
2011	116,609	58,566	12,243

xv. The Appellant operated the Phorest system as a full EPOS system for his [redacted] the relevant years;

xvi. The Appellant did not correctly record his sales for the relevant years.

123. The Commissioner notes that during final oral submissions at the oral hearing the Appellant raised an issue in relation to the Respondent's analysis of the Phorest data which the Respondent had downloaded. The Appellant's Tax Agent submitted that he had concerns relating to who within the Respondent had carried out the analysis and in particular alleged that Mr [redacted] had not carried out the analysis on the data on which much of the evidence in this appeal is based. The Commissioner noted at the oral hearing that no issue in relation to the integrity of the analysis was put to Mr [redacted] under cross examination. The Commissioner has no reason to doubt the integrity of the data analysis which the Respondent has presented in this appeal and evidence which challenges the integrity of the data analysis has been adduced to the Commissioner.

124. The Commissioner also notes that the Appellant's Tax Agent submitted at the oral hearing that he had not been able to get counsel's opinion on the admissibility of the data analysis. The Commissioner did not accept this observation by the Appellant and noted that this appeal dates from 2017 and relates to the years 2008, 2009, 2010 and 2011. In addition, the Commissioner noted at the oral hearing that the Appellant had been put on notice in May 2022 that the oral hearing of this appeal was going to be scheduled by the Commission. The issue of the admissibility of the Respondent's data analysis has not been argued before the Commissioner and the issue has not formed part of this determination.

Preliminary Issue:

125. The Appellant argued in his Outline of Arguments that the Notice of Amended Assessment to Income Tax and the Notices of Assessments to VAT raised by the Respondent were out of time. The Commissioner has considered this submission.

126. Section 955(2)(a) of the TCA1997 contains a protective section which provides that the Respondent is not entitled to raise or amend assessments outside of a four year time limit in circumstances where a chargeable person has made a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period as follows:

> "*(2)(a) Where a chargeable person has delivered a return for a chargeable period and has made in the return a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period, an assessment for that period or an amendment of such an assessment shall not be made on the chargeable person after the end of four years commencing at the end of the chargeable period in which the return is delivered and*
>
> > *(i)no additional tax shall be payable by the chargeable person after the end of that period of four years, and*
> >
> > *(ii) no tax shall be repaid after the end of a period of four years commencing at the end of the chargeable. For which the return is delivered,*
>
> *by reason of any matter contained in the return.*"

127. The High Court decision of Stack J in *Hanrahan v The Revenue Commissioners* [2022] IEHC 43 (hereafter "*Hanrahan*") dealt with the issue of full and true material disclosure as

set out in section 955 of the TCA1997. At paragraphs 89 to 91 of that decision Stack J stated the following:

> *"89. The third argument made by the appellant on the time issue was to say that, insofar as there was a failure to make a full and true disclosure of all material facts on the tax return, this was not "necessary for the making of an assessment" because Revenue proceeded to make an assessment and they had never amended that assessment.*
>
> *90. I cannot accept that argument. It is tantamount to saying that because the notice of assessment issued on the basis of the material non-disclosure, Revenue is precluded from arguing that the non-disclosure is material. Although not expressed in these terms, this is what it seems to amount to and, in my view, such an interpretation of s. 955 (2) would be absurd.*
>
> *91. The word "assessment" in s. 955 (2) (a) does not refer, as the appellant appears to suggest, to the formal document which issues to a taxpayer who files a tax return under the self-assessment system, but to the process of assessing the tax payable or, in this case, the amount of allowable losses which may be deducted from chargeable gains."*

128. The High Court decision *Hanrahan* is supportive of the position that a chargeable person is not entitled to the protections contained in section 955 of the TCA1997 in circumstances where a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period has not been made. It was stated in *Hanrahan* stated at paragraphs 92 and 93:

