AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

68TACD2023

Between

[redacted]

Appellant

and

CRIMINAL ASSETS BUREAU

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeals Commission (hereinafter "the Commission") as an appeal against an assessment to Value Added Taxation ("VAT") raised by the Criminal Assets Bureau ("the Respondent") on 4th December 2020.

2. The assessment covers the period 1st January 2017 to 30th June 2017 and the total VAT due on the assessment amounts to €202,913. The Appellant is appealing the assessment in accordance with the provisions of section 119 (1) Value-Added Tax Consolidation Act 2010, as amended ("VATCA 2010").

Background

3. The Appellant registered for Income Tax and VAT on 1st January 2015 and declared his business description as "car sales and recovery". The Appellant filed VAT returns for the periods 1st January 2015 to 30th June 2017 and for the period 1st January 2017 to 30th June 2017, the Appellant paid the sum of €2,836 in VAT. On 19th April 2017, the Appellant voluntarily elected to de-register for VAT.

4. In 2017, the Appellant was reported through the VAT Information Exchange System ("VIES") to be in receipt of goods/services to the value of STG£1,411,814. "VIES" is a system that was established by the European Union ("EU") and it provides a mechanism whereby checks can be made in each Member State (which the United Kingdom ("UK") was then a part of) on the validity of claims to zero-rating. It is designed to assist in the detection of unreported movements of zero-rated goods between Member States.

5. This sum of STG£1,411,814 therefore represented the amount of motor vehicles that the Appellant had been reported as importing from the UK to Ireland at the zero-rate of VAT under his VAT registration number for the period under appeal.

6. For context, it should be noted when motor vehicles are imported into Ireland from other EU States by motor traders in Ireland at the zero-rate of VAT, VAT should ordinarily be charged on the full amount of the subsequent vehicle sale to the end customer. The reason for this is that the motor trader exporting the vehicle (in this case the UK motor dealer) is ordinarily entitled to reclaim (and have repaid) the VAT in the country of export (the UK). It follows as the goods have been imported into Ireland at the zero-rate, if VAT was not charged on the subsequent sale of the goods in Ireland, there would be a VAT loss to the Exchequer.

7. The matter initially came to the attention of the Revenue Commissioners when it compared the Appellant's VAT liability per the returns he had submitted to the anticipated liability per the VIES figures and noted discrepancies therein. Subsequently as certain matters were brought to the Revenue Commissioner's attention during the course of an interview conducted with the Appellant (see below at paragraph 21), the Revenue Commissioners passed carriage of the Appellant's tax affairs to the Respondent in accordance with the provisions of section 5(1) (b) Criminal Assets Bureau Act 1996. The effect of this transfer was that the Respondent became the appropriate body responsible for administering and collecting liabilities from the Appellant and as such it engaged with the Appellant from the date of the transfer on all aspects of his taxation affairs including the VAT investigation forming the basis for the matter under appeal.

8. Following the conclusion of that interview, the Respondent was provided with bank statements, other documentation and explanations by the Appellant. Using this information, the Respondent subsequently calculated the Appellant's liability to VAT for the period under appeal and issued its assessment to VAT in the sum of €202,913 on 4th December 2020.

9. On 15th December 2020, the Appellant who was not in agreement with the Notice of Assessment lodged an appeal with the Commission. The Appeal hearing was held on 25th

November 2022 and the Appellant was represented by his agent. The Respondent was represented by Counsel.

Legislation and Guidelines

10. The following legislation is relevant to this appeal.

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

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

(a) an accountable person, and

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

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

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

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

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

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

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

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

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

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

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

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

Section 24 VATCA 2010 – Intra-Community acquisitions of goods

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

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

(i) supplied by—

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

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

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

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

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

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

…

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

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

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

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

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

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

…

<u>Section 29 VATCA 2010</u>

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

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

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

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

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

…

Section 87 VATCA 2010

(1) In this section –

…

"margin scheme" means the special arrangements for the taxation of supplies of margin scheme goods;

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

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

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

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

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

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

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

…

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

(a) subject to paragraph (b)—

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

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

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

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

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

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

"taxable dealer"—

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

(b) includes a person supplying financial services of the kind specified in paragraph 6(1)(e) of Schedule 1 who acquires or purchases margin scheme

goods for the purpose of the supply thereof as part of an agreement of the kind referred to in section 19 (1)(c),

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

"works of art" means any of the goods specified in paragraph 18(2) or 23 of Schedule 3 or in paragraph 1 of Schedule 5.

