



Between

46TACD2023

████████████████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) pursuant to section 119 of the Value Added Tax Consolidation Act 2010 (“VATCA 2010”) against the refusal of the Revenue Commissioners (“the Respondent”) to grant it a Value-Added Tax (“VAT”) registration.
2. In accordance with the provisions of section 949U of the Taxes Consolidation Act 1997 as amended (“TCA 1997”) and by agreement with the parties, this appeal is determined without a hearing.

**Background**

3. On 30 May 2022, the Appellant’s agent informed the Appellant that the Respondent had refused its application for VAT registration. The Appellant’s agent quoted an email from the Respondent which stated *inter alia* that

*“I am advising you that your application for VAT registration has been refused as 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.*

*This decision has been arrived at based on the application documentation provided and the details of the responses provided in support of the application. The company is not being managed and controlled from Ireland, is not trading in Ireland and has no base in the state.”*

4. On 10 June 2022, the Appellant appealed the Respondent’s refusal to grant it a VAT registration to the Commission. The Commissioner is satisfied that it is appropriate to determine this appeal without an oral hearing, pursuant to section 949U of the TCA 1997.

### **Legislation and Guidelines**

5. Section 5(1)(a) of the VATCA 2010 provides that

*“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.”*

6. Section 9(1)(a) of the VATCA 2010 provides that

*“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.”*

7. The Respondent’s website<sup>1</sup> defines a “taxable person” as “*any person who independently carries out a business in the European Union (EU) or elsewhere. It includes persons who are exempt from Value-Added Tax (VAT) as well as flat-rate (unregistered) farmers.*” It defines an “accountable person” as

*“a taxable person (for example, an individual, partnership, company) who:*

- *supplies taxable goods or services in the State*

*and*

- *is registered or required to register for VAT.*

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<sup>1</sup> <https://www.revenue.ie/en/vat/what-is-vat/taxable-and-accountable-persons.aspx>

*As such they are required to charge VAT in the State.”*

## **Submissions**

### *Appellant*

8. In the email attaching its Notice of Appeal, the Appellant stated

*“ [REDACTED] is a company established under Irish Law. Its registered address is [REDACTED] (being the address of [REDACTED] Solicitors).*

*[REDACTED] is the only employee of [REDACTED] [REDACTED] is almost always working from her home in Ireland [REDACTED] [REDACTED] and she is actually performing the services that [REDACTED]. is contractually supplying for a fee to other [REDACTED] entities and for which [REDACTED] is required both to raise invoices that are meeting the Irish invoice requirements and to be registered for Irish VAT purposes.*

*From a [REDACTED] policy perspective it is not desired that all post / communication is routed via [REDACTED] personal address. This is the reason why we would like to keep [REDACTED] registered address as [REDACTED] correspondence address.*

*Based on the above we are of the opinion that [REDACTED] qualifies as a taxable person, is trading in Ireland and has a base in Ireland. The fact that [REDACTED] [REDACTED] directors are not based in Ireland should not be relevant from a VAT perspective.”*

9. Following a request from the Commission to provide information and documentation relating to taxable supplies carried out by the Appellant in the State, on 2 September 2022 the Appellant stated

*[REDACTED] (a company established under Irish Law) is recharging the costs of its employees with an uplift to other [REDACTED] entities. At this moment [REDACTED] [REDACTED] only has one employee [REDACTED] and the costs of this employee are recharged with a 15% uplift to the [REDACTED] entity [REDACTED] [REDACTED] It is expected that in the near future (probably already this month) [REDACTED] will have another employee whose costs shall be recharged with an expected uplift of 7% to the [REDACTED] entity [REDACTED] [REDACTED]*

Since [REDACTED] qualifies as a taxable person (it is trading in Ireland and it has a base in Ireland) it requires an Irish VAT number, both for VAT reporting and for invoicing purposes.

The outstanding amount to be recharged to [REDACTED] is Euro 180.374 (status 31 August 2022). This amount sits as an accrual in [REDACTED] ... Since [REDACTED] has not received an Irish VAT number yet, it has not raised invoices that are meeting the Irish invoice requirements to [REDACTED] yet.”

*Respondent*

10. In its Statement of Case, the Respondent stated that

“ [REDACTED] have applied for the VAT registration for the purposes of recharging staffing costs to other non-Irish [REDACTED] entities. There are no formal business plans, advertisement, websites etc as [REDACTED] operations are solely to support the [REDACTED] group. They have one employee who works from her own home in the state. The business address is that of their solicitors [REDACTED].”

