



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

54TACD2023

Between

[REDACTED]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“the Appellant”) against a Value Added Tax (“VAT”) Notice of Assessment of Tax Payable issued by the Revenue Commissioners (“the Respondent”) on 26 April 2017 for the period 1 March 2013 to 30 April 2013, in the sum of €61,598.
2. The assessment was raised as the Respondent contends that certain receipts of the Appellant in March/April 2013 are derived from unrecorded sales of the Appellant. The Appellant argues that the receipts the Respondent refers to were loans from family members and currency/exchange transactions. The sole substantive question under consideration at the hearing was whether the receipts represent taxable receipts of the Appellant.
3. On 15 May 2017, the Appellant duly appealed to the Commission. The appeal proceeded by way of an oral hearing on 29 November 2022. Both the Appellant and Respondent were represented by Junior Counsel and the Commissioner heard sworn oral evidence and submissions from the parties.

Background

4. The Appellant is a company which trades in [REDACTED]. The Appellant was incorporated in 2001 and its registered address is at [REDACTED]. The Directors of the Appellant are [REDACTED] (PEM) and [REDACTED].
5. In 2013, the Appellant operated a [REDACTED] to the public, in addition to a [REDACTED] distribution business at its registered address. Between 2014 and 2016, the Appellant commenced to operate further [REDACTED] at a number of other locations [REDACTED] and various other unmanned [REDACTED] sites and commercial retail units which it leased in [REDACTED]. The Appellant is fully licenced by the Respondent to trade in [REDACTED].
6. In 2013, the sale [REDACTED] was subject to VAT at the rate of 23% and 13% for marked [REDACTED]. The average rate of VAT on the Appellant’s sales in 2013, based on the Appellant’s accounts and VAT returns, was 21.76%.
7. The Appellant’s turnover for the year ended 31 December 2013, as recorded in its annual accounts, was in the sum of €29,768,086 (For the year 2012, it was in the sum of

€22,669,761) and which was almost exclusively generated from the sale of [REDACTED] in this jurisdiction.

8. On 6 August 2014, the Respondent issued correspondence to the Appellant in the form of a Notification of a Revenue Investigation for the period 1 January 2011 to the date of correspondence. The investigation concerned primarily Excise Duties, VAT and Corporation Tax. On 18 March 2015, the Respondent requested from the Appellant its accounts and linking papers for the year 2013.
9. The Respondent issued a Notice of Amended Assessment and charged the Appellant VAT on the following receipts:-
 - (i) €68,515 on 5 March 2013, recorded as received from [REDACTED] (a brother of PEM)(hereinafter "GM")
 - (ii) €100,000 on 14 March 2013, recorded as received from a company called [REDACTED] owned by GM.
 - (iii) £150,000 (€176,164) on 26 March 2013, recorded as received from [REDACTED] [REDACTED] (a brother of PEM) (hereinafter "PM").
10. The total gross sum of the above referenced receipts is €344,679. The Respondent applied a rate of 21.76%, which it states represents the average VAT rate applied by the company across its products in the relevant year, namely 2013. Consequently, the amount under appeal is in the sum of €61,598.00.
11. The assessment is based on a belief by the Respondent that sums totalling €344,679, recorded as loans and/or currency/exchange transactions taken by the Appellant from family members of the PEM, were in fact not loans but rather were taxable receipts of the Appellant.
12. In addition, the Respondent intends to seek an increase in its VAT assessment for the period March/April 2013, in relation to receipt transactions recorded in a document entitled "[REDACTED] Bureau De Change GBP a/c" referenced [REDACTED] [REDACTED] and "[REDACTED]" in the total sum of €129, 843.72.
13. The Appellant argues that the receipts of €68,515 and €100,000 were currency transactions/exchanges with GM and the receipt of £150,000 was a loan from PM. Moreover, the Appellant disputes the Respondent's entitlement to increase the assessment on the basis of transactions referenced above in the "[REDACTED] [REDACTED] De Change GBP a/c".

14. The Appellant argues that there was no under payment of VAT by the Appellant “*in the chargeable period or during any other period*” and that the Appellant has properly and appropriately discharged all taxes.

Legislation and Guidelines

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

16. Section 3 of the Value Added Tax Consolidation Act 2010 (“VATCA 2010”), Charge of Value Added Tax, provides:-

Except as expressly otherwise provided by this Act, a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions:

- (a) the supply for consideration of goods by a taxable person acting in that capacity when the place of supply is the State;*
- (b) the importation of goods into the State;*
- (c) the supply for consideration of services by a taxable person acting in that capacity when the place of supply is the State;*
- (d) the intra-Community acquisition for consideration by an accountable person of goods (other than new means of transport) when the acquisition is made within the State;*
- (e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State.*

17. Section 84 VATCA 2010, *Duty to keep records*, provides:-

- (1) Every accountable person shall, in accordance with regulations, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility.*
- (2) Every person (other than an accountable person) who supplies goods or services in the course or furtherance of business shall keep all invoices issued to him or her in connection with the supply of goods or services to him or her for the purpose of such business.*
- (3) The following:*
 - (a) records kept by a person pursuant to this Chapter or section 124 (7) and that are in the power, possession or procurement of the person;*

(b) any books, invoices, copies of customs entries, credit notes, debit notes, receipts, accounts, vouchers, bank statements or other documents whatsoever which relate to the supply of goods or services, the intra-Community acquisition of goods, or the importation of goods by the person and that are in the power, possession or procurement of the person; and

(c) in the case of any such book, invoice, credit note, debit note, receipt, account, voucher, or other document, which has been issued by the person to another person, any copy thereof which is in the power, possession or procurement of the person

shall, subject to subsection (4), be retained in that person's power, possession or procurement for a period of 6 years from the date of the latest transaction to which the records, invoices, or any of the other documents, relate.

(4) Notwithstanding the retention period specified in subsection (3), the following retention periods shall apply:

(a) where a person acquired or developed immovable goods to which section 4 of the repealed enactment applied, the period for which the person shall retain records pursuant to this Chapter in relation to that person's acquisition or development of those immovable goods shall be the duration that such person holds a taxable interest in such goods plus a further period of 6 years;

(b) where a person exercised a waiver of exemption from tax in accordance with section 7 of the repealed enactment, the period for which the person shall retain records pursuant to this Chapter shall be the duration of the waiver plus a further period of 6 years.

(5) This Chapter—

(a) shall not require the retention of records or invoices or any of the other documents in respect of which the Revenue Commissioners notify the person concerned that retention is not required, and

(b) shall not apply to the books and papers of a company which have been disposed of in accordance with section 305 (1) of the Companies Act 1963 .

