AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

15TACD2026

Between

[redacted]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [redacted] ("the Appellant") against an assessment to value-added tax ("VAT") raised against it by the Revenue Commissioners ("the Respondent") in the amount of €9,074,974.53 for periods from 1 January 2021 to 31 December 2022.

2. The assessment was raised on the basis that the Appellant was not entitled to apply the Margin Scheme on the importation of second-hand mobile phones and other electronic goods into the State.

Background

3. The Appellant is a company resident in the State that is engaged in the sourcing and supply of mobile telephones and similar electronic goods. It purchases all of its goods from [redacted] which is located in the United Kingdom ("UK").

4. The Respondent commenced an audit into the Appellant in 2019. On 21 November 2024, it issued a findings letter to the Appellant which stated that the Appellant did "*not qualify under the VAT Margin Scheme for the periods from 01 January 2021 to 31 December 2022, and VAT at 23% is due on all sales. As demonstrated from VAT computations received on the 29 March 2024, [the Appellant] applied the Margin Scheme on all sales to customers in the State during these periods. Despite requests made as part of the audit queries, supporting documentation was not provided by [the Appellant] to demonstrate the entitlement to apply the Margin Scheme*."

5. On 17 December 2024, the Respondent issued a notice of assessment to the Appellant which stated that the total amount of VAT owed for periods from 1 January 2021 to 31 December 2022 was €9,175,658. As the Appellant had already paid €100,683.47, the notice stated that the total amount of VAT outstanding was €9,074,974.53.

6. On 8 January 2025, the Appellant appealed against the assessment to the Commission. It contended that [redacted] supplied goods to the Appellant from Northern Ireland ("NI") which was treated as part of the European Union ("EU") for the purposes of VAT, and that therefore it was entitled to apply the Margin Scheme. The Respondent stated that [redacted] was not registered for VAT in NI for the years under appeal, and that the documentation supplied to it by the Appellant did not support its contention that it was entitled to apply the Margin Scheme.

7. The appeal proceeded by way of a private hearing on 25 November 2025. [redacted]

Legislation and Guidelines

8. Article 2 of Directive 2006/112/EC ("the VAT Directive") states *inter alia* that:

   "*1. The following transactions shall be subject to VAT:*

   (a) the supply of goods for consideration within the territory of a Member State by a taxable person acting as such;

   (b) the intra-Community acquisition of goods for consideration within the territory of a Member State…

   (c) the supply of services for consideration within the territory of a Member State by a taxable person acting as such;

   (d) the importation of goods."

9. Article 4 of the VAT Directive states *inter alia* that:

   "*In addition to the transactions referred to in Article 3, the following transactions shall not be subject to VAT:*

   (a) the intra-Community acquisition of second-hand goods, works of art, collectors' items or antiques, as defined in points (1) to (4) of Article 311(1), where the vendor is a taxable dealer acting as such and VAT has been applied to the goods in the Member State in which their dispatch or transport began, in accordance with the margin scheme provided for in Articles 312 to 325".

10. Article 20 of the VAT Directive states *inter alia* that:

    "*'Intra-Community acquisition of goods' shall mean the acquisition of the right to dispose as owner of movable tangible property dispatched or transported to the person acquiring the goods, by or on behalf of the vendor or the person acquiring the goods, in a Member State other than that in which dispatch or transport of the goods began…"*

11. Article 200 of the VAT Directive states that "*VAT shall be payable by any person making a taxable intra-Community acquisition of goods*."

12. Article 226 of the VAT Directive states *inter alia* that:

"*Without prejudice to the particular provisions laid down in this Directive, only the following details are required for VAT purposes on invoices issued pursuant to Articles 220 and 221:*

(1) the date of issue;

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

(3) the VAT identification number referred to in Article 214 under which the taxable person supplied the goods or services;

(4) the customer's VAT identification number, as referred to in Article 214, under which the customer received a supply of goods or services in respect of which he is liable for payment of VAT, or received a supply of goods as referred to in Article 138;

(5) the full name and address of the taxable person and of the customer;

(6) the quantity and nature of the goods supplied or the extent and nature of the services rendered;

(7) the date on which the supply of goods or services was made or completed or the date on which the payment on account referred to in points (4) and (5) of Article 220…

(14) where one of the special arrangements applicable to second-hand goods, works of art, collectors' items and antiques is applied, the mention 'Margin scheme — Second-hand goods'; 'Margin scheme — Works of art' or 'Margin scheme — Collector's items and antiques' respectively…"

13. Article 313 of the VAT Directive states *inter alia* that:

"*1. In respect of the supply of second-hand goods…, Member States shall apply a special scheme for taxing the profit margin made by the taxable dealer, in accordance with the provisions of this Subsection*."

14. Article 314 of the VAT Directive states that:

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

(a) a non-taxable person;

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

(c) another taxable person, in so far as the supply of goods by that other taxable person is covered by the exemption for small enterprises provided for in Article 284 and involves capital goods;

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

15. Article 315 of the VAT Directive states that:

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

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

16. Section 3 of the Value-Added Tax Consolidation Act 2010 as amended ("VATCA 2010") states that:

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

(a) the supply for consideration of goods by a taxable person acting in that capacity when the place of supply is the State;

(b) the importation of goods into the State;

(c) the supply for consideration of services by a taxable person acting in that capacity when the place of supply is the State;

(d) the intra-Community acquisition for consideration by an accountable person of goods (other than new means of transport) when the acquisition is made within the State;

(e) the intra-Community acquisition for consideration of new means of transport when the acquisition is made within the State."

