



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 Appeal Commission (hereinafter the "Commission") as an appeal against a decision by the Revenue Commissioners (hereinafter the "Respondent") made on 16 February 2023 disallowing an application by [REDACTED] [REDACTED] (hereinafter the "Appellant") pursuant to section 65 of the Value Added Tax Consolidation Act 2010 (hereinafter the "VATCA2010") seeking to register for Value Added Tax (hereinafter "VAT").

## Background

2. The Appellant is a UK registered limited liability company having its registered address at [REDACTED].
3. The Appellant submitted an application to the Respondent seeking to register for VAT. The Respondent sought initial information from the Appellant, to which the Appellant responded as follows:

***"1. A detailed description of the Vatable activity being carried out by your client. If the Vatable activity relates to different trades or businesses, please give a detailed description of all.***

*Response:* The company distributes [REDACTED]  
[REDACTED].

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

*Response:* The business address of the company is: [REDACTED]  
[REDACTED].

***If the business address is rented, please state the name & address of the landlord, amount of rent paid per week/month/year, the date your client started to pay the rent and the length of the agreed rental/lease period.***

***If no rent is being charged for the use of the business premises, please outline the circumstances as to why this is the case.***

*Response:* This premises is rented, the Landlord is [REDACTED], the managing agent is [REDACTED].

**3. Evidence of trading within the last 3 months, this should include copies of contracts, service agreements, sales invoices and purchase invoices from suppliers of goods/services related to the carrying out of your client's trade or trades.**

*Response: Please see attached:*

*Copies of sales invoices for last 3 months*

*Copies of purchase orders for last 3 months*

*Correspondence with customer who cancelled and returned product because the company did not have an Irish VAT number*

*The company is losing out on business in Ireland by not having an Irish VAT number as Irish customers are unwilling to trade with them without one due to the extra administration on them to self account for VAT.*

**4. Please confirm who is carrying out the company's business activity in Ireland. List employees, stating name, address and PPS number where applicable and proof of the payroll set up for these employees.**

*Response: The business is carried out by our people in [REDACTED] by phone, internet and email.*

*The two people engaged in that activity are employed in the UK not Ireland, addresses as follows.*

1. [REDACTED]  
[REDACTED]
2. [REDACTED]  
[REDACTED].”

4. On 7 February 2023 the Respondent requested further information from the Appellant in relation to its application as follows:

*"1. Who are the goods being supplied to? Please supply copies of customer invoices. Please provide SAD document for the invoices you have provided previously.*

*2. Is there a contract in place with the customer? If so, please supply copy.*

*3. As per the contract of sale who is the Importer of the goods into Ireland?*

*4. Where & when will the change of ownership of the goods take place?*

*5. What are the International Commercial Terms (Incoterms) of sale?*

*6. Are you customers business or private individuals."*

5. On 8 February 2023 the Appellant replied as follows:

*"...Our client's customers are refusing to buy from them until they get a VAT number so we would really appreciate your help in getting this over the line. If any of my responses are too vague and you need more detail or backup, please let me know.*

*1. The goods are being sold to business clients in Ireland. Please see attached invoices and SAD documents.*

*2. Purchase orders are used. The following process takes place: A client will accept the offer of goods at an acceptable price, they send a purchase order, the purchase order is accepted forming a contract, the contract is deemed completed when the goods are delivered in the correct condition, the correct specification, correct quantity and within the agreed timeframe.*

*3. The importers are the clients.*

*4. The change of ownership happens upon delivery of goods to the client.*

*5. Currently the terms are on DAP (Deliver At Place) terms, however this will change to DDP (Deliver Duty Paid) terms upon receipt of an Irish VAT number.*

*6. The customers/clients are business customers."*

6. On 14 February 2023 the Respondent sought further information from the Appellant as follows:

*"1. I note one of the customers is [REDACTED]. Did the company actually buy the product or were they the distributor of your products?"*

*2. I note you state upon receipt of an Irish Vat Number the incoterms will be DDP, can you also confirm if the importer will be the client also or who will?"*

7. On 14 February 2023 the Appellant responded as follows:

*"1. [REDACTED] are not a distributor of our clients but were an importing client of theirs, the transaction mentioned on our list was supplied on DAP (Deliver At Place) terms.*

*2. As our client's business is essentially wholesale they supply to resellers who sell these goods on to end user clients from corporations to small and medium sized businesses. In some cases they will ship directly to those resellers, in other cases they will ship to the clients of the resellers but in all cases the resellers will be the importers, not their clients."*

8. On 16 February 2023 the Respondent issued its decision disallowing the Appellant's application for VAT registration stating that having reviewed the application *"...management are satisfied that your company is not an accountable person for the purposes of Value Added Tax as defined in Section 5(1)(a) of the VAT Consolidation Act 2010."*

9. The Appellant appealed the Respondent's decision to the Commission by way of a Notice of Appeal dated 27 February 2023.

