



Between

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**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeals Commission (hereinafter “the Commission”) as an appeal against an assessment to excise duty raised by the Revenue Commissioners (“the Respondent”) on 26<sup>th</sup> September 2016 under section 99A Finance Act 2001 (as inserted by section 46 of the Finance (No. 2) Act 2008).
2. The amount of excise duty due on the assessment is €11,465.79 and that duty was deemed due for payment on 31<sup>st</sup> December 2014. The Appellant makes her appeal in accordance with the provisions of section 105 Finance Act 1995 (as amended).
3. The assessment relates to excise duty due on the alleged sale of imported cigarettes by the Appellant from her residence in 2014.

**Background**

4. The Appellant is a PAYE worker and owing to the number of hours worked is also in receipt of Department of Social Protection payments and rent allowance.

5. Following covert visits to the Appellant's home during several dates throughout 2014, the Appellant was observed selling cigarettes from that property. As these cigarettes did not contain Irish tax stamps they were seized by the Respondent on two occasions in 2014. Irish tax stamps were introduced under Statutory Instrument Number 202 of 1997 – "Tobacco Products (Tax Stamps) Amendment Regulations 1997" and require the seller of cigarettes in Ireland to display a tax stamp on any cigarettes or tobacco related products which it sells. The purpose of these tax stamps is to identify those cigarettes and tobacco products upon which Irish excise duty has been paid and those which have not.
6. Following a second seizure of cigarettes from the Appellant, the Respondent instigated a Revenue Audit ("audit") into the Appellant's tax affairs, in particular her compliance with tobacco excise duty ("excise duty").
7. Following the conclusion of that audit, the Respondent formed the opinion that the Appellant had sold 41,600 cigarettes in 2014 without paying the corresponding excise duty. The Respondent subsequently compulsorily registered the Appellant for excise duty and raised an assessment under that tax classification in the sum of €11,465.79 which represented the deemed excise duty on the sale of these cigarettes. This assessment issued by post to the Appellant's home address on 26<sup>th</sup> September 2016.
8. The Appellant who was not in agreement with the notice of assessment lodged a notice of appeal with the Commission on 22<sup>nd</sup> October 2016. Following repeated issues of non-compliance by the Appellant to directions issued by the Commission, the appeal was heard remotely on 13<sup>th</sup> December 2022 with the Appellant in attendance. The Respondent was represented by two staff officials.

### **Legislation and Guidelines**

9. The following legislation is relevant to this appeal.

#### *Finance Act 1995*

103. *In this Chapter—*

*"Appeal Commissioners" has the meaning assigned to it by section 156 of the Income Tax Act, 1967;*

*"appellant" means a person who appeals to the Appeal Commissioners under section 104 or 105, as appropriate;*

*"the Commissioners" means the Revenue Commissioners.*

104. (1) *Any person who has paid or who, in the opinion of the Commissioners, is liable to pay a duty of excise and is called upon by them to pay an amount of such duty may appeal in accordance with this section against the decision concerned in respect of the liability or the amount of the duty.*

(2) *Any person who has claimed or received a repayment of a duty of excise may appeal to the Commissioners against the decision concerned in respect of the amount of such repayment or the refusal of such repayment.*

(3) *An appeal under subsection (1) or (2) shall be in writing and shall set forth in detail the grounds of appeal.*

(4) *An appeal shall be lodged by the person concerned with the Commissioners within the period of 30 days from the date of—*

*(a) the payment of a duty of excise,*

*(b) the notification by the Commissioners on being called upon by them to pay an amount of a duty of excise,*

*(c) the repayment of a duty of excise, or*

*(d) the notification by the Commissioners of a refusal of a repayment by them of a duty of excise,*

*or within such longer period as the Commissioners may, in exceptional cases, allow.*

(5) *An appeal shall, subject to subsection (11), be determined by the Commissioners within a period of 30 days from its lodgment with the Commissioners.*

(6) *The Commissioners may appoint one or more of their officers for the purposes of carrying out their functions under this section:*

*Provided that no such officer shall determine an appeal under this section in respect of a decision he or she has made.*