Submissions

Appellant

18. The PEM gave sworn evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by PEM:-

- (i) He said that he and his wife have been Directors of the Appellant since its incorporation in 2001 and that the Appellant's principal activity is the retail sale of [REDACTED]. The Appellant is mainly a [REDACTED] that sells [REDACTED] and groceries, which is the main core of the business. He said that in 2013, the sale of [REDACTED] accounted for 90% of sales with other products/services, namely cigarettes and confectionary comprising 10% of sales for that year. At the time, he confirmed that the Appellant had approximately 10-20 employees, some full time employees and some part-time.
- (ii) He said the main supplier of [REDACTED] was [REDACTED]. He said that he had a facility for €552,000 with [REDACTED] in Dublin and would keep to that credit limit. He mentioned that he had a considerable amount of debt with [REDACTED] bank and the accounts were always very tight. This was due to the purchase of four development sites on the [REDACTED], in addition to property purchased for development in [REDACTED] prior to the downturn of the economy in 2008. He mentioned that in 2008, the bank sought repayment of the loans and it was a difficult number of years for both him personally and for the Appellant company.
- (iii) He stated that he employs a bookkeeper who is more of a Financial Controller and who is responsible for preparing and organising the staff in the office, in addition to preparing the accounts for the accountants. He said the bookkeeper who was employed at the time, would produce profit and loss accounts on a monthly basis for him. Reference was made to the financial statements for 2013. He said that in terms of margins, on the [REDACTED] in [REDACTED], it would roughly have been in or around 6% or 8%, according to what the price of [REDACTED] was at the time and if he was selling a bulk load of [REDACTED] another [REDACTED], then it would be in or about 1% or less.
- (iv) Reference was made to page 49 of 109 of the Respondent's Book of financial statements and to the following paragraph "*The current economic environment remains difficult for the company. The directors consider that the outlook presents significant challenges in terms of sales volume and pricing as well as input costs. While the directors have instituted measures to preserve cash and secure*

additional finance, these circumstances create material uncertainty over future trading results and cash flows." He said that he had been in talks with [REDACTED] at the time, as he was unable to meet certain payments required to meet the debts incurred.

- (v) Reference was made to page 58 of the Respondent's Book of financial statements entitled "Notes to the Financial Statements" under the heading "Going Concern" which states *"The directors of the company have introduced personal funds into the company in the current financial year and are currently in negotiations to sell certain group assets in an aim to reduce overall group gearing. The company continues to have a good and supportive relationship with the bank."* He said that the Appellant sold the above referenced [REDACTED] sites and houses in 2011/2012.
- (vi) He said that in 2013, he asked his brother for certain loans. Reference was made to the Appellant's [REDACTED] bank account at Tab 6 of the Appellant's bundle of documents and he confirmed that this was the business account of the Appellant and the transactions contained therein were included in the financial statements of the Appellant. He mentioned that in addition to this bank account, the Appellant held a bank account with [REDACTED].
- (vii) Reference was made to a transaction that took place on 26 March 2013 entitled "Deposit re: [REDACTED]" for an amount of £150,000. He confirmed that the transaction was money that he had borrowed from his brother PM to put a friendly charge on his own family home and farm, as at the time he was in great financial difficulty with the bank and feared losing his home. He said that his brother PM told him that he could provide a short term loan, as his sister [REDACTED] ("BM") was waiting on the purchase of a site to close. He said that PM provided the money but said that it must be repaid to his sister BM. He confirmed that he repaid the sum of £150,000 to [REDACTED] the company which BM was Director. He stated that as far as he could remember, he thought that the sum of £110,000 was repaid to [REDACTED] and that the balance of approximately £40,000 was repaid in cash sums over a month or so to BM. He confirmed that PM who resides [REDACTED], purchased nothing from the Appellant.
- (viii) Reference was made to Tab 5 of the Appellant's bundle of documents and to an [REDACTED] bank account in the name of the Appellant, with a branch in [REDACTED]. Reference was made to a transaction that took place on 5 March 2013, in the sum of €68,515. He said that his brother GM contacted him seeking to exchange euro to sterling currency. He said that GM telephoned him and informed him that he

wanted sterling currency and that he was lodging euro currency into the Appellant's account. He explained that his brother lodged euro to the Appellant's bank account and the sum was repaid to him in sterling. He said that nearly 90% of his customers are all sterling based customers at the [REDACTED] in [REDACTED], [REDACTED] [REDACTED]. He said that 90% of his business sold on site would have been [REDACTED] customers paying in sterling. He said that he would try and provide a decent rate of exchange for euro to sterling or vice versa. Reference was made to the lodgement being made in the name of [REDACTED] and he confirmed that the first time he was made aware of the name of the person who lodged the amount, was during the course of the Respondent's investigation. He said that he was unaware of who lodged the sum, just that it was lodged and being repaid by him in sterling.

- (ix) Reference was made to Tab 5 of the Appellant's bundle of documents and a payment on 14 March 2013 in the sum of €100,000 from [REDACTED] bank account of the Appellant. He said that his brother GM telephoned him and requested sterling for euro currency and that to the best of his knowledge he paid him back in sterling. He confirmed that the transaction on 20 March 2013, from the Appellant's [REDACTED] bank account, in the sum of £45,000 was part repayment of the sum of €100,000. He also confirmed that the transaction on 26 March 2013, from the Appellant's [REDACTED] bank account in the sum of £39,846.90 was also a repayment of the sum of €100,000. He stated that if you add both sterling amounts together, you get the sum of approximately €100,000. He stated that GM did not purchase any goods from the Appellant for the sum of €100,000.
- (x) He again said that the rationale for these private euro to sterling transactions and vice versa, was that a better rate could be achieved than going to the banks. He said that he always had sterling and was regularly changing sterling to euro. He said there could be a saving in the region of 1,000-2,000 euro/sterling on such transactions.
- (xi) During cross examination, he was asked why the charge on his property was not registered until 2016. He stated that the plan was that the loan from PM was to create a charge over his home and that he could control when his Solicitor processed the paperwork for that to occur. He conceded that he did not owe the funds when the charge was registered and it was put to him that this was unlawful. Counsel made reference to the financial statements at Tab 3 of the Respondent's Book of financial statements and a number of paragraphs wherein the auditors

document a limitation of scope entitled "accuracy of stock" in the financial statements. He said that his understanding was that this related to groceries and shop stock and that in any event, the auditor was new and did not have an understanding of the Appellant. It was put to him in that there was no reference to cash flow issues or loans with █████ in the financial statements. Counsel referred to Tab 4, page 7 of 218 of the Respondent's book of core documents and to various entries in a loan reconciliation document that purports to set out the loans that had been made. Counsel for the Respondent extensively cross examined PEM on the documents. Reference was also made to Tab 6 page 22 and 23 of 218 of the Respondent's Book of financial statements and a document entitled "*Loans from Third parties*".

19. BM gave sworn evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by BM:-

- (i) She confirmed that she is a Director of █████ and that the main business of the company is building houses. It was incorporated in 2013 and a site was purchased. Reference was made to Tab 10 and she confirmed that the documents referred to is the bank account statement of the company dated 30 April 2013.
- (ii) She said that her brother PM agreed to loan her the sum of £150,000 to assist with the purchase of the site. She said the site was purchased just before Christmas 2012. She said she provided that information to the Respondent including the contract for sale. She said she purchased the site in order to complete the houses that were already started, selling them quickly, and developing the rest of the site so that more development land could be purchased. She said at that time, it was the bottom of the market of what we now know to be the worst recession in construction in a long time.
- (iii) She confirmed that she started in construction in 1997 when her husband took ill, and she got involved in his business and took it over when he died in 2000. She said that she has worked on about 20 development sites and several other sites during her career.
- (iv) She confirmed that she received £110,000 back from PEM before the purchase of the site closed. In addition, PM provided a further £80,000 the day before the purchase, so that the sale could complete and she could start working, as PEM had cash flow problems and did not return the outstanding funds in time for the closing of the sale. She confirmed that PEM gave her £40,000 cash over 4 months for the benefit of PM, which was the balance of the loan from PM and which she

kept in PM's safe for him. She said later in the year, she got the opportunity to purchase some machinery and that she asked PM could she use the cash for that purpose and he agreed.