10. Statements of Case were received by the Commission from the Appellant on 16 March 2023 and from the Respondent on 3 April 2023.

11. On 12 April 2023 the Commission wrote to the Parties indicating its intention to determine the within appeal pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and allowed the Parties 21 days to indicate their disagreement with same. The Respondent indicated its consent to this course of action by correspondence dated 20 April 2023. The Appellant has not objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the TCA1997.

## Legislation and Guidelines

12. The legislation relevant to the within appeal is as follows:

Section 2 of the VATCA2010 – “Interpretation – general”

“(1) In this act –

...

“Community”, subject to section (4A), has the same meaning as it has in Articles 5 to 8 of the VAT Directive;

...

“taxable person” means a person who independently carries on a business in the Community or elsewhere;

...

“VAT Directive” means Council Directive No. 2006/112/EC of November 2006<sup>1</sup> on the common system of value-added tax;

...”

Section 5 of the VATCA2010 – “Persons who are, or who may become, accountable persons”:

“(1)(a) 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.

(b) Subject to paragraph (c), in addition, the persons referred to in sections 9, 10, 12, 15, 17(1), 94(3), 108C, 109A and 91J(10) shall be accountable persons.

(c) A person not established in the State who supplies goods in the State only in the circumstances set out in section 10, or supplies a service in the State only in the circumstances set out in section 16(3), shall not be an accountable person.

(2) Where, by virtue of section 6(1) or 7, a person has not been an accountable person and a change of circumstances occurs from which it becomes clear that the person is likely to become an accountable person, he or she shall be deemed, for the

*purposes of this Act, to be an accountable person from the beginning of the taxable period commencing next after such change.”*

Section 10 of the VATCA2010 – “Certain supplies of goods — supplier not established in the State.

*“(1)Where a person not established in the State supplies gas through the natural gas distribution system, or heat or cooling energy through heating or cooling networks, or electricity, to a recipient in the State, and where the recipient is—*

*(a)a taxable person who carries on a business in the State, or*

*(b)a public body,*

*then that recipient shall, in relation to that supply, be an accountable person or be deemed to be an accountable person and shall be liable to pay the tax chargeable as if the recipient supplied those goods in the course or furtherance of business.*

*(2)Where a person not established in the State supplies goods in the State which are installed or assembled, with or without a trial run, by or on behalf of the person, and where the recipient of the supply of those goods is—*

*(a)a taxable person who carries on a business in the State, or*

*(b)a public body,*

*then that recipient shall, in relation to that supply, be an accountable person or be deemed to be an accountable person and shall be liable to pay the tax chargeable as if the recipient supplied those goods in the course or furtherance of business.”*

Section 65 of the VATCA2010 – “Registration”:

*“(1) The Revenue Commissioners shall set up and maintain a register of persons—*

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

*(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)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.*

*(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's Submissions*

13. The Appellant submitted the following in support of this appeal in its Notice of Appeal:

*“ [REDACTED] application for an Irish VAT number has been refused on the basis that 'your company is not an accountable person for the purposes of Value Added Tax as defined in Section 5(1)(a) of the VAT Consolidation Act 2010.' We disagree with this opinion as we do believe the company is an accountable person for the purpose of VAT as defined in Section 5(1)(a).*

*[REDACTED] has been trading since 2006 and is one of the UK's leading [REDACTED], supplying corporate resellers across the UK and the Republic of Ireland. It was set up by [REDACTED] who is living in the UK and is still running the business.*

*To put it succinctly, since Brexit came into practical effect on 31/01/2020, [REDACTED] have seen a reduction of over 50% in headline Republic of Ireland sales. The figure is much worse when we delve into the detail. Key clients have effectively removed [REDACTED] from their 'Approved Supplier List' for the sole reason of [REDACTED] not having an Irish VAT number.*

*In order to reinstate its business in ROI to pre-Brexit levels, the company needs an*

*Irish VAT number as Irish corporate customers have point blank refused to continue to trade with them until they obtain one.*

