



93TACD2023

Between:

██

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a decision by the Revenue Commissioners (hereinafter the "Respondent") made on 18 October 2022 disallowing an application by ██████████  
██████████ (hereinafter the "Appellant") pursuant to section 65 of the Value Added Tax Consolidation Act 2010 (hereinafter the "VATCA2010") seeking to register for Value Added Tax (hereinafter "VAT").

**Background**

2. The Appellant is a limited liability company which was registered with the Companies Registration Office on ██████████ 2022 with a registered number ██████████ and having its registered address at ██████████ and having a business address at ██████████.

3. On 22 July 2022 the Appellant submitted an application to the Respondent seeking to register for VAT. The Respondent requested further information from the Appellant in relation to its application supporting documentation from the Appellant as follows:

“

- *Please forward a detailed description of the exact nature of the business of this company and the vatable activity being carried out.*
- *Please forward evidence of trading such as a copy of a contract, a service agreement, a sales invoice or a purchase invoice from suppliers of goods/services related to the carrying out of this company's trade.*
- *Please state why Intra EU Registration is required and provide evidence of trading with other EU States such as a copy of a purchase invoice or correspondence with potential suppliers.*
- *Please confirm the correct business address. The business address is where the activities of the company are being performed. **Please note a virtual office/P.O. Box/agents address will not suffice.***
- *Please confirm if the business address is rented and if so please state the name and address of the landlord, amount of rent paid per week/month/year, the date the company started to pay the rent and the length of the agreed rental/lease period. If no rent is being charged for the use of the business premises, please outline the circumstances as to why this is the case.*
- *Please confirm if the company has a website and if so please forward the website address.*
- *If the taxable activity being provided is in relation to online sales, please advise if the goods/services are being supplied directly from within the EU or elsewhere. Please also clarify if the sales are intended to be supplied to taxable or non-taxable individuals/entities in Ireland.*
- *Please confirm what physical or technical resources of this company are based in Ireland.*
- *Where is the company managed and controlled.*
- *Please advise who is carrying out the activities of the company in Ireland as I note that the company has no employees on record.”*

4. On 14 September 2022 the Appellant responded with the following replies:

- **“Please forward a detailed description of the exact nature of the business of this company and the vatable activity being carried out.**

- Nature of business: "retail sale of [REDACTED] goods in specialised stores (not incl. [REDACTED] not elsewhere classified", and "other retail sale not in stores, stalls or markets."
  - Import products from HQ in [REDACTED] and [REDACTED], for [REDACTED] alongside providing hands-on training.
- **Please forward evidence of trading such as a copy of a contract, a service agreement, a sales invoice or a purchase invoice from suppliers of goods/services related to the carrying out of this company's trade.**
    - (Please find a sales invoice (B2B) and purchase invoice attached, CI from HQ for importing goods and AWB)
  - **Please state why Intra EU Registration is required and provide evidence of trading with other EU States such as a copy of a purchase invoice or correspondence with potential suppliers.**
    - Intra-EU registration is required as we trade with multiple countries in the EU (Please find B2B invoices attached to show trading with other EU states)
  - **Please confirm the correct business address. The business address is where the activities of the company are being performed. Please note a virtual office/P.O. Box/agents address will not suffice.**
    - [REDACTED]
  - **Please confirm if the business address is rented and if so please state the name and address of the landlord, amount of rent paid per week/month/year, the date the company started to pay the rent and the length of the agreed rental/lease period.**  
**If no rent is being charged for the use of the business premises, please outline the circumstances as to why this is the case.**
    - Business address is rented  
Landlord: [REDACTED],  
[REDACTED]
      - Rent: € 3,590.37 (incl. VAT) per month
      - Initial rent date: [REDACTED] 2022
      - Contract period: 1 year (please see attached contract for further reference)

- **Please confirm if the company has a website and if so please forward the website address.**
  - [REDACTED] - Website showing the products being sold, the Company is currently working on website and hope for it to be running within this year
  - [REDACTED] - US branch website which can be used for reference
  - [REDACTED] - HQ website
  
- **If the taxable activity being provided is in relation to online sales, please advise if the goods/services are being supplied directly from within the EU or elsewhere. Please also clarify if the sales are intended to be supplied to taxable or non-taxable individuals/entities in Ireland.**
  - Goods are being supplied from [REDACTED] and sales will be taxable in Ireland
  
- **Please confirm what physical or technical resources of this company are based in Ireland.**
  - Products will be imported from [REDACTED] and shipped to clients based in Ireland and B2B distributors
  
- **Where is the company managed and controlled**
  - Company is managed in Ireland and controlled in the UK
  
- **Please advise who is carrying out the activities of the company in Ireland as I note that the company has no employees on record.**
  - Employees from [REDACTED] branch will temporarily carry out activities in Ireland. As the Irish Company has just opened, they are actively seeking to recruit Irish resident employees in [REDACTED] so that the company will be completely managed and controlled in Ireland.”

