



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

164TACD2025

Between



Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") brought on behalf of [REDACTED] ("the Appellant") in relation to a decision of the Revenue Commissioners ("the Respondent") dated 8 August 2024, refusing an application by the Appellant, pursuant to section 65 of the Value Added Tax Consolidation Act 2010 ("VATCA 2010"), seeking to register for Value Added Tax ("VAT").
2. The Respondent was of the opinion that the Appellant is not an "accountable person", pursuant to the provisions of sections 5 and 9 VATCA 2010, entitled to the assignment of a registration number, on the basis that the Appellant does not have sufficient evidence of trade activities in the State, lacks a physical or technical presence in the State and that its directors are non-residents of the State.
3. On 14 August 2024, the Appellant duly appealed to the Commission by submitting its Notice of Appeal. On 25 September 2024, the Appellant filed a Statement of Case and accompanying documentation and on 24 September 2024, the Respondent filed its Statement of Case and accompanying documentation. On 29 December 2024, the Appellant filed its Outline of Arguments. The Respondent confirmed that it was relying on its Statement of Case and supporting documentation appended thereto. The Commissioner has considered all of the documentation submitted by the parties in this appeal.
4. The appeal hearing took place remotely on 12 February 2025. The Appellant was represented by its tax agent ("the Appellant's Agent") and Respondent was represented by two case officers. In making this determination, the Commissioner had the benefit of the evidence of the Appellant's Agent given at the remote hearing, in addition to written and oral legal submissions made by both parties at the hearing of the appeal.

Background

5. The Appellant is a limited liability company. Until 2022, the Appellant was part of the [REDACTED].
6. On 9 November 2009, the Appellant was registered with the Companies Registration Office ("CRO") and a certificate of incorporation was submitted with the documentation in this appeal.
7. On 10 July 2015, the Appellant changed its name with the CRO from [REDACTED] to the Appellant and a certificate of a change of name from the CRO was submitted with the documentation in this appeal.

8. The Appellant has one Director, [REDACTED] ("the Director of the Appellant"), who owns one hundred per cent of the shares in the Appellant. The country of residence of the Director of the Appellant is [REDACTED].
9. The Appellant's main business activities include the provision of [REDACTED]
[REDACTED]
[REDACTED]. The Appellant submitted that "*part of its services arise from the Appellant's sub-contractors, located in [REDACTED]*".
10. From 1 November 2009 to 30 April 2024, the Appellant was previously registered for VAT. However, following an intervention by the Respondent, the Appellant's VAT number was cancelled by the Respondent.
11. On 5 July 2024, the Appellant submitted an application for VAT registration. On 8 August 2024, the Respondent refused the Appellant's application for VAT registration, on the grounds that the Appellant does not qualify as an "accountable person" pursuant to VATCA 2010. The reasons for the refusal were the following: the Appellant is managed and controlled from outside the State, as its directors are non-resident in the State; the Appellant has no physical or technical resources, such as employees or equipment based in the State; the Appellant's registered business address at [REDACTED]
[REDACTED] is rented for €300 per annum, which the Respondent considered insufficient to prove the existence of a fixed establishment or significant business activity in Ireland.
12. The Appellant submits that it conducts taxable business activities from Ireland and has business relationships within the EU. The Appellant argued that "*despite the absence of employees and a significant physical presence, it conducts taxable business activities from Ireland and maintains business relationships with clients within the EU, which should entitle it to VAT registration*". The Appellant has from 2 January 2025, engaged in the State one part time employee as an Administrative Assistant.

