



124TACD2023

Between

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against notices of assessment to Value Added Tax (“VAT”) for the calendar years 2013 to 2016 inclusive. The amount of VAT sought on those assessments is the sums of €60,291, 73,955, €69,342 and €64,594 respectively.
2. The total quantum of VAT for those years is therefore €268,182 and the Appellant makes its appeal under the provisions of section 119 of the Value-Added Tax Consolidation Act 2010 (“VATCA 2010”).

## Background

3. The Appellant is involved in the motor trade and specialises in the importation and sale of high end second hand cars. These are primarily sourced from England and Northern Ireland. The Appellant has two primary suppliers namely, ██████████, trading as ██████████ ██████████ in England and ██████████ in Northern Ireland (██████████).
4. The Respondent initiated an audit into the Appellant’s taxation affairs on 25<sup>th</sup> August 2016. During the course of the audit, it was noted that while the transactions with ██████████ were treated correctly as Intra-European (EU) acquisitions, self-accounted for by the Appellant and VAT paid accordingly, the majority of the transactions with ██████████ were treated by the Appellant as being subject to the “Margin Scheme”.
5. For the purpose of comprehension, the “Margin Scheme” is an optional special arrangement for the calculation of VAT chargeable on supplies of margin scheme goods. When availed of, subject to certain criteria being fulfilled, it permits a taxpayer to pay VAT on the difference between the purchase and sales price of the goods in question (“the margin”) rather than on the full sales price of the goods being sold. The purpose of the Margin Scheme is to reduce the possibility of double taxation on the sale of second-hand goods.
6. The Respondent noted that none of the ██████████ purchase invoices were endorsed with the required wording “Margin Scheme” and that some of those invoices quoted the VAT registration number of the Appellant. As those invoices did not fulfil the conditions necessary to avail of the Margin Scheme, the Respondent advised the Appellant that those sales which were taxed under the Margin Scheme were not eligible for inclusion in that scheme and as such were liable to be taxed as Intra-EU acquisitions. This meant that VAT was due on the full sales price of those vehicles.

7. Subsequent discussions and correspondence ensued between the parties which resulted in the Respondent issuing its notices of assessment to VAT on 6<sup>th</sup> June 2018.
8. The Appellant who was not in agreement with the Respondent's notices of assessment lodged its appeal with the Commission. The appeal was heard before the Commissioner on 2<sup>nd</sup> February 2023 and the Appellant and the Respondent were represented by Counsel. The Commissioner had the benefit of written submissions from both parties in addition to the oral evidence and submissions presented at the hearing. Those submissions and evidence are considered below.

### **Legislation**

9. The following legislation is relevant to this appeal.

*Section 9 VATCA 2010 – Intra-Community acquisitions and accountable persons.*

*(1) Where a person engages in the intra-Community acquisition of goods in the State in the course or furtherance of business, he or she shall be—*

*(a) an accountable person, and*

*(b) accountable for and liable to pay the tax chargeable.*

*(2) Subject to subsection (3) and sections 12 (3) and (5), 13 and 17 (1), and notwithstanding subsection (1), a person for whose intra-Community acquisitions of goods (being goods other than new means of transport or goods subject to a duty of excise) the total consideration for which has not exceeded and is not likely to exceed €41,000 in any continuous period of 12 months shall not, unless the person otherwise elects and then only during the period for which such election has effect, be an accountable person.*

*(3) Where section 5 (1) applies to a person referred to in subsection (2), then subsection (2) shall not apply to the person unless section 6 (1) also applies to him or her.*

*(4) Subject to subsection (5), a person who is an accountable person by virtue of this section or section 10 and who is a person referred to in section 6 (1)(a) or (b) shall be deemed to be an accountable person only in respect of—*

*(a) intra-Community acquisitions of goods which are made by him or her, and*

*(b) any services of the kind referred to in section 12, 13 or 17 (1) which are received by him or her.*

*(5) A person may elect that subsection (4) shall not apply to him or her.*

*(6) Subject to subsection (7), a person who is an accountable person by virtue of this section or section 10 and who is a person referred to in section 17 (2) shall be deemed to be an accountable person only in respect of—*

*(a) intra-Community acquisitions of goods which are made by him or her,*

*(b) racehorse training services which are supplied by him or her, and*

*(c) any services of the kind referred to in section 12, 13 or 17 (1) which are received by him or her.*

*(7) A person may elect that subsection (6) shall not apply to him or her.*

*Section 24 VATCA 2010 – Intra-Community acquisitions of goods*

*(1) In this Act “intra-Community acquisition”, in relation to goods, means the acquisition of—*

*(a) movable goods (other than new means of transport)—*

*(i) supplied by—*

*(I) a person registered for value-added tax in a Member State,*

*(II) a person obliged to be registered for value-added tax in a Member State,*

*(III) a person who carries on an exempted activity in a Member State, or*

*(IV) a flat-rate farmer in a Member State,*

*(ii) supplied to a person in another Member State (other than an individual who is not a taxable person or who is not entitled to elect to be a taxable person, unless the individual carries on an exempted activity), and*

*(iii) which have been dispatched or transported from the territory of a Member State to the territory of another Member State as a result of such supply,*

*...*

*(2) An intra-Community acquisition of goods shall be deemed not to occur where the supply of those goods is subject to value-added tax referred to in the VAT Directive in the Member State of dispatch under the provisions implementing Articles 4 and 35, first subparagraph of Article 139(3) and Articles 311 to 341 of that Directive in that Member State.*

*(3) For the purposes of this section and section 32 —*

*(a) a supply in the territory of another Member State shall be deemed to have arisen where, under similar circumstances, a supply would have arisen in the State under Chapter 1 or Chapter 1 of Part 4 (including either of those Chapters as read with section 2 (3)),*

*(b) an activity in another Member State shall be deemed to be an exempted activity where the same activity, if carried out in the State, would be an exempted activity,*

*(c) a person shall be deemed to be a flat-rate farmer in another Member State where, under similar circumstances, the person would be a flat-rate farmer in the State in accordance with section 86 (1), and*

*(d) a person shall be deemed to be a taxable person or a person who is entitled to elect to be a taxable person in another Member State where, under similar circumstances, the person would be an accountable person or entitled to elect to be an accountable person in the State in accordance with Part 2.*

...