5. On receipt of the further information from the Appellant the Respondent decided that a pre-registration visit to the Appellant be carried out. On 11 October 2022 the Respondent carried out an unannounced pre-registration visit to the Appellant’s business address at 14.50. The Respondent was unable to gain access to the Appellant’s business address as there was nobody present.
  
6. On 18 October 2022 the Respondent issued its decision disallowing the Appellant’s application for VAT registration.

7. The Appellant appealed the Respondent's decision to the Commission by way of a Notice of Appeal dated 17 November 2022.
8. Statements of Case were received by the Commission from the Appellant on 15 March 2023 and from the Respondent on 2 February 2023.
9. On 23 March 2023 the Commission wrote to the Parties indicating its intention to determine the within appeal pursuant to section 949U of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and allowed the Parties 21 days to indicate their disagreement with same. Neither Party has objected to this course of action. As a result the within appeal has been determined pursuant to section 949U of the TCA1997.

### **Legislation and Guidelines**

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

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

*"(1)(a) Subject to paragraph (c), a taxable person who engages in the supply, within the State, of taxable goods or services shall be—*

*(i) an accountable person, and*

*(ii) accountable for and liable to pay the tax charged in respect of such supply.*

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

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

*(2) Where, by virtue of section 6(1) or 7, a person has not been an accountable person and a change of circumstances occurs from which it becomes clear that the person is likely to become an accountable person, he or she shall be deemed, for the purposes of this Act, to be an accountable person from the beginning of the taxable period commencing next after such change."*

Section 65 of the VATCA2010 – "Registration":

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

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

(b) who are persons who dispose of goods or supply services which pursuant to section 22(3) or 28(4) or (5) are deemed to be supplied by an accountable person in the course or furtherance of his or her business.

(2) The Revenue Commissioners shall assign a registration number to each person registered in accordance with subsection (1).

(2A) The Revenue Commissioners may cancel the registration number which has been assigned to a person in accordance with subsection (2), where that person does not become or ceases to be an accountable person.

(3) Every accountable person shall, within the period of 30 days beginning on the day on which the person first becomes an accountable person, furnish in writing to the Revenue Commissioners the particulars specified in regulations as being required for the purpose of registering the person for tax.

(4) Every person who disposes of goods or supplies services which pursuant to section 22(3) or 28(4) or (5) are deemed to be supplied by an accountable person in the course of his or her business shall, within 14 days of the disposal or the supply of a service, furnish in writing to the Revenue Commissioners the particulars specified in regulations as being required for the purpose of registering the person for tax."

## **Submissions**

### Appellant's Submissions

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

"The VAT application for [REDACTED] [REDACTED] [REDACTED] ("the Company") was disallowed on 18 October 2022 and the Company would like to appeal this decision.

By way of background, the Company imports goods from their headquarters in [REDACTED] [REDACTED] into Ireland and then sell these products to [REDACTED], for [REDACTED] [REDACTED] and the products will also be sold to distributors in Ireland and in the EU. The Company will also be providing hands-on training on how to use the products in question.

The Company's director, [REDACTED], is based in Ireland and works alongside colleagues in the UK and [REDACTED]. In addition, the Company is actively recruiting employees in [REDACTED] to assist with operations on the ground. In the meanwhile, employees from the [REDACTED] branch temporarily carry out activities

*in Ireland.*

*The Company provided evidence of goods shipped into Ireland clearly showing the intention to make taxable supplies within Ireland and the goods being shipped from Ireland to EU customers. There are four requirements to be met before a sale (known as a "supply") to come within the scope of VAT in Ireland as follows:*

- 1. There must be a supply of goods or services.*
- 2. The supply must take place within the State i.e. the place of supply must be the Republic of Ireland.*
- 3. The supply must be for consideration. There must be a direct link between the supply and the entitlement to receive consideration.*
- 4. The supply must be made in the course or furtherance of business.*