- (v) She confirmed that on 10 April 2013, she received £25,000, on 11 April 2013 £50,000 and on 26 April 2013 £35,000 from the PEM which totals £110,000. She said that she negotiated the purchase price of the lands down to £135,000.
- (vi) Reference was made to tab 6 of the Appellant's bundle of documents and to a Danske bank account. In relation to the sum of £250,000 debited on 2 June 2020, she said that this was an amount she owed her brother PM. She mentioned that her brother PM lent her substantial amounts of money to buy various development sites over the period 2013 to 2019. She said she no longer owes any monies to her brother PM.
- (vii) Reference was made to page 244 of the Respondents bundle of documents entitled Copy of Investigation records/information. She confirmed that on 14 August 2017 she corresponded with HM Revenue and Customs in the UK setting out the receipt of payments to ██████ from the Appellant. She confirmed that she has provided all of ██████ bank statements to HM Revenue and Customs by way of correspondence dated 14 August 2017. She said she wrote again to HM Revenue and Customs on 10 May 2019, enclosing the contract for sale of the aforementioned site. She stated that she has never purchased ██████ or other goods from the Appellant.
- (viii) During cross examination, she confirmed that she is also a Director of ██████ a company owned by PM and where the sum of £40,000 cash went to. She said the lodgements in the aforementioned sums went to ██████, as she did not require the cash, as it took too long to be returned. She said that as PM resides ██████, she runs the business for him. She said that ██████ is heavily indebted. She said that she could not remember why PEM gave the money in cash, it was not requested in cash, but that she presumed that he had the cash and he gave it to her. She said she did not ask why as in 2013 it was useful to have cash, as it was difficult to purchase second hand machinery without pound notes and she could not get finance. She stated that she had a company that was £5 million in debt, she was doing her best to pay the bank back and that she had opened a new company, ██████ and PM helped her in that regard. She said she and PM made several investments at the bottom of the market.

- (ix) When asked whether she kept ledgers between her and her brothers, she said that they are brothers and sisters and they trust each other, there is no need for that.

20. PM gave sworn evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by PM:-

- (i) He confirmed that he has been residing in [REDACTED] for 26 years and is part owner of a [REDACTED] business, [REDACTED]. He said that the turnover from the business last year was about \$300 million and there was a profit of about \$3 million. He said that he returns to Ireland on average, about twice a year.
- (ii) He said his brother PEM asked him for the loan of £150,000 as he wanted to put a charge on his house and adjoining land. He said he had nothing to do with the charge and does not know if a charge was placed on the property. He stated that PEM asked him to lend him the money and as a good brother he did. He said he wrote to [REDACTED] and asked them to draw up a bank draft for £150,000 sterling and he gave it to his brother. He said BM was to get the money originally, as she had a project coming up. However, PEM asked him if he could do a short term loan for him. He said BM confirmed that she could let PEM have the money for a short time, as she was waiting on the purchase of the site to close. Reference was made to the bank account statements at Tab 9 of the Appellant's bundle of documents and the transaction on 22 March 2013, namely the bank draft of £150,000.
- (iii) He confirmed that he did not give the money to his brother "for keeps". He said it went back into his company's bank account. When asked had he ever purchased goods or services from the Appellant to the value of £150,000 or any other amount, he said the only thing he buys is a bit of ice cream when home.
- (iv) During cross examination he was asked how much his brothers and sisters owed to him, he stated that he would hate to admit that he does not keep a record. When asked was it not unusual that no one has a record, he stated that we are family and that our word is our bond.
- (v) He confirmed he owns [REDACTED] with BM and that the nature of the business is owning property, renting property and developing small projects of that nature. He confirmed that has had no involvement in [REDACTED]

21. GM gave sworn evidence on behalf of the Appellant. The Commissioner sets out hereunder a summary of the evidence given by GM:-

- (i) He confirmed that he is a joint Director of [REDACTED]. Reference was made to Tab 4 of the Appellant's bundle of documents. He stated that the company provides [REDACTED].
- (ii) Reference was made to Tab 7 of the bundle of documents and the [REDACTED] current account, [REDACTED]. He confirmed that the transaction on 14 March 2013 of €100,000 was a payment to the Appellant in euro currency for a sterling currency exchange. He said he would have contacted PEM by phone to inform him that he would be lodging a cheque for a currency exchange.
- (iii) Reference was made to Tab 8 of the Appellant's bundle of documents and he confirmed that the transactions as follows were repayments in sterling for the above referenced sum:- 20 March 2013 £45,000 and 6 March 2013 £39,846.90. He mentioned that it is very simple, he gives PEM euro and he gives him sterling. It is something he is familiar with on a regular basis, as he gets a much better rate. He said that people who [REDACTED] are doing this on a daily and a weekly basis, exchanging money from sterling to euro.
- (iv) He confirmed that he is also a [REDACTED] [REDACTED] and he said he recalls the transaction amounting to €68,515. He said that it was a euro transaction for a client he worked with, [REDACTED], who was looking for sterling. He said he understood he asked his sister could he use her account for the euro transaction. He said that it was probable he told him that PEM will do that, as he was always selling sterling and euro. He mentioned that he would have rang PEM to inform him that there is the sum of €68,000 going into the account and can he let me know when he has the sterling sum. He said that PEM would not have known the person who lodged the sum of money. He confirmed he never purchased goods or services from the Appellant in connection with that transfer into the bank account.
- (v) During cross examination he was asked a number of questions relating to loans since 2011. Reference was made to the [REDACTED] payments to the Appellant and he said that it may have been related to third party cheques for payment from people who were buying goods from him, although it was hard to remember as it was so long ago. He said it was a long time ago but that he does remember the [REDACTED] cheques were to go on to PEM.

22. Counsel on behalf of the Appellant made a number of submissions in respect of the Appellant's position in relation to its appeal.

balancing. Reference was made to page 28 Respondent's Book of core documents.

- (v) Reference was made to correspondence dated 29 June 2017 and to the assessment. He said he was satisfied at that point to raise the assessment because he had already identified what he believed were inconsistencies in various submissions. He mentioned that a lot of the Respondent's case besides the bookkeeping, turns on the fact that the Appellant has now told us a second way that it repaid the same amounts. He said that there are a number of important points at page 44, namely the second part of the first paragraph, where it says: "*At the end of each quarter the financial controller also reviews the outstanding third party loan balances and adjusts for differences via the cash control account, thus the existence of transactions*".
- (vi) Reference was made to ██████████, where sterling receipts were paid by account transfer from ██████████ into the bank account of the Appellant. In addition, he said that six cheques from ██████████ were also received by the Appellant, who is a business associate of GM. He said that the cheques were furnished by the Appellant's accountant.
- (vii) Reference was made to the sum of €219,292. He said that this is a real transaction because there is a debit to the cash account and there is a credit to the loan account. He mentioned that it is a very significant transaction, a real transaction affecting the cash account of the business where the debit is to be found. He said here we have credit the loan account in effect, although it is called Bureau de Change and debit the cash account and on my analysis, that amounts to a double counting. The correct accounting of the €219,292 was not debit cash and credit loan but credit sales and debit cash. He stated that this is the relationship between the loan transactions and the entry of €219,292. He gave evidence that the entry of €219,292 is actually net of a figure of €41,885, the €41,885 is the difference between total receipts on behalf of GM, which comes to €165,000 and the total payments to him, which come to €123,000. He said the conclusion that he is drawing from this is that the assessment is correct and as part of arriving at that conclusion, he has traced amounts totalling €261,117, which when taken net of €41,885 are debited to cash and credited to sales.
- (viii) Therefore, he said sales for the purposes of VAT in the accounts are understated by that amount. Further, he stated that when the assessment was made, there was insufficient evidence, no commercial documentation, and no back up to show that

these amounts were loans. He said that this was his starting point and he maintains that position. He confirmed that there was nothing in the investigation that he carried out that led him to believe that the receipts were not liable for VAT, as they were lodged into the bank account of the Appellant either by way of third party cheque or by way of account transfer and they are not adequately explained in terms of showing that they are not taxable receipts.