#### Section 29 VATCA 2010

*(1) For the purposes of this Act, the place where goods are supplied shall be deemed to be—*

*(a) in the case of goods dispatched or transported and to which section 30 does not apply, subject to subsection (2), the place where the dispatch or transportation to the person to whom the goods are supplied begins,*

*(b) in the case of goods which are installed or assembled, with or without a trial run, by or on behalf of the supplier, the place where the goods are installed or assembled,*

*(c) in the case of goods not dispatched or transported, the place where the goods are located at the time of supply,*

*(d) in the case of goods supplied on board vessels, aircraft or trains during transport, the places of departure and destination of which are within the Community, the place where the transport begins.*

...

Section 66 VATCA 2010 – Issue of invoices and other documents.

*(1) (a) An accountable person –*

- (i) who supplies goods or services to –
  - (I) another accountable person,*
  - (II) a public body,*
  - (III) a person who carries on an exempted activity,*
  - (IV) a person (other than an individual) in another Member State in such circumstances that tax is chargeable at any of the rates specified in section 46(1), or*
  - (V) a person in another Member State who is liable to pay value-added tax pursuant to the VAT Directive on such supply,**
- or*
- (ii) who supplies goods to a person in another Member State in the circumstances referred to in section 30(1)(a)(ii),*

*shall issue to the person so supplied, in respect of each such supply, an invoice, in paper format or subject to subsection (2) in electronic format, and containing such particulars as may be specified by regulations.*

*(b) Notwithstanding paragraph (a), an accountable person who supplies goods or services to -*

- (i) another accountable person,*
- (ii) a public body, or*
- (iii) a person who carries on an exempted activity in the State,*

*may instead issue to the person so supplied, a simplified invoice to the amount of €100 or less, in respect of each such supply and in such form and containing such particulars as may be specified by regulations.*

*(c) An accountable person who supplies goods or services, which if an invoice (in accordance with paragraph (a)) were issued at the time of each separate supply of those goods or services would become chargeable to tax within the same calendar month, may instead issue a summary invoice detailing those supplies of goods or services to the person so supplied for that calendar month, in such form and containing such particulars as may be specified by regulations.*

*(2) An invoice or other document issued in electronic format by an accountable person is deemed to be so issued for the purposes of subsection (1), if -*

*(a) each such invoice or other document is issued and received by prior agreement between the person who issues the invoice or other document and the person who is in receipt of that invoice or document, and*

*(b) the electronic system used to issue or receive any such invoice or other document conforms with such specifications as are required by regulations.*

*(2A) (a) An accountable person who issues or receives an invoice or other document under this Chapter, and for the purposes of section 84(1), shall apply business controls to each such invoice or other document to ensure -*

*(i) the authenticity of the origin of that invoice or other document,*

*(ii) the integrity of the content of that invoice or other document, and*

*(iii) that there is a reliable audit trail for that invoice or other document and the supply of goods or services as described therein.*

*(b) The accountable person shall furnish evidence of the business controls used to comply with paragraph (a) as may be required by the Revenue Commissioners and such evidence shall be subject to such conditions as may be specified in regulations (if any).*

...

Section 87 VATCA 2010.

*(1) In this section –*

...

*“margin scheme” means the special arrangements for the taxation of supplies of margin scheme goods;*

*“margin scheme goods” means any works of art, collectors’ items, antiques or second-hand goods supplied within the Community to a taxable dealer—*

*(a) by a person (other than a person referred to in paragraph (c)) who was not entitled to deduct, under Chapter 1 of Part 8 , any tax in respect of the person’s purchase, intra-Community acquisition or importation of those goods where that person is neither—*

*(i) an accountable person who acquired those goods from a taxable dealer who applied the margin scheme to the supply of those goods to that accountable person, nor*

*(ii) an accountable person who acquired those goods from an auctioneer (within the meaning of section 89) who applied the auction scheme (within the meaning of section 89) to the supply of those goods to that accountable person,*

*(b) by a person in another Member State who was not entitled to deduct, under the provisions implementing Articles 167, 173, 176 and 177 of the VAT Directive, in that Member State, any value-added tax referred to in that Directive in respect of that person’s purchase, intra-Community acquisition or importation of those goods, or*

*(c) by another taxable dealer who has applied the margin scheme to the supply of those goods or applied the provisions implementing Articles 4 and 35, first subparagraph of Article 139(3) and Articles 311 to 325 and 333 to 340 of the VAT Directive, in another Member State to the supply of those goods,*

*and also includes goods acquired by a taxable dealer as a result of a disposal of goods by a person to the taxable dealer where that disposal was deemed not to be a supply of goods in accordance with section 20 (3);*

*...*

*“profit margin” means the profit margin in respect of a supply by a taxable dealer of margin scheme goods and—*

*(a) subject to paragraph (b)—*

*(i) shall be deemed to be inclusive of tax, and*



*(ii) shall be an amount which is equal to the difference between the taxable dealer's selling price for those goods and the taxable dealer's purchase price for those goods,*

*(b) shall be deemed to be nil in any case where the purchase price is greater than the selling price;*

*“purchase price”, in relation to an acquisition of margin scheme goods, means the total consideration, including all taxes, commissions, costs and charges whatsoever, payable by a taxable dealer to the person from whom that taxable dealer acquired those goods;*