Legislation and Guidelines

13. The legislation relevant to this appeal is as follows:
14. Section 5 VATCA 2010, Persons who are, or who may become, accountable persons, provides *inter alia* that:
- (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.*

15. Section 9 VATCA 2010, Intra-Community acquisitions and accountable persons, provides *inter alia* that:

- (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.*

16. Section 65 VATCA 2010, Registration, provides that:

- (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) (a) *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.*

(b) Where an accountable person, when registering for tax, has furnished particulars specified in regulations referred to in paragraph (a) stating that he or she shall not engage in intra-Community trade, that persons shall, within the period of 30 days beginning on the date on which he or she first engages in intra-Community trade, notify the Revenue Commissioners in writing of such an engagement.

(c) Where an accountable person notifies the Revenue Commissioners under paragraph (b) regarding his or her engagement in intra-Community trade, the Revenue Commissioners shall request that person to correct the particulars furnished as specified in regulations referred to in paragraph (a).

(d) In this subsection, 'intra-Community trade' means—

- (i) the intra-Community supply of goods made by an accountable person and dispatched or transported from the State to a person registered for value-added tax in another Member State, or*
- (ii) the intra-Community acquisition of goods.*

(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.

Evidence and Submissions

Appellant's evidence and submissions

17. The Appellant's Agent gave evidence and made submissions on behalf of the Appellant.

The Commissioner sets out a summary hereunder:-

17.1. The Appellant's Agent confirmed that he works with [REDACTED] [REDACTED] ("the company of the Appellant's Agent") which provides bookkeeping and accountancy services to the Appellant.

17.2. The Appellant's Agent stated that the Appellant was registered with the CRO in 2009 and whilst it is managed and controlled by a director located outside of Ireland, it conducts substantial business activities within Ireland that necessitate VAT registration. The Appellant's Agent confirmed that the Appellant has one Director who is resident in Finland and who owns one hundred per cent of the

shares in the Appellant. The Appellant's Agent stated that the Appellant pays corporation tax in Ireland and in 2021, it paid the amount of €118,150 in corporation tax.

- 17.3. The Appellant's Agent gave evidence that the Appellant engages with two sub-contractors which provide firstly, design services and secondly, support services. The Appellant's Agent stated that [REDACTED], being the first sub-contractor, provided consulting services and reference was made to the consulting agreement dated March 2023, within the documentation. The Appellant's Agent stated that the sub-contractor provides design services to the Appellant.
- 17.4. The Appellant's Agent submitted that the Appellant's books and records are located in Ireland at its registered business address which is the same address as the company of the Appellant's Agent, being the second sub-contractor. The second sub-contractor provides support services to the Appellant.
- 17.5. The Appellant's Agent submitted that since 2 January 2025, the Appellant has employed an Administrative Assistant to carry out administrative tasks on behalf of the Appellant and reference was made to the employment agreement submitted in the documentation. When asked, the Appellant's Agent confirmed that the employee is also an employee of the company of the Appellant's Agent, who is now engaged to work part time with the Appellant, but that the Administrative Assistant has a separate room and systems for the Appellant's duties. The Appellant's Agent stated that the Appellant is in the process of erecting signage to display the Appellant's company name at the premises. Reference was made to the photographs submitted in the documentation and to the employee's payslips in the net amount of €76.36 per week.
- 17.6. The Appellant's Agent referred to an invoice dated 8 February 2024, from the company of the Appellant's Agent, which stated under the heading "Description" "Office Address from 01/01/2023 to 31/12/2023". This, he said, reflects the rent amount paid to the company of the Appellant's Agent, for the registered business address of the Appellant being the amount of €300.00 or €369.00 inclusive of VAT. Reference was also made to a lease agreement submitted with the documentation which purports to lease the office desk space to the Appellant from the company of the Appellant's Agent.
- 17.7. The Appellant's Agent stated that the Appellant has a significant economic presence in the State, including contracts and partnerships with local Irish companies. The Appellant's Agent submitted that this involvement in the Irish

market obligates the Appellant to register for VAT under the provisions of the VATCA 2010.

17.8. The Appellant submitted a bank statement purporting to show a payment of €175,000 from a customer on 14 October 2024. The Appellant stated that there are many companies established in Ireland with management and control being located outside of Ireland.

