



115TACD2023

Between



Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal under section 119(2) of the Value-Added Tax Consolidation Act 2010 (“the VATCA 2010”) against the decision of the Revenue Commissioners (“the Respondent”) that the Appellant is not an “accountable person” entitled to the assignation of a registration number. The issues between the parties in the appeal are whether the Appellant is, as a condition for the granting of registration, obliged to furnish the Respondent with proof that he is a “taxable person” involved in economic activity within the State and, if so, whether he has provided sufficient evidence of being so involved. In making this determination, the Commissioner had the benefit of the evidence of the Appellant given at remote hearing, as well as written and oral legal submission made by both parties.

Background

2. On 14 December 2021 the Appellant applied to the Respondent to be registered for VAT as a person engaged in the State in the supply of taxable services.

3. The Appellant's TR1 VAT registration form indicated that he was of [REDACTED] nationality and lived at [REDACTED] Aparthotel [REDACTED]. He stated in the VAT registration form that he would be operating as a sole trader under the registered business name "[REDACTED]", with an address at [REDACTED], Dublin [REDACTED]. Therein he also described the nature of the business in the following terms: "[REDACTED] serves as consulting business for quality management solutions in safety critical industries like medtech or automotive." He stated his expected turnover for the following twelve months to be €80,000 and indicated his intention both to make and acquire services to and from other EU member states.

4. On 26 January 2022 an officer of the Respondent sent the Appellant the following correspondence:-

"To enable me to process [the application] please supply the following information.

(1) A detailed description of the Vatable activity being carried out by the business.

(2) Confirmation of the correct business address (The business address is where the activities of the business are being performed please note a virtual office/PO Box/agent's address will not suffice.

(3) I note that Income Tax returns filed to date show no trading income for the business. Please provide evidence that the business is currently trading such as a copy of a contract, a service agreement, a sales invoice or a purchase invoice from suppliers of goods/services related to the carrying out of your client's trade.

In the absence of the preferred items above, then at least evidence of intent to trade will be required, such as a detailed copy of your business plan, correspondence with potential customers/suppliers, your website address or business cards/flyers/advertisements etc.

I must advise that until the information requested is supplied, I will be unable to progress this application any further and in the event that no response is received within 21 days, I will have no option but to treat the application as abandoned."

5. On 28 January 2022 the agent acting for the Appellant replied to the Respondent's queries, stating that her client was to be engaged by a customer called [REDACTED] on a consultancy project. In support of this she uploaded an agreement evidencing the proposed engagement of [REDACTED] by that company. Her correspondence also stated:-

“[The Appellant] would like to mention the decision of [...] C-142/11 which states that a VAT-ID may only be denied if there is evidence of tax fraud attempt and that revenue have to prove that there are objective signs for planned tax fraud.”

6. The aforementioned agreement with [REDACTED] is dated 10 October 2021. Its terms are written in [REDACTED] and it is apparent therefrom that the Appellant was to be engaged so as to give advice in relation to the design of health and safety systems with reference to International Organization for Standardization (“ISO”) standards. A daily rate of €[REDACTED], plus VAT, had been agreed between the parties in return for these services. It was signed by the Appellant and a representative of the [REDACTED]. On its website this company describes itself as “an IT and engineering service provider”.¹

7. On 9 February 2022 the officer of the Respondent indicated that she had not received a substantive reply to her queries raised on 26 January 2022. On 10 February 2022 the agent for the Appellant provided the following further information on behalf of her client:-

“1. Consultancy services on establishing and management [sic] of quality assurance issues in industries. More details are not possible due to confidentiality reasons. [The Appellant] works daily doing phone conference, entering data on laptop and doing configuration consultancy on software for clients.

2. Working address in [REDACTED] Aparthotel, [REDACTED] [...]

3. Contract has been already sent. Please find attached here also. Issue invoices not possible due to missing VAT.”

8. On 5 March 2022 the Respondent contacted the Appellant seeking a copy of the lease for his business address at [REDACTED]. In addition, the Respondent inquired:-

“Does [the Appellant] reside at [REDACTED] aparthotel? If so, please provide copies of invoices issued from [REDACTED] aparthotel from commencement of business to date.