*“second-hand goods” means any tangible movable goods which are suitable for further use either as they are or after repair, including means of transport and agricultural machinery, purchased or acquired on or after 1 January 2010, but not including works of art, collectors' items, antiques, precious metals and precious stones;*

*“selling price” means the total consideration which a taxable dealer becomes entitled to receive in respect of or in relation to a supply of margin scheme goods, including all taxes, commissions, costs and charges whatsoever and value-added tax (if any) payable in respect of the supply;*

*“taxable dealer”—*

*(a) means an accountable person who in the course or furtherance of business, whether acting on the person's own behalf, or on behalf of another person pursuant to a contract under which commission is payable on purchase or sale, purchases or acquires or applies for the purpose of his or her business margin scheme goods or the goods referred to in subsection (4)(a)(ii) and (iii), with a view to resale, or imports the goods referred to in subsection (4)(a)(i), with a view to resale, and*

*(b) includes a person supplying financial services of the kind specified in paragraph 6(1)(e) of Schedule 1 who acquires or purchases margin scheme goods for the purpose of the supply thereof as part of an agreement of the kind referred to in section 19 (1)(c),*

*and, for the purposes of this interpretation, a person in another Member State shall be deemed to be a taxable dealer where, in similar circumstances, that person would be a taxable dealer in the State under this section;*

...

(2) Subject to and in accordance with this section, a taxable dealer may apply the margin scheme to a supply of margin scheme goods.

(3) Where the margin scheme is applied to a supply of goods, the amount on which tax is chargeable on the supply in accordance with section 3 (a) or (c) is, notwithstanding Chapter 1 of Part 5, the profit margin less the amount of tax included in the profit margin.

...

(8) (a) In this subsection—

“aggregate margin”, in respect of a taxable period—

(i) subject to paragraph (ii), means an amount which is equal to the difference between the taxable dealer’s total turnover in that taxable period from supplies of low value margin scheme goods, to which the same rate of tax applies, less the sum of that taxable dealer’s purchase prices of low value margin scheme goods to which that rate of tax applies to the supply thereof, in that taxable period,

(ii) in any case where the sum of such purchase prices of that dealer is in excess b) Notwithstanding subsection (3) but subject to and in accordance with regulations (if any)—

(i) where a taxable dealer acquires low value margin scheme goods in job lots or otherwise, the amount of tax due and payable in respect of the dealer’s supplies of low value margin scheme goods shall, in respect of a taxable period, be the amount of tax included in that dealer’s aggregate margin, or margins, for that period and the amount of tax in each aggregate margin shall be determined by the formula—

B

$$A \times B + 100$$

where—

A is the aggregate margin for the taxable period in question, and

B is the percentage rate of tax chargeable in relation to the supply of those goods,

and

*(ii) where the taxable dealer referred to in subparagraph (i) makes supplies in any taxable period which are subject to different rates of tax, that taxable dealer shall calculate separate aggregate margins for that taxable period in respect of the supplies at each of the relevant rates.*

*(b) Subject to and in accordance with regulations (if any), where a taxable dealer supplies a low value margin scheme good for an amount in excess of €635, then—*

*(i) notwithstanding the definition of “low value margin scheme goods” in paragraph (a), the supply of that good shall be deemed not to be a supply of a low value margin scheme good,*

*(ii) in determining the aggregate margin for the taxable period in which the supply occurs, the dealer shall deduct the purchase price of that good from the sum of the dealer’s purchase prices of low value margin scheme goods for that period, and*

*(iii) the purchase price of that good shall be used in determining the profit margin in relation to the supply of that good.*

*(9) Notwithstanding Chapter 2 of Part 9, a taxable dealer shall not, in relation to any supply to which the margin scheme has been applied, indicate separately the amount of tax chargeable in respect of the supply on any invoice or other document in lieu thereof issued in accordance with that Chapter.*

*(10) Where the margin scheme is applied to a supply of goods dispatched or transported from the State to a person registered for value-added tax in another Member State, then, notwithstanding paragraph 1(1) of Schedule 2, section 46 (1)(b) shall not apply unless such goods are of a kind specified elsewhere in that Schedule.*

*(11) Notwithstanding section 30, where the margin scheme is applied to a supply of goods dispatched or transported, the place of supply of those goods shall be deemed to be the place where the dispatch or transportation begins.*

*(12) Where a taxable dealer applies the margin scheme to a supply of goods on behalf of another person pursuant to a contract under which commission is payable on purchase or sale, the goods shall be deemed to have been supplied by that other person to the taxable dealer when that taxable dealer supplies those goods.*

...

S.I. No. 639 of 2010 – Value Added Tax Regulations 2010

6. Every Invoice issued by an accountable person in accordance with section 87(9) or 89(5) of the Act is required to indicate that the margin scheme or auction scheme, as appropriate, has been applied.

...

20. (1) In this Regulation “reverse charge supply” means a supply of goods or services to a person in another Member State who is liable to pay value added tax under the VAT Directive on such supply.