*In this instance, all four requirements are met. The general place of supply rule for goods, is where the goods are located at the time of supply (i.e. Ireland). In the case where goods being transported across a border i.e. leaving Ireland, the place of supply is where the transport begins (i.e. Ireland).*

*Accordingly, the Company would like to appeal the decision made by Revenue on the grounds that there are taxable supplies being made by the Company. Should you require any further information, please let us know."*

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

*"The VAT application for [REDACTED] [REDACTED] [REDACTED] ("the Company") was disallowed on 18 October 2022 and the Company would like to appeal this decision.*

*By way of background, the Company imports goods from their headquarters in [REDACTED] [REDACTED] into Ireland and then sell these products to [REDACTED], for [REDACTED] [REDACTED] and the products will also be sold to distributors in Ireland and in the EU. The Company will also be providing hands-on training on how to use the products in question.*

*The Company's director, [REDACTED], is based in Ireland and works alongside colleagues in the UK and [REDACTED]. The Company is actively recruiting employees in [REDACTED] to assist with operations on the ground however there have been some difficulties trying to source the right staff. In the meanwhile, employees from [REDACTED] are being temporarily seconded to carry out activities in Ireland.*

*The Company provided evidence of goods shipped into Ireland clearly showing the intention to make taxable supplies within Ireland and the goods being shipped from Ireland to EU customers. There are four requirements to be met before a sale (known as a "supply") to come within the scope of VAT in Ireland as follows:*

*There must be a supply of goods or services.*

*The supply must take place within the State i.e. the place of supply must be the Republic of Ireland.*

*The supply must be for consideration. There must be a direct link between the supply and the entitlement to receive consideration.*

*The supply must be made in the course or furtherance of business.*

*In this instance, all four requirements are met. The general place of supply rule for goods, is where the goods are located at the time of supply (i.e. Ireland). In the case where goods being transported across a border i.e., leaving Ireland, the place of supply is where the transport begins (i.e. Ireland).*

*We understand that a key factor in Revenue's decision to disallow the VAT application was the pre-registration visit that took place on the 11 October 2022. A visit on a once-off occasion does not give a true reflection of the business activities being performed by the Company in Ireland. Several overseas companies that are setting up a subsidiary company in Ireland face similar challenges in terms of recruiting and getting everything in place and it would appear unjust for a once-off visit to determine the status of the VAT application.*

*In summary, the director of the Company is located in Ireland, the business activities are being performed in Ireland by staff on a seconded basis whilst recruitment is ongoing, there are taxable supplies of goods being made in Ireland and from Ireland to EU customers.*

*Accordingly, the Company would like to appeal the decision made by Revenue on the grounds that there are taxable supplies being made in Ireland by the Company and the Company is carrying on its own business independently. Should you require any further information, please let us know."*

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



- 13.1. Office rental agreement between [REDACTED] and [REDACTED]  
[REDACTED] start date [REDACTED] end date  
[REDACTED] 2023;
- 13.2. Return flight tickets from Heathrow to Dublin airport for 2 passengers dated [REDACTED]  
2022 for [REDACTED] and [REDACTED];
- 13.3. Return flight tickets from Heathrow to Dublin airport for 4 passengers dated 14  
July 2022 for [REDACTED], [REDACTED] and [REDACTED]  
[REDACTED];
- 13.4. Return flight tickets from Gatwick to Dublin airport for 2 passengers dated 30  
August 2022 for [REDACTED] and [REDACTED];
- 13.5. Return flight tickets from Gatwick to Dublin airport for 2 passengers dated 14  
September 2022 for [REDACTED] and [REDACTED];
- 13.6. Return flight tickets from Gatwick to Dublin airport for 2 passengers dated 25  
September 2022 and returning 26 September 2023 for [REDACTED] and [REDACTED]  
[REDACTED];
- 13.7. Return flight tickets from London Gatwick to Dublin Airport for 2 passengers dated  
12 October 2022 for [REDACTED] and [REDACTED];
- 13.8. Return tickets from London Gatwick to Dublin Airport for 2 passengers dated 26  
October 2022 for [REDACTED] and [REDACTED];
- 13.9. Return flight tickets from Gatwick to Dublin airport for 2 passengers dated 9  
November 2022 for [REDACTED] and [REDACTED];
- 13.10. Return flight tickets from Gatwick to Dublin airport for 2 passengers dated 30  
November 2022 for [REDACTED] and [REDACTED];
- 13.11. Return flight tickets from Heathrow to Dublin airport for 2 passengers dated 14  
December 2022 for [REDACTED] and [REDACTED];
- 13.12. Return flight tickets from Gatwick to Dublin airport for 2 passengers dated 18  
January 2023 for [REDACTED] and [REDACTED];
- 13.13. Return flight tickets from London Gatwick to Dublin Airport for 2 passengers dated  
1 February 2023 for [REDACTED] and [REDACTED];
- 13.14. Return flight tickets from Heathrow to Dublin airport for 2 passengers dated 17  
February 2023 for [REDACTED] and [REDACTED];