Plases provide details of the business bank account and copies of bank statements from commencement of business to date.

Can you provide a copy of the contract with [REDACTED] translated into English if possible.”

9. On 5 April 2022 the agent for the Appellant furnished the Respondent with three invoices concerning taxable supplies that her client stated he had acquired in the course of his

¹ Translation from [REDACTED]

economic activity providing ISO-9000 consultancy services. Two of these are from a [REDACTED] based company called [REDACTED] and are addressed to [REDACTED]. This first is dated [REDACTED] December 2021 and is in the amount of €4, [REDACTED]. The second is dated [REDACTED] January 2022 and is in the amount of €8, [REDACTED]. The business of [REDACTED] is not apparent from these invoices, though the taxable service acquired by the Appellant is, somewhat curiously, in each instance described as being “ISO-9001 Quality Consulting”. In evidence the Appellant stated that the service acquired from [REDACTED] permitted him to perform his own consultancy work. There is little clarity though as to what the services acquired constituted exactly and how they were cost components of anticipated supplies of consulting services to be made by the Appellant.

10. The Appellant also furnished an invoice from [REDACTED] dated [REDACTED] 2021, in the amount of €198.99. This was paid in consideration for his business trading address at [REDACTED].

11. It is apparent that the officer of the Respondent did not consider this information to be a satisfactory answer to her earlier queries as, on 6 April 2022, she emailed the Appellant stating:-

“I have not yet received the information requested in my email of 5 March 2022 and am unable to proceed further with the application until the items have been submitted.”

12. On 30 April 2022 the agent for the Appellant replied in the following terms:-

“Please see attached screenshots for the subscription to the office in [REDACTED], also [the Appellant’s] response below:

Although the legal basis for a copy of the contract only for VAT registration is not clear we hand this over in good faith.

The contract with [REDACTED] is private and thus has obviously no relation to VAT.

There is no business account yet as my client still has no certainty about the VAT status of the business and a business account would cause additional unnecessary expenses.

Please provide the following information:

What is the legal basis for asking for a business account before registering for VAT?

In regards to the decisions of the European Court of Justice where VAT registration may only be declined in cases of objective suspicion of a planned VAT fraud and that the tax authority has a duty to provide evidence for that objective suspicion:

What are the objective facts that keep you from following the rules?"

13. After further correspondence, the contents of which do not require summation in this Determination, the officer of the Respondent sent the following to the agent for the Appellant on 27 September 2022:-

"[Dear Agent]

[...]

Following a visit by a Revenue official to [REDACTED], Dublin [REDACTED], it would appear that this address is only used as a virtual office for postal deliveries and the business is not being operated from this premises.

Based on information available to me, I am not satisfied that there is objective evidence that taxable supplies are being made in Ireland. Accordingly, as the conditions for VAT registration as set out in section 5(1)(a) of the VAT Consolidation Act 2010 have not been met, I am disallowing your application for registration at this time.

In the event that your circumstances change in the future, you may re-apply to register for VAT."

14. This refusal was appealed by way of Notice of Appeal delivered to the Commission on 13 October 2022. At the hearing of the appeal, the Appellant gave evidence about the nature of his business and his own circumstances. He reiterated that he acts as a quality control consultant. In particular, he explained that he advises companies about how to ensure compliance with ISO-9000 quality control standards. Often this involves assisting with documentary compliance. The Appellant said that at the time of the application for registration he was residing in the [REDACTED] Aparthotel, but had since moved. He stated that at the time of the hearing he was living in a mobile home in the greater Dublin area. The Appellant stated that as a consequence of the refusal of the Respondent to assign a registration number, the consultancy work with [REDACTED] never occurred and the contract was cancelled.