(2) The following particulars are specified for purposes of section 66(1) of the Act and are required to be included in every invoice issued, or deemed to be issued, by an accountable person:

(a) the date of issue of the invoice,

(b) a sequential number, based on one or more series, which uniquely identifies the invoice,

(c) the full name, address and registration number of the person who supplied the goods or services to which the invoice relates,

(d) the full name and address of the person to whom the goods or services were supplied,

(e) in the case of a reverse charge supply, the value-added tax identification number of the person to whom the supply was made and an indication that a reverse charge applies,

(f) in the case of a supply of goods, other than a reverse charge supply, to a person registered for value-added tax in another Member State, the person’s value-added tax identification number in that Member State and an indication that the invoice relates to an intra-Community supply of goods,

(g) the quantity and nature of the goods supplied or the extent and nature of the services rendered,

(h) the date on which the goods or services were supplied or, in the case of supplies specified in section 70(2) of the Act, the date on which the payment on account was made, in so far as that date differs from the date of issue of the invoice,

*(i) in respect of the goods or services supplied—*

*(i) the unit price exclusive of tax,*

*(ii) any discounts or price reductions not included in the unit price,*

*and*

*(iii) the consideration exclusive of tax,*

*(j) in respect of the goods or services supplied, other than reverse charge supplies—*

*(i) the consideration exclusive of tax per rate of tax, and*

*(ii) the rate of tax chargeable,*

*(k) the tax payable in respect of the supply of the goods or services, except—*

*(i) in the case of a reverse charge supply, or*

*(ii) where section 87(9) or 89(5) of the Act applies,*

*and*

*(l) in the case where a tax representative is liable to pay the value-added tax in another Member State, the full name and address and the value-added tax identification number of that representative.*

...

*(4) Every invoice issued by an accountable person in accordance with section 67(1)(a) of the Act in respect of an increase in consideration is required to include the particulars specified in subparagraphs (a) to (f) of paragraph (2), and shall indicate—*

*(a) the amount, exclusive of tax, of the increase in consideration for the supply,*

*(b) the rate or rates of tax and the amount of tax at each rate appropriate to that increase in consideration, and*

*(c) a cross-reference to every other invoice issued by the accountable person in respect of the total consideration for the supply.*

EC Directive 2006/112/EC

Article 226

*Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:*

- (1) the date of issue;*
- (2) a sequential number, based on one or more series, which uniquely identifies the invoice;*
- (3) the VAT identification number referred to in Article 214 under which the taxable person supplied the goods or services;*
- (4) the customer's VAT identification number, as referred to in Article 214, under which the customer received a supply of goods or services in respect of which he is liable for payment of VAT, or received a supply of goods as referred to in Article 138;*
- (5) the full name and address of the taxable person and of the customer;*
- (6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;*
- (7) the date on which the supply of goods or services was made or completed or the date on which the payment on account referred to in points (4) and (5) of Article 220 was made, in so far as that date can be determined and differs from the date of issue of the invoice;*
- (8) the taxable amount per rate or exemption, the unit price exclusive of VAT and any discounts or rebates if they are not included in the unit price;*
- (9) the VAT rate applied;*
- (10) the VAT amount payable, except where a special arrangement is applied under which, in accordance with this Directive, such a detail is excluded;*
- (11) in the case of an exemption or where the customer is liable for payment of VAT, reference to the applicable provision of this Directive, or to the corresponding national provision, or any other reference indicating that the supply of goods or services is exempt or subject to the reverse charge procedure*

...

### Article 312

*For the purposes of this Subsection, the following definitions shall apply:*

- (1) 'selling price' means everything which constitutes the consideration obtained or to be obtained by the taxable dealer from the customer or from a third party, including subsidies directly linked to the transaction, taxes, duties, levies and charges and incidental expenses such as commission, packaging, transport and insurance costs charged by the taxable dealer to the customer, but excluding the amounts referred to in Article 79;*
- (2) 'purchase price' means everything which constitutes the consideration, for the purposes of point (1), obtained or to be obtained from the taxable dealer by his supplier.*

### Article 313

- (1) In respect of the supply of second-hand goods, works of art, collectors' items or antiques carried out by taxable dealers, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection.*

...

### Article 314

*The margin scheme shall apply to the supply by a taxable dealer of second-hand goods, works of art, collectors' items or antiques where those goods have been supplied to him within the Community by one of the following persons:*

- (a) a non-taxable person;*
- (b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;*
- (c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;*
- (d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.*

#### Article 315

*The taxable amount in respect of the supply of goods as referred to in Article 314 shall be the profit margin made by the taxable dealer, less the amount of VAT relating to the profit margin.*

*The profit margin of the taxable dealer shall be equal to the difference between the selling price charged by the taxable dealer for the goods and the purchase price.*

#### Article 316

*(1) Member States shall grant taxable dealers the right to opt for application of the margin scheme to the following transactions:*

*(a) the supply of works of art, collectors' items or antiques, which the taxable dealer has imported himself;*

*(b) the supply of works of art supplied to the taxable dealer by their creators or their successors in title;*

*(c) the supply of works of art supplied to the taxable dealer by a taxable person other than a taxable dealer where the reduced rate has been applied to that supply pursuant to Article 103.*

*(2) Member States shall lay down the detailed rules for exercise of the option provided for in paragraph 1, which shall in any event cover a period of at least two calendar years.*

#### Article 317

*If a taxable dealer exercises the option under Article 316, the taxable amount shall be determined in accordance with Article 315.*

...

#### Article 318

*(1) In order to simplify the procedure for collecting the tax and after consulting the VAT Committee, Member States may provide that, for certain transactions or for certain categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return referred to in Article 250.*



*In the event that such provision is made in accordance with the first subparagraph, the taxable amount in respect of supplies of goods to which the same rate of VAT is applied shall be the total profit margin made by the taxable dealer less the amount of VAT relating to that margin.*

*(2) The total profit margin shall be equal to the difference between the following two amounts:*

*(a) the total value of supplies of goods subject to the margin scheme and carried out by the taxable dealer during the tax period covered by the return, that is to say, the total of the selling prices;*

*(b) the total value of purchases of goods, as referred to in Article 314, effected by the taxable dealer during the tax period covered by the return, that is to say, the total of the purchase prices.*

*(3) Member States shall take the measures necessary to ensure that the taxable dealers referred to in paragraph 1 do not enjoy unjustified advantage or sustain unjustified harm.*

#### Article 319

*The taxable dealer may apply the normal VAT arrangements to any supply covered by the margin scheme.*