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

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

(4) (a) Subject to paragraph (b) and to such conditions (if any) as may be specified in regulations, a taxable dealer may, notwithstanding subsection (2), opt to apply the margin scheme to all that dealer's supplies of any of the following as if they were margin scheme goods:

(i) a work of art, collector's item or antique which the taxable dealer imported;

(ii) a work of art which has been supplied to the taxable dealer by its creator or the creator's successors in title; or

(iii) a work of art which has been supplied to the taxable dealer by an accountable person other than a taxable dealer, where the supply to that dealer is of the kind referred to in section 48 (1)(c).

(b) Where a taxable dealer opts to apply the margin scheme in accordance with paragraph (a), the option shall be for a period of not less than 2 years from the date when that option was exercised.

(5) Where a taxable dealer exercises the option in accordance with subsection (4), in respect of the goods specified in subsection (4)(a)(i), then, notwithstanding the definition of "purchase price" in subsection (1), the purchase price for the purposes of determining the profit margin in relation to a supply of those goods shall be an amount equal to the value of those goods for the purposes of importation determined in

accordance with section 53 increased by the amount of any tax payable in respect of the importation of those goods.

(6) Subject to subsection (7) and notwithstanding Chapter 1 of Part 8 , a taxable dealer who exercises the option in respect of the supply of the goods specified in subsection (4)(a) shall not be entitled to deduct any tax in respect of the purchase or importation of those goods.

(7) Where a taxable dealer exercises the option in accordance with subsection (4), the dealer may, notwithstanding subsection (4)(b), in respect of any individual supply of the goods specified in subsection (4)(a), opt not to apply the margin scheme to that supply, and in such case the right to deduction of the tax charged on the purchase, intra-Community acquisition or importation of those goods shall, notwithstanding Chapter 1 of Part 8, arise only in the taxable period which the dealer supplies those goods.

(8)(a) In this subsection—

"aggregate margin", in respect of a taxable period—

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

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

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

$$\frac{B}{A \times B + 100}$$

where—

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

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

and

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

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

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

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

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

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

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

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

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

…

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

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

…

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

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

(a) the date of issue of the invoice,

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

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

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

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

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

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

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

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

(i) the unit price exclusive of tax,

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

and

(iii) the consideration exclusive of tax,

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

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

(ii) the rate of tax chargeable,

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

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

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

and

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

…

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

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

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

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

EC Directive 2006/112/EC

Article 312

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

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

(2) 'purchase price' means everything which constitutes the consideration, for the purposes of point (1), obtained or to be obtained from the taxable dealer by his supplier.

Article 313

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

…

Article 314

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

(a) a non-taxable person;

(b) another taxable person, in so far as the supply of goods by that other taxable person is exempt pursuant to Article 136;

(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Articles 282 to 292 and involves capital goods;

(d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme.

Article 315

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

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

Article 316

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

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

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

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

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

Article 317

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

In respect of the supply of works of art, collectors' items or antiques which the taxable dealer has imported himself, the purchase price to be taken into account in calculating the profit margin shall be equal to the taxable amount on importation, determined in accordance with Articles 85 to 89, plus the VAT due or paid on importation.

Article 318

(1) In order to simplify the procedure for collecting the tax and after consulting the VAT Committee, Member States may provide that, for certain transactions or for certain

categories of taxable dealers, the taxable amount in respect of supplies of goods subject to the margin scheme is to be determined for each tax period during which the taxable dealer must submit the VAT return referred to in Article 250.

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

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

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

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

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

Article 319

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

Article 320

(1) Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art, a collectors' item or an antique which he has imported himself, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid on the import.

Where the taxable dealer applies the normal VAT arrangements to the supply of a work of art supplied to him by its creator, or the creator's successors in title, or by a taxable person other than a taxable dealer, he shall be entitled to deduct from the VAT for which he is liable the VAT due or paid in respect of the work of art supplied to him.

(2) A right of deduction shall arise at the time when the VAT due on the supply in respect of which the taxable dealer opts for application of the normal VAT arrangements becomes chargeable.

Article 321

If carried out in accordance with the conditions specified in Articles 146, 147, 148 or 151, the supply of second-hand goods, works of art, collectors' items or antiques subject to the margin scheme shall be exempt.