> "*92. It is quite clear from the terms of s. 955 (2)(a) that it only has application in the case of "a fully compliant tax return", as clearly stated by the Supreme Court in Droog. The appellant's argument would have the effect of avoiding this pre-condition entirely: once Revenue proceeded to an assessment, a taxpayer could say that because Revenue was able to issue a notice of assessment for some amount, it would follow in all cases where a formal notice of assessment issued that the material non-disclosure could not be said to be necessary to the assessment.*
>
> *93. In my view, the appellant clearly did not make a full and true disclosure of all material facts necessary for the making of an assessment for the 2004 chargeable period. This means that the appellant is not a person who can avail of s. 955 (2) to*

prevent an assessment to capital gains tax for 2004. This follows from the Supreme Court judgment in Droog."

129. The Court of Appeal in *Robert Stanley v The Revenue Commissioners* [2017] IECA 279 (hereinafter "*Stanley*") stated as follows:

"*Provided that the taxpayer has fully and correctly completed those parts, omitting no relevant detail that ought to be provided therein, he/she will have complied with the requirements of s. 46(2)(a). The next required step to be taken in accordance with s. 46(2)(b) is to self-assess the CAT which the taxpayer 'to the best of [his/her] knowledge, information and belief, ought to be charged'.*"

130. The Commissioner has already found that the Appellant did not correctly record his sales for the relevant years. This in turn led to the Appellant making incorrect returns for the relevant years. It therefore follows that the Appellant did not make a full and true disclosure of all material facts necessary for the making of an assessment for the chargeable period in his returns for the relevant years.

131. As a result the Appellant is not entitled to rely on the protective provisions of section 955(2)(a) of the TCA1997 and it follows that the Respondent is not estopped from raising the Notices of Amended Assessment to Income Tax outside of the four year time limit.

132. Section 30 of the Value Added Tax Act 1972 (as enacted until 31 October 2010) and section 113 of the VATCA2010 (as in enacted from 23 November 2010) contain provisions which allow for the Respondent to raise or amend assessments or estimates to VAT outside of a four year time limit in circumstances where by reason of fraud or neglect tax would otherwise be lost to the exchequer.

133. Section 30(4)(b) of the Value Added Tax Act 1972 defines neglect as meaning "*negligence or a failure to give any notice, to furnish particulars, to make any return or to produce or furnish any invoice, monthly control statement, credit note, debit note, receipt, account, voucher, bank statement, estimate, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations*".

134. Section 113(2)(a) of the VATCA2010 defines neglect as meaning "*negligence or a failure to give any notice, to furnish particulars, to make any return or to produce or furnish any invoice, credit note, debit note, receipt, account, voucher, bank statement, estimate*

or assessment, statement, information, book, document, record or declaration required to be given, furnished, made or produced by or under this Act or regulations".

135. Regulation 27(1)(h) of the Value Added Tax Regulations 2010 requires an accountable person who supplies services to keep a full and accurate record of each transaction that affects the person's liability to VAT in the form of (i) a description of the services in question and (ii) particulars of the cost, excluding tax, to the accountable person of supplying the services and of the consideration, if any, receivable by him or her in respect of the supply. In addition Regulation 27(1)(l) of the Value Added Tax Regulations 2010 requires an accountable person to keep a full and accurate record of each in relation to discounts allowed or price reductions made to unregistered persons in the form of (i) a daily total of the amount so allowed and (ii) cross-reference to the goods returned book, cash book or other record used in connection with the matter. Appellant has not submitted any document.

136. The Commissioner notes that the Appellant contests the accuracy of the Phorest data on which the Respondent's analysis is based. The Appellant has not produced any additional documentation aside from the Phorest records which set out the documentation and records required under the Value Added Tax Regulations 2010.

137. In addition, the Commissioner has already found as a material fact that the Appellant did not correctly return his sales for the relevant years.

138. As a result of the Appellant's failure to submit and detail the required information and as a result of the Commissioner's finding that the Appellant did not correctly return his sales for the relevant years, the Commissioner finds that the Appellant is not entitled to rely on the protective provisions of section 30 of the Value Added Tax Act 1972 or of section 113 of the VATCA2010. It therefore follows that the Respondent is not estopped from raising the Notices of Assessment to VAT outside of the four year time limit.