#### Article 323

*Taxable persons may not deduct from the VAT for which they are liable the VAT due or paid in respect of goods which have been, or are to be, supplied to them by a taxable dealer, in so far as the supply of those goods by the taxable dealer is subject to the margin scheme.*

#### Article 324

*Where the taxable dealer applies both the normal VAT arrangements and the margin scheme, he must show separately in his accounts the transactions falling under each of those arrangements, in accordance with the rules laid down by the Member States.*

#### Article 325

*The taxable dealer may not enter separately on the invoices which he issues the VAT relating to supplies of goods to which he applies the margin scheme.*

## Witness Evidence

### *Appellant*

10. The Appellant's witness, [REDACTED], who is a Director in the Appellant advised that he was a qualified [REDACTED] and was involved in the motor trade for [REDACTED]. He stated that he had previously held a senior position in a [REDACTED] and initially became involved in the motor trade as a hobby.
11. He stated that he normally sourced motor cars to order and the Appellant's activities were mainly repeat business for local customers. The Appellant's witness, [REDACTED], further advised that the Appellant operated on small margins as he had another source of income. This other source of income related to the provision of [REDACTED] to the [REDACTED].
12. The witness advised that success in the appeal was crucial as his "*name and pride were important to him*" and as the Appellant did not have sufficient funds to discharge the amounts sought by the Respondent, "*it is all or nothing*" for him and the Appellant (indicating if the Appellant lost its appeal that he would have to close the Appellant's business as it would be insolvent).
13. The witness explained that he ordinarily sourced and purchased motor cars from two dealers ([REDACTED] and [REDACTED]) and those vehicles were usually 2-3 years old. He stated that he had dealt with those suppliers for numerous years and found them to be reputable. He further explained that the Appellant had a previous audit from the Respondent in 2012, that the same paperwork was in place and the Appellant had dealt with the same suppliers then but no issues in terms of the Margin Scheme were identified at that audit.
14. In explaining the Appellant's relationship with [REDACTED], the witness advised that he was always of the firm belief that all of the motor vehicles, excluding commercial vehicles, were purchases eligible for the Margin Scheme. From a sample of "typical" [REDACTED] purchase invoices presented to him, the witness advised that they contained the usual details one would expect to see on an invoice, such as the date, a description of the goods, the purchaser's VAT number and the amount payable for the goods but there was no VAT charged on those invoices by the supplier. The witness explained that some of the [REDACTED] invoices contained both the Appellant and [REDACTED] VAT registration details on them but others did not and none of those invoices contained any reference to the Margin Scheme written or embossed upon them.
15. The witness advised following the Respondent's audit findings, he immediately contacted [REDACTED] and explained that future invoices had to have "Margin Scheme goods" or similar

entered on them if they qualified for that scheme. The witness confirmed that instruction was immediately implemented by [REDACTED]. The witness advised prior to that discussion with the Respondent's representative, he was unaware of that requirement as he had essentially been lulled into a false sense of security that his paperwork was compliant following the 2012 audit.

16. The witness further advised that the Appellant's sales invoices contained the wording "*Margin Scheme applies, no residual taxes applicable*" upon them in respect of its sale of margin scheme vehicles and it was his understanding that by doing this, the Appellant was correctly operating the Margin Scheme.
17. The witness further advised if he had been informed at the time that the motor vehicles purchased from [REDACTED] were not eligible for the Margin Scheme then he would not have purchased them on the Appellant's behalf as it would have been uneconomical to do so. He advised when he contacted [REDACTED] following the Respondent's findings that he was reassured that all of the motor vehicles purchased by the Appellant, which they had treated as Margin Scheme motor vehicles were eligible to be treated in that manner.
18. Under cross examination by the Respondent's Counsel, the witness confirmed that his work as an [REDACTED] was very much "*driven by compliance, paperwork and detail*" and he appreciated attention to detail. He further advised that the Appellant had treated the purchases from [REDACTED] as intra-community (Intra-EU) acquisitions, rather than Margin Scheme purchases, and hence he knew the difference between the two. The witness further agreed that the Appellant's sales invoices contained the correct Margin Scheme narrative on applicable vehicles sold by it.
19. When asked why he had included this narrative on the Appellant's invoices, he stated that was "*because that is what is required under Irish regulations for a seller*". He further explained that as he was not *au fait* with English tax legislation, he was not aware that the [REDACTED] invoices required similar wording to be contained upon them for those purchases to be eligible for inclusion in the Margin Scheme. Further, the witness informed the Commission that the Appellant's accountant had never advised the Appellant of this requirement either.
20. While the witness stated that he did not understand the process of the "mutual assistance procedure" put to him by the Respondent's Counsel, he confirmed following that process (see paragraph 21 for further information) that the Respondent reduced the amount of the VAT originally sought by it in discounting down the original sum by the amount referable to the vehicles it had identified were eligible for inclusion on the Margin Scheme.

*Respondent*

21. The Respondent's witness, [REDACTED] advised that he was engaged by the Respondent as an [REDACTED] in its [REDACTED]. He explained that the "mutual assistance procedure" is a system used by Revenue authorities in various jurisdictions which provides them with information on transactions entered into between an Irish taxpayer and a taxpayer resident in the other jurisdiction.
22. Under cross examination, the witness confirmed that he did not author the mutual assistance request or report in relation to the Appellant's affairs.