(7) *The Commissioners shall, in writing, notify an appellant concerned of their determination of an appeal and the reasons for their determination.*

(8) *Where the Commissioners determine on appeal that the amount due is less than the amount paid, they shall repay the amount overpaid to the appellant concerned.*

*(9) Where the Commissioners determine on appeal that the amount due is greater than the amount paid, the appellant concerned shall pay the amount underpaid.*

*(10) For the purpose of determination of an appeal any goods or vehicles to which the appeal relates shall be produced to the Commissioners for inspection, if so required.*

*(11) Where an appeal has been lodged but not determined in accordance with subsection (5) there shall be deemed to have been a determination by the Commissioners on the last day of the period of 30 days from the date the appeal was lodged that the appeal was not upheld but such deeming shall cease to have effect if a determination is subsequently made by the Commissioners before a determination is made by the Appeal Commissioners under section 105 in respect of the matter concerned.*

*(12) The provisions of the Customs Acts or of any instruments made thereunder, in so far as they apply to appeals concerning duties of excise, shall not apply in relation to any amount of excise duty capable of being the subject of an appeal under the provisions of this section.*

105. *(1) A person who is aggrieved by a determination of the Commissioners under section 104 may, in accordance with the provisions of this section, appeal to the Appeal Commissioners against such determination and the appeal shall be heard and determined by the Appeal Commissioners whose determination shall be final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.*

*(2) A person who intends to appeal under this section against a determination of the Commissioners shall, within 30 days of the notification of such determination (or the expiry of the time limit for such determination, whichever is the earlier) give notice in writing to them of such intention.*

...

#### Section 75 Finance Act 2005

*(1) Subject to subsection (2), where a rate of tobacco products tax is related to the price at which a tobacco product is sold by retail, that price shall be taken for the purposes of this Chapter to be the price at which the product*

*and any packaging and any article or token, accompanying the product, are sold by retail.*

- (2) *A manufacturer or importer of cigarettes shall make a declaration in writing to the Commissioners of the price at which such manufacturer or importer will recommend that such cigarettes are to be sold by retail in respect of each category of quantity that the cigarettes are packaged for retail sale, and the price so declared shall, for the purposes of this Chapter, be taken to be the price at which such cigarettes are sold by retail.*
- (3) *In the case of cigarettes to which subsection (2) relates but in relation to which a price does not stand declared for the time being in the manner specified in that subsection or a price so stands that is, in the opinion of the Commissioners, lower by an unreasonably large amount than the price at which cigarettes of a similar type and character are being sold at the time the tax is being charged on the cigarettes, the Commissioners may determine a price for the purposes of this Chapter and the price at which they are sold by retail shall be taken, for the purposes of this Chapter to be such price as stands so determined for the time being.*
- (4) (a) *A manufacturer or importer of tobacco products shall not recommend, expressly or by implication that cigarettes the price of which stands declared, but not determined for the time being under subsection (3) be sold by retail at a price higher than that so standing.*
- (b) *A manufacturer or importer of tobacco products shall not recommend, expressly or by implication that cigarettes the price of which stands determined for the time being under subsection (3) be sold by retail at a price higher than that so standing.*

Section 99A Finance Act 2001 (as inserted by section 46 of the Finance (No. 2) Act 2008

Chapter 1 of Part 2 of the **Finance Act 2001** is amended –

(a) by substituting the following for **section 99**:

Liability of persons.

99. (1) *An authorised warehouse-keeper is liable for payment of the excise duty on excisable products released from a tax warehouse by such authorised warehousekeeper—*

*(a) for consumption, or*

*(b) for delivery under a suspension arrangement.*

*(2) The liability under subsection (1) (b) is fully or partly discharged where, and to the extent that, the excisable products have been (as the case may be)—*

*(a) received by another tax warehouse in the State,*

*(b) received by a person or trader, referred to in section 115(2), or*

*(c) exported from the Community,*

*and evidence to that effect is received within the prescribed time and in the prescribed manner*

*(3) A registered trader or a non-registered trader is liable for payment of excise duty on excisable products received by such a trader under a suspension arrangement, and such payment shall be made when such products are so received.*