Conclusion

139. As there was no matter of law at issue between the Parties in relation to the substantive matters which arise in this appeal and as the diversion between the Parties rested on the question of whether the Appellant had correctly recorded his sales for the relevant years, this appeal were therefore based on material fact issues. The Commissioner has found the material facts as set out at paragraph 122 of this determination.

Determination

140. The Commissioner determines that the Appellant has not discharged the burden of proof in this appeal and that he has not succeeded in showing that the relevant tax was not payable.

141. The Commissioner therefore determines that Notices of Amended Assessment to Income Tax and the Notices of Assessment to VAT raised on 8 January 2017 by the Respondent in relation to the Appellant shall stand.

142. It is understandable that the Appellant will be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

143. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular section 949 thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal to the High Court on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA1997.

Clare O'Driscoll
Appeal Commissioner
12 June 2023

The Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of section 949 AP, Chapter 6 of Part 40A of the TCA 1997.

Annex 1

Week Commencing	Manual Cash Sheets	Per SAGE Gross	Net per SAGE	VAT per SAGE	Total VAT per SAGE by VAT period	T1 (VAT return made)	Phorest weekly total	Gross Difference per week
02/01/2012				536.32			7,669.73	
09/01/2012		6,495.38	5,501.92	993.46			14,416.82	
16/01/2012		12,031.93	10,931.20	1,100.73			15,994.51	3,962.58
23/01/2012		13,331.10	12,236.32	1,094.78			15,254.02	1,922.92
30/01/2012		12,871.07	11,827.90	1,043.17			14,917.58	2,046.51
06/02/2012		12,633.95	11,405.85	1,228.10			17,117.44	4,483.49
13/02/2012		14,873.58	13,778.34	1,095.24			14,767.96	-105.62
20/02/2012		13,264.60	12,033.40	1,231.20	8,323	8,323	17,253.42	3,988.82
27/02/2012		14,911.17	13,597.16	1,314.01			18,097.01	3,185.84
05/03/2012		16,311.00	14,964.08	1,346.92			18,646.31	2,335.31
12/03/2012		16,612.42	15,240.75	1,371.67			18,434.29	1,821.87
19/03/2012		14,858.32	13,631.49	1,226.83			17,726.62	2,868.30
26/03/2012		15,372.82	14,103.50	1269.32			18,307.18	2,934.36
02/04/2012		15,276.56	14,015.19	1261.37			18,093.44	2,816.88
09/04/2012		13,046.84	11,969.58	1077.26			14,361.42	1,314.58
16/04/2012		13,808.03	12,667.92	1,140.11			15,791.12	1,983.09
23/04/2012		16,810.85	15,422.78	1,388.05	11395.54	10082	19,302.71	2,491.88
30/04/2012	16,913	16,884.84	15,421.51	1,443.33			19,426.17	2,561.33
07/05/2012	14,425	14,426.72	13,175.65	1,251.07			17,783.03	3,356.31
14/05/2012	14,784	14,785.41	13,547.16	1,238.25			16,929.27	2,143.86
21/05/2012	17,195	17,196.74	15,702.60	1,494.14			20,229.42	3,032.68
28/05/2012	14,572	14,573.62	13,370.30	1,203.32			16,968.39	2,394.77
04/06/2012	13,936	13,937.96	12,758.20	1,178.76			16,059.92	2,121.96
11/06/2012	13,506	13,507.18	12,391.90	1,115.28			15,667.79	2,160.61
18/06/2012	14,863	14,887.36	13,603.05	1,264.31			16,772.59	1,905.23
25/06/2012	18,727	18,728.91	17,091.37	1,637.54	11,826.00	13,140.00	20,875.78	2,146.84
					31,544.54	31,545.00		127,898.87

								2,459.59 average weekly difference