**Submissions**

*Appellant*

23. The Appellant's Counsel submitted that the Appellant was very prudent in relation to the operation of VAT within its business and that it would have expected the Respondent to have advised it when conducting its Revenue Audit in 2012 of any irregularities in its record keeping. Counsel emphasised that this was particularly relevant given the nature of the Appellant's business activities was unchanged and as it was still dealing with the same suppliers.
24. Counsel for the Appellant further submitted that had the Appellant been aware that the motor vehicles it purchased from [REDACTED] were not eligible for the margin scheme, then it would not have purchased those vehicles, as to do so would have been uneconomic. As such Counsel submitted that the imposition of the liability calculated by the Respondent would be catastrophic for the Appellant's continued business survival.
25. The Appellant's Counsel submitted that the Respondent's assessments were based upon the Appellant's supplier [REDACTED] incorrectly including the relevant motor vehicles as intra-community supplies rather than correctly recording them as purchases eligible for the margin scheme. Counsel submitted that as [REDACTED] had confirmed to the Appellant that the vehicles purchased by it from them were entitled to avail of the margin scheme, then the Respondent ought to have conducted a more thorough audit in order to ascertain the correct position.
26. Counsel for the Appellant submitted that the alleged evidence obtained by the Respondent from Her Majesty's Customs and Excise (as it was then, "HMRC" – see paragraph 34 below) was merely hearsay evidence, as the Respondent had not called the author(s) of that documentation, and as such it should be disregarded by the Commission in deliberation of the matter under appeal.

27. The Appellant's Counsel opened the Court of Justice of the European Union ("CJEU") case of *UAB 'Litdana' v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos, third party: Klaipėdos apskrities valstybinė mokesčių* Case 624/15 ("*Litdana*") which examined the central issue of whether a taxable person who received an incorrect invoice had the right to apply the margin scheme when calculating its VAT liability on the subsequent sale of those goods.
28. In *Litdana*, the CJEU held that such a taxpayer was entitled to avail of the margin scheme where it had acted in good faith and taken every step which could reasonably be required of the taxpayer to satisfy itself that the transaction which it is effecting does not result in its participation of tax evasion. The CJEU held (at paragraph 40):
- "..the tax authority cannot, as a general rule, require the taxable person wishing to exercise the right to apply the margin scheme, first, to verify, inter alia, that the issuer of the invoice relating to the goods in respect of which the exercise of that right is sought has satisfied his obligations as regards declaration and payment of VAT, in order to be satisfied that there are no irregularities or fraud at the level of the traders operating at an earlier stage of the transaction or, secondly, to be in possession of documents in that regard".*
29. The Appellant's Counsel submitted that the Appellant had taken steps consistent with those in *Litdana* and as such the Commission should allow the disputed invoices to be taxed in accordance with the margin scheme. In the first instance, the Appellant's Counsel submitted that as the disputed invoices neither mentioned the margin scheme nor zero VAT, the Appellant Director telephoned the owner of [REDACTED], following the Respondent's audit findings and was reassured that the motor vehicles the Appellant had sold as margin scheme cars were eligible for that treatment.
30. Counsel or the Appellant stated that in addition to this verbal confirmation, the Appellant conducted a historic review of its purchases from [REDACTED] for 2017 and 2018 which revealed that the majority of the vehicles it purchased for those periods were eligible for the margin scheme (2017: of 28 vehicles purchased, 21 deemed eligible and in 2018 of 20 vehicles, 18 qualified). Counsel submitted using this information, it was reasonable to conclude for the periods under appeal that the majority of the vehicles purchased from [REDACTED] were eligible for inclusion in the margin scheme and thus, had been correctly treated by the Appellant.
31. The Appellant's Counsel opened Article 226 of the VAT sixth Directive which sets out the items to be included on a sales or purchase invoice in order for it to be compliant for VAT purposes. Counsel submitted that the purchase invoices obtained from [REDACTED] were fully

compliant with those requirements with the limited exception of the margin scheme wording.

32. In summation, the Appellant's Counsel submitted that as the Appellant did not derive competitive advantage in purchasing the motor vehicles from [REDACTED] and as it had taken reasonable steps to validate that those purchases were eligible for inclusion in the margin scheme, then the Appellant's appeal should be allowed and the assessments vacated.

*Respondent*

33. The Respondent's Counsel submitted that while the onus of proof fell squarely on the Appellant to prove that it did not owe the disputed tax, the Respondent had conducted some investigative work to establish if the Appellant's purchases from [REDACTED] were eligible for inclusion in the margin scheme.
34. In this regard, the Respondent's Counsel advised that the Respondent issued a mutual assistance request to the United Kingdom's ("UK") HMRC. The UK authorities confirmed that with the exception of eight vehicles all other sales to the Appellant were shown on [REDACTED] records as Intra-EU sales rather than margin scheme sales. In addition, HMRC stated that they were advised by [REDACTED] accountants that was the correct position according to its records maintained on behalf of [REDACTED]
35. The Respondent's Counsel advised that as a concession, the Respondent treated the eight vehicles identified by HMRC as being eligible for inclusion on the margin scheme as being so eligible and that the assessments issued by the Respondent reflected this reduction in the original calculated liability.
36. In relation to the balance of the vehicles acquired from [REDACTED], the Respondent's Counsel submitted that as no evidence was presented to it or the Commission that those vehicles were eligible for inclusion in the margin scheme, then it was incumbent on the Commission to uphold the Respondent's assessments.
37. The Respondent's Counsel emphasised that this duty was imposed on the Commission as the Appellant's underlying purchase invoices from [REDACTED] were not in compliance with the statutory requirements for the margin scheme to be operated. Counsel submitted that the Respondent's tax and duty manual was clear on the requirements for the margin scheme to be applicable as it states<sup>1</sup>:

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<sup>1</sup> <https://www.revenue.ie/en/tax-professionals/tm/value-added-tax/part03-taxable-transactions-goods-ica-services/Goods/goods-second-hand-goods.pdf> at paragraph 3, page 3.