17. Section 9(1) of the VATCA 2010 states that:

"*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."

18. Section 24(1) of the VATCA 2010 states *inter alia* that:

"*In this Act "intra-Community acquisition", in relation to goods, means the acquisition of –*

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

(i) supplied by –

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

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

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

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

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

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

19. Section 84 of the VATCA 2010 states *inter alia* that:

"*(1) Every accountable person shall, in accordance with regulations, keep full and true records of all transactions which affect or may affect his or her liability to tax and entitlement to deductibility.*

(2) Every person (other than an accountable person) who supplies goods or services in the course or furtherance of business shall keep all invoices issued to him or her in connection with the supply of goods or services to him or her for the purpose of such business.

(3) The following:

(a) records kept by a person pursuant to this Chapter or section 124(7) and that are in the power, possession or procurement of the person;

(b) any books, invoices, copies of customs entries, credit notes, debit notes, receipts, accounts, vouchers, bank statements or other documents whatsoever which relate to the supply of goods or services, the intra-Community acquisition

of goods, or the importation of goods by the person and that are in the power, possession or procurement of the person;

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

(d) any linking documents that are in the power, possession or procurement of the person,

shall, subject to subsection (4) and sections 91C(7) and 91E(7) and notwithstanding any other law, be retained in that person's power, possession or procurement for a period of 6 years from the date of the latest transaction to which the records, linking documents, invoices, or any of the other documents, relate…"

20. Section 87 of the VATCA 2010 states *inter alia* that:

"(1) In this section …

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

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

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

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

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

(aa) by an accountable person who was entitled to deduct tax in accordance with section 59(2)(d) in respect of a second-hand good, being a qualifying vehicle, as defined in section 59(1),

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

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

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

"taxable dealer"

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

(b) includes a person supplying financial services of the kind specified in paragraph 6(1)(e) of Schedule 1 who acquires or purchases margin scheme goods for the purpose of the supply thereof as part of an agreement of the kind referred to in section 19(1)(c)

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

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

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

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

21. Regulation 20(2) of the Value-Added Tax Regulations 2010 (SI 639/2010) states that:

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

(a) the date of issue of the invoice,

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

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

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

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

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

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

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

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

(i) the unit price exclusive of tax,

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

(iii) the consideration exclusive of tax,

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

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

(ii) the rate of tax chargeable,

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

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

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

and

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

22. Article 8 of the Protocol on Ireland/Northern Ireland ("NI Protocol") states *inter alia* that "*The provisions of Union law listed in Annex 3 to this Protocol concerning goods shall apply to and in the United Kingdom in respect of Northern Ireland*." Annex 3 includes the VAT Directive.

23. The Respondent's Tax and Duty Manual guidance on the Margin Scheme states *inter alia* that:

"*The margin scheme was introduced as a means of reducing the likelihood of double taxation in the context of the sale of second-hand goods.*

It operates by allowing dealers in certain second-hand goods, works of art, antiques and collectors' items to pay VAT on the difference between the sale price and the purchase price of the goods.

The scheme is at the option of the dealers concerned. If the dealer chooses not to operate the margin scheme then the normal VAT rules apply.

[…]

11. <u>Goods bought from other Member States of the EU</u>

Where a dealer sells margin scheme goods that were bought from the persons mentioned in paragraph 6 above in another Member State she or he should apply the margin scheme in the same way as if the goods were bought in the State i.e. VAT is payable on the dealer's margin and there is no VAT deductibility. If the goods have been bought from another dealer operating the margin scheme in another Member

State the normal VAT rules in relation to the intra-Community acquisition of goods do not apply. Any VAT included in the price charged in the other Member State is not deductible and would not, as a general rule be shown separately on the invoice."

24. The UK Government's guidance on registration for VAT [1] includes the following information:

"***Selling or moving goods between Northern Ireland and the EU***

You need a VAT registration number starting with XI to trade under the Northern Ireland Protocol…

Tell HMRC you're eligible

Use this service to tell HMRC you're eligible.

You'll need:

- *the sign in details you used when you registered for VAT*
- *your VAT registration number*
- *the name of your business*

After you tell HMRC

You'll get an email from HMRC to confirm that you've been recorded as operating under the Northern Ireland Protocol.

After you get the email, you'll need to start using the XI prefix before your usual VAT registration number - for example, XI 123456789 instead of GB 123456789.