13.15. Invoice [REDACTED] dated 7 July 2022 from [REDACTED] to [REDACTED] for 10,741 [REDACTED] products in the amount of €483,683.20;

13.16. Airway Bill Number [REDACTED] dated 10 July 2022 shipping 27 cartons of [REDACTED] from [REDACTED] to [REDACTED]

13.17. Commercial Invoice dated 30 August 2022 from [REDACTED] to [REDACTED] in the amount of €6,200 exclusive of VAT

13.18. Commercial Invoice dated 30 August 2022 from [REDACTED] to [REDACTED] in the amount of €2,406 exclusive of VAT;

13.19. Invoice dated 19 January 2023 from [REDACTED] to [REDACTED] for shipment to [REDACTED];

13.20. Invoice dated 3 February 2023 from [REDACTED] to [REDACTED] for shipment to [REDACTED].

#### Respondent's Submissions

14. The following was submitted in the Respondent's Statement of Case:

*"Case Summary:*

*Under Section 5(1)(a) In order to be to be considered an accountable person for VAT, any applicant must satisfy Revenue that they are an accountable person in Ireland for the purpose of VAT. Applicants are required to provide substantive evidence of trade or evidence of intention to trade at the time of application.*

*If Intra EU VAT registration is also sought under Section 9(1) (a) of the VAT consolidation Act 2010 applicants are required to provide substantive evidence of trade with other EU member states.*

██████████ submitted an application for VAT registration on 22nd July 2022. The caseworker requested further information and supporting documentation from the company's tax agents, ██████████.

2.1 - An e mail was issued to the tax agents, ██████████ requesting details of the exact nature of the business of the company and the Vatable activity being carried out by them, evidence of trading, evidence of Intra EU trade, confirmation of the correct business address, confirmation as to whether the business address is rented and if so details of same, confirmation if the company has a website, confirmation if the goods/services are being supplied directly from within the EU or elsewhere, confirmation if the sales are intended to be supplied to taxable or non-taxable individuals/entities in Ireland, confirmation of what physical or technical resources of this company are based in Ireland, where the company is managed and controlled and confirmation of who is carrying out the activities of the company in Ireland as the company has no employees on record.

2.2 A reply was received from ██████████ confirming the nature of business is the retail sale of ██████████ goods in specialised stores (not incl. ██████████ ██████████ not elsewhere classified and other retail sale not in stores, stalls or markets. The company will import products from HQ in ██████████ and sell to ██████████ ██████████ alongside providing hands-on training. They confirmed the company is managed in Ireland and controlled in the UK, the company has no employees in Ireland at the moment and are seeking to recruit new employees. They also confirmed the company has no website at the moment but are working on same and hope to have one up and running within the year. A copy of the office agreement was also forwarded from ██████████. They also advised that goods are being supplied from ██████████ and sales will be taxable in Ireland. Products will be imported from ██████████ and shipped to clients based in Ireland and B2B distributors.

2.3 On receipt of the response the case was referred to the local Revenue district in ██████████ requesting that a pre registration visit be carried out.

An unannounced VAT pre reg visit was carried out at the business address at 14.50 on Tuesday, the 11th October 2022 by two Revenue officials. They called to the premises to assess vatable activity and there was no evidence of any vatable business taking place at the premises.

*From this visit to the listed business address for this business it appears this company does not operate from this address but uses it as a virtual office and simply rents an office there from time to time.*

*Reasons for Disallowing Vat Registration*

*On the basis of the information provided to date Revenue are not satisfied that the applicant has provided substantive evidence of trade or capacity to trade in Ireland either on the application form, or in the correspondence that followed with the case worker, or resulting from the information provided from the pre registration visit that took place. Accordingly the VAT registration application was disallowed on the basis that the applicant had not provided substantive evidence that taxable supplies were being made in Ireland, or from Ireland as could not be considered to be an accountable person as required in Section 5(1)(a) and Section 9(1)(a) of the VAT Consolidation Act 2010.*