(ix) He was cross examined in relation to his evidence by Counsel for the Appellant.

24. Following evidence being given, Counsel on behalf of the Respondent made submissions in respect of the Respondent's position.

Material Facts

25. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

- (i) The Appellant is a trader in [REDACTED] and [REDACTED] and is based in [REDACTED].
- (ii) The Appellant was incorporated in 2001 and its Directors are [REDACTED].
- (iii) The Appellant's turnover for the year ended 31 December 2013, as recorded in its annual accounts, was in the sum of €29,768,086.
- (iv) In 2013, the sale of [REDACTED] accounted for 90% of the Appellant's sales with other products/services comprising 10% of sales for that year
- (v) On 5 March 2013, the sum of €68,515 was lodged to the Appellant's [REDACTED] bank account by [REDACTED]. PEM was unaware of the name of the person lodging the amount until the Respondent's investigation commenced.
- (vi) The sum of €68,515 is a receipt of the Appellant for the purposes of a currency exchange transaction and is not a vatable receipt of the Appellant derived from sales.
- (vii) On 14 March 2013, the sum of €100,000 was lodged to the Appellant's [REDACTED] account, drawn on an [REDACTED].
- (viii) The sum of €100,000 is a receipt of the Appellant for the purposes of a currency exchange transaction and is not a vatable receipt of the Appellant derived from sales.

- (ix) On 26 March 2013, a transaction took place entitled "Deposit re: [REDACTED]" for an amount of £150,000 which was lodged to the Appellant's [REDACTED] bank account.
- (x) The sum of £150,000 is a receipt by the Appellant for the purposes of a loan transaction from PM and not a vatable receipt of the Appellant derived from sales.
- (xi) The assessment was raised by the Respondent prior to the [REDACTED] receipts being identified by the Respondent in the Appellant's books and records.
- (xii) The sum of €129,843.72, being the total of the [REDACTED] receipts are not vatable receipts of the Appellant derived from sales.
- (xiii) It is not an unusual occurrence that loan documentation would not exist in respect of loan transactions or other receipts of monies between family members.
- (xiv) It is not an unusual occurrence that corrections are made to the financial accounts and records of a business throughout an accounting period.
- (xv) The Appellant and Respondent disagree as to the accounting treatment of various sums in the Appellant's books and records, including the sum of €219,212.
- (xvi) In addition to the aforementioned findings of material fact, the Commissioner finds that the facts as set out in the document entitled "Statement of Agreed Facts" are also material facts found.

Analysis

26. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, 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, 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".

27. The Commissioner considers it useful at the outset to clarify the parties' relationships and the companies referenced in the within appeal. Both PM and GM are brothers of PEM. PM resides in [REDACTED]. GM is a Director of [REDACTED]. [REDACTED] BM is a sister of PEM and a Director of [REDACTED].

28. The Appellant's appeal relates to a number of grounds as set out in its Notice of Appeal dated 15 May 2017. At the outset of the hearing Counsel for the Respondent stated that the issue to be determined is in fact simple, namely that "*There is four sets of payments we want to know what they are*". Helpfully, Counsel for the Appellant agreed that this is in fact the issue to be determined. The Commissioner is grateful to the parties for putting the matter so plainly and in addition, for the agreed statement of facts submitted by the parties, prior to the hearing date and which has assisted the Commissioner greatly.
29. The first three payments at issue are receipts by the Appellant in the sum of €68,515, €100,000 and £150,000 (€176,164) which amount in total to the sum of **€344,679**. The Respondent contends that these three amounts represent previously undisclosed trading receipts of the Appellant, and therefore vatable receipts that were not included in the relevant VAT return for **March/April 2013**. Consequently, the Respondent raised an assessment dated 26 April 2017 and assessed the VAT liability of the Appellant arising from the aforesaid receipts, in the amount of **€61,598**. It is this assessment of the Appellant's liability to VAT that is appealed herein.
30. The Commissioner has considered correspondence of the Respondent dated 26 April 2017 at page 84 of the Respondent's Book of documents entitled "Inter-Parties Correspondence" which under the heading entitled "VAT Assessment – March/April 2013" states "*In order to protect the interest of the Revenue Commissioners, a Value Added Tax Assessment is being issued in respect of receipts recorded as loans in the records/accounts for the period March/April 2013, calculates as follows:...(21.76% was the average rate of VAT on sales, bases on the accounts and VAT returns for 2013)*". It is clear from the forgoing that the Respondent did not distinguish between any particular alleged sales, in circumstances where it applied an average rate of VAT.
31. The Commissioner has considered the Respondent's Outline of Arguments dated 5 December 2018 and its submissions at the hearing of the appeal, wherein it outlines that the Respondent will be applying to the Commissioner to increase the assessment by a further **€23,204.66**. The receipt transactions in respect of which the Respondent intends to seek an increase in the VAT assessment for the period **March/April 2013** are recorded in the [REDACTED] *Bureau de Change GPB account*" and comprise three receipts totalling the sum of €75,024.65 referenced under the heading "*Details*" "*from GM*" and seven receipts totalling the sum of €54,819.07 referenced under the heading "*Details*" [REDACTED]". The total of those figures is **€129,843.72**.
32. The Commissioner notes that the Appellant contends that the sums totalling €344,679 were monies received from family members by way of loans and/or for the purposes of

euro/sterling currency transactions, not for goods purchased. Moreover, the Appellant asserts that at this remove, the Respondent is not entitled to apply to the Commissioner to increase the assessment where no VAT assessment was raised against the Appellant in respect of the aforementioned additional sums. The Appellant argues that the assessment, the subject matter of this appeal, is based on the Respondent's belief that the sums totalling €344,679, recorded as loans taken by the Appellant from family members of PEM, were in fact not loans at all, but rather, were taxable receipts of the Appellant, i.e. *"that the Appellant had supplied goods "off the books" and received payment for same but had characterised these receipts in its records as loans"*.