17.9. In addition to its submissions filed in relation to the appeal, the Appellant submitted *inter alia* the following documentation in support of its appeal:

- 17.9.1. Certificate of Incorporation from the CRO;
- 17.9.2. Certificate of name change from the CRO;
- 17.9.3. Memorandum of Association of the Appellant;
- 17.9.4. Shareholders General Meeting 2024;
- 17.9.5. Correspondence from the Respondent dated 30 March 2023;
- 17.9.6. Service Agreement dated 28 March 2024;
- 17.9.7. Agreement with company of the Tax Agent;
- 17.9.8. Director evidence;
- 17.9.9. Consulting Agreement [REDACTED];
- 17.9.10. Addendum 1 and 2 to Consulting Agreement;
- 17.9.11. Revolut Business Account Statement;
- 17.9.12. Rent Agreement;
- 17.9.13. Rent invoice dated 8 February 2024;
- 17.9.14. Invoice for Accountancy fees;
- 17.9.15. Contract of Employment;
- 17.9.16. Payslips for 2025;
- 17.9.17. Monthly Employer PAYE return;
- 17.9.18. Email re signage dated 7 February 2025.

Respondent's evidence and submissions

18. The Commissioner sets out hereunder a summary of the submissions made by the Respondent, both at the hearing of the appeal and in the documents submitted in this appeal:-

- 18.1. The Appellant was previously registered for VAT and submitted VAT returns from 1 November 2009 to 30 April 2011 and 1 May 2022 to 30 April 2024. However, the Appellant's VAT number was cancelled by the Respondent on foot of intervention by the Respondent.
- 18.2. On 5 July 2024, the Appellant reapplied for VAT registration with the Respondent and on 15 July 2024, the Respondent issued an Evidence of Trade letter to the Appellant.
- 18.3. On 1 August 2024, the Appellant replied to the Respondent's letter stating that commencing 2024, the Appellant provided in both Ireland and the European Union, design services, engineering services and management consulting services for shipyards and vessel manufacturers and repair companies. The correspondence stated that the Director of the Appellant is an EU resident and that there are no employees located in Ireland. The Appellant stated that the Appellant has its registered business address at [REDACTED] which it stated was rented for the amount of €300.00 per annum.
- 18.4. The Appellant must be engaged in economic activity in the State and must be in a position to show that it is doing so, on the basis of credible evidence. It is possible that the decision of the Respondent can be amended if more information is forthcoming, but on the basis of the available information the Respondent refused the application for VAT registration as there was no evidence of trading activity in the State. Moreover, the registered business address of the Appellant is that of the Appellant's Agent that provides bookkeeping services to the Appellant and the employee engaged by the Appellant from 2 January 2025, is also an employee of the Appellant's Agent.
- 18.5. There was little or no evidence of any transactions taking place, the consulting agreement with [REDACTED] related to a period in 2023 and there are no evidence of ongoing payments being made for services. Thus, the Respondent concluded there was no business activity being carried out in the State.

- 18.6. What the Respondent would expect to see are invoices and trade receipts, such as payments between a business and its customers to illustrate what transactions are occurring in the State to evidence business activity herein. The Appellant has submitted only arbitrary invoices. The Respondent would expect to see regular payments on foot of the [REDACTED] contract, but none have been forthcoming. Moreover, [REDACTED] is a company based in the [REDACTED] with no connection to the State.