*(4) A tax representative, acting on behalf of the persons referred to in paragraph (a) or (b) of subsection (1) of section 113, is liable for the payment of excise duty on excisable products delivered to the State by or on behalf of such persons.*

*(5) Where excisable products are imported into the State from outside the Community, and the products are not then placed under a suspension arrangement, the person liable for payment of the excise duty is—*

*(a) the person who declares such products for free circulation, in accordance with Article 79 of Regulation (EEC) No. 2913/92, or*

*(b) where the excisable products are not declared for free circulation—*

*(i) any person who imports the products, and*

*(ii) any person who arranged for the importation of the products, or on whose behalf such importation was arranged.*

*(6) Where excisable products are produced, otherwise than under a suspension arrangement in a tax warehouse, the person liable for payment of the excise duty is—*

*(a) the producer of the excisable products, and*

*(b) any person who arranged for the production, or on whose behalf the production was carried out.*

*(7) Where any person, otherwise than under a suspension arrangement, has—*

*(a) sold or delivered, or*

*(b) kept for sale or delivery,*

*excisable products on which the appropriate excise duty has not been paid, then—*

*(i) such person,*

*(ii) any other person on whose behalf such excisable products have been so sold, kept, or delivered, and*

*(iii) any person to whom such products have been delivered, is liable for payment of the excise duty on such excisable products.*

*(8) Where any person has received excisable products on which excise duty has been relieved, rebated, repaid, or charged at a rate lower than the appropriate standard rate, subject to a requirement that such excisable products are used for a specific purpose or in a specific manner, and where that requirement has not been satisfied, then the person who has received such excisable products is liable for payment of the excise duty on such products at the rate appropriate to them, without the benefit of any such relief, rebate, repayment or lower rate.*

*(9) Where under subsections (1) to (8) more than one person is, in a particular case, liable for payment of an excise duty liability, such persons are jointly and severally liable.*

*(10) Subsections (1) to (9) are without prejudice to the liability of excisable products to excise duty, or their liability to forfeiture, under excise law.*

*Assessment of excise duty payable.*

*99A (1) (a) In this section 'authorised officer ' means an officer authorised by the Commissioners to exercise the powers conferred by this section.*

*(b) This section does not apply to betting duty chargeable under Chapter 1 of Part 2 of the Finance Act 2002.*

*(2) Where an authorised officer has reason to believe that a person is liable for payment of excise duty, then such officer may make an assessment of the amount that, in the opinion of such officer, such person is liable to pay.*

*(3) The authorised officer shall give notice to each person assessed of every assessment made by such officer, setting out the amount of the assessment, the type of excise duty covered by the assessment, the right of appeal against the assessment, under section 146, and the time allowed for giving notice of such appeal.*

*(4) (a) Where an authorised officer has reason to believe that the amount of any assessment is excessive or deficient, or that there is no such liability, then such officer shall reduce, increase or vacate such assessment, as the case may be.*

*(b) In any case where an assessment is reduced or increased under paragraph (a), an authorised officer shall, accordingly, issue a revision of the notice referred to in subsection (3), to the person assessed.*

*(c) In any case where an assessment is vacated under paragraph (a), an authorised officer shall inform the person assessed in writing.*

*(5) Any assessment under subsection (2), and any action to collect the amount assessed, is without prejudice to—*

*(a) the liability to forfeiture, under the law relating to excise, of any goods or vehicles concerned in the assessment,*

*(b) any proceedings in relation to an offence under the law relating to excise, involving any goods or vehicles concerned in the assessment.”*

*(b) in section 145 by inserting the following after subsection (1):*

*“(1A) No appeal shall lie under this section against an assessment made under section 99A (inserted by section 46 of the Finance (No. 2) Act 2008).”*

*and*

*(c) in section 146 by substituting the following for subsections (1) and (2):*

"(1) A person who is aggrieved by -

(a) a determination of the Commissioners under section 145, or

(b) an assessment made on that person under section 99A (inserted by section 46 of the Finance (No. 2) Act 2008),

may, in accordance with this section, appeal to the Appeal Commissioners against such determination or assessment, and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.