Legislation and Guidelines

Directive 2006/112 ("The VAT Directive")

15. The concepts of a "taxable person" and "economic activity" are defined in Article 9(1) of the VAT Directive in the following terms:-

"Taxable person" shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity.

Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity."

16. Under Article 214 of the VAT Directive:-

"1. Member States shall take the measures necessary to ensure that the following persons are identified by means of an individual number:

(a) every taxable person, with the exception of those referred to in Article 9(2), who within their respective territory carries out supplies of goods or services in respect of which VAT is deductible, other than supplies of goods or services in respect of which VAT is payable solely by the customer or the person for whom the goods or services are intended, in accordance with Articles 194 to 197 and Article 199;

(b) every taxable person, or non-taxable legal person, who makes intra-Community acquisitions of goods subject to VAT pursuant to Article 2(1)(B) and every taxable person, or non-taxable legal person, who exercises the option under Article 3(3) of making their intra-Community acquisitions subject to VAT"

17. Section 5(1)(a) of the VATCA 2010 provides:-

"Subject to paragraph (c), a taxable person who engages in the supply, within the State, of taxable goods or services shall be—

(i) an accountable person, and

(ii) accountable for and liable to pay the tax charged in respect of such supply.

18. Section 65 of the VATCA 2010 provides:-

"(1) The Revenue Commissioners shall set up and maintain a register of persons –

(a) who are, or who may become, accountable persons

(b) who are persons who dispose of goods or supply services which pursuant to section 22(3) or 28(4) or (5) are deemed to be supplied by an accountable person in the course or furtherance of his or her business."

(2) The Revenue Commissioners shall assign a registration number to each person registered in accordance with subsection (1).

(2A) The Revenue Commissioners may cancel the registration number which has been assigned to a person in accordance with subsection (2), where that person does not become or ceases to be an accountable person.

(3)

(a) Every accountable person shall, within the period of 30 days beginning on the day on which the person first becomes an accountable person, furnish in writing to the Revenue Commissioners the particulars specified in regulations as being required for the purpose of registering the person for tax.

(b) Where an accountable person, when registering for tax, has furnished particulars specified in regulations referred to in paragraph (a) stating that he or she shall not engage in intra-Community trade, that persons shall, within the period of 30 days beginning on the date on which he or she first engages in intra-Community trade, notify the Revenue Commissioners in writing of such an engagement.

(c) Where an accountable person notifies the Revenue Commissioners under paragraph (b) regarding his or her engagement in intra-Community trade, the Revenue Commissioners shall request that person to correct the particulars furnished as specified in regulations referred to in paragraph (a).

(d) In this subsection, 'intra-Community trade' means—

(i) the intra-Community supply of goods made by an accountable person and dispatched or transported from the State to a person registered for value-added tax in another Member State, or

(ii) the intra-Community acquisition of goods.

(4) Every person who disposes of goods or supplies services which pursuant to section 22(3) or 28(4) or (5) are deemed to be supplied by an accountable person in the course of his or her business shall, within 14 days of the disposal or the supply of a service, furnish in writing to the Revenue Commissioners the particulars specified in regulations as being required for the purpose of registering the person for tax."

Submissions

Appellant

18. The Appellant submitted that the Respondent was obliged pursuant to the law of the European Union to assign him a VAT registration number. In this regard the Appellant cited the joined cases of C-80/11 and C-142/11 ("*Mahegeben*"), in which the CJEU held

that a taxable person can only be refused the right to deduct VAT incurred for the purpose of making taxable supplies where a Member State's national authority establishes on the basis of objective evidence that the right is relied on for fraudulent or abusive ends.² As the assignation of a VAT registration number was necessary for the exercise of the right to deduct, the Respondent could only refuse to assign in circumstances where it produced objective evidence proving the probability of intended fraud or abuse. No such evidence had been proffered and, consequently, the appeal of the refusal should be allowed.