33. The Appellant states that *"it may not, where the case to be met is clear from the outset and where the reasons for the assessment are clear, be penalised by having an assessment increased or negatively amended upon reasons which did not superintend the original assessment, nor which were not enunciated in the pleaded documents available to the parties prior to the Appeal"*. The Appellant argues that it is a basic tenet of due process that a party knows the case it has to meet. The Commissioner is grateful for the additional written submissions, furnished in mid-December 2022 by both Counsel for the Appellant and Respondent, which the Commissioner had requested at the conclusion of the hearing, which address the matter of the Commissioner's jurisdiction to increase an assessment in the particular circumstances of this appeal.
34. The Commissioner is satisfied that she must first determine what exactly are the nature of the receipts by the Appellant and following that, what if any sums are due and owing. The Commissioner considers that it will only be in circumstances where the Commissioner determines that the receipts of the Appellant are in fact, vatable receipts of the Appellant derived from sales, that the Commissioner's jurisdiction to increase an assessment must be considered. Therefore, the Commissioner will proceed initially to consider the relevant receipts/payments at issue during March/April 2013.
35. The Commissioner notes section 3 VATCA 2010 and considers that the wording in the section is clear and self-evident such that it provides that *"a tax called value-added tax is, subject to and in accordance with this Act and regulations, chargeable, leviable and payable on the following transactions: (a) the supply for consideration of goods by a taxable person acting in that capacity when the place of supply is the State"*.

Relevant Receipts/Payments March/April 2013

36. The Commissioner has considered the suite of detailed documentation submitted in this appeal, in addition to the lengthy testimony of a number of witnesses for the parties. The

Commissioner notes the particular focus by the parties on the document entitled “*Loans from Third Parties*” at page 22 of the Respondent’s Book of core documents, which refers to “loans” of €68,515, €100,000 and €176,163.86 and which the Appellant contends are from GM, ██████████ and PM. The transactions also involve BM and ██████████. In addition, the parties focused on a document entitled “*Bureau de Change Account*” at page 64 of 218 of the Respondent’s book of core documents. With this in mind, the Commissioner intends to set out each of the payments/receipts separately below to assist with her consideration and determination of the issues in the within appeal.

€68,515 received on 5 March 2013

37. The Commissioner notes on 5 March 2013, the Appellant received a payment of €68,515 by way of a lodgement to its bank account at ██████████. A copy of the lodgement slip has been submitted with the documentary evidence in this appeal at page 38 of 218 of the Respondent’s Book of core documents. The Commissioner has considered that this transaction was initially attributed to the Appellant’s accounts as a payment from PM, but that the evidence of PEM was that this was an error in the account reference. The Respondent’s witness confirmed that corrections in financial accounts and linking documents is not an unusual occurrence. The Commissioner notes that it was established that this payment was made by a person called ██████████, at a branch in ██████████. The evidence of PEM was that his brother GM had arranged the payment and the testimony of GM was that he had arranged the payment to be made to the bank account of the Appellant. The evidence of PEM was that he did not know the name of the person who made the lodgement until a number of years later, after the Respondent’s investigation had commenced. This was not disputed by the Respondent. The evidence was that this transaction was a short term loan to enable a currency exchange transaction to take place, namely that euro currency would be repaid to GM in sterling currency, which the Appellant held. The Appellant argues therefore that this is not a vatable transaction.

38. The evidence of PEM was that the sum of €68,515 was repaid to GM and that the documentation submitted in this appeal supports same. He said that the loan was repaid by way of a transfer of the sum of £27,206.40 from the Appellant’s ██████████ bank account two days after the sum was received on 7 March 2013, to ██████████ and that the balance was repaid in sterling cash which the Appellant always has access to. The Commissioner has considered the supporting documentation in the form of the ██████████ bank account statement at Tab 6 in the Appellant’s bundle of documents and the evidence of the Appellant’s witnesses in relation to same.

39. The Commissioner is satisfied that the documentation supports the evidence given, such that there was a payment made to the Appellant's [REDACTED] account in the sum of €68,515 and two days later, a payment out of the Appellant's account in the sum of £27,206.40. The Commissioner notes the transaction in the sum of €68,515 being recorded as a credit in the document entitled "Loans from third parties" at page 22 of 218 of the Respondents Book of Core Documents. In addition, the Commissioner notes the Bureau de Change account at page 64 of 218 of the Respondents Book of Core Documents showing a transaction being debited to the Bureau de Change account on 7 March 2023, entitled "Payment to [REDACTED]" in the sum of €32,098.61. This account reflects all balances in euro currency, despite banking documentation supporting sterling repayment amounts being made by the Appellant from its [REDACTED] bank account.
40. The Commissioner notes that the reason given for repayment in sterling currency was that [REDACTED] was a UK based company and that the payment was made to avoid bank charges and poor exchange rates. The evidence of both PEM and GM was that the Appellant exchanged euro currency for sterling currency at a better rate than any bank or Bureau de Change could offer and that the transactions served no other purpose. The Commissioner notes the short period of time between the receipt of payment by the Appellant and the repayment by the Appellant. The Commissioner does not accept that the short period of time between the payment and repayment transactions means that these payments could not be considered loans, which the Respondent contends.
41. The Commissioner notes the Respondent's concerns that no contemporaneous documentation evidencing the making of such a loan, the terms of such a loan, the amount of such a loan, or the repayment of such a loan is in existence. PEM's evidence was that it was a family arrangement, thus no such documentation existed.

€100,000 received on 14 March 2013

42. On 14 March 2013, a cheque in the amount of €100,000 was lodged to the Appellant's [REDACTED] account, drawn on an [REDACTED] account of [REDACTED]. A copy of said cheque has been submitted with the documentary evidence in this appeal at page 30 of 218 of the Respondent's Book of core documents. The Commissioner notes the evidence of PEM that the transaction was again a currency or bureau de change transaction, a short term loan between family members to avail of more favourable currency exchange rates. The Commissioner notes that the explanation for this payment is the same as the reasons proffered for the previous sum of money received, namely €68,515 on 5 March 2013, such that it is contend for by the Appellant that both transactions occurred for the purposes of currency exchange.

43. The Commissioner has considered the documents submitted, including bank statements and the evidence of the Appellant's witnesses such that the payment on 20 March 2013, from the Appellant's [REDACTED] bank account in the sum of £45,000 entitled "Exchg Ref:- [REDACTED] EXCHG", was part repayment of the sum of €100,000. Further, the transaction on 26 March 2013, from the Appellant's [REDACTED] bank account in the sum of £39,846.90 entitled "Exchg Ref:- [REDACTED] EXCHG" was also part repayment to [REDACTED] and the remainder of the money owed to [REDACTED] in sterling currency. The Respondent disputes that the sterling payments on 20 and 26 March 2013 of £45,000 and £39,845.90 to [REDACTED] represent the repayment of a loan. The Commissioner notes that the evidence is that the sum of both sterling payments represents the total sum of €100,000.
44. The receipt of the sum of €100,000 on 20 March 2013, is recorded as a credit in the document entitled "Loans from third parties" at page 22 of 218 of the Respondent's Book of core documents. In addition, the Commissioner notes the Bureau de Change account at page 64 of 218 of the Respondent's Book of core documents which shows two transactions being debited to the Bureau de Change account on 20 and 26 March 2013 entitled "[REDACTED] Exchange" in the sums of €53,091.83 and €47,012.11. Again, as mentioned above, this account reflects all balances in euro currency, despite banking documentation supporting sterling repayment amounts being made by the Appellant from its [REDACTED] bank account.
45. Notably, the Respondent again argues that there is no contemporaneous documentation evidencing the making of such a loan, the terms of such a loan, the amount of such a loan, or the repayment of such a loan. There is no evidence of receipts from any parties for any payments.