Using your XI VAT registration number

You must use your XI VAT registration number on all documentation when communicating with EU customers or suppliers (for example, on invoices)…"

Evidence

[redacted] – *Secretary of the Appellant*

25. The witness had submitted a witness statement which she stated she adopted as her evidence in chief. The statement included the following paragraphs:

[1] https://www.gov.uk/register-for-vat/selling-or-moving-goods-between-northern-ireland-and-the-eu

"*1. Our business model is straightforward: we purchase second-hand goods from* [redacted]*, a long-established supplier operating in Northern Ireland, and resell them to Irish retailers. The goods are shipped from* [redacted] *Northern Ireland warehouses— namely* [redacted] *and* [redacted]*—directly to our storage facility at* [redacted]*. At no stage did the goods transit through Great Britain. No import duties or customs declarations were ever required, as these movements are intra-EU acquisitions under the Northern Ireland Protocol (as updated by the Windsor Framework).*

2. [redacted] *is incorporated in England and Wales (Company No.* [redacted]*) and has been VAT-registered in the UK under* [redacted] *since* [redacted] *2013. With effect from 1 January 2021, pursuant to the Northern Ireland Protocol, HM Revenue & Customs ("HMRC") automatically recognised* [redacted] *as a Northern Ireland trader for EU purposes, issuing it with an XI EORI number (*[redacted]*). The allocation was confirmed by HMRC by email dated 28 January 2021.*

3. Under HMRC's published guidance, the grant of an XI EORI simultaneously confers recognition of the existing VAT registration with the prefix "XI", giving [redacted] *the valid EU-recognised VAT number* [redacted] *effective from 1 January 2021. VIES validation confirms this number as valid. The administrative distinction between GB and XI numbers does not alter the legal substance: the company was and remains a Northern Ireland trader for EU VAT purposes*."

26. On cross examination, the witness stated that she understood that [redacted] had two bank accounts, a Lloyds bank account in London and a Natwest account in Birmingham. She stated that the Appellant made payments to whichever bank account it was instructed to by [redacted]. She stated that [redacted] was responsible for delivering the stock to the Appellant. She agreed that the Appellant did not have any visibility of what happened at the level before [redacted].

27. She stated that [redacted] told the Appellant that it had a valid NI VAT registration during the years under appeal: "*The confirmation of EORI number was what we took as confirmation from them to say that they are VAT registered, they are - they have the VAT. We kind of went on the words from* [redacted]*, yes*." She stated that the invoices provided by [redacted] were in error because they had not updated their template to include their NI VAT number. She stated that when the Respondent advised

the Appellant of the issue, the Appellant asked [redacted] for updated invoices. This was around April 2024.

28. The witness stated that she was not sure when [redacted] applied for a NI VAT registration. She stated that when the invoices were originally issued the Appellant "*just paid no attention to what details* [redacted] *had on their invoices.*" She agreed that the Appellant turned its mind to the issue after it was audited. She agreed that the amended invoices received in April 2024 had a different bank account to the original invoices. She stated that the Appellant had not noticed this at the time as "*we were focusing on what Revenue were required for us to present on invoices, which was the Northern Ireland VAT number and their address*." She accepted that this was an oversight.

29. The witness agreed that she did not have a detailed oversight of the chain of supply prior to the goods reaching the Appellant. She stated that "*I was not analysing in as much detail as I should have been*." She stated that, after the Respondent identified issues with the second set of invoices, the Appellant asked [redacted] to supply a further, third set, which were provided to the Respondent in November 2024. She stated that this set included [redacted] NI VAT number. She stated that "*I believe they had their EORI number before that and with, communicating with Revenue they specified EORI is not XI VAT number, this is when we got back to* [redacted] *to say that you need to include the VAT number on, your VAT number on*."

30. She agreed that the third set of invoices had a different bank account (Lloyds) to the second set (Natwest), and was the same as the first set (Lloyds). She stated that she had not noticed this at the time. She stated that the proof of delivery documents ("PODs") provided to the Respondent had come from [redacted]. She stated that the Respondent informed the Appellant that the original PODs did not have [redacted] NI VAT number, so the Appellant asked [redacted] to send amended PODs. She agreed that she could not explain the inconsistencies in [redacted] documentation.

31. On re-examination, the witness stated that she had asked the Respondent for guidance on what the invoices and PODs needed to state but did not receive any guidance. She stated that after Brexit, [redacted] supplied goods to the Appellant from Northern Ireland.

Mr James Power – officer of the Respondent

32. The witness was called on behalf of the Respondent. He stated that the Respondent originally received 20 invoices from the Appellant ("the first set"). He stated that these included [redacted] EORI number. This was an Economic Operator number that

facilitated trade between EU Member States, which included NI under the NI Protocol. He stated that it was a customs and excise reference number and was separate to a VAT number. He stated that it was accepted that [redacted] EORI number was genuine and correct.

33. He stated that the first set of invoices included the wording "*Second-hand goods sold in VAT Margin Scheme*." The Appellant subsequently submitted a second set of six invoices ("the second set"). These did not include the wording above but instead stated that "*Customer to pay output tax of £[amount] to HMRC*". A third set of invoices ("the third set") was submitted in November 2024. These included [redacted] NI VAT number for the first time. The witness stated that the Respondent did not know when [redacted] obtained a NI VAT number, but believed that it was in the second half of 2024.

34. The witness stated that the PODs submitted to the Respondent did not include a NI VAT number. He also stated that the shipper address differed from that provided in a letter from the shipping company. He stated that in the documentation submitted by the Appellant for the hearing the PODs had a VAT number but did not in the PODs provided to the Respondent. He stated that the Respondent was not alleging that the Appellant was responsible for the changes. There were further delivery documents submitted by the Appellant from "[redacted] that had not been provided to the Respondent prior to the appeal.