Respondent

19. The Respondent submitted that before it could issue the Appellant with a VAT registration number it was necessary for him to produce objective evidence that he was a "taxable person" who had the capacity to make supplies of goods or services. The Respondent submitted that the Appellant had failed to provide such evidence. *Mahegeben* concerned circumstances in which there was no dispute that the taxpayer in question was a "taxable person" engaged in economic activity.

Agreed Facts

20. The facts material to this appeal that were not in dispute were as follows:-

- the Appellant is a [REDACTED] national;
- the Appellant has registered a business name of "[REDACTED]" with the CRO;
- the registered business address of this business is [REDACTED], Dublin [REDACTED]. This address is a "virtual address" [REDACTED] [REDACTED]. The Appellant [REDACTED] not in fact operate his business from this address.

Analysis

21. Article 214 of the VAT Directive obliges a Member State to ensure the identification of every taxable person who within its territory carries out supplies of goods or services in respect of which VAT is deductible. A taxable person is, under Article 9 of the VAT Directive, any person who independently carries on any economic activity, whatever the purpose or results of the activity.

22. The State complies with the obligations under Article 214 of the VAT Directive by way of the issuing under section 65 of the VATCA 2010 of VAT registration numbers to

² At paragraph 42

“accountable persons”. An accountable person is, under section 5 of the VATCA 2010, a taxable person who, within the State, engages in the supply of taxable goods or services.

23. In the submission of the Appellant, the Respondent may only refuse to register a person who wishes to be assigned a VAT registration number where it proves that the number would, as matter of probability, be used for fraudulent or abusive purposes. The Commissioner finds, however, that this contention is wrong as a matter of law insofar as it is first incumbent on the person who applies for a registration number to demonstrate that they are a taxable person at all. This, of course, is not an issue in circumstances where a person has already commenced “economic activity” by the making of supplies as they then are by definition a taxable person. However in this instance the Appellant has not produced any evidence that he has actually carried out economic activity in the form of the supply of consulting services. Rather, he has produced certain documentary material that might be taken to suggest that he intends to do so in the future.
24. In Case C-527/11 (*Ablessio SIA*), the CJEU held at paragraphs 24 – 26 that the concept of a “taxable person”:-

“24. [...] covers any person who, independently, and irrespective of the place, carries out an economic activity, whatever the purpose or results of that activity.

25. According to the case-law of the Court, that concept should be given a broad interpretation. Any person with the intention, as confirmed by objective elements, of independently starting an economic activity, and who incurs the initial investment expenditure for those purposes must be regarded as a taxable person (see, to that effect, Case C-400/98 Breitsohl [2000] ECR I-4321, paragraph 34, and Case C-280/10 Polski Trawertyn [2012] ECR, paragraph 30).

26. It follows from this case-law and from the wording of Article 213(1) of Directive 2006/112 that, not only persons who already carry out an economic activity are considered to be taxable persons eligible to apply for a VAT identification number, but also those who plan to start such an activity and who incur the initial investment expenditure for that purpose. These persons may therefore not be in a position to prove, at this early stage of their economic activity, that they already have the material, technical and financial resources to carry out such an activity.”

25. Based on this passage in *Ablessio SIA*, what the Commissioner must consider in this appeal is whether the conclusion may be drawn from “objective elements” that the Appellant has the intention of independently starting economic activity and has incurred

“initial investment expenditure” for that purpose. If it may be so concluded the Appellant should then be taken to be a “taxable person”.