£150,000 received on 22 March 2013

46. The Commissioner notes on 26 March 2013, a transaction took place entitled "Deposit re: [REDACTED]" for an amount of £150,000, which was lodged to the Appellant's [REDACTED] bank account. The Commissioner queried the reference on the transaction and the evidence of PEM was that the amount was lodged at the [REDACTED] branch. An extract from the [REDACTED] bank account of PM has been submitted at Tab 9 of the Appellant's bundle of documents and shows a sterling bank draft being raised in the sum of £150,000 on 22 March 2013.
47. The Appellant's witnesses gave evidence that this transaction was a loan from PM, which was required to be repaid to BM. The evidence was that the sum of money was due to be

provided to BM by PM, in circumstances where it was to be used to complete the purchase of certain lands by [REDACTED]. Further, the evidence was that the sale was not due to conclude for a number of weeks and that the funds were available to be used as a short term loan for PEM. The Commissioner has considered the documents in the form of [REDACTED] bank account statements submitted by the Appellant at Tab 9 and 10 of the Appellant's bundle of documents, in support of the transaction being as described.

48. The Commissioner notes the evidence of PM that he did not ask his brother the reasons for requesting the loan and stated that if his brother needed a loan, then he was happy to provide same. PEM's evidence was that the loan was to assist with the overdraft with [REDACTED]. In addition, he said it was acquired "*so that a friendly charge could be placed on his own home and farm as he feared losing his home due to debts due and owing*".
49. The Commissioner notes the evidence of PEM while under cross examination, such that the explanation for the loan was to register a charge in favour of PM over land owned by PEM and that despite the alleged repayment of the loan, the charge remains registered. Further, when it was put to PEM that a charge on his personal property was not registered until 2016, he conceded that he did not owe the funds when the charge was registered. The Commissioner takes a poor view of PEM's dealings with his personal property. Nevertheless, the Commissioner must consider whether this evidence affects the probability that the receipts of the Appellant are vatable transactions.
50. The Commissioner notes PEM's evidence that the sum of £150,000 was repaid by bank transfer in the sum of £110,000 to [REDACTED] and the balance of approximately £40,000 was repaid in cash sums to BM over a month or so. The Commissioner has considered the bank account statements and the testimony of BM and PM in relation to these repayments. As aforementioned, the Commissioner has considered [REDACTED] bank account statement at Tab 10 of the Appellant's bundle of documents which shows three payments into the account namely, £25,000 on 10 April 2013, £50,000 on 11 April 2013 and £35,000 on 26 April 2013 with the transactions details being entitled [REDACTED]. The three sums amount to the total sum of £110,000 which BM confirmed were receipts from PEM.
51. The Commissioner notes that receipt of the sum of £150,000 on 22 March 2013, is recorded as a credit in the document entitled "loans from third parties" at page 22 of 218 of the Respondents Book of Core Documents. Specifically, it is reflected as €176,163.86. In addition, the Commissioner notes the Bureau de Change account at page 64 of 218 of the Respondents Book of Core Documents which shows 3 transactions being debited to

the Bureau de Change account entitled "[REDACTED]" and "[REDACTED]" in the sums of €29,495.46 on 10 April 2013, €58,990.92 on 11 April 2013 and €41,293.65 on 26 April 2013. Again, as stated above, this account reflects all balances in euro currency, despite banking documentation supporting sterling repayment amounts being made by the Appellant from its [REDACTED] bank account.

52. The Respondent contends that no credible explanation has been provided by the Appellant for the nature of the alleged payments, beyond a desire of PM to help out his sister BM, as well as his brother, PEM. Again, it is argued that there is no contemporaneous documentation evidencing the making of such a loan, the terms of such a loan, the amount of such a loan, or the repayment of such a loan. There is no evidence of receipts from any parties for any payments. The Commissioner notes that BM corresponded with HM Revenue Commissioners on both 14 August 2017 and 10 May 2019 enclosing documentation relating to [REDACTED] bank accounts and the contract for the sale of the site.
53. Additionally, the Commissioner notes the Respondent's argument that it is not credible to assert that a company with such a high turnover was engaging in complex undocumented transactions for short periods of time in order to avoid bank fees or to ensure that credit limits were not reached without any written requests or receipts.

[REDACTED] Receipts

54. The Commissioner notes the document entitled "Bureau de Change Account" at page 64 of 218 of the Respondent's book of core documents. The document shows receipts by the Appellant on 2 April 2013 of €4,235.55 from "101628 from GM" and €54,819.07 from [REDACTED]". In addition on 17 and 29 April 2013, a sum of €35,394 was credited to the "Bureau de Change Account" on each occasion. The evidence was that this is in the form of six cheques from GM in the sum of £15,000 each from [REDACTED] and that [REDACTED] was a business associate of GM, with the cheques being made payable to PEM.
55. Notably, two of these cheques are lodged outside of the vatable period at issue. Hence, the above referenced credit on 17 and 29 April accounts only for four cheques. Of the aforementioned receipts, a total of €129,843.72 was received in March/April 2013. Moreover, the document at page 65 of 218 of the Respondent's book of core documents provides further detail in relation to the above mentioned payments. The Respondent contends that it is on this basis that these previously undisclosed receipts of €129,843.72, represent the gross proceeds of vatable trading and on which the Respondent seeks to increase the assessment in the sum of €23,204.66.

56. The Appellant has sought to explain the [REDACTED] payments, as payments being due to GM, on the basis that [REDACTED] were business customers or associates of GM. The Commissioner notes the copies of cheques from [REDACTED], six in total in the sum of £15,000 each, are made payable to "[REDACTED]". The Commissioner has considered the cheques at page 181 to 185 of the Respondent's bundle of documents entitled "Copy of Investigation Records/Information". Notably, the cheques are payable to a "[REDACTED]" and the full Christian name is not evident from the cheques.
57. The documentation submitted by the Respondent was sought under an exchange of information under Articles 7, 15, 16 and 25-27 of Regulation 904/2010/EU. The Commissioner has considered the response at page 192 and the invoices at page 195, 196, 197 of the Respondent's bundle of documents entitled "Copy of Investigation Records/Information" which seem to suggest on the face of them that a company called [REDACTED] raised an invoice to be issued to [REDACTED] and it states "*Cheques payable to [REDACTED]*". In addition, the Commissioner has considered the information at pages 224 and 225 in relation to [REDACTED]. Nevertheless, no evidence was brought before the Commissioner by the Respondent in respect of these documents and the Commissioner notes that the Respondent's witnesses could merely corroborate that he made a request of HM Revenue Commissioners for certain information.
58. The evidence of the Appellant's witness GM was that the lodgements and transfers were made to the Appellant by those companies to minimise bank charges and foreign exchange commission on his part. The Commissioner notes the correspondence between the Appellants accountants and the Appellant was consistent in its account of the receipts, namely that the cheque payments were made to the Appellant on the instruction of GM, so that GM could be repaid sums in both sterling and euro cash, as [REDACTED] was a business customer of GM and [REDACTED] was an associate of GM. The Commissioner has also considered the correspondence at page 58 of 218 of the Respondent's Book of core documents in relation to the adjustments made to the accounts.
59. The Appellant has sought to explain the [REDACTED] payments as all being due to GM, on the basis that [REDACTED] were business customers or associates of GM. The Appellant contends that the lodgements and transfers were made to the Appellant by those companies to minimise bank charges and foreign exchange commission, and has asserted that the Appellant subsequently paid out cash to GM. The Commissioner notes that the Respondent contends that it is simply not credible to assert that GM/his customers were transacting such substantial business through the bank account of the Appellant or engaging in complex undocumented transactions for short

periods of time in order to avoid bank fees and further that the documentary evidence available directly contradicts the account provided by the Appellant.