*“An invoice issued by an accountable dealer in respect of a supply of the margin scheme must not show VAT separately. Any such invoice should be clearly endorsed “Margin Scheme – this invoice does not give the right to an input credit of VAT”.*

38. The Respondent’s Counsel submitted that as none of the Appellant’s disputed purchase invoices contained this narrative then the related sales were ineligible for inclusion on the margin scheme and as such the Respondent’s assessments should be upheld.
39. The Respondent’s Counsel further submitted that the Appellant’s reliance on *Litdana* was misguided since that matter considered conflicting narratives on issued invoices where the Appellant’s appeal considers the lack of statutory wording required for the margin scheme to be applicable.
40. The Respondent’s Counsel submitted that the Appellant’s submissions that the mutual assistance documentation was hearsay was further misguided since the Appellant had benefitted from that documentation (in allowing the eight identified vehicles to be eligible for treatment in accordance with the margin scheme) and that in any event, the obligation to prove that the disputed tax was not owed rested with the Appellant. The Respondent’s Counsel submitted that this burden could have been discharged by the Appellant calling a representative of ██████ to give evidence before the Commission or the production of documentation which evidenced that the disputed purchases were eligible for inclusion within the margin scheme.
41. In summation, the Respondent’s Counsel submitted that the obligation to prove eligibility within the margin scheme rested on the Appellant and as it had failed to do so and as its invoices did not contain the requisite statutory wording to avail of the margin scheme, then the assessments raised by the Respondent ought to be upheld by the Commission.

### **Material Facts**

42. The Commissioner finds the following material facts:
  - 42.1. The Appellant is engaged in the business of selling used motor vehicles.
  - 42.2. Subject to compliance with statutory criteria, the Appellant is entitled to elect for a special scheme when computing its VAT liabilities known as the “margin scheme”.
  - 42.3. The margin scheme is applicable to purchases from other European Union (“EU”) Member States.

- 42.4. For the periods under appeal, the UK was a member of the EU and hence a Member State.
- 42.5. In relation to its purchases from one of its vehicle suppliers (██████████), the Appellant treated the majority of those purchases as being eligible for inclusion in the margin scheme. ██████████ was at all material times operating from the UK.
- 42.6. The Appellant conducted a limited amount of due diligence in respect of its UK suppliers.
- 42.7. None of the purchase invoices received from ██████████ by the Appellant had wording to the effect of “Margin Scheme Goods” or similar.

### **Analysis**

43. Before turning to the substantive issue, the Commissioner notes in the first instance that the Appellant asserts some responsibility rests with the Respondent owing to its failure to discover the alleged defective purchase invoices at its earlier audit conducted in 2012.
44. The Commissioner disagrees with these submissions as various provisions of the TCA 1997 and the VATCA 2010 provide that it is the Appellant and not the Respondent who is responsible for maintaining proper books of account. Furthermore, had the Respondent discovered the alleged defective purchase invoices in 2012, it would have placed the Appellant in the position it currently finds itself in.
45. The Appellant Director further asserted that he was not an expert in UK law and hence that contributed to the alleged invoices being defective. The Commissioner does not agree with this statement as firstly the laws governing the operation of the margin scheme in Ireland derive from both Irish legislation and EU Directives (and the UK “equivalent” legislation imposes similar “margin scheme” requirements as it was governed at the time by the same Directives). Thus, the Appellant is not required to be an expert in either UK or Irish tax law to operate its business effectively, but as with all other taxpayers is required to be familiar with the operation of taxation principles relevant to its business activities. The Commissioner further notes that the Appellant had an accountant whom it could have sought advice from to ensure that it was tax compliant but chose not to adapt this course of action.
46. Furthermore, the Appellant’s Counsel submits that the documentation obtained from HMRC should not be relied upon by the Commission as it is hearsay evidence (which means that the evidence should be disregarded by the Commission as it relates to



evidence of something where the author of the documentation is not available to substantiate the claims made).

47. The law of evidence concerning hearsay includes, *inter alia*, a document generated out of court or tribunal by another person who is not produced as a witness to prove the truth of what is asserted in the document. While there are many reasons why hearsay evidence should be excluded, the lack of opportunity to cross-examine is considered to be the principle one.
48. Administrative tribunals, such as the Commission are not necessarily restricted by the rule against hearsay. Section 949 AC TCA 1997 gives the Commissioner certain flexibility to admit hearsay evidence. However, where such evidence is admitted, tribunals are required to observe natural justice as held by Hench J in *Kiely v Minister for Social Welfare (No. 2)*, [1977] IR 267. In that case, the Supreme Court held that an appeals officer in a social welfare tribunal was wrong to accept the hearsay evidence of a doctor, in the form of a written opinion, in rebuttal of the oral testimony of two other doctors when considering a claim for a death benefit under the Social Welfare Acts. In delivering judgment, Henchy J said (at page 281):

*“Of one thing I feel certain, that natural justice is not observed if the scales of justice are tilted against one side all through the proceedings. Audi alteram partem means that both sides must be fairly heard. That is not done if one party is allowed to send in his evidence in writing, free from the truth-eliciting processes of a confrontation which are inherent in an oral hearing, while his opponent is compelled to run the gauntlet of oral examination and cross examination. The dispensation of justice, in order to achieve its ends, must be even-handed in form as well as in content. Any lawyer of experience could readily recall cases where injustice would certainly have been done if a party or a witness who had committed his evidence to writing had been allowed to stay away from the hearing, and the opposing party had been confined to controverting him simply by adducing his own evidence. In such cases it would be cold comfort to the party who had been thus unjustly vanquished to be told that the tribunal's conduct was beyond review because it had acted on logically probative evidence and had not stooped to the level of spinning a coin or consulting an astrologer. Where essential facts are in controversy, a hearing which is required to be oral and confrontational for one side but which is allowed to be based on written and, therefore, effectively unquestionable evidence on the other side has neither the semblance nor the substance of a fair hearing. It is contrary to natural justice.”*