Article 322

In so far as goods are used for the purpose of supplies carried out by him and subject to the margin scheme, the taxable dealer may not deduct the following from the VAT for which he is liable:

(a) the VAT due or paid in respect of works of art, collectors' items or antiques which he has imported himself;

(b)the VAT due or paid in respect of works of art which have been, or are to be, supplied to him by their creator or by the creator's successors in title;

(c) the VAT due or paid in respect of works of art which have been, or are to be, supplied to him by a taxable person other than a taxable dealer.

Article 323

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

Article 324

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

Article 325

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

Documentation Presented to the Commission

Appellant

11. In advance of the hearing, the Appellant's agent provided the Commission with a covering letter and in an appendix attached to that letter various workings in an excel spreadsheet. The excel spreadsheet was split into four tabs, labelled "Income Sterling Appendix 1", "Expenditure Sterling Appendix 2", "Appendix 3 Margin Scheme" and "Appendix 4 Commission [redacted]".

12. The first two appendices contained details of sums lodged into a sterling bank account (number [redacted]) and sums withdrawn from that bank account for the period December 2016 to June 2017. These amounts were converted from sterling to euro using various exchange rates. The first appendix provided a list of transactions which related to sales to various garages (chiefly [redacted] and [redacted]) in the sum of €1,756,471. The second appendix detailed various purchases from a number of garages (chiefly [redacted]) in the sum of €1,717,410. At Appendix 3, the Appellant's agent computed VAT on those transactions by applying the margin scheme (see paragraph 35) and this gave rise to a liability of €7,304.

13. Appendix 4 listed various withdrawals from a bank account number [redacted] described as "Commissions [redacted]" which totalled €16,567 and showed a VAT component of €3,098. The period covered by this spreadsheet was similarly December 2016 to June 2017.

14. The Appellant's agent's letter referenced these spreadsheets and within it stated:

> "[redacted] *is availing of the Margin Scheme where VAT is paid on the difference between the sales price and the purchase price of second hand vehicles….* [redacted] *would be happy under the Margin Scheme to pay €7,304 as a full and final settlement to the Office of the Revenue Commissioners*."

Respondent

15. The Respondent included the following documentation in its booklet of documents to the Commission in advance of the hearing date:

    15.1 Minutes of an interview conducted with the Appellant on 19th April 2017.

    15.2 Copies of the Appellant's 2015, 2016 and 2017 Income Tax returns. The 2016 Income Tax Return showed sales of €10,436, purchases of €7,886, other expenses of €2,263 and a Case I profit of €287. The 2017 Income Tax Return

showed sales of €15,980, purchases of €2,586, other expenses of €2,332 and a Case I profit of €11,062.

15.3 Two excel spreadsheets. These spreadsheets referenced the following details for all of the entries contained within it and were obtained from a list of invoices issued by the Appellant to his customers:

- An invoice number;
- A transaction date (various between 2nd December 2016 and 8th March 2017);
- A vehicle description;
- A UK vehicle registration number;
- The name of the UK supplier;
- The location of the end-customer purchasing the vehicle. These customers were primarily Irish customers but some were UK customers;
- The value of the vehicle sale in sterling;
- The converted value of the sale from sterling to euro;
- Under a column entitled "Euro Conversion" details of the conversion rate used. These were described "as per invoice" or "estimate".

15.4 The monetary value of total sales shown on that spreadsheet for the period was STG£1,245,443/€1,454,209. The spreadsheet records only one of those sales occurring in 2016 in the sum of STG£22,750/€26,423 and that sale was to a UK customer. The balance of the transactions occurred in 2017, totalled £STG1,222,693/€1,427,786 and 18 of those transactions with a value of STG£455,993/€513,221 were sold in the UK. The value of sales recorded in Ireland was therefore nil in 2016 and STG£766,700/€914,565 in 2017.

15.5 53 invoices for a company called "[redacted]". The address shown for this company was [redacted], United Kingdom. The invoices were all dated in January 2017, showed the UK seller's VAT registration number, were addressed to the Appellant and showed his VAT number. Each of those invoices gave a description of the vehicle being sold, the net purchase price and a total purchase price. The net purchase price

and the total purchase price were identical meaning that no VAT was charged by [redacted] Ltd. when it sold vehicles to the Appellant.