(2) A person who intends to appeal under this section against a determination of the Commissioners, or against an assessment under section 99A, shall within 30 days of -

(a) the notification of such determination, or the expiry of the time limit for such determination, whichever is the earlier, or

(b) the notice of such assessment,

give notice in writing to the Commissioners of such intention."

Finance (No. 2) Act 2013

(52) The Finance Act 2005 is amended with effect as on and from 16 October 2013 by substituting the following for Schedule 2 to that Act (as amended by section 49 of the Finance Act 2013):

"SCHEDULE 2

Rates of Tobacco Products Tax

(With effect as on and from 16 October 2013)

Description of Product

Rate of Tax

Cigarettes .....

Rate of tax at—

(a) except where paragraph (b) applies,  
€241.83 per thousand together with  
an amount equal to 8.72 per cent of

*the price at which the cigarettes are sold by retail, or*

*(b) €275.62 per thousand in respect of cigarettes sold by retail where the rate of tax would be less than that rate had the rate been calculated in accordance with paragraph (a).*

...

*Finance Act 2014*

*(60) The Finance Act 2005 is amended with effect as on and from 15 October 2014 by substituting the following for Schedule 2 to that Act (as amended by section 52 of the Finance (No. 2) Act 2013):*

*“SCHEDULE 2*

*Rates of Tobacco Products Tax*

*(With effect as on and from 16 October 2013)*

*Description of Product*

*Rate of Tax*

*Cigarettes .....*

*Rate of tax at—*

*(a) except where paragraph (b) applies, €255.69 per thousand together with an amount equal to 8.85 per cent of the price at which the cigarettes are sold by retail, or*

*(b) €289.98 per thousand in respect of cigarettes sold by retail where the rate of tax would be less than that rate had the rate been calculated in accordance with paragraph (a).*

...

Statutory Instrument No. 202 of 1997

TOBACCO PRODUCTS (TAX STAMPS) AMENDMENT REGULATIONS, 1997.

The Revenue Commissioners, in exercise of the powers conferred on them by section 8 (as amended by the Finance Act, 1994 (No. 13 of 1994) and the Finance Act, 1995 (No. 8 of 1995)) of the Finance (Excise Duty on Tobacco Products) Act, 1977 (No. 32 of 1977), hereby make the following Regulations:

1. (1) These Regulations may be cited as the Tobacco Products (Tax Stamps) Amendment Regulations, 1997.
- (2) These Regulations shall come into operation on the 1st day of June, 1997.
2. The Tobacco Products (Tax Stamps) Regulations, 1995 (S.I. No. 233 of 1995), are hereby amended—

(a) in Regulation 7, by the insertion, after paragraph (2), of the following:

"(3) Tax stamps shall be affixed in such a manner that the level of adhesion should be sufficient to ensure that any attempt to subsequently remove the stamp will result in damage to the stamp itself or to the packaging material which contains the tobacco products." and

(b) by the insertion, after Regulation 10, of the following:

"10A. The form of a tax stamp on a packet of tobacco products shall include—

(a) subject to paragraph (b), all over continuous background printing of the words 'The Revenue Commissioners' and 'Na Coimisinéirí Ioncaim',

(b) a representation of the (Official) Irish Harp, against a plain white background, containing 12 strings in a vertical plane with the ornamentation on the Harp being clearly printed, and encircled by a ring on which is printed the words 'Ireland', 'Eire', 'Excise Duty' and 'Dieacht Mhail',

(c) three lines of encoding printed in black containing such combination of characters as the Commissioners have authorised for the tobacco products to which the stamp relates, and

(d) such security or other features as the Commissioners may from time to time direct.”

...