Material Facts

19. Having read the documentation submitted and having listened to the oral evidence and legal submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:-

- 19.1. The Appellant is a limited liability company.
- 19.2. On 9 November 2009, the Appellant was incorporated in Ireland and was registered with the CRO. A Certificate of Incorporation from the CRO was submitted by the Appellant.
- 19.3. On 10 July 2015, the Appellant changed its name from [REDACTED] to the Appellant and a change of name certificate from the CRO was submitted by the Appellant.
- 19.4. The Appellant was previously registered for VAT and submitted its VAT returns for the periods 1 November 2009 to 30 April 2011 and 1 May 2022 to 30 April 2024.
- 19.5. Following an intervention by the Respondent, the Appellant's VAT number was cancelled by the Respondent,
- 19.6. On 5 July 2024, the Appellant reapplied for VAT registration with the Respondent.
- 19.7. On 15 July 2024, the Respondent issued an Evidence of Trade letter to the Appellant, with the response from the Appellant being issued on 1 August 2024.
- 19.8. On 8 August 2024, the Respondent refused the Appellant's application for VAT registration on the basis that it was not an "accountable person".
- 19.9. The Appellant has filed its corporation tax returns for all years up to and including 2024.

Analysis

The burden of proof

20. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* (“*Menolly Homes*”) [2010] IEHC 49, Charleton J., at paragraph 22, states that:

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

21. The law regarding the burden of proof and the reasons for it has been reaffirmed in recent subsequent judgments, for example in *McNamara v Revenue Commissioners* [2023] IEHC 15 and *Quigley v Revenue Commissioners* [2023] IEHC 244.

22. However, when an appeal relates to the interpretation of the law only, Donnelly J. and Butler J. clarified the approach to the burden of proof, in their joint judgment for the Court of Appeal in *Hanrahan v The Revenue Commissioners* [2024] IECA 113 (“*Hanrahan*”). At paragraphs 97-98 the Court of Appeal held that:

“97. Where the onus of proof lies can be highly relevant in those cases in which evidential matters are at stake.....

98. In the present case however, the issue is not one of ascertaining the facts; the facts themselves are as found in the case stated. The issue here is one of law;....Ultimately when an Appeal Commissioner is asked to apply the law to the agreed facts, the Appeal Commissioner’s correct application of the law requires an objective assessment of what the law is and cannot be swayed by a consideration of who bears the burden. If the interpretation of the law is at issue, the Appeal Commissioner must apply any judicial precedent interpreting that provision and in the absence of precedent, apply the appropriate canons of construction, when seeking to achieve the correct interpretation.....”

Statutory interpretation

23. In relation to the relevant decisions applicable to the interpretation of taxation statutes, the Commissioner gratefully adopts the following summary of the relevant principles emerging from the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 and the judgment of O’Donnell J. in the Supreme Court in

Bookfinders v The Revenue Commissioners [2020] IESC 60, as helpfully set out by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“Perrigo”) at paragraph 74:

“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in *Bookfinders Ltd. v The Revenue Commissioner* [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) *If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

(b) *Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*

(c) *Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

(d) *Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

(e) *In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

(f) *Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*

(g) *Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or*

exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible.”

24. The Commissioner is of the view that in relation to the approach to be taken to statutory interpretation, *Perrigo*, is authoritative in this regard, as it provides an overview and template of all other judgments. It is a clear methodology to assist with interpreting a statute. Therefore, the Commissioner is satisfied that the approach to be taken in relation to the interpretation of the statute is a literal interpretative approach and that the wording in the statute must be given a plain, ordinary or natural meaning as per subparagraph (a) of paragraph 74 of *Perrigo*. In addition, as per the principles enunciated in subparagraph (b) of paragraph 74 of *Perrigo*, context is critical.
25. Furthermore, the Commissioner is mindful of the recent decision in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 (“Heather Hill”) and that the approach to be taken to statutory interpretation must include consideration of the overall context and purpose of the legislative scheme. The Commissioner is mindful of the *dictum* of Murray J. at paragraph 108 of his decision in *Heather Hill*, wherein he stated that:

“It is also noted that while McKechnie J. envisaged here two stages to an inquiry – words in context and (if there remained ambiguity), purpose- it is now clear that these approaches are properly to be viewed as part of a single continuum rather than as separated fields to be filled in, the second only arising for consideration if the first is inconclusive. To that extent I think that the Attorney General is correct when he submits that the effect of these decisions - and in particular Dunnes Stores and Bookfinders –

is that the literal and purposive approaches to statutory interpretation are not hermetically sealed”.