15.6 A further 16 invoices for an assortment of UK garages. These invoices were similarly addressed to the Appellant and were identical in form to those invoices at 15.5 above with that addendum that all of those invoices did not show a VAT component and either specified "Zero" under the VAT rate or words to the effect of "NO VAT – Exported" or "Export to ROI 0% VAT".

15.7 A copy of the Appellant's sales Invoices numbered 22 dated 2nd December 2016 thru invoice number 94 inclusive dated 8th March 2017. The address shown for the Appellant on those invoices was "[redacted]". The invoices are partly pre-printed and completed to show the date the vehicle was sold, details of the specific vehicle sold (which are predominately private motor vehicles) and the monetary amount of the sale. There is no VAT narrative or VAT figures entered on those invoices save the following pre-printed wording:

> "**MARGIN SCHEME – This invoice does not give the right to an input of VAT"**.

15.8 Numerous outward and inward payment advices on account number [redacted] which is a sterling bank account in the name of the Appellant. These advices show various receipts and payments for motor vehicles transacted through that bank account.

15.9 A summary Companies House print-out for [redacted]. That document lists the company director as [redacted] and shows the last document submitted on [redacted] is "Dissolved Compulsory Strike-off Suspended".

15.10 A spreadsheet showing sales in the sum of €894,565 for the period 23rd January 2017 to 8th March 2017 by the Appellant to a company called [redacted]. The spreadsheet narrates that all of the vehicles sold by the Appellant to [redacted]. were purchased from [redacted]

15.11 A separate Companies House print-out for [redacted]. That document lists the company director as [redacted] and shows that a liquidator was appointed to the Company on [redacted].

15.12 AIB bank statements for a euro account number [redacted] in the name of the Appellant. The period covered by these bank statements is 1st December 2016

to 20th June 2017. The lodgements into that bank account total €290.19 for the period ended 31st December 2016 and €24,616 for the period 1st January 2017 to 20th June 2017. The withdrawals from that bank account for those periods are mainly classified as "withdrawals".

Submissions

Appellant

16. The Appellant's agent stated that the Appellant was approached by a friend in 2016 regarding a perceived business opportunity. The nature of the business was that the Appellant was to collect various motor vehicles at an exit off the [redacted] and was to drive them to a storage yard located in [redacted]. In turn for providing this service, the Appellant was advised that he would be paid the sum of STG£250 per vehicle collected and delivered by him.

17. The Appellant's agent submitted that the Appellant was advised that the business was being operated by a [redacted] and a [redacted] ("the promotors"), who traded as car dealers in the locality and in order for the Appellant to provide his services, he was required to obtain a VAT number and open a business sterling and euro bank account. The Appellant's agent stated that the Appellant who had previously registered for VAT, provided the promotors with his VAT number and full access to electronic banking rights to the two bank accounts he opened in his name. This access permitted the promotors to view the bank account transactions online and make lodgements/withdrawals to/from that account.

18. The Appellant's agent advised that the Appellant engaged the services of a bookkeeper to assist him with the accounting and taxation requirements of his business. Having explained the nature of the business to the bookkeeper, the Appellant's agent submitted that the Appellant was advised that as he was operating as an agent, he was only liable to VAT on the commission element of the sum received by him for the collection and delivery of vehicles. The Appellant's agent submitted that the Appellant started in business shortly thereafter and paid VAT on the commission element of those transactions, as advised.

19. The Appellant's agent submitted that the Appellant became concerned about the nature of the business when bank statements in his name began arriving in the post to his home address which showed large amounts of money being lodged and transferred into his (sterling) account. The Appellant's agent submitted that these transactions were conducted without the Appellant's knowledge or consent. The Appellant's agent stated

that as the Appellant was not a tax expert and had not consulted a tax expert when he commenced his business that he had understood he was correctly accounting for and discharging any tax liabilities he was required to.

20. The Appellant's agent advised following receipt of the bank statements by post, the Appellant examined the transactions on the accounts and felt he was "duped" by the promotors as he had not agreed that the bank account could be used for the purposes it evidently was being used for.

21. In early April 2017, the Appellant's agent advised that the Respondent requested the Appellant to attend an interview to discuss his financial and taxation affairs. The interview took place on 19th April 2017 during which the Respondent questioned the Appellant about the nature of his business activities. The Appellant cooperated with the Respondent during the course of this interview and provided the Respondent with his understanding of the nature of the business and all records in his possession. Following the conclusion of that interview, the Appellant's agent submitted that the Appellant began questioning the promotors about their dealings on the bank accounts in his name, but owing to the threats to his welfare, he could not advance discussions any further.