11. In further correspondence, the Respondent stated that

[REDACTED] were refused a vat registration in Ireland as they were not regarded to be an accountable persons in accordance with S5 or S9 of the Vat Act 2010. In order to be regarded as an accountable person an applicant needs to demonstrate that they are involved in vatable business activity in Ireland in the case of S 5 Vat Act 2010, and engaged in vatable business activity conducted from Ireland with other member states in the case of S9.

Any applicant for vat registration is required to provide evidence of trade or substantive evidence of capacity to trade in support of an application. In this case the applicant has not provided any evidence of trade and accordingly the application was refused.

Should the applicant provide sufficient evidence of trade at any point in the future it is open to them to reapply for vat registration...

The correspondence submitted on 2 September 2022 does not provide any evidence of Vatable Business activity taking place in Ireland. Accordingly the applicant is not regarded as an accountable person for Vat purposes and the decision to refuse the vat registration stands.”

## Material Facts

12. Having read the documentation submitted by the parties, the Commissioner makes the following findings of material fact:

12.1 The Appellant is an Irish-registered company with its registered business address being that of its solicitors. It has one employee in the State.

12.2 The Appellant supplies services to other related entities outside the State.

12.3 No documentary or other objective evidence has been submitted to demonstrate that the Appellant is engaged in activity that is liable to VAT.

## Analysis

13. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at paragraph 22: “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”

14. The Appellant has appealed the Respondent’s refusal to grant it a VAT registration. The Respondent refused on the basis that it did not consider the Appellant to be an accountable person under section 5 or section 9 of the VATCA 2010. The Respondent stated that “*an applicant needs to demonstrate that they are involved in vatable business activity in Ireland in the case of S 5 Vat Act 2010, and engaged in vatable business activity conducted from Ireland with other member states in the case of S9*” but that “*In this case the applicant has not provided any evidence of trade and accordingly the application was refused.*”

15. As set out in the High Court judgment in the *Menolly Homes* case, the burden of proof in all cases before the Commission lies on the appellant. Consequently, it is necessary for the Appellant to show that it is engaged in taxable supplies in the State, and therefore can be considered an “accountable person” under the VATCA 2010. The difficulty in this instance is that the Appellant has not submitted any documentary or other objective evidence to show that it is engaged in supplies that are liable to VAT. The Commissioner accepts that it is a company that is registered in the State, but this in itself does not show that it is engaged in activity that is liable to VAT. Additionally, while the Commissioner notes the Appellant’s evidence that “*The outstanding amount to be recharged to [REDACTED] is Euro 180.374*”, he does not consider that this statement in itself demonstrates that the Appellant’s supplies are liable to VAT.

16. The Commissioner notes that the Commission directed the Appellant to provide information and documentation in support of its contention that it carried out taxable supplies in the State. In response, on 2 September 2022 the Appellant submitted the material set out at paragraph 9 above; however, as explained in the preceding paragraph, the Commissioner is not satisfied that this material is sufficient to meet the burden on the Appellant to demonstrate that the Respondent's refusal of its request for a VAT registration should be overturned.
17. Furthermore, in response to the Commission's request to the parties to submit any final documentation that they wished the Commissioner to consider, the Appellant stated on 9 January 2023 that "*no additional documentation shall be submitted; everything showing that [REDACTED] is a VAT business from an EU / Irish VAT perspective has already been provided.*" However, to reiterate, the Commissioner is not satisfied that the material submitted by the Appellant is sufficient to demonstrate that it is engaged in supplies that are liable to VAT. The Commissioner would expect to see some sort of documentary or other objective evidence, over and above simple assertions, to show that the Appellant should be considered to be an "accountable person".
18. Therefore, the Commissioner is satisfied that the Appellant has not met the burden of proof to demonstrate that the Respondent's refusal to grant it a VAT registration was incorrect. Consequently, the appeal is refused. However, the Commissioner notes the Respondent's comment that "*Should the applicant provide sufficient evidence of trade at any point in the future it is open to them to reapply for vat registration*" and suggests that the Appellant consider whether there is any additional evidence demonstrating that it is an accountable person that it could submit to the Respondent in order to support a new application.

### **Determination**

19. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct to refuse the Appellant's application for a VAT registration, as the Appellant has not demonstrated that it is an "accountable person" under the VATCA 2010.
20. The appeal is hereby determined in accordance with section 949U of the TCA 1997. This determination contains full findings of fact and reason 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.



Simon Noone  
Appeal Commissioner  
18 January 2023