49. In considering whether the evidence sought to be included by the Respondent is prejudicial to the Appellant's right to a fair hearing, the Commissioner notes that the inclusion of such evidence is beneficial to the Appellant as it results in a reduction of its potential liability (by virtue of the concession afforded by the Respondent in allowing the eight identified vehicles to be deemed eligible for inclusion in the margin scheme). Furthermore, the Appellant could have refuted this evidence by admitting evidence in rebuttal of same but for reasons unknown chose not to adapt this course of action. Accordingly, the Commissioner finds that the evidence obtained from HMRC should be admitted to the Commission and is not prejudicial to the Appellant.
50. The rules for statutory interpretation are set out in the judgment of McDonald J. in *Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners and ors.* 2020 IEHC 552 ("*Perrigo*") where he summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

*"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";*

*(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

*(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

*(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

*(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

*(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible"*

51. The central issue to be addressed in the Appellant's appeal is whether it was entitled to avail of the margin scheme in respect of a portion of its purchases from its supplier [REDACTED]
52. Availability of that scheme requires compliance with sections 87 VATCA 2010, S.I. 639/2010 and Articles 312 to 325 EC Directive 2006/112/EC. While much of that legislation provides for the operation of the margin scheme, of particular mention is section 87 (6) VATCA 2010, subsection (6) of S.I. 639/2010 and Articles 314, 319 and 325 of EC Directive 2006/112/EC. Article 314 (d) EC Directive 2006/112/EC required [REDACTED] to have operated the margin scheme, for the Appellant in turn to have applied the margin scheme on its subsequent supplies and as they did not, this renders the Appellant ineligible for inclusion on the margin scheme.

53. In addition, section 6 of S.I. 639/2010 requires that any invoice issued by an accountable person availing of the margin scheme is required to indicate that the margin scheme has been applied to the supply. As the [REDACTED] invoices did not specify that the margin scheme applied to the supplies on their issued invoices, it is clear to the Commissioner that the supplies made by them to the Appellant were not in accordance with the legislative requirements of the scheme and thus, the Appellant's entitlement to avail of the margin scheme on its subsequent supplies must be denied.
54. These findings are supported by the documentation submitted from HMRC which confirms that the [REDACTED] invoices were treated domestically (in the UK) as Intra-Community acquisitions.
55. The Commissioner notes from the Appellant Director's evidence that he is a diligent man who in the past had responsibility in his main profession of managing [REDACTED] [REDACTED] and managed large numbers of personnel within that role. The Commissioner notes that the Appellant Director chose to conduct limited research, if any, into the availability of the margin scheme for the Appellant's business but chose instead to conduct limited research after the fact by telephoning the [REDACTED] representative "to see" if the margin scheme applied to the disputed purchases. The Commissioner further notes that the Appellant based his appeal primarily on this information coupled with the unsubstantiated analysis of purchases for the two years following the period under appeal. This perhaps was not the most prudent course of action for the Appellant in these circumstances.
56. As such, the Commissioner finds that while the Appellant Director may have acted in good faith in his dealings with [REDACTED], he did not take "every reasonable step that could be required" to establish that the Appellant's supplies were eligible for the margin scheme. As such the Commissioner finds that *Litdana* is of no assistance to the Appellant in its appeal and further notes that *Litdana* concerned an incorrect invoice whereas in the Appellant's appeal there is nothing to support a finding that the invoices it received from [REDACTED] were erroneous in any aspect.
57. As the purchases from [REDACTED] are deemed to be Intra-Community acquisitions, section 9 (1) (b) VATCA 2010 is of relevance. That section states that the Appellant "*shall be accountable for and liable to pay the tax chargeable*". The tax chargeable is computed on a "two step" approach. Step one required the Appellant to have self-accounted for VAT at the time of acquisition and as the Appellant's business consisted of total vatable activities, the effect of this would have been VAT neutral (since the Appellant would have charged itself VAT and deducted the same amount by virtue of the self-accounting

method). Step two would have required the Appellant to have charged VAT to its customers on the basis of the full sales price with no VAT deduction available for the purchase of the goods (since the Appellant would have already accounted for the purchase VAT at the time of acquisition). As the Appellant's UK purchases are Intra-Community acquisitions, and as the Respondent calculated the VAT assessments correctly in accordance with the requirements of the Act, the Commissioner determines that the assessments raised by the Respondent in the sum of €268,182 must stand.

58. The Commissioner understands the position that this leaves the Appellant in but notes as VAT is an EU tax one party cannot be unjustly enriched by the actions of others. Unjust enrichment could arise in the instant situation by virtue of the Appellant's UK supplier recovering his purchase VAT (which he could do as he treated the sales to the Appellant as intra-community supplies) on their acquisition of the goods subsequently supplied to the Appellant VAT free.

59. As with all appeals before the Commission 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, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*

60. The Commissioner determines that the Appellant has not discharged the necessary burden of proof to establish its entitlement to avail of the margin scheme. As a result the Respondent's assessment to VAT in the sum of €268,182 is upheld.

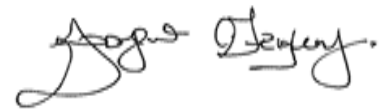
### **Determination**

61. The Commissioner determines that the assessment to VAT in the sum of €268,182 stands as the Appellant has not discharged the necessary burden of proof. Therefore, the appeal is denied and the assessment is upheld.

62. The Commissioner appreciates this decision will be disappointing for the Appellant but the Commissioner has no discretion and must, as stated above apply the provisions of the VATCA 2010 and associated EU law. The Appellant was correct to check to see whether its legal rights were correctly applied

63. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 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 on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.

A handwritten signature in black ink, appearing to read "Andrew Feighery". The signature is written in a cursive style with a large initial 'A'.

**Andrew Feighery**

**Appeal Commissioner**

**26<sup>th</sup> July 2023**