*██████████, an independent distributor, is also effectively a wholesaler and as such their activities are governed by The Sale of Goods Act. Once they achieve acceptance onto clients 'Approved Supplier List', they are free to enter into contracts to sell ██████████ to them. These contracts are frequent, repeated and relatively short term.*

*The following steps outline the process:*

- 1. ██████████ makes a written offer of goods to a client*
- 2. The client accepts this offer*
- 3. The client raises an official purchase order*
- 4. ██████████ reviews this purchase order and if within the offered terms accepts the purchase order and a contract is formed, performance of the contract then follows with the goods being delivered to the correct specification, the correct quantity, correct price, and specified location*
- 5. The contract obligations are typically exhausted on both parties when the client pays, normally within a maximum of 60 days from date of invoice*

*We enclose an additional document to further outline our appeal which includes a copy of the financial statements of ██████████ showing it is a profitable and solvent company, cashflow projections and a credit safe report.”*

14. The following was submitted in support of this appeal in the Appellant's Statement of Case:

*██████████ was formed in ██████████ ██████████, have become one of the UK's leading distributors of ██████████ ██████████; supply corporate resellers across the UK and the Republic of Ireland. Company website: ██████████ Company address: ██████████ ██████████. Company registration number: ██████████.*

*The Company has been owned and run by ██████████ since its incorporation.*

*Since Brexit, ██████████ have incurred a reduction of over 50% in headline Republic of Ireland sales. Key clients have effectively removed ██████████ from their "Approved Supplier List" for the sole reason of ██████████ not having an Irish VAT number.*

*██████████ applied for an Irish VAT number on November 2022 but it was rejected in February 2023 for the following reason as provided by Revenue:*

*“Your company is not an accountable person or the purpose of Value Added Tax as defined in Section 5(1)(a) of the VAT Consolidation Act 2010.”*

*We disagree with this decision and do believe the company, [REDACTED], is an accountable person for the purposes of Value Added Tax as defined in Section 5(1)(a) of the VAT Consolidation Act 2010 (VATCA 2010) for the following reasons:*

- 1. [REDACTED] independently supplies taxable goods in the State to Irish business customers – a transfer of ownership occurs for money.*
- 2. The taxable goods that [REDACTED] supplies are [REDACTED] which are goods taxable at the standard rate of VAT in Ireland – Section 46(1)(a) VATCA 2010.”*

15. The Appellant submitted the following documentation in support of this appeal:

- a) Copy of correspondence between Appellant’s Tax Agent and Respondent on the Respondent’s *My Enquiries* portal;
- b) Document named “[REDACTED] *Projections Irish Vat Application – [REDACTED] version.pdf*” which contained the following documents:
  - Background Information
  - 5 Year Project Profit and Loss to 28 February 2028
  - Monthly Cash Flow Projection to 28 February 2028
  - UK VAT Registration Certificate
  - Irish Customers
  - Customer Correspondence
  - Credit Safe Report
  - Financial Statements for [REDACTED]

#### *Respondent’s Submissions*

16. The following was submitted in the Respondent’s Statement of Case:

*“[REDACTED] is a UK company seeking VAT registration in Ireland. In order to be granted a VAT registration in Ireland the applicant must be regarded as an accountable person and be involved in a business activity in Ireland. To do so they are required to provide substantive evidence of trade here or substantive evidence of intention to trade here.*

*The company initially applied for VAT registration back in 11/2022 for the supply of taxable goods [REDACTED] in the state and were refused on grounds of not providing substantive evidence of trade here or substantive evidence of intention to do so. At the time they advised they had no premises or employees but once the business grows, they would consider both. To date none of these items have been undertaken.*

*In support of their most recent VAT application 01/02/2023 they provided documentation on 08/02/2023 advising that the Incoterms were DAP (delivered a place) but will change to DDP (delivered duty paid) upon receipt of a VAT number. However, they continue to state that they will not be the importer of the goods.*

*On 14/03/2023 they advised that their business is essentially wholesale, they supply to resellers who sell these goods on to end user clients from corporations to small and medium sized businesses. In some cases, they will ship directly to those resellers, in other cases they will ship to the clients of the resellers but in all cases the resellers will be the importers, not themselves.*

*On that basis and after examination of the VAT application, the business does not appear to be operating from the Republic of Ireland and therefore the company is not an accountable person for VAT per Section 5(1)(a) of the VAT Consolidation Act 2010.”*

## **Material Facts**

17. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commissioner, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 (hereinafter “*Menolly Homes*”), at paragraph 22, Charleton J. stated:

*“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 Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.*