Loan documentation

60. The Respondent was highly critical of the Appellant's lack of documentation relating to the purported transactions between family members. The Respondent submitted that it will be the Commissioner's role to decide if on the basis of "*somebody's word that they were making very substantial loans between themselves on a very short term basis*". The Respondent has argued that "*at the very least loans of £150,000, €100,000 and €68,515 are very substantial amounts of money, so what you would expect to see before the loan being made is perhaps a request for a loan, some discussion of how much is required, communications, and in this day and age you would expect to see texts or e-mails*".

61. The Commissioner listened to the evidence of GM, PM and BM and notes that each family member was consistent in their evidence in respect of each of the loans. Moreover, each family member has procured individual and separate bank account details to the Appellant's to show receipts of payments and repayments. In addition, BM submitted a copy of the contract for the purchase of lands by [REDACTED], which is consistent with the evidence of PM, that he provided a loan to BM via PEM for the purchase of the lands by [REDACTED].

62. The Commissioner does not accept that the lack of documentation is fatal to these receipts being loans and/or currency exchange transactions between family members. The Commissioner does not accept the Respondent's argument that "*there must be some documentation out there*". The Commissioner considers it credible that a family loan or arrangement in terms of currency exchange is not documented in any formal way and that familial bonds, trust and respect may be sufficient for family members to hand over sums of money in such a colloquial manner. Moreover, as agreed by both Counsel, in law, there is no requirement for a loan to be reduced to writing (Contract Law in Ireland, McDermott).

The Appellant's Accounts

63. The evidence of the Respondent's witness was that there was nothing in the investigation that he carried out that led him to believe that the receipts were not liable for VAT. He said that that the receipts were lodged into the bank account of the Appellant "*either by way of third party cheque or by way of account transfer and were not adequately explained in terms of showing that they are not taxable receipts*". The Commissioner does not accept that the receipts are not adequately explained. Having reviewed the correspondence between the parties, it is evident that explanations were offered by the Appellant and that

there was disagreement in respect of the accounting treatment of certain sums. Moreover, the Commissioner notes that the Respondent's witness accepted during cross examination that at some point during the investigation, it was the Respondent's position, that certain amounts at issue represented income of PEM, as a Director. The Commissioner also notes that various correspondence of the Respondent during 2018, supports that view being taken by the Respondent.

64. The Commissioner has considered the evidence of the Respondent's witness that each of the relevant receipts, the purported explanations for them, and the grounds on which they are accounted for, are not credible or consistent with the evidence. In particular, the Respondent's witness makes reference to an entry in the accounts on 30 June 2013, in the sum of €219,212 and which is entitled "Bank transfer". He made reference to page 64 of 218 of the Respondent's Book of core documents where the amount appears in the "Bureau de Change Account" as a credit. In addition, he refers to page 65 of 218 of the Respondent's Book of core documents wherein the sum of €219,292 appears in the "Bureau de Change Account" as a credit under the heading "Posted to" [REDACTED] floats" and under the heading "Type" it states "Client adjustment". The Commissioner notes that it also appears at page 121 of the Appellant's "Nominal Activity" account as a debit entry on the same date. The evidence was that this was the cash account or the Appellant's floats ledger.
65. The testimony of the Respondent's witness was that this means that cash in the sum of €219,292 was received into the business. Further, he said that this means that even if the loans were netted off in the accounts, the Appellant has still double accounted the sum of €219,292. He said that the credit to the loan account is in the sum of €219,292. He said that he corresponded with the Appellant, that it was his view that this matter would have to be adjusted, as it was being explained to him that it was only a journal entry. He said that his position was that it is not only a journal entry, it is a debit to cash and that is a physical asset account, a real account, cash on hand, reconciled and signed off by the bookkeeper. Therefore, any entry in the cash account is of vital importance and he did not accept that it was a journal entry of no consequence. He said the sum has been accounted for as a credit to sales and he does not think it is something that can be moved.
66. The Commissioner notes that the Appellant does not agree that this is the position and the Commissioner has considered the correspondence of the Appellant's Accountant dated 16 October 2017 and 12 November 2018 at page 111 and 136 of 156 of the Respondent's bundle of documents entitled "Inter-Parties Correspondence" and the explanation provided in relation to the sum of €219,292, namely that the adjustment of €219,292 is an

adjustment to balance the control accounts at the quarter ends and that these adjustments were not actual cash repayments and do not form part of the list of repayments. The Appellant submits that explanations were offered as early as 2017, in relation to the sum of €219,292.

67. Subsequent correspondence thereafter occurs between the Appellant and the Respondent, wherein the Respondent raises queries in relation to various matters in the Appellant's accounts and the Appellant provides its rationale for same. The Commissioner notes that in correspondence dated 29 May 2019, the Respondent again raises the matter of the sum of €219,292.58 in the accounts and it sets forth various suggestions to the Appellant as to the calculations and treatment of these sums. The assessment to VAT was raised before this figure was accounted for. Nevertheless, the Respondent argues that this figure supports "*without a doubt a certain proportion of those VAT assessments are justified by their own books and records*".

68. From the above correspondence and testimony provided by the Respondent's witness, the Commissioner is satisfied that there is thorough disagreement between the parties as to the treatment of these matters in the accounts of the Appellant. The Respondent is steadfast in its argument that even if it is wrong in relation to the sums being loans, and they are in fact correctly treated as such, there is still the sum of €260,000 that is in the accounts and which the Respondent states is vatable, as there is no explanation for it. The Respondent argues that "*there is a large amount of money in the accounts that has been accounted for twice*", having regard to pages 22 and 64 of the Respondent's Book of core documents.

69. As stated above the Commissioner does not accept that there is no explanation provided. The inter-parties correspondence during 2017, 2018 and 2019 sets out the Appellant's position. Further, the Appellant points out that the transaction in question occurred in June 2013, was recorded in June 2013, which is outside the assessable period namely March/April 2013. The Appellant argues that the Respondent's witness was unable to make a breakdown as to what aspects of the sales occurred within that two month period, March/April 2013, and was unable to say whether it related to [REDACTED], although he did say he applied the average rate of VAT. Simply put, the Appellant and Respondent are not *ad idem* in terms of the accounting treatment of the various sums in the Appellant's accounts. The Commissioner does not consider that the correct accounting treatment of these various sums is a matter to be determined.

70. As mentioned above, the Commissioner has considered the correspondence of the Respondent dated 26 April 2017 at page 82 of 156 of the Respondents bundle of

documents entitled "Inter-Parties Correspondence". The correspondence states that "*in order to protect the interest of the Revenue Commissioner, a value added tax assessment is being issued in respect of the receipts recorded as loans in the records/accounts for the period March/April 2013*".