*Whereas no one factor leads directly to the decision, in looking at the whole case facts as outlined below would support the decision made.”*

15. The Appellant also submitted a Visit report dated 11 October 2022 which stated as follows:

*“Employees on Site: None*

*Details of Visit:*

*An unannounced VAT pre-registration visit was made to the business address of [REDACTED] at 14.50 on Tuesday 11/10/2022.*

*Report*

*An unannounced visit was carried out to this companies registered business address. Nobody from this company was present at time of call. According to [REDACTED] - receptionist a representative from this company is in this building roughly once a month.*

*As we were unable to contact this company during this visit to the listed business address it appears the company is not trading from this location.*

*VAT registration is not appropriate in this case as this business is not operating substantially at this location.”*

### **Material Facts**

16. The following material facts are not at issue in the within appeal and the Commissioner accepts same as material facts:
  - 16.1. The Appellant is a limited liability company which was registered with the Companies Registration Office on [REDACTED] 2022 with a registered number [REDACTED] and having its registered address at [REDACTED] and having a business address at [REDACTED];
  - 16.2. The Appellant's director, [REDACTED], is based in Ireland;
  - 16.3. On [REDACTED] 2022 the Appellant entered into a rental agreement for an office located at [REDACTED];
  - 16.4. In July 2022 the Appellant was in receipt of goods from [REDACTED] to [REDACTED] for 10,741 [REDACTED] products in the amount of €483,683.20;
  - 16.5. On 22 July 2022 the Appellant submitted an application to the Respondent seeking to register for VAT;
  - 16.6. The Appellant's parent company has live websites at [REDACTED] - a US branch website and [REDACTED] - the Appellant's HQ website;
  - 16.7. The Appellant was in receipt of a shipment of 10, 741 [REDACTED] products in the amount of €483,683.20 which were invoiced to the Appellant on Invoice [REDACTED] dated 7 July 2022 from [REDACTED] to [REDACTED] and which shipped from [REDACTED] on 10 July 2022;
  - 16.8. The Appellant generated a Commercial Invoice dated 30 August 2022 to [REDACTED] in the amount of €6,200 exclusive of VAT;

- 16.9. The Appellant generated a Commercial Invoice dated 30 August 2022 to [REDACTED] [REDACTED] in the amount of €2,406 exclusive of VAT;
- 16.10. On 19 January 2023 the Appellant shipped goods to [REDACTED] [REDACTED];
- 16.11. On 3 February 2023 the Appellant shipped goods to [REDACTED] [REDACTED].
- 16.12. Employees of the Appellant's sister company [REDACTED] Limited flew from the UK to Ireland on the following dates:
- 4 July 2022, 14 July 2022, 30 August 2022, 14 September 2022, 25 September 2022, 12 October 2022, 26 October 2022, 9 November 2022, 30 November 2022, 14 December 2022, 18 January 2023, 1 February 2023 and 17 February 2023.
17. The following material fact is at issue in the within appeal:
- 17.1. The Appellant is, or may become, an accountable person pursuant to section 5(1)(a) of the VATCA2010.
18. Part 2 of the VATCA2010 and specifically Section 5 of the VATCA2010 defines an accountable person and/or a person who may become an accountable person as being “... a taxable person who engages in the supply, within the State, of taxable goods or services.”
19. The Appellant submits that it is an accountable person pursuant to section 5 of the VATCA2010. The Appellant submits that it has provided evidence of goods shipped in to Ireland showing the intention to make taxable supplies within Ireland.
20. In addition the Appellant submits that the invoices and airway bills which it has submitted in support of its appeal demonstrate that it is involved in shipping goods from Ireland to EU customers.
21. The Respondent has submitted that the On the basis of the information provided to date Revenue are not satisfied that the applicant has provided substantive evidence of trade or capacity to trade in Ireland either on the application form, or in the correspondence that followed with the case worker, or resulting from the information provided from the pre-registration visit that took place. Accordingly the VAT registration application was

disallowed on the basis that the applicant had not provided substantive evidence that taxable supplies were being made in Ireland, or from Ireland as could not be considered to be an accountable person as required in Section 5(1)(a) and Section 9(1)(a) of the VAT Consolidation Act 2010.