22. The Appellant's agent submitted that the Appellant felt despondent following the interview with the Respondents and the threats received from the promotors. Given this position, the Appellant's agent advised that the Appellant disassociated himself from the promotors, ceased the business, closed the associated bank accounts and de-registered for VAT.

23. The Appellant's agent submitted as the Appellant had not benefited from the transactions undertaken by the promotors that any VAT liabilities being imposed on the Appellant should be properly assessed on the promotors as they were the ultimate benefactors of the Appellant's business operation.

24. Based upon the documentation available to the Appellant's agent, he advised that he prepared workings on the Appellant's euro bank account which he lodged his commissions into. These workings (detailed at paragraphs 11-13 above) showed that the Appellant received the sum of €16,567 for the period 23rd December 2016 to 12th June 2017. The Appellant's agent submitted that the VAT chargeable on this sum was €3,098 (being €16,567/123% x 23%) and as the Appellant had paid the sum of €2,836 to the Respondent in VAT, then the Appellant's assessment should be reduced to the net sum payable being €262 (€3,098 - €2,836).

25. Further or in the alternative, the Appellant's agent submitted in the event of the Commission determining that the Respondent was liable to VAT in respect of the sums

lodged and withdrawn from his sterling bank account, then he ought to be allowed avail of the margin scheme in computing his VAT liability. The Appellant's agent submitted that as the lodgements into that account for the period 5th December 2016 to 2nd June 2017 equated to €1,756,471 and the identifiable purchases, €1,717,410 then the vat due on the margin was €7,304 (€1,756,471 - €1,717,410 = €39,061/123% x 23% = €7,304). The Appellants agent advised that the Appellant was willing to pay the above underpayment of VAT in the sum of €262 and the VAT due on the margin, €7,304 in full and final settlement of his tax liabilities.

Respondent

26. The Respondent's Counsel submitted that the Appellant was responsible for the operation of his business and the payment of any tax liabilities associated thereof. The Respondent's Counsel submitted that there was no defence to these obligations by virtue of the Appellant's alleged misguided trust in providing the promotors with control over his bank accounts. Put simply, the Respondent's Counsel submitted that as the transactions were conducted under the Appellant's name, using his bank accounts and VAT number then any tax liabilities properly accrued to the Appellant and were payable by him.

27. Counsel for the Respondent submitted it is clear from recital 51 of Council Directive 2006/112/EEC of 28th November 2006 ("the VAT Directive") that the objective of that VAT Directive is to avoid distortions of competition between taxable persons in the area of second-hand goods, works of art, collectors' items or antiques and the CJEU upheld this view in paragraph 47 of its judgment in *Auto Nikolovi*, C-203/10, 3rd March 2011.

28. The Respondent's Counsel opened the case of *Bawaria Motors*, C-160/11 where it was held at paragraphs 28 and 29 of the judgment that because the scheme for the taxation of the profit margin made by a taxable dealer on the supply of second-hand vehicles constitutes a special arrangement for VAT purposes, which is a derogation from the general scheme of Council Directive 2006/112, then the provisions regarding the special arrangement must be construed narrowly.

29. The Respondent's Counsel advised following an examination of the Appellant's record of transactions relating to the sale of motor vehicles, the Respondent established that during the period 11th January 2017 to 8th March 2017 the Appellant sold 70 cars which he had purchased from UK VAT registered entities. Counsel stated that the majority of the vehicles acquired by the Appellant during this period were purchased from [redacted], a UK company and a significant number of those vehicles were then immediately sold to [redacted], an Irish company.

30. Counsel for the Respondent submitted as all of the vehicles purchased by the Appellant were zero rated intra-community acquisitions, then in accordance with the provisions of section 87 VATCA 2010, they could not qualify as margin scheme goods and were liable to VAT at the standard rate of VAT on their subsequent sale. Counsel for the Respondent advised that despite this position, the Appellant operated the margin scheme on the sale of all of the vehicles in Ireland.