## Documentation Presented to the Commission

### *Respondent*

10. The Respondent provided the Commission with the following documentation.

10.1. An outline of facts relating to purchases of illicit cigarettes from the Appellant at her home address on various dates in 2014. This document was compiled by a [REDACTED] (“the Respondent’s witness”) who is an employee of [REDACTED] [REDACTED]. That company conduct market research in relation to the sale of illicit cigarettes and other illicit tobacco products (“illicit products”) in Ireland. The Respondent’s witness advised that he was engaged in the role since [REDACTED] and he is responsible for the management of a number of operatives who undertake mystery shopping operations for the purposes of ascertaining where and by whom illicit products are being sold. The Respondent’s witness advised within this document that:

- 10.1.1. On 23<sup>rd</sup> January 2014, he brought an operative to the Appellant’s home address where he observed that operative purchase one carton of Winston cigarettes for €50 and one packet of Benson and Hedges cigarettes for €4.50 from the Appellant. The Respondent’s witness noted that the carton of Winston Cigarettes purchased from the Appellant bore no tax stamps while the packed of Benson and Hedges purchased from the Appellant bore a Canary Islands tax stamp.
- 10.1.2. On 21<sup>st</sup> April 2014, he brought a different operative to the Appellant’s home address where he observed that operative purchase three packets of Benson and Hedges cigarettes from the Appellant for €4.50 each. The Respondent’s witness confirmed that these cigarette boxes did not bear any tax stamps upon them.
- 10.1.3. On 22<sup>nd</sup> May 2014, he conducted an identical visit to the same address. On that occasion, his operative purchased two packets of Pall Mall cigarettes from the Appellant for €5 a packet. These cigarettes did not bear any tax stamp upon the packaging.

- 10.1.4. On 13<sup>th</sup> November 2014, he conducted a further identical visit to the Appellant's home address where he observed his operative purchase 10 packets of assorted cigarettes from the Appellant. The Respondent's witness advised that an inspection of these packets of cigarettes displayed Lithuanian or Ukrainian tax stamps and tax stamps which he did not recognise but confirmed were not Irish.
- 10.1.5. On 30<sup>th</sup> December 2014, he conducted a final visit to the Appellant's home with an operative. The Respondent's witness advised that he observed his operative purchase two packets of Winston Blue Super Slims from the Appellant and his subsequent examination of these packets revealed that they bore Canary Islands tax stamps.
- 10.2. An undated letter signed by the Appellant to the Anti-Fraud Unit of the Respondent. This letter related to a seizure of 700 cigarettes seized from the Appellant by the Respondent on 20th November 2014 and stated:
- "I do not wish to contest any legal proceedings that the Revenue Commissioners may institute and in this regard I wish to withdraw my claim to the goods seized by you on 20th November 2014 and I confirm I will not issue any proceedings against the Revenue Commissioners, their servants or agents arising out of the above seizure. I understand that the case will now be closed by retention of the goods by the Revenue Commissioners."*
- 10.3. Seizure documentation in relation to the cigarettes purchased by the Respondent's witness. This documentation disclosed that all of the cigarettes seized from the Appellant on 20th November 2014 were subsequently destroyed on the Respondent's instructions.
- 10.4. A copy of a page extracted from the Central Statistics Office website which displayed retail cigarette prices in 2014.
- 10.5. A copy of various receipts for the purchase of quantities of cigarettes from Latvia and Lithuania. These receipts related to purchases made by the Appellant using her bank card and were all dated throughout 2014.
- 10.6. Bank documentation in the name of the Appellant which displayed the withdrawal of cash from ATM's in various non-European Union ("EU") countries throughout 2014.

## Submissions

### *Appellant*

11. The Appellant submitted that the notice of assessment which issued by the Respondent on 26<sup>th</sup> September 2016 related to the wrong quantity of seized cigarettes and as such was invalid. Within her Statement of Case submitted to the Commission she stated:

*“I never had 41,600 in my home and never sold these products to anyone.*

*If the officers from Customs has any information that I have sold cigarettes, they have to prove it. Cigarettes were confiscated during the search in my home were brought from Latvia for my personal needs. Also no money was found while reviewing my bank accounts”.*

12. The Appellant further submitted that as she had limited income it was not possible for her to have travelled to the various countries where the alleged illicit cigarettes were purchased and given this position, she submitted that there was no evidence to support the Respondent’s assessment. In those circumstances, the Appellant requested the Commission to allow her appeal and hold that the assessment should be vacated.