35. On cross-examination, the witness stated that an EORI number was granted by HMRC and was not the same as a VAT number. He stated that [redacted] did not have a NI VAT registration for the years under audit: "*So from the 1st of the 1st, 2021 there was no VAT registration for* [redacted]" He stated that prior to January 2021 [redacted] had a UK VAT number, but this did not continue for NI after the UK left the EU.

36. The witness stated that the delivery documents provided to the Respondent during the audit suggested that the goods were being supplied from NI. He stated that the original PODs did not have invoice or VAT numbers on them, and that "*the Appellant was using them as an effort to show that the goods were supplied by their supplier with a VAT registration in Northern Ireland*."

37. The witness did not agree that the Respondent refused to provide assistance to the Appellant, and stated that "*It's not Revenue's position to advise a taxpayer to amend documentation in order to satisfy requirements of tax legislation*." He stated that the PODs were supplied to the Respondent in 2024. He stated that the Respondent did not engage with [redacted]. He stated that it had requested HMRC to provide information regarding [redacted] NI VAT status but had not received a reply.

38. On re-examination, the witness stated that the VIES gateway was a system available to tax authorities to check a company's VAT status. The Europa tracker system was open to the public to check a VAT status.

Submissions

Appellant

39. In written submissions, the Appellant stated that the transactions with [redacted] constituted intra-EU acquisitions and that the Margin Scheme applied to them. It stated that the Respondent's assessment was based on "*an administrative invoicing error*" rather than substantive non-compliance with VAT laws. It stated that [redacted] had a valid NI VAT registration during the years under appeal and that the goods were transported directly from NI to the State.

40. In oral submissions, the Appellant's solicitors stated that there was no evidence to support the Respondent's contention that [redacted] did not have a valid NI VAT registration for the years under appeal. The Respondent had misunderstood the VAT system under the NI Protocol. Documentation submitted by the Appellant showed that the goods had been transported from NI to the Appellant. There was no evidence to show that the goods were transported from Great Britain.

41. The Respondent had focused on the form rather than the substance of the transactions, which was incorrect; *Collée v Finanzamt Limburg an der Lahn* C-146/05 ("*Collée*). The XI prefix was not a separate VAT registration regime but was a geographic identifier applied to an existing UK VAT registration number. There was no requirement for a business to apply for a separate NI VAT number. [redacted] had been allocated an XI EORI by HMRC on 28 January 2021, which demonstrated that HMRC was satisfied that [redacted] qualified to operate under the NI Protocol.

42. The Appellant had submitted multiple documents showing that the goods from [redacted] were dispatched from NI. Where a trader acts in good faith, it should not be penalised for errors outside its control; *Teleos & Ors* C-409/04 ("*Teleos*"). Here the Appellant relied on independent logistic records, PODs and supply confirmations provided by third party carriers. It is the real economic substance of the transactions which determines how VAT should be applied; *MEO – Serviços de Comunicações e Multimédia SA v Autoridade Tributária e Aduaneira* C-295/17 ("*MEO*").

43. The Appellant also relied on a letter from [redacted] which stated that [redacted] engaged it in advance of 1 January 2021 to provide a logistics and warehouse

facility on [redacted] behalf at [redacted]. [redacted] confirmed that it dispatched the goods to the Appellant from NI. The Appellant relied on this arrangement, and was able to demonstrate a consistent account of compliance with the NI VAT regime. The Respondent's attempt to apply VAT on the basis that the goods were dispatched from Great Britain was an artificial construct and not in compliance with the jurisprudence of the CJEU; *Boehringer Ingelheim RCV GmbH & Co. KG Magyarországi Fióktelepe* C-717/19 ("*Boehringer*").

44. It was accepted that in the first instance the burden of proof lay on the Appellant. But where the Appellant had produced evidence supporting its case, and the Respondent had not, the Commissioner should prefer the former's version of events. Additionally, the Respondent's engagement with the Appellant had been procedurally flawed and unfair.

45. In replying submissions, the Appellant's solicitors submitted that the Appellant's witness had stated in evidence that she understood the goods had originated from NI. The Appellant accepted that there were mistakes in its documentation, but these errors were subsequently corrected. No evidence had been supplied by the Respondent to show that the goods had come from Great Britain.

Respondent

46. In written submissions, the Respondent stated that the Appellant had not established that it qualified under the Margin Scheme. It appeared that the VAT registration held by [redacted] for the relevant period related to England and Wales rather than NI, and that therefore the goods did not qualify under the Margin Scheme. As a result, there had been an underpayment of VAT of €3,686,578 for 2021 and of €5,393,396 for 2022.

47. In oral submissions, Senior Counsel for the Respondent stated that the Appellant's witness [redacted] had honestly stated in evidence that she had not considered the red flags regarding the status of [redacted] at the relevant time. There was nothing in the first set of invoices which indicated that the goods had been dispatched from NI. The final question during her re-examination invited her to say that she knew the goods had come from NI, but there was nothing in the documents before her at that time to support that view.