31. Counsel for the Respondent advised of the 70 vehicles sold during the period 11th January 2017 to 8th March 2017, 18 of those vehicles were sold to VAT registered entities in the UK and therefore should be treated as intra community supplies subject to the zero rate of VAT (i.e. not subject to Irish VAT as they were sold in the UK). Counsel submitted as the balance of these vehicles were sold to Irish entities and since they did not satisfy the eligibility criteria for inclusion on the margin scheme, then they were subject to VAT on their full sales price on their subsequent sale in Ireland.

32. Counsel for the Respondent stated that the Appellant had calculated its assessment based upon the value of the vehicles sold to Irish registered entities by the Appellant, in the sum of €894,565 at the appropriate VAT rate (23%) and this gave rise to a charge to VAT for the period under appeal of €205,749. Counsel submitted that the Respondent gave credit for the amount of VAT paid by the Appellant, €2,836 and the resultant sum, €202,913 was the sum payable by the Appellant. In those circumstances, Counsel for the Respondent requested the Commission to uphold its assessment and refuse the Appellant's appeal.

Material Facts

33. The Commissioner finds the following material facts:-

    33.1. The Appellant registered for VAT and Income Tax on 1st January 2015.

    33.2. The Appellant's 2016 Income Tax Return showed sales of €10,436, purchases of €7,886, other expenses of €2,263 and a Case I profit of €287. The 2017 Income Tax Return showed sales of €15,980, purchases of €2,586, other expenses of €2,332 and a Case I profit of €11,062.

    33.3. The Appellant filed VAT returns for the periods 1st January 2015 to 30th June 2017.

    33.4. For the period 1st January 2017 to 30th June 2017, the Appellant paid the sum of €2,836 in VAT.

    33.5. During the period under appeal, the Appellant operated two bank accounts, chiefly a sterling bank account and a euro bank account.

33.6. The Commission were provided with a copy of the bank statements for the euro bank account but were not provided with a copy of the bank statements for the sterling bank account.

33.7. The euro bank account showed lodgements into that account for the period December 2016 to June 2017 of €16,567. The split of lodgements was €290 for the year 2016 and €24,616 for 2017.

33.8. The Appellant's agent provided the Commission with spreadsheets purportedly prepared from the sterling bank account. These spreadsheets showed sales for the periods under appeal of €1,756,471 and purchases for that period of €1,717,410. The basis of the rates used by the Appellant's agent to convert the sterling figures to euro were not provided to the Commission.

33.9. The Respondent provided the Commission with spreadsheets of the Appellant's sales derived from an analysis of his sales invoices. The spreadsheets showed the following sales information:

	UK	*ROI*	*Total*	*UK*	*ROI*	*Total*
	Sales STG£	*Sales STG£*	*Sales £STG*	*Sales €*	*Sales €*	*Sales €*
2016	22,750	0	22,750	26,423	0	26,423
2017	455,993	766,700	1,222,693	513,221	914,565	1,427,786
	478,743	766,700	1,245,443	539,644	914,565	1,454,209

The rates of exchange used for converting sterling to euro were variously described as "per invoice" or "estimate" on those spreadsheets.

33.10. The Appellant was reported through the VIES in 2017 as having been in receipt of STG£1,411,814 worth of zero-rated EU acquisitions.

33.11. The 53 invoices submitted to the Commission for a UK company called "[redacted]." from whom the Appellant purchased vehicles displayed the UK suppliers VAT number and the Appellant's VAT number. In addition, there was neither a descriptive mention of VAT on this invoices nor VAT charged on the underlying purchases.

33.12. Of the 18 additional invoices submitted to the Commission for various additional suppliers of vehicles to the Appellant, they were identical in content to the invoices received from [redacted]. save that they indicated a zero-rate of VAT or had wording embossed upon them containing the narrative "No VAT – Exported", "Export to ROI" or "0% VAT".

33.13. The Appellant's sales invoices issued with an address of "[redacted]" and contained the pre-printed narrative "Margin Scheme – This invoice does not give rise to an input of VAT".

33.14. The Respondent based its VAT assessment upon its calculations on a spreadsheet titled "[redacted] 23/1/2017 to 8/3/2017".This spreadsheet detailed sales for that period in the sum of €894,565 and the VAT component was calculated as €894,565 @ 23% = €205,750.