18. Whilst the Parties did not submit a Statement of Agreed Facts to the Commissioner, the following material facts are not at issue in the within appeal and the Commissioner finds same as material facts:

- i. The Appellant is a UK registered limited company having its registered address at [REDACTED];
- ii. The Appellant was first registered for VAT in the UK on [REDACTED];
- iii. The Appellant is an independent distributor of [REDACTED], supplying corporate resellers across the UK and the Republic of Ireland;
- iv. Since the withdrawal of the United Kingdom from the European Union (hereinafter “Brexit”) the Appellant has experienced a fall in sales to Ireland as a result of the Appellant being a UK VAT registered limited company;
- v. The Appellant operates its’ business in the UK and from the UK;
- vi. The Appellant does not have a physical presence within the State;
- vii. The Appellant does not have employees within the State.

19. The following material fact is at issue in the within appeal:

- i. The Appellant is, or may become, an accountable person pursuant to section 5(1)(a) of the VATCA2010.

20. Part 2 of the VATCA2010 and specifically section 5 of the VATCA2010 defines an accountable person and/or a person who may become an accountable person as being “... a taxable person who engages in the supply, within the State, of taxable goods or services.”

21. As previously set out, *Menolly Homes* established that the burden of proof lies on an appellant in an appeal before the Commissioner. It is therefore necessary for the Appellant to demonstrate that it comes within the definition of an accountable person as set out in section 5 of the VATCA2010.

22. The Appellant is an independent distributor of [REDACTED], supplying corporate resellers across the UK and the Republic of Ireland.

23. The Commissioner has considered all of the submissions and documentation submitted in support of this appeal. The Appellant has submitted copies of correspondence from three

Irish customers who have indicated that they will only purchase from suppliers who deliver to Ireland on a duty paid basis.

24. In support of this appeal the Appellant has submitted the documentation set out at paragraph 15 of this determination. Nothing in the documentation or submissions received from the Appellant has indicated to the Commissioner how the Appellant intends to put itself in a position to deliver goods to Ireland on a duty paid basis.

25. The Appellant is not registered in the State and, on the basis of the submissions received from the Respondent, the Appellant has indicated to the Respondent in November 2022 that it would consider setting up a physical presence within the State. To date no evidence has been submitted by the Appellant which tends to suggest that this has occurred.

26. The Respondent further stated in its submissions to the Commissioner that the Appellant provided documentation on 8 February 2023 advising that the Incoterms under which they supply to customers in Ireland are DAP (delivered at place) but that these Incoterms would change to DDP (delivered duty paid) upon receipt of a VAT number. However, the Respondent also submitted that the Appellant also indicated that they would continue to state that they will not be the importer of the goods.

27. On the basis of the submissions and documentation received, the Commissioner is satisfied that the Appellant has not discharged the burden of proof in relation to this material fact and has not established that it is, or may become, an accountable person pursuant to section 5(1)(a) of the VATCA2010.

28. Therefore this material fact is not accepted.

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

- i. The Appellant is a UK registered limited company having its registered address at [REDACTED]  
[REDACTED]
- ii. The Appellant was first registered for VAT in the UK on [REDACTED];
- iii. The Appellant is an independent distributor of [REDACTED]  
[REDACTED], supplying corporate resellers across the UK and the Republic of Ireland;

- iv. Since the withdrawal of the United Kingdom from the European Union the Appellant has experienced a fall in sales to Ireland as a result of the Appellant being a UK VAT registered limited company;
- v. The Appellant operates its' business in the UK and from the UK;
- vi. The Appellant does not have a physical presence within the State;
- vii. The Appellant does not have employees within the State.

### **Analysis**

30. The Commissioner has already found that the Appellant has not established that it is, or may become, an accountable person pursuant to section 5 of the VATCA2010.

31. It therefore follows that the provisions of section 65 of the VATCA2010 cannot be applied to the Appellant and that Respondent cannot place the Appellant on the register of persons who are or may become accountable persons.

32. As a result, the Commissioner is satisfied that the Appellant has not discharged the burden of proof as set out in *Menolly* to establish that the Respondent refusal to grant it a VAT registration was incorrect.

### **Determination**

33. For the reasons set out above, the Commissioner determines that the Respondent was correct to refuse the Appellant's application to be registered for VAT.

34. The Appellant has not succeeded in this appeal. It is understandable that the Appellant will be disappointed with the outcome of his appeal. The Appellant was correct to check to see whether its legal rights were correctly applied.

35. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949U 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  
05 September 2023