48. While the Appellant had criticised the Respondent, it would have been open to the Respondent to raise an assessment on the basis of the first set of invoices. However, [redacted] then generated the second set of invoices, which raised more questions than they answered. Then a third set of invoices was produced. So it was not correct of

the Appellant to claim that its documentation was consistent. The PODs were produced to the Respondent late in the day.

49. There was a statutory duty on the Appellant to maintain accurate records, including invoices. There were also requirements under Irish and EU law regarding invoices for Margin Scheme goods that the Appellant and [redacted] had not complied with. One of these was that it was necessary for a NI trader to have a separate VAT registration, notwithstanding the submissions on behalf of the Appellant. These were not just technical shortcomings as alleged by the Appellant, but went to the substance of the transactions.

50. In response to a question from the Commissioner, counsel stated that it was the Respondent's position that the absence of a valid NI VAT number for [redacted] was sufficient in itself to disentitle the Appellant to apply the Margin Scheme. Strict compliance with the requirements of section 87 of the VATCA 2010 and SI 639/2010 was required.

Material Facts

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

    51.1. The Appellant is an Irish-registered company engaged in the buying and selling of mobile telephones and similar electronic goods. It is registered for VAT in the State.

    51.2. The Appellant sources all of its goods from [redacted], which is located in the UK. Prior to the UK leaving the EU, [redacted] supplied goods to the Appellant from Great Britain.

    51.3. The Appellant claimed that, subsequent to the UK leaving the EU, [redacted] supplied goods to it from Northern Ireland, and that therefore they qualified under the Margin Scheme for the supply of second-hand goods. However, there is insufficient evidence before the Commissioner to enable him to determine from where the goods were dispatched.

    51.4. The Appellant applied the Margin Scheme to the goods it received from [redacted]. The Respondent subsequently carried out an audit of the Appellant and concluded that it was not entitled to apply the Margin Scheme during 2021 and 2022. It raised an assessment against the Appellant for VAT periods from 1 January 2021 to 31 December 2022 in the total amount of €9,074,974.53.

    51.5. [redacted] was not registered for VAT in NI during 2021 and 2022.

51.6. The Appellant provided three sets of invoices that it received from [redacted] for the relevant transactions during 2021 and 2022. However, the second and third sets of invoices were sourced from [redacted] in 2024 on foot of queries from the Respondent. Therefore, only the first set of invoices were before the Appellant during 2021 and 2022.

51.7. The first set of invoices stated *inter alia* that: [redacted] address was [redacted]; that its VAT number was [redacted]; that payment should be made to a Lloyds bank account; and that it concerned "*Second hand goods sold under Vat Margin Scheme*."

51.8. The number stated to be a VAT number on the first set of invoices was not actually a VAT number, but was [redacted] EORI number.

51.9. The second set of invoices provided the same alleged VAT number as on the first set of invoices. They also stated that [redacted] address was [redacted], and that payment should be made to a Natwest bank account. The remark that the invoice concerned "*Second hand goods sold under Vat Margin Scheme*" was removed, and replaced with "*Customer to pay output tax of £[amount] to HMRC (VAT ACT 1994. SECTION 55A APPLIES).*"

51.10. The third set of invoices provided two VAT numbers, including the NI VAT number [redacted]. It provided the same address as the second set. It included the remark "*Second hand goods sold under Vat Margin Scheme*" and removed the remark from the second set regarding the customer paying output tax. It also stated that payment should be made to the Lloyds bank account.

51.11. The Appellant provided proof of delivery documents ("PODs") that it received from [redacted] to the Respondent. It was unclear when the Appellant received the first set of PODs from [redacted], but it seemed likely that were provided to the Appellant after the years under appeal. The first set of PODs did not include a VAT number for [redacted] or linking invoice numbers. When this was pointed out by the Respondent, the Appellant procured additional PODs from [redacted].

51.12. The Appellant had also sought to rely on additional documentation to support its claim that it was entitled to apply the Margin Scheme, including delivery documentation from "[redacted] and [redacted] and a letter from [redacted] to [redacted] allegedly dated 23 November 2020. No witness from any of these third parties attended the hearing to prove the veracity of the documentation. In any event, it seemed that all of this documentation had been provided by the Appellant to the Respondent on foot of the audit, or in the course of the appeal before the Commission, and it did not appear that any of these documents were considered by the Appellant during the relevant years of 2021 and 2022.

51.13. Therefore, the only relevant documentation before the Appellant during the years under appeal was the first set of invoices. These provided an incorrect VAT number for [redacted] and also stated that [redacted] was located in Great Britain and not NI. Therefore, on their face they demonstrated that the Appellant was not entitled to operate the Margin Scheme. Notwithstanding this, the Appellant made no attempts to confirm the correct position with [redacted] until after the years under appeal on foot of the Respondent's audit.

Analysis

52. The burden of proof rests on the Appellant to show that the assessment raised by the Respondent against it was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49 ("*Menolly Homes*"), Charleton J stated at paragraph 22 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.*"

53. This appeal concerns the application of the Margin Scheme for second-hand goods on foot of the UK's departure from the EU in 2021. The Margin Scheme operates by allowing dealers in certain second-hand goods to pay VAT on the difference between the sale price and the purchase price of the goods. The scheme is at the option of the dealers concerned. It is not in dispute in this appeal that the Northern Ireland Protocol in effect extends the scope of the VAT Directive to businesses in NI that are appropriately qualified in respect of the supply of goods.