22. Having considered all of the documentation provided, the Commissioner is satisfied that the Appellant is an accountable person, that is to say the Appellant is a person who may engage in the supply, within the State, of taxable goods or services. This is on the basis that the Appellant has received goods to value of €483,683.20; has submitted evidence of invoices for the supply of taxable goods to customers within the EU; has submitted evidence of shipments of taxable goods to customers within the EU; has submitted evidence of a rental agreement for an office at the same address as the goods received by the Appellant were shipped to and the same address from which the goods shipped by the Appellant were shipped.
23. The Commissioner also notes that the dates of the flight details submitted by the Appellant coincide with the supply of goods for which the invoices and airway bills have been submitted. In addition the Commissioner has had regard to the Respondent's Visit Report of 11 October 2022 wherein it states that the receptionist for the building in which the Appellant's office is located had indicated that a representative from the Appellant attends the office approximately once a month. The Commissioner notes that this coincides with the flight details submitted by the Appellant.
24. The Commissioner is satisfied that the Appellant has discharged the burden of proof in relation to this material fact and has established that it is an accountable person pursuant to section 5(1)(a) of the VATCA2010.
25. Therefore this material fact is accepted.
26. For the avoidance of doubt the Commissioner finds the following material facts in this appeal:
  - 26.1. The Appellant is a limited liability company which was registered with the Companies Registration Office on [REDACTED] 2022 with a registered number [REDACTED] and having its registered address at [REDACTED] and having a business address at [REDACTED];
  - 26.2. The Appellant's director, [REDACTED], is based in Ireland;

- 26.3. On [REDACTED] 2022 the Appellant entered into a rental agreement for an office located at [REDACTED];
- 26.4. In July 2022 the Appellant was in receipt of goods from [REDACTED] to [REDACTED] for 10,741 [REDACTED] products in the amount of €483,683.20;
- 26.5. On 22 July 2022 the Appellant submitted an application to the Respondent seeking to register for VAT;
- 26.6. The Appellant's parent company has live websites at [REDACTED] - a US branch website and [REDACTED] - the Appellant's HQ website;
- 26.7. The Appellant was in receipt of a shipment of 10,741 [REDACTED] products in the amount of €483,683.20 which were invoiced to the Appellant on Invoice [REDACTED] dated 7 July 2022 from [REDACTED] to [REDACTED] and which shipped from [REDACTED] on 10 July 2022;
- 26.8. The Appellant generated a Commercial Invoice dated 30 August 2022 to [REDACTED] in the amount of €6,200 exclusive of VAT;
- 26.9. The Appellant generated a Commercial Invoice dated 30 August 2022 to [REDACTED] in the amount of €2,406 exclusive of VAT;
- 26.10. On 19 January 2023 the Appellant shipped goods to [REDACTED];
- 26.11. On 3 February 2023 the Appellant shipped goods to [REDACTED];
- 26.12. Employees of the Appellant's sister company [REDACTED] Limited flew from the UK to Ireland on the following dates:
- 4 July 2022, 14 July 2022, 30 August 2022, 14 September 2022, 25 September 2022, 12 October 2022, 26 October 2022, 9 November 2022, 30 November 2022, 14 December 2022, 18 January 2023, 1 February 2023 and 17 February 2023.



26.13. The Appellant is an accountable person pursuant to section 5(1)(a) of the VATCA2010.

### **Analysis**

27. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*

28. Section 65(1)(a) of the VATCA2010 provides that the Respondent shall set up and maintain a register of persons who are, or who may become, accountable persons.

29. Section 65(2) of the VATCA2010 provides that the Respondent shall assign a registration number to each person registered in accordance with section 65(1) of the VATCA2010.

30. The use of the word “*shall*” as set out in sections 65(1) and 65(2) of the VATCA2010 indicates an absence of discretion in the application of these provisions.

31. Having found that the Appellant is an accountable person pursuant to section 5 of the VATCA2010, it therefore follows that the provisions sections 65(1) and 65(2) of the VATCA2010 apply to the Appellant. Therefore, in accordance with section 65(1) of the VATCA2010 the Respondent shall place the Appellant on its register of persons who may become accountable persons and, in accordance with section 65(2) of the VATCA2010 the Respondent shall assign a registration number to the Appellant.

### **Determination**

32. For the reasons set out above, the Commissioner determines that the within appeal has succeeded and as a result the Respondent shall, in accordance with section 65(1) of the VATCA2010, place the Appellant on its register of persons who is an accountable person and, in accordance with section 65(2) of the VATCA2010 the Respondent shall assign a registration number to the Appellant..

33. This Appeal is determined in accordance with Part 40A of the TCA1997 and in particular, section 949U thereof. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA1997.



Clare O'Driscoll  
Appeal Commissioner  
24 April 2023