Analysis

34. In appeals before the Commission, the burden of proof rests with the Appellant who must prove on a balance of probabilities that the assessments or tax deductions are incorrect. In the case of *Menolly Homes v Appeal Commissioner and another* (2010) IEHC 49, at paragraph 22 Charleton J. stated:

> '*The burden of proof in this appeals 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*'

35. In order for the Appellant to be eligible for inclusion on the margin scheme for VAT purposes, he was required to comply with the provisions of sections 87 VATCA 2010, S.I. 639/2010 and Articles 312 to 325 EC Directive 2006/112/EC. While much of that legislation provides for the operation of the margin scheme, of particular mention is section 87 (6) VATCA 2010, subsection (6) of S.I. 639/2010 and Articles 314, 319 and 325 of EC Directive 2006/112/EC. Article 314 (d) EC Directive 2006/112/EC required the UK suppliers to have operated the margin scheme for the Appellant in turn to have applied the margin scheme on his subsequent supplies and as they did not this renders the Appellant ineligible for inclusion on the margin scheme. Furthermore, both Article 325 EC Directive 2006/112/EC and section 87 (6) VATCA 2010 provides that a taxable dealer shall not (in respect of margin scheme supplies) indicate separately the amount of tax chargeable in respect of the supply on any invoice or other document in lieu thereof and/or show their VAT numbers on invoices. While some of the Appellant's suppliers (notably [redacted].) did not separately indicate VAT chargeable on the issued invoices, all of the invoices issued to the Appellant by its UK suppliers included both the Appellant and the suppliers VAT number and/or wording to the effect of "No VAT ROI Sale" or similar. As the Appellant's UK suppliers showed either a VAT analysis and/or quoted both its and the Appellant's VAT number on the invoices which they issued to the Appellant, this further denies the Appellant inclusion on the margin scheme.

36. In addition, section 6 of S.I. 639/2010 requires that any invoice issued by an accountable person availing of the margin scheme is required to indicate that the margin scheme has been applied to the supply. As the Appellant's UK supplier invoices did not specify that the margin scheme applied to the supplies on their issued invoices, it is clear to the Commissioner that the supplies made by the Appellant's UK suppliers were not in accordance with the legislative requirements of the scheme and the Appellant's entitlement to avail of the margin scheme on his subsequent supplies must be denied. The Commissioner notes that all of the Appellant's sales invoices contained the "margin scheme narrative" and this supports the Commissioner's view that the Appellant knew or ought to have known that his UK purchases did not contain the necessary narrative and were ineligible for inclusion on the margin scheme.

37. Section 9 and section 24 VATCA 2010 set out the conditions to be fulfilled in order for a purchase to be considered an Intra-Community Acquisition in addition to providing how the Appellant was required to account for the VAT on such acquisitions. As the invoices issued to the Appellant comply with the requirements outlined in section 9 and 24 VATCA 2010, by virtue of them showing the Appellant's and the Appellant's suppliers respective VAT registration numbers in addition to the goods being charged VAT at zero percent, the Commissioner determines that the Appellant's purchase invoices qualify as Intra-Community purchase invoices.

38. As the Appellant's UK purchases are deemed to be Intra-Community acquisitions, section 9 (1) (b) VATCA 2010 is of relevance. That section states that the Appellant "shall be accountable for and liable to pay the tax chargeable". The tax chargeable is computed on a "two step" approach. Step one required the Appellant to have self-accounted for VAT at the time of acquisition and as the Appellant's business consisted of total vatable activities, the effect of this would have been VAT neutral (since the Appellant would have charged himself VAT and deducted the same amount by virtue of the self-accounting method). Step two would have required the Appellant to have charged VAT to his customers on the basis of the full sales price with no VAT deduction available for the purchase of the goods (since the Appellant would have already accounted for the purchase VAT at the time of acquisition). As the Appellant's UK purchases are Intra-Community acquisitions, and as the Respondent calculated the VAT assessments correctly in accordance with the requirements of the Act, the Commissioner determines that the assessment which relates to VAT due on the Intra-Community Acquisitions must stand, if computed in accordance with the legislation.

39. In calculating the amount of VAT due on the intra-community acquisitions, the Commissioner is somewhat hampered in his efforts to compute the figure as he was not provided with the Appellant's bank statements detailing the intra-community acquisitions. Absent same, the Commissioner considers the most appropriate documentation for him to base the calculations upon is the listing of the Appellant's sales invoices detailed at paragraph 33.9 above since this contains a full listing of the Appellant's sales for 2016 and 2017.