54. The Appellant herein is an Irish-registered company that deals in mobile phones and other electronic goods. It sources all of its goods from [redacted] in the UK, but claims that in January 2021 [redacted] set up a distribution hub in NI that allowed it to continue to trade with the Appellant on an intra-EU basis, and that therefore the Appellant was entitled to apply the Margin Scheme to the goods, notwithstanding the departure of the UK from the EU on 1 January 2021.

55. There are a number of matters that fall to be considered in the determination of this appeal. The first issue is from where the Appellant sourced its goods in 2021 and 2022. While the Appellant has submitted evidence that goes to show the goods from NI, there is conflicting evidence which suggests they came from Great Britain; e.g. the [redacted] address on the first set of invoices. Unfortunately, no oral evidence was heard from a representative of [redacted], or any of the other third parties upon which the Appellant has sought to rely, including [redacted]. While documentation was submitted that purported to originate from these third parties, nobody attended the hearing to prove the documentation or to vouch for their accuracy. The Commissioner considers that this seriously diminishes any reliance that he could put on the contents of any of these third-party documents.

56. The Commissioner is not satisfied that the evidence before him is sufficient to enable him to determine with any certainty from where [redacted] dispatched goods. In particular, given the conflicting documentary evidence, he considers that it was necessary to hear direct evidence from a representative of [redacted] itself. The Appellant's witness [redacted] fairly admitted that she could not explain the inconsistences in [redacted] documents, and the Commissioner considers that any evidence from the Appellant regarding [redacted] activities could at most constitute hearsay evidence.

57. The Appellant did submit a witness statement from [redacted], who stated that he was the director and manager of [redacted] and who claimed that [redacted] "*had continuously operated in Northern Ireland since before 1 January 2021*". However, the Appellant did not seek the permission of the Commission to allow this statement to constitute [redacted] evidence, nor did it request that [redacted] be permitted to give evidence remotely. In the circumstances, given the inability of the Respondent to test the evidence of [redacted] by way of cross-examination, the Commissioner considers that little weight can be given to the contents of [redacted] statement.

58. Therefore, no finding is made regarding the place of origin of the goods supplied by [redacted] to the Appellant during the years under appeal. Given that the burden of proof rests on the Appellant to demonstrate that it satisfied the requirements of the Margin Scheme, the Commissioner considers that this in itself is sufficient to conclude that its appeal cannot succeed. However, for the purposes of this determination, the Commissioner will now proceed on the assumption that the goods from [redacted] did indeed originate from NI.

59. Article 314 of the VAT Directive sets out the four categories of persons who may supply goods to a "taxable dealer" for the purposes of the Margin Scheme. The Appellant did not

clarify which category it contended that [redacted] came under. However, it is clear that it is not alleged that [redacted] was a non-taxable person (category (a)), and the Commissioner considers that categories (b) and (c) are not applicable in this instance. Therefore, it appears that [redacted] must come within category (d), i.e. "*(d) another taxable dealer, in so far as VAT has been applied to the supply of goods by that other taxable dealer in accordance with this margin scheme*." Furthermore, section 87 of the VATCA 2010 defines a "taxable dealer" as *inter alia* an "*accountable person*".

60. Therefore, the Commissioner considers that it was necessary for [redacted] to be registered for VAT for it to participate in the Margin Scheme. Indeed, the Appellant has not disputed that this is correct. Rather, its argument is that [redacted] had a NI EORI number and therefore automatically was registered for VAT in NI in 2021 and 2022.

61. The Respondent, through its witness Mr Power, accepted that [redacted] had a valid NI EORI number in 2021 and 2022. An EORI number (Economic Operators Registration and Identification) is an ID for businesses trading goods into or out of the EU. The Respondent's witness stated that an EORI number concerned customs and was not the same as a VAT registration.

62. The Appellant's solicitors submitted that HMRC's published guidance provided that the granting of a NI EORI number simultaneously and automatically extended a UK business's VAT registration to NI. This was also stated in [redacted] witness statement and in [redacted] witness statement, although she did not appear to stand over this claim in her oral evidence. However, no quotation from HMRC guidance was provided to substantiate this claim, nor was any other authority or precedent referenced.

63. In its book of authorities, the Appellant provided a copy of HMRC's guidance on registration for VAT, extracts from which are set out at paragraph 24 above. The Commissioner is satisfied that these extracts do not state that the granting of a NI EORI number automatically grants a VAT registration, but rather provide that:

> "*You need a VAT registration number starting with XI to trade under the Northern Ireland Protocol… You'll get an email from HMRC to confirm that you've been recorded as operating under the Northern Ireland Protocol. After you get the email, you'll need to start using the XI prefix before your usual VAT registration number - for example, XI 123456789 instead of GB 123456789.*"

64. Therefore, the Commissioner does not accept that the granting of an EORI number automatically results in the granting of a NI VAT registration. The evidence of the Respondent was that [redacted] did not have a NI VAT registration during 2021 and

2022, and did not acquire one until sometime in 2024. The Appellant did not provide any countervailing evidence to show that [redacted] did have a VAT registration during the years under appeal. It queried the evidence of the Respondent, and noted that no written output from the Respondent's VIES check had been provided. The Commissioner is of the view that such written confirmation of [redacted] VAT status would have been helpful in clarifying the situation.