26. The *dictum* of Murray J. in *Heather Hill* was considered and approved by the Court of Appeal in the decision in *Hanrahan*. The Court of Appeal noted that the trial judge had cited and relied on the approach to the interpretation of taxation legislation that Murray J. in the Court of Appeal identified in the decision of *Used Car Importers Ireland Ltd. v Minister for Finance* [2020] IECA 298. Murray J., when considering the provision at issue, at paragraph 162 of the judgment stated that:

“[it] falls to be construed in accordance with well-established principle. The Court is concerned to ascertain the intention of the legislature having regard to the language used in the Act but bearing in mind the overall purpose and context of the statute.”

27. Moreover, the Court of Appeal in *Hanrahan* at paragraph 83 held that:

“Thus, the High Court correctly held that in interpreting taxation statutes generally, context and purpose are relevant.”

28. The Commissioner will now proceed to consider the statutory provisions articulated in this appeal.

Substantive issue

29. The Appellant has appealed the Respondent’s refusal to grant its application, made on 15 July 2024, for VAT registration. On 8 August 2024, the Respondent refused the Appellant’s application for VAT registration on the basis that it did not consider the Appellant to be an “accountable person” pursuant to the provisions of sections 5 or 9 VATCA 2010. The Respondent submitted that the Appellant had not provided any objective evidence of trade or of the capacity to trade in the State and accordingly, the application was refused.

30. On 8 August 2024, the Respondent wrote to the Appellant to state that:

“Having reviewed your application, I am satisfied that your client is not an accountable person for the purposes of Value Added Tax as defined in Section 5(1)(a) and Section 9(1)(a) of the VAT Consolidation Act. 2010. Among the factors considered -

The company is managed and controlled from elsewhere.

The company is not established in the Republic of Ireland.

The company has no physical or technical resources here.

I am therefore disallowing your application for VAT registration”.

31. Thus, the central issue to be determined in this appeal is whether or not the Appellant is an “accountable person” entitled to the assignation of a VAT registration number. The issues between the parties in this appeal are whether the Appellant has provided sufficient evidence that it is a “taxable person” involved in economic activity within the State.
32. The provisions of Council Directive 2006/112/EC of 28 November 2006 (“the VAT Directive”) have been implemented by the VATCA 2010. Article 214 of the VAT Directive obliges a Member State to ensure the identification of every taxable person who within its territory carries out supplies of goods or services in respect of which VAT is deductible. A taxable person is under Article 9 of the VAT Directive any person who independently carries on any economic activity, whatever the purpose or results of the activity.
33. The State complies with its obligations under Article 214 of the VAT Directive by way of the issuing of VAT registration numbers to “accountable persons”, pursuant to section 65 VATCA 2010. Section 65(1)(a) VATCA 2010 provides that the Respondent shall set up and maintain a register of persons who are, or who may become, “accountable persons”. Section 65(2) VATCA 2010 provides that the Respondent shall assign a registration number to each person registered in accordance with section 65(1) VATCA 2010.
34. An accountable person is defined in section 5 VATCA 2010 as “... *a taxable person who engages in the supply, within the State, of taxable goods or services.*”
35. The Respondent submitted that the Appellant’s application for VAT registration was refused, in circumstances where the Respondent was not satisfied that the Appellant had provided objective evidence of economic activity in the State. The Commissioner notes that the Appellant was previously registered for VAT in the State. However, on 30 April 2024, following an intervention by the Respondent, the Respondent cancelled the Appellant’s VAT registration. The Commissioner notes that section 65(2A) VATCA 2010 provides for the cancellation of VAT registration which states that: “*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.*”
36. In order for any company to be engaged in economic activity for VAT purposes it must make taxable supplies for remuneration. The Commissioner is satisfied that this means that the Appellant must meaningfully engage with what comprised taxable economic activity for VAT purposes. The Commissioner notes that the Appellant submitted a large volume of documentation in support of its appeal. Nonetheless, of relevance to the matter of taxable supplies, the Commissioner considers that only limited documentation has been submitted by the Appellant in support of its appeal.