40. The Commissioner favours the listing based upon the Appellant's sales invoices for the purpose of calculating the correct VAT liability as he notes that the Respondent only calculated the VAT liability based upon the sales to one of the Appellant's customers, namely [redacted]. whereas it should more properly based upon the Appellant's total sales in Ireland. Furthermore, the Commissioner discounts the alternative calculations provided to him since there is no source documentation to verify the Appellant's agent figures and the VIES figure being statistical in nature is prone to errors[1].

41. Turning to the summary of sales invoices, the UK sales are not included within the VAT calculations as the place of supply rules under Section 29 VATCA 2010 is the UK (since the goods were acquired and sold there). As the Appellant had no Irish sales in 2016, it follows that he has no liability to VAT on the sale of motor vehicles for that year. For 2017, the Appellant's Irish motor vehicle sales were STG£766,700. As the Commissioner is not satisfied that the exchange rate used by the Appellant and the Respondent is accurate (as the basis of the exchange rates used in their calculations were described as estimates or "per invoice"), the Commissioner has consulted the Central Bank's website[2] for the appropriate rate for ascertaining the average rate of exchange that should have been used for calculating the sterling values to euro amounts. In applying the appropriate rate (.87667) to the Appellant's 2017 UK sales, this gives euro equivalent sales of €874,559. Applying the appropriate VAT rate to this sales (23%), gives rise to a liability of €201,149.

42. In addition to the above liability, the Appellant received the sum of €290 in commissions in 2016 and €24,616 in 2017. Applying the appropriate rate of VAT (23%) to these commissions' results in additional VAT for the year 2016 of €54 and €4,603 for 2017. Therefore the assessment issued by the Respondent should be amended to €54 for the year 2016 and €205,752 for the year 2017. The sum of €2,836 paid by the Appellant for

[1] See, for example - https://www.revenue.ie/en/customs/documents/vies/vies-intrastat-traders-manual.pdf. This document at pages 50 and 51 acknowledges that errors can arise in computing VIES figures and details a correction statement to rectify such errors.
[2] https://www.centralbank.ie/statistics/interest-rates-exchange-rates/exchange-rates

those periods should be deducted from those assessable figures giving rise to an amount payable for 2016 of Nil and for 2017 €202,970 (€205,752 – [€2,836 - €54]).

43. The Commissioner determines that the Appellant has not discharged the necessary burden of proof to vacate the assessment to VAT. As a result of the calculations at paragraph 42, for accuracy purposes, the Respondent's assessment to VAT in the sum of €202,913 should be amended to reflect a revised figure payable of €202,970.

44. While not forming part of the Appellant's appeal, for the purpose of completeness, the Commissioner examined the Appellant's Income Tax returns since he is liable to Irish Income Tax on his worldwide transactions (which by definition would include his UK sales). However, owing to the different and inconsistent figures provided by the Appellant's agent and the Respondent and the lack of crucial information, chiefly the Appellant's sterling bank statements, the Commissioner is unable to substantiate the accuracy of the figures returned by the Appellant in his 2016 and 2017 Income Tax returns. Therefore, the Commissioner makes no findings in respect of the Appellant's liability to income tax for the years 2016 and 2017.

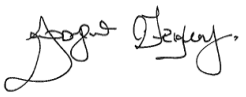
Determination

45. The Commissioner determines that the assessment to VAT in the sum of €202,913 should be amended to reflect the more accurate figure of €202,970 payable by the Appellant. Therefore, the appeal is denied and the assessment is upheld with the variation that the payable figure on the Notice of Assessment is to be amended from a payable figure of €202,913 to €202,970.

46. The Commissioner notes that the Appellant felt "duped" by the promotors whom he acted in tandem with. However, the Commissioner agrees with the Respondent's submissions that "ignorance of the law is no excuse" as this is a central legal principle in operation for centuries (see: for example *Rex v. Bailey* (1800) Russ & Ry 1, 168 E.R. 651). The Commissioner further notes that while the Appellant submitted he did not benefit from the transactions, it was the Respondent who firstly contacted him in relation to his taxation affairs. Finally, the Commissioner notes that the euro bank account lodgements, which was used by the Appellant to lodge his commissions into, was not consistent in values with the sums allegedly agreed with the promotors at the inception of the trade.

47. The appeal is determined in accordance with section 949AK Taxes Consolidation Act 1997 ("TCA 1997"). This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point

of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Andrew Feighery
Appeal Commissioner
9th March 2023