65. However, he is satisfied that the burden of proof rests on the Appellant to show that [redacted] was registered for VAT in NI during the years under appeal. No such evidence has been provided, apart from a bald assertion without any authority that the granting of an EORI number automatically grants a VAT registration. In the circumstances, the Commissioner is satisfied that the evidence before him demonstrates that [redacted] was not registered for VAT in NI in 2021 and 2022, and he finds accordingly.

66. Consequently, he is satisfied that, as a matter of law, the Appellant was not entitled to apply the Margin Scheme, even if the goods from [redacted] were dispatched from NI as it claims. Furthermore, he is satisfied that the documentation upon which the Appellant seeks to rely does not demonstrate an entitlement to apply the Margin Scheme.

67. As outlined in the Material Facts section above, the Appellant submitted a considerable amount of documentation to attempt to justify its application of the Margin Scheme to its goods. However, as the Commissioner has found that the Appellant was not entitled in law to apply the scheme, he is satisfied that the only documents of any substantive relevance to this appeal are those that were in the possession of the Appellant at the time that the transactions took place, i.e. in 2021 and 2022. The evidence suggests that the only relevant documents are the first set of invoices, as it seems that all subsequent documentation was submitted to the Respondent during the audit in an attempt by the Appellant, to "mend its hand" and demonstrate compliance with the Margin Scheme. However, as it never was in compliance with requirements of the Margin Scheme during 2021 and 2022, the Commissioner is satisfied that this was fundamentally a futile exercise.

68. While it was not cited by either party, the Commissioner considers the judgment of the CJEU in *UAB „Litdana" v Valstybinė mokesčių inspekcija prie Lietuvos Respublikos finansų ministerijos* C-624/15 ("*Litdana*") to be of direct relevance to this appeal. That case concerned the circumstances in which a tax authority can disentitle a taxpayer from applying the Margin Scheme because of incorrect information on the VAT invoices for the goods supplied. In its judgment, the CJEU stated *inter alia* that:

"*23 As a preliminary point, it should be noted that the scheme for the taxation of the profit margin made by the taxable dealer on the supply of second-hand goods, such as those at issue in the main proceedings, constitutes a special arrangement for VAT, derogating from the general scheme of the VAT Directive. Consequently, Article 314 of that directive, which identifies the cases in which this special arrangement is to be applied, must be construed narrowly…*

29 It follows from the order for reference that the wording on the invoices issued by Handicare Auto regarding the application of the margin scheme was incorrect, because it became apparent, following a check carried out by the tax authorities, that Handicare Auto had not actually applied that scheme to the supply of the second-hand vehicles at issue. The authorities concluded that Litdana had no right to apply the margin scheme since the conditions for the application of that scheme were not met, which is why they subsequently required Litdana to pay the amount of VAT applicable….

48 In the light of the foregoing considerations, the answer to the questions referred is that Article 314 of the VAT Directive must be interpreted as precluding the competent authorities of a Member State from denying a taxable person the right to apply the margin scheme where he received an invoice that includes references relating both to the margin scheme and to exemption from VAT, even if it is apparent from a subsequent check carried out by those authorities that the taxable dealer supplying the second-hand goods had not actually applied that scheme to the supply of those goods, unless it is established by the competent authorities <u>that the taxable person did not act in good faith or did not take every reasonable measure in his power to satisfy himself that the transaction carried out by him does not result in his participation in tax evasion — a matter which it is for the referring court to determine.</u>" (emphasis added)

69. Therefore, the Commissioner considers that it is necessary for the Appellant to demonstrate that it took "*every reasonable measure in [its] power*" to satisfy itself that [redacted] was registered for VAT in NI and entitled to apply the Margin Scheme. However, he is satisfied that the evidence clearly shows that it did not do so.

70. Article 226 of the VAT Directive and regulation 20 of SI 639/2010 set out the details that VAT invoices are required to provide, which include the address and VAT identification number of the supplier of the goods (i.e. [redacted]). The first set of invoices submitted by the Appellant included a number that was stated to be a NI VAT number but was in fact an EORI number. Therefore, the Commissioner considers that the Appellant was on notice of the fact that [redacted] did not have a valid VAT registration, although he

appreciates that the differences between a VAT number and an EORI number are subtle, in that the EORI number has some additional digits at the end that the VAT number does not have. It would arguably be unfair to penalise a trader who, without more, mistook one for the other.

71. More blatantly, however, the first set of invoices provided an address for [redacted] in Great Britain and not NI, and therefore it was clear on their face that the requirements of the Margin Scheme were not met. However, the evidence of the Appellant's witness was that it "*just paid no attention to what details* [redacted] *had on their invoices*" and it seems no steps were taken to address the matter until the Respondent raised queries with the Appellant. Therefore, the Commissioner concludes that the Appellant clearly did not take "*every reasonable measure in its power*" to ensure that it was entitled to apply the Margin Scheme. In fact, it took no steps at all until the Respondent pointed out the issues with the first set of invoices.