71. The Commissioner has also considered the Respondent's cross examination of PEM in relation to the financial statements of the Appellant. In particular, the references made in the Appellant's accounts for the year ended 31 December 2013 at page 52 of 109 of the Respondent's Book of Financial Statements, wherein the Independent Auditors report refers to a limitation of scope in respect of the accuracy of stock. It states "*...owing to weak controls in the company in relation to stock management and exacerbated by the independent values, we were unable to obtain sufficient audit evidence regarding the accuracy of the amounts include in the stock take.restricted our ability to test the accuracy of gross profit margins and overall value of stocks.*
72. In contrast, it was put to the Respondent's witnesses during cross examination that there is a process in terms of the accountability of [REDACTED], [REDACTED] [REDACTED] must make a return to the Respondent [REDACTED] every month in relation to matters such as the opening and closing balance of [REDACTED] per type held, each inward and outward movement of [REDACTED] and aggregate sales to commercial/domestic customers. The Appellant argues that [REDACTED] is completely traceable according to the [REDACTED] returns and [REDACTED] returns show the sources of deliveries and the sales of same. The [REDACTED] system was introduced in January 2013 by the Respondent.
73. The Commissioner notes the testimony of the Respondent's witness during cross examination, such that he did not attend meetings in relation to the [REDACTED] returns of the Appellant and did not carry out any detailed reconciliation as between the [REDACTED] returns. He agreed that there is a great deal of accuracy requested by the licensee in relation to the [REDACTED] returns. It was put to him by Counsel for the Appellant that it would be a huge anomaly for effectively €219,212, in terms of cost of litres, to go unaccounted for in the sales records of a [REDACTED]. He stated that he was not in a position to give evidence in respect of the [REDACTED] returns showing any evidence of a loss of litres. The Commissioner notes that the Respondent has brought no evidence before the Commissioner of there being any issue with the [REDACTED] returns of the Appellant.
74. The Appellant submits that there is an absence of any comparative analysis or evidence of unaccounted for stock on the Respondent's part and it is not part of the Respondent's case that the [REDACTED] was at issue. Further, the Respondent's witness was asked if in any of

his dealings with third parties, had he ever come across any sales by the Appellant, reflected in the purchase records of anyone else, that had not been recorded in the Appellant's books. He said that he was not aware of any information that was specifically identified.

75. The Commissioner is satisfied that what is at issue in this appeal is the VAT liability of the Appellant for March and April 2013. A number of different arguments are advanced which have the capacity to distract from the core issue which must be identified and analysed, namely the receipts. The Commissioner is satisfied that the Appellant has been consistent throughout, in terms of its explanation to the Respondent namely, that the receipts were loans and repayments and/or foreign currency exchange transactions. The Commissioner is satisfied that the documentation submitted in the form of banking records and the evidence of the Appellants witnesses, which the Commissioner considered credible, is consistent. The Commissioner is satisfied that the Appellant is in a position to prove the sources of funds and the reasons for same.

76. The Respondent states that its "*primary position remains that we are not satisfied that the monies floating around in companies accounts are loans*". The Respondent stresses that the only activity that the Appellant engages in is the sale of [REDACTED] sale of the consumer goods in the [REDACTED]. Therefore, the Respondent submits it is sure that this money must come from that activity. The Commissioner notes the testimony of the Respondent's witness in relation to the [REDACTED] returns. Further, the Commissioner has considered the Respondent's argument that it is making the broader point that the books it has been given by the Appellant "*are utterly unreliable because they keep contradicting themselves and that this supports its overall loan argument*".

77. The Commissioner has carefully considered the Appellant's case that the payments were not the product of the buying or selling of [REDACTED] by the Appellant i.e. the selling of [REDACTED] or the selling of other goods. The Appellant argues that the assessments are raised, because identifiable round sum receipts into the Appellant's bank account were somehow held by the Respondent to represent vatable income. However, the Appellant argues it sells [REDACTED] and groceries and the evidence was that 90% of its turnover was from the sale of [REDACTED] [REDACTED]. This evidence was accepted by the Respondent's witness. Again, the Commissioner notes the testimony of the Respondent's witness in relation to the [REDACTED] returns which is of importance. The Appellant suggests that it is highly unlikely that such round sums coming directly into the Appellant's bank account from identified sources would represent unrecorded turnover of goods and [REDACTED] for the purposes of VAT. The Appellant states the receipts in issue all have the character of capital receipts, round

figures such as £150,000 and €100,000 and repayments made were all directly linkable to the particular sums advanced to the Appellant on a short term basis. The Commissioner accepts this argument.

78. The Appellant states that “*transferring funds around for whatever reason isn't a vatable activity*”. The Appellant maintains that it suited the persons putting money into the Appellant and persons taking money out of the Appellant to do it in that way, i.e. changing funds between euros and sterling currency and/or loans. Counsel on behalf of the Appellant submitted that “*this is the Appellant's case in a nutshell*”.

79. The Commissioner is further satisfied that the evidence is supportive of this view. The Commissioner notes that the Appellant's witnesses were consistent in terms of their explanation of the various receipts and the Commissioner found the evidence to be credible. There is no question of evidence being rehearsed. Each family member could account for the amounts being provided to the Appellant and had documentary evidence to support same. Further each family member could account for repayments and had documentary evidence to support same. Notably, BM, GM and PM corroborated their accounts of the funds by providing bank account statements from their own businesses to support monies being withdrawn and/or repaid. Where this could not be corroborated by way of documentary evidence, such as in the case of cash repayments, the evidence given was credible. The Commissioner notes that on 14 August 2017 and 10 May 2019, BM corresponded with HM Revenue Commissioners to provide ██████████ contract of sale for the site.

80. As enunciated by Murray J in *Kenny Lee v The Revenue Commissioners* [2021] IECA 18, “*the Commissioners are restricted to inquiring into and making findings as to those issues and fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes*”.

81. This appeal relates to VAT and the Commissioner must consider whether the charge to VAT has been properly prepared in accordance with VATCA 2010.

82. What is at issue herein are the receipts of the Appellant. Nevertheless, the Appellant has painted a credible picture of the journey of the receipts at issue, including accounts of repayment and third party supporting documentation. Accordingly, having considered the lengthy evidence and detailed documentation submitted in this appeal, the Commissioner is satisfied that the Appellant has shown on balance that the receipts do not represent sales and are therefore not vatable.

83. The Commissioner considers that the Appellant is in a position to prove the sources of funds, the reasons for same and that the Appellant has not *“supplied goods “off the books” and received payment for same but had characterised these receipts in its records as loans”* as contended for by the Respondent. Consequently, the Appellant has succeeded in showing the relevant tax is not payable.

Jurisdiction

84. For completeness, the Commissioner has considered the parties' submissions in relation to her jurisdiction to increase an assessment. However, in circumstances where the Commissioner has found that the receipts by the Appellant do not represent taxable sales, and were monies introduced into the Appellant by way of family arrangements, the parties' arguments as to her jurisdiction to increase an assessment, in the present circumstances, are moot.

Determination

85. As such and for the reasons set out above, the Commissioner determines that the Notice of Assessment of Tax Payable issued by the Respondent on 26 April 2017 for the period 1 March 2013 to 30 April 2013, in the sum of €61,598, shall be reduced to nil.

86. This appeal is hereby determined in accordance with Part 40A of the TCA 1997 and in particular, section 949 thereof. 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.



Claire Millrine
Appeal Commissioner
14 February 2023