37. The Commissioner notes that the Appellant is a company registered with the CRO and the Commissioner notes the documentation submitted by the Appellant from the CRO, including the documentation relating to the change of name of the Appellant. The Commissioner does not consider that this is itself supportive of the Appellant's taxable supplies in the State. It was not in dispute herein that the Appellant was a company incorporated in the State. Rather, as the Respondent submitted, the issue was that the Appellant is managed and controlled from elsewhere, the Director of the Appellant is non-resident, the Appellant is not established in the State (an invoice for the amount of €300 per annum for rent is not sufficient evidence), the Appellant has no physical or technical resources in the State and there are no employees on the payroll. The Commissioner will now set out her consideration of the relevant documentation submitted by the Appellant in support of its appeal.
38. The Commissioner has considered documentation relating to the Consulting Agreement with [REDACTED] dated "1-2023 DD 1.3.2023". The Commissioner notes that the company is located in the USA. The evidence of the Appellant's Agent was that the Appellant engaged [REDACTED] as a sub-contractor to provide design services to the Appellant. In addition to the Consulting Agreement, the Commissioner has considered both Addendum 1 and 2 to the [REDACTED] Consulting Agreement. The Commissioner notes that Addendum 1 is effective from 1 March 2023 and Addendum 2 is effective from 1 May 2024. Moreover, the Commissioner notes that Addendum 1 makes reference to a monthly fee of 14,500.00 USD and Addendum 2 to the monthly fee of 3,950.00 USD. Both documents stated that the fees are to be paid monthly.
39. The Commissioner notes the "Revolut Business" monthly statement dated 1 November 2024, submitted by the Appellant which purports to show a payment on 7 October 2024, to [REDACTED] in the amount of €3,629.30. The Commissioner further notes the payment in from [REDACTED] in the amount of €175,759. The Appellant's Agent gave evidence that this was another sub-contractor that the Appellant had engaged. The Commissioner notes that no other documentary evidence was submitted by the Appellant in support of [REDACTED] being a sub-contractor or that it contributed to the Appellant's taxable supplies in the State. In this instance and having considered this documentation, the Commissioner is satisfied that the Appellant has not produced evidence that it has carried out economic activity in the State. The Commissioner is satisfied that the documentation is sparse and relates to a period in early 2023 and May and October 2024, rather than any consistent periods of time which might illustrate ongoing payments or business engagements that might support there being taxable economic activities. The furnishing of one consulting agreement from 2023, two related Addenda and a statement

from a Revolut business account for a one-month period, does not provide objective evidence of economic activity. Therefore, the Commissioner finds that the documentation submitted does not establish on balance that the Appellant is an “accountable person” as defined by section 5 VATCA 2010 and is thus entitled to registration in accordance with section 65(1) VATCA 2010.