72. Consequently, the Commissioner is satisfied that, pursuant to the judgment in *Litdana*, the Respondent was correct in determining that the Appellant was not entitled to apply the Margin Scheme. As already explained, he considers that the subsequent efforts to submit corrected documentation in 2024 are of little substantive relevance, because there was no entitlement to participate in the Margin Scheme in the first place. However, as set out in the Material Facts section, there were clear issues with the second set of invoices provided, including the same invalid VAT number as in the first set, and the statement "*Customer to pay output tax of £[amount] to HMRC (VAT ACT 1994. SECTION 55A APPLIES)*" which is inapplicable to Margin Scheme goods. These errors were not rectified until the third set of invoices were submitted in late 2024. This third set included a valid NI VAT number for [redacted], but it was the uncontradicted evidence of the Respondent that [redacted] did not register for VAT in NI until 2024.

73. The Appellant had also sought to rely on additional documentation, including PODs. It was unclear when these were provided to the Appellant, although it seemed from the evidence of [redacted] that it was most likely after the years under appeal: "*Some PODs were – they're not always sent when they send deliveries but they can be requested from* [redacted] *at any point, yes*." In any event, the first set of PODs did not include VAT or invoice numbers, and therefore they could not have been used to justify participation in the Margin Scheme, even if supplied when the deliveries were made. After these issues were identified by the Respondent, the Appellant procured updated PODs, but as with the later sets of invoices, the Commissioner considers that these are of little relevance in showing an entitlement to participate in the Margin Scheme.

74. The same considerations apply to the documents from [redacted] and [redacted] which were submitted to the Respondent and/or the Commission in the context of the audit and subsequent appeal, and therefore could not have been within the contemplation of the Appellant when the transactions were taking place. Furthermore, as explained above, no representative of any of the third parties gave evidence at the hearing of the appeal in order to substantiate the contents of the documents, and therefore the Commissioner concludes that they are of very little assistance to him in determining this appeal.

75. Before concluding, the Commissioner will briefly address some of the other submissions made on behalf of the Appellant. Its solicitors contended that CJEU caselaw, including *Collée*, *MEO* and *Boehringer,* showed that the Respondent had incorrectly focused on the form rather than the substance of the transactions. However, as explained above, the Commissioner is not satisfied that the Appellant has demonstrated that the transactions were substantively in compliance with the requirements of the Margin Scheme, and therefore he does not agree that the Respondent has incorrectly focused on errors in the Appellant's documentation. This is not a case where the Appellant has demonstrated substantive compliance with the legislative requirements of the scheme but had made minor errors in its paperwork that it had subsequently rectified.

76. The case of *Teleos*, also relied on by the Appellant, concerned evidence supplied by the taxpayer which demonstrated a *prima facie* entitlement to exemption. However, as discussed above, the first set of invoices provided by the Appellant demonstrated on their face a lack of entitlement to apply the Margin Scheme. Furthermore, the Commissioner notes in passing the requirement on the Appellant under section 84 of the VATCA 2010 to keep "*full and true records*" of all transactions. While he has not determined this appeal on the basis of that requirement, he does not believe that the Appellant has demonstrated compliance with that provision in respect of the transactions with [redacted] under appeal.

77. Finally, the Appellant has complained about its treatment by the Respondent during the audit, which it claimed was procedurally unfair. However, it is settled case law that the Commission has no supervisory jurisdiction over the Respondent, and does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent in its investigations of taxpayers. In *Lee v Revenue Commissioners* [2021] IECA 18, Murray J stated that:

> "*The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment…*

That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry."

78. This jurisprudence was reaffirmed and followed in the recent High Court judgment of *Peadar Hamill v Revenue Commissioners* [2025] IEHC 627, where Quinn J stated at paragraph 20 that "*Nonetheless, the Appeals Commissioners do not have any* quasi *inherent powers to declare any aspect of the process or outcome of the Revenue Commissioners void or invalid, akin to the powers the High Court might have in a judicial review hearing*."

79. Therefore, the Commission cannot entertain any allegations of unfair procedure by the Respondent in its audit of the Appellant. In any event, the Commissioner notes that the Respondent afforded the Appellant a number of opportunities to submit amended documentation to it, notwithstanding the requirements of section 84 of the VATCA 2010. Fundamentally, however, the responsibility rested with the Appellant to demonstrate its entitlement to apply the Margin Scheme.

80. In conclusion, the Commissioner is satisfied that the Appellant has not met the burden of proof upon it to demonstrate its compliance with the requirements of the Margin Scheme, and its entitlement to apply the scheme to the goods sourced from [redacted]. Specifically, it has not demonstrated that the goods came from Northern Ireland rather than Great Britain, it has not demonstrated that [redacted] had a valid NI VAT registration for 2021 and 2022, and it has not demonstrated that it took all reasonable steps to confirm [redacted] VAT status on receipt of the deficient invoices from [redacted]. Therefore, the Commissioner determines that the appeal is unsuccessful.

Determination

81. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner determines that the assessment to VAT raised against the Appellant in the total amount of €9,074,974.53 for periods from 1 January 2021 to 31 December 2022 should stand.

82. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 as amended ("TCA 1997") and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

83. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the 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

84. 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 of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Simon Noone
Appeal Commissioner
12 January 2026

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.