### *Respondent*

13. The Respondent submitted at the initial interview conducted as part of the audit, the Appellant advised that she did not sell cigarettes and that she brought some home from Latvia once a year for her own use and that sometimes her friends and family also bought her cigarettes from Latvia as a present. The Respondent advised when asked what particular brand she smoked, the Appellant advised that she no longer smokes but when she did she used to smoke Winston and Marlboro branded cigarettes.

14. The Respondent opened its witness’s Outline of Facts and submitted that the contents of this report made it clear that the Appellant was selling illicit cigarettes from her home throughout 2014. The Respondent submitted that as the Appellant was only permitted to purchase 200 cigarettes duty-free from countries outside the EU, then it was evident owing to the quantity and source of the cigarettes seized and purchased from the Appellant’s home address that she had either brought into the Country or sold cigarettes brought into the Country in contravention of this allowance level. The Respondent further stated that the allowance of 200 cigarettes is for personal use only and as such does not permit the retail sale of such cigarettes. Furthermore, the Respondent submitted as much of the cigarettes seized or purchased from the Appellant were from countries located

outside the EU that the Appellant was not being forthright in her accounts to the Commission.

15. The Respondent advised that Customs Officers seized a quantity of cigarettes not bearing an Irish stamp and paperwork from the Appellant's home during authorised searches of that premises. The Respondent submitted as that paperwork revealed the Appellant purchased large quantities of cigarettes on her bank card from countries outside the EU that this was further evidence that the Appellant was not being sincere in recounting her dealings to the Commission.
16. In addition, the Respondent submitted that the Appellant's bank cards disclosed that it had been used at ATM machines in the Canary Islands in January 2014, June 2014 and December 2014 and in Latvia in July 2014 and October 2014. The Respondent submitted that this was evidence that the Appellant frequently travelled to non-EU countries for the purpose of purchasing illicit cigarettes for sale in Ireland, despite her allegations to the contrary.
17. The Respondent advised following the conclusion of the audit and having regard to the test purchases conducted by its witness and the paperwork and quantity of cigarettes seized from the Appellants home that the Appellant was selling on average 40 packets of 20 cigarettes per week throughout 2014. The Respondent submitted that as the Respondent had not paid any excise duty on these cigarettes that she was liable to the amount it had assessed and served on her in the notice of assessment.
18. The Responded concluded its submissions by stating that the onus of proof in the appeal was on the Appellant and as she had not discharged this onus, it was incumbent on the Commission to uphold the assessment in its entirety.

### **Material Facts**

19. The Commissioner finds the following material facts:-
  - 19.1 The Appellant was selected for an audit by the Respondent. At the commencement of the audit the Appellant was not registered for excise duty tax.
  - 19.2 At various dates throughout 2014, the Appellant was observed by the Respondent's witness to be selling cigarettes to third parties.

- 19.3 Those cigarettes purchased by the Respondent's witness's operatives did not bear any Irish tax stamp on their packaging and either contained non-EU country tax stamps or no tax stamp at all upon them.
- 19.4 The quantity of cigarettes seized from the Appellant's home did not display any Irish tax stamp upon their packaging.
- 19.5 Documentation obtained from the Appellant's home during the course of the search conducted at the Appellant's home evidenced that the Appellant had purchased large quantities of cigarettes from non-EU countries and based upon the Appellant's bank documentation that the Appellant herself had frequented non-EU countries several times throughout 2014.

### **Analysis**

20. 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 ("*Menolly*"), 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.'*

21. The decision in *Menolly* is consistent with authorities in England and Wales, such as *Hurley v Taylor (Inspector of Taxes)* ChD, 10<sup>th</sup> February 1998 which is persuasive authority that on appeal of an "in-time" assessment the burden of proof rests with the taxpayer. In *Eagerpath Limited v Edwards (Inspector of Taxes)* CA 14<sup>th</sup> December 2000, the UK Court of Appeal held:

*'On appeal to the commissioners the burden of proof is on the appellant taxpayer because the taxpayer can be expected to know all about his own financial affairs, whereas the inspector may have little or no knowledge about them apart from the taxpayer's return.'*

22. While there is no authority to support the Appellant's submission that this well-established principle should be reversed for the purpose of completeness the Commissioner makes a number of findings in relation to the Appellant's appeal.