26. As regards proof of economic activity, the Appellant proffered the agreement to supply his consultancy services to [REDACTED] and the invoices from [REDACTED]. Taken together these documents are not, in the Commissioner’s view, adequate “objective elements” confirming the existence of economic activity on the part of the Appellant, such that he should be regarded as taxable person. In this respect it is necessary to emphasise that the purpose of adopting the expansive view of a taxable person referred to in *Ablessio SIA* is to ensure that ‘preparatory’ or ‘investment’ expenditure linked to an anticipated future output supply is deductible at the time it is incurred.³ This ensures the effectiveness of the principle of neutrality, which is at the heart of the VAT system.
27. In the instant case, the planned contract with [REDACTED] appears to the Commissioner be a reasonable basis upon which to conclude that the Appellant wishes to engage in the future in the provision of consultancy services relating to ISO-9000 compliance. However, it is unclear how the expenditure recorded by the [REDACTED] invoices relates to the provision of this anticipated output supply. Moreover, it cannot in the Commissioner’s view be said that payment made in return for a virtual postal address constitutes itself initial investment expenditure in the business intended to be pursued. The consequence of the Appellant’s failure to satisfy the burden of proving that that he is a taxable person engaged in economic activity is that his appeal against the Respondent’s refusal must fail.
28. Lest the determination of the appeal on the foregoing basis be in error however, the Commissioner also finds that the appeal would fail for the following additional reason.
29. Member States are obliged under Article 214 of the VAT Directive to assign taxable persons carrying out supplies of goods or services “*within their respective territories*” with an identification number. In this appeal the only supporting evidence that the Appellant has furnished to the Commissioner or, before that, the Respondent, concerning his intention to make supplies in the territory of the State is the existence of a business trading name registered with the CRO and the contract relating to the “virtual address” obtained from [REDACTED] in exchange for the payment of €198.99. The Respondent, quite reasonably in the Commissioner’s view, asked the Appellant to provide additional material that might substantiate his claim that he intended to carry out the supply of services from within the State. In this regard it sought material supporting the Appellant’s own claim that

³ Case C-268/83M, *Rompelman v Minister van Financien*, paragraph 23.

he resided at an address at the [REDACTED] Aparthotel in [REDACTED] from where he would carry out his supplies. The Appellant declined, however, to provide any such substantiating material. At the hearing of the appeal the Appellant gave oral evidence that he no longer resided at this location and had moved instead to mobile accommodation in the Dublin area, from where he would now provide his remote consultancy services. Again, no supporting material was furnished to the Commissioner that might verify this claim.

30. It is the Appellant who bears the burden of proving not only that he is a taxable person, but also that he is one who has the intention of carrying out economic activity in form of the making of supplies of services from within the State's territory. Unless he succeeds in so doing, he cannot be said to fall within the definition of an "accountable person" under the VATCA 2010, entitled to registration under section 65 of the same legislation.
31. The Commissioner has no documentary evidence on which to verify the Appellant's claim, made in oral evidence at a remote hearing, that the place from which he will make his supplies of services is in the territory of the State. As noted already, at the conclusion of the hearing the Appellant was afforded the opportunity to submit additional material that might support his appeal. He opted though to submit nothing further. In view of this, the Commissioner finds that the Appellant has not satisfied the burden of proving that any of the economic activity that he may carry out will be activity carried out from within the territory of the State. Consequently, the Respondent is, for this reason also, not obligated either by Article 214 of the VAT Directive or section 65 of the VATCA 2010, which gives effect to the obligations in question arising under the VAT Directive, to assign the Appellant a registration number for VAT. As a result, the Appellant's appeal fails.

Determination

32. The Appellant fails in this appeal on the grounds that he has not satisfied the burden resting with him either to prove that he is a taxable person or that the economic activity that he indicates he wishes to carry out will be made from within the territory of the State. The Commissioner wishes however to emphasise in the clearest terms that nothing in this determination precludes the Appellant from making a fresh application to the Respondent for registration forthwith, complete with further information or clarification of existing information adequate to allow the assignation of the number desired. It is to be hoped and expected that any fresh application will be dealt with expeditiously.
33. This appeal has been determined in accordance with section 949AL of the TCA 1997. This determination contains full findings of fact and law. Notwithstanding the

aforementioned right of the Appellant to make a fresh application for registration, it also is the case that any party dissatisfied with the determination has the right to appeal to the High Court on a point or points of law within a period of 42 days from receipt of this Determination in accordance with the provisions of the TCA 1997.

A handwritten signature in black ink, appearing to read 'CO'Higgins', written in a cursive style.

Conor O'Higgins
Appeal Commissioner
20 June 2023