40. The Commissioner has also considered the documentation submitted by the Appellant in relation to the Appellant’s registered business address and the rental agreement with the company of the Appellant’s Agent. The Appellant submitted that it has a registered business address, and since 2 January 2025, it has employed an Administrative Assistant, and it matters not that the address is at the location of the company of the Appellant’s Agent, which provides bookkeeping and accountancy services to the Appellant. The Commissioner notes that the rental agreement related to the rental of office desk space and the invoice was dated 8 February 2024, for the amount of €300.00 (exclusive of VAT) for the period 1 January 2023 to 31 December 2023. As stated, the registered business address of the Appellant is also the business address of the Appellant’s Agent.
41. Moreover, the Commissioner has considered the evidence adduced that the Appellant has engaged an employee and the Commissioner has considered the contract of employment submitted by the Appellant. It is apparent from the contract of employment that is commenced on 2 January 2025 and relates to the employment of an Administrative Assistant. The contract is a fixed term contract due to expire on 1 January 2026, the role is a part time role and the contract is non-specific in terms of the working hours. In this context, the Commissioner notes the payroll slip submitted by the Appellant which purports to show that the Appellant paid the amount of €76.36 per week to the employee. During cross-examination of the Appellant’s Agent, he accepted that the employee was also an employee of the company of the Appellant’s Agent.
42. Having considered the totality of the documentation submitted in this appeal by the Appellant, the Commissioner is satisfied that the Appellant has not objectively shown that it is engaged in taxable supplies in the State, in accordance with section 5 VATCA 2010 nor was any evidence submitted by the Appellant to show that the Appellant was engaged in intra-community acquisitions, in accordance with section 9 VATCA 2010. The Commissioner is satisfied that the evidence adduced of the Appellant’s business premises and its employee is not evidence that supports the Appellant being engaged in taxable supplies in the State.
43. In addition, the Commissioner considers that the [REDACTED] Consulting Agreement dated 2023 (including Addendum 1 and 2) and a “Revolut Business” account payment for

October 2024 to [REDACTED] does not establish taxable supplies in the State to conclude that the Appellant is an “accountable person” in accordance with section 5 VATCA 2010. Consequently, the Commissioner is satisfied that no sufficient documentary evidence or other objective evidence has been submitted to demonstrate that the Appellant is engaged in activity that is liable to VAT. Taken together these documents are not, in the Commissioner’s view, adequate evidence confirming the existence of economic activity on the part of the Appellant, such that it should be regarded as a taxable person.

44. The Commissioner considers that the Respondent, quite fairly, asked the Appellant to provide additional material that might substantiate the claim that it was engaged in economic activity from within the State. If the company was as contended for, engaged in taxable activity, then it could provide contracts and invoices that confirmed its legitimate business activities within the State and/or EU to the Respondent. However, none were furnished to the Respondent or the Commissioner in this appeal. Moreover, the argument that the Appellant was registered for VAT and should therefore remain registered for VAT is misplaced. Section 65(2A) VATCA 2010 provides a power to the Respondent to cancel a VAT registration.

Conclusion

45. It is the Appellant who bears the burden of proving it is a taxable person. Unless the Appellant succeeds in so doing, the Appellant cannot be said to fall within the definition of an “accountable person” under VATCA 2010, entitled to registration in accordance with section 65 VATCA 2010. The Commissioner is satisfied that the Appellant has not met the burden of proof to demonstrate that the Respondent’s refusal to grant it a VAT registration was incorrect for the reasons set out in this Determination. The consequence of the Appellant’s failure to satisfy the burden of proving that it is a taxable person engaged in economic activity in the State is that the appeal against the Respondent’s refusal must fail.
46. However, the Commissioner notes the Respondent’s comment that should the Appellant provide sufficient evidence of trade at any point in the future it is open to the Appellant to reapply for VAT registration. The Commissioner suggests that the Appellant consider whether there is any additional evidence demonstrating that it is an “accountable person” that it could submit to the Respondent in order to support a new application. The Commissioner wishes to emphasise in the clearest terms that nothing in this Determination precludes the Appellant from making a new application to the Respondent for VAT registration.

Determination

47. As such and for the reasons set out above and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the Respondent was correct to refuse the Appellant's application for a VAT registration, as the Appellant has not demonstrated that it is an "accountable person" in accordance with section 5 VATCA 2010.
48. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties.
49. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) TCA 1997.

Notification

50. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ(5) and section 949AJ(6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ(6) TCA 1997. This notification under section 949AJ TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

51. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
8 April 2025

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.