23. Firstly, primarily owing to the Respondent's witness's evidence it is beyond doubt that the Appellant was involved in the trade of selling illicit cigarettes at her home throughout 2014. While the Appellant asserted in her evidence to the Commission that no money from the sale of cigarettes was lodged into her bank account, the Commissioner considers that the Appellant's business was of a type most likely operated in cash and therefore discounts such submissions.
24. The Commissioner is reassured of this position in considering the additional evidence submitted by the Respondent which establishes that the Appellant was in a number of non-EU countries throughout 2014 and whilst there purchased significant quantities of cigarettes. As these cigarettes were purchased from non-EU countries and the allowance permitted for the Appellant's own use was not availed of (as the Appellant in her evidence stated that she no longer smokes), the provisions of section 99A Finance Act 2001 and section 75 Finance Act 2005 required the Appellant to have paid excise duty on the retail price that these cigarettes were sold for in Ireland at the dates alleged by the Respondent.
25. Section 99A (2) Finance Act 2001 provides that where an authorised officer acting on behalf of the Respondent has reason to believe that a person is liable for payment of excise duty, then such an officer may make an assessment of the amount, that in the opinion of such officer, the person is liable to pay.
26. It therefore follows that as the Respondent's authorised officer has reason to believe that the Appellant did not pay excise duty on the importation of cigarettes from non-EU countries that the Respondent's assessment should be upheld by the Commission subject it being based upon the Respondent's best estimate of the number of cigarettes sold by the Appellant in 2014.
27. While acknowledging that this is a subjective exercise, the Commission in reviewing the Respondent's evidence, in particular the frequency and quantity of the cigarettes purchased by the Respondent's witness's operative and having regard to the documentation and quantity of cigarettes seized from the Appellant's home, finds that the Respondent's estimate of 40 packets of 20 cigarettes being sold by the Appellant each week in 2014 is an accurate portrayal of the true position.
28. Having confirmed the likely quantum of cigarettes sold by the Appellant in 2014, the Commissioner confines the balance of his findings as to whether the figures forming the basis of the Notice of Assessment issued by the Respondent comply with the legislative provisions of the relevant Finance Acts concerning the quantification of excise duties due on the sale of cigarettes.

29. Section 75 of the Finance Act 2005 requires that the amount of excise duty is calculated with reference to the retail price that cigarettes would have commanded at the date of sale. The Commissioner notes that the Respondent obtained this retail price for the cigarettes sold by the Appellant in 2014 using the Central Statistics Office website and having examined that documentation confirms that the price applied by the Respondent in its calculations properly represents the retail price of the cigarettes sold by the Appellant in 2014.
30. Having established that position, regard must be had to the provisions of Schedule 2 Finance Act (No. 2) 2013 and Schedule 2 Finance Act 2014 which specifies the appropriate rate of excise duty applicable to the retail sale of cigarettes in 2014. Having examined these provisions, the Commissioner is satisfied that the Respondent properly allocated the quantity of cigarettes sold by the Appellant in 2014 with reference to the lower rate of duty provided in Schedule 2 of the Finance Act (No. 2) Act 2013 and the higher rate introduced under Schedule 2 of the Finance Act 2014.
31. It follows as the Respondent's calculations are based on reasonable assumptions and the corresponding liability to excise duty is properly computed, then the Commissioner is required to uphold the Respondent's assessment in its entirety. Therefore the Appellant's appeal is refused and the assessment is upheld.

### **Determination**

32. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in her appeal and has not succeeded in showing that the assessment to income tax is incorrect. Therefore, the Notice of Assessment to excise duty issued by the Respondent for the year of assessment 2014, in the sum of €11,465.79, shall stand.
33. The appeal is determined in accordance with section 949AK 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  
11th April 2023

**The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997**