AN COIMISIÚN UM ACHOMHAIRC CHÁNACH

TAX APPEALS COMMISSION

27TACD2026

Between

[redacted]

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This Determination concerns the appeals to the Tax Appeals Commission ("the Commission") of [redacted] ("the Appellant") of the following assessments of the Revenue Commissioners ("the Respondent"):-

   (a) an assessment to excise duty in the form of mineral oil tax in the sum of €1,296,122.73, made on 25 January 2018, relating to the period 28 April 2014 – 23 July 2015;

   (b) amended assessments to income tax, made on 20 February 2018, for the years ending 31 December 2014 and 2015, in the respective sums of €55,360.63 and €159,303.88; and

   (c) an assessment for VAT due in the sum of €54,072, made on 21 March 2018, relating to the period covering 1 May 2013 – 30 April 2015, arising from the denial of deductions previously claimed.

2. Hereafter in this Determination these assessments are referred to as "the excise duty assessment", "the income tax assessments" and "the VAT assessment".

3. In relation to the excise duty assessment, the sum assessed arose from the Appellant's alleged receipt of 3,440,364 litres of ultra-low sulphur marked gas oil from the fuel supplier [redacted] Limited ("A Limited") in the years 2014 and 2015, and from the failure of the Appellant to satisfy the Respondent that it used such fuel, or held it for use, for purposes allowed by law. Ultra-low sulphur marked gas oil, often referred to as 'green', 'marked' or 'agricultural' diesel, is described hereafter by the Commissioner as marked gas oil ("MGO").

4. In relation to the income tax assessments, the sums assessed arose from the refusal by the Respondent of deductions claimed by the Appellant in respect of MGO acquired from A Limited in the years 2014 and 2015.

5. In relation to the VAT assessment, the sum assessed arose from the Respondent's refusal of deductions claimed in respect VAT incurred on purchases of MGO from A Limited and from another fuel supplier, [redacted] Oil Limited.

Background

6. The Appellant is a farmer, agricultural contractor and haulier, who at all times relevant to this appeal owned and operated a farm located in [redacted], County [redacted].

7. There is no dispute that in the years 2014 and 2015 the Appellant received supplies of MGO from A Limited. A key matter at issue in this appeal however is the amount of MGO received by the Appellant in these years from this source.

8. On 22 October 2014, the Respondent notified the Appellant that he was to be the subject of a Revenue audit covering "*all relevant taxes and duties"*. This audit was to relate to the period 1 January 2012 to 31 December 2013.

9. In correspondence of 20 November 2015, sent in the conduct of the audit, the Respondent asked that the Appellant provide invoices relating to his purchases of MGO in 2012 and 2013. The Appellant did not provide these invoices in response to this request of the Respondent.

10. On 7 January 2016, the Respondent notified the Appellant by correspondence that it was commencing an investigation into his tax affairs that was to cover the period running from 1 January 2012 to 7 January 2016. The Respondent attached a schedule to this notification correspondence in which it specified information that it required the Appellant to make available to its officers. The notification correspondence of 7 January 2016 and the schedule were sent to the Appellant at his personal address and to his then tax agent, [redacted].

11. The information referred to by the Respondent in the schedule to the correspondence of 7 January 2016 included:-

    - trading, profit and loss accounts for the period under investigation;
    - sales and purchase invoices relating to the Appellant's farming business;
    - details of bank accounts in the Appellant's name and statements relating to such accounts covering the period under investigation;
    - a list of the Appellant's oil suppliers over the period under investigation, as well as the purchase invoices supplied by them;
    - a list of payments made by the Appellant to these oil suppliers over the period under investigation, reconciled to payments set out in the Appellant's bank statements; and
    - a list of haulage and agricultural contractors and payments made by the Appellant to such contractors over the period under investigation.

12. On 11 January 2016, [redacted] informed the Respondent that he was no longer acting as the Appellant's agent. At around this time, the Appellant engaged a new agent,

[redacted] of [redacted] Accountants, to represent him.[1] [redacted] is referred to hereafter in this Determination as “the Appellant’s agent”.

13. As of the date of the commencement of the Respondent’s investigation, the Appellant had not yet filed an income tax return for the year ending 31 December 2014 and he also had VAT returns outstanding for the periods May – August 2014, September – December 2014, January – April 2015 and May – August 2015.

14. On 17 February 2016, the two officers of the Respondent conducting the investigation, [redacted] and [redacted], met the Appellant’s agent at his offices in [redacted] so as to obtain information.

15. On 18 March 2016, the Appellant’s agent sent correspondence to the Respondent. Under the heading *“Final Accounts”,* he wrote:-

> “*We enclose Profit & Loss Accounts for 2012. This was prepared by* [the Appellant’s] *previous accountant and subsequently we have insufficient information to prepare a full set of accounts for that year.*
>
> *The 2014 accounts have not been prepared yet and as you are aware you hold all available records for this period.*
>
> *As previously advised at our meeting on 17th February 2016 reconciliations are not possible and therefore any accounts preparation would be from incomplete records*.”

16. In the same correspondence, the Appellant’s agent also explained that he was not yet in possession of purchase invoices from the Appellant’s oil suppliers, but that he understood the Appellant was seeking to locate and provide them to him so that they could then be forwarded to the Respondent. The Appellant’s agent also wrote in relation to the matter of the Appellant’s receipt of supplies of fuel:-

> “*As advised at our meeting on 17 February we cannot reconcile payments to oil suppliers to bank statements.*
>
> *We have again requested our client to order Statements/Invoices from his oil suppliers from January 2012 to the current date.”*

17. On 26 April 2016, the Respondent again wrote to the Appellant’s agent. In this correspondence, the Respondent observed that a listing of fuel purchase invoices covering the period under investigation had by then been provided to it, but that the

[1] Among the documents appended to the Respondent’s Statement of Case is investigation correspondence of 26 February 2016 addressed to [redacted]. This is the earliest correspondence addressed to him that was made available to the Commissioner;

invoices themselves had not been. The Respondent indicated that the Appellant was required to provide them. It also informed the Appellant that he was to provide statements of account from his suppliers of MGO that covered the period under investigation.

18. On 30 May 2016, the practice manager of [redacted] Accountants, copying the Appellant's agent, sent the following correspondence to the Respondent:-

> "*Please see attached statements from* [A Limited]*,* [redacted] *Ltd and* [redacted] *Oils for the above client.*
>
> *Full reply to your letter of 26th April is being prepared and will follow shortly*."

19. The statement from A Limited attached to this correspondence of 30 May 2016 is a statement of account in the Appellant's name, which lists supplies of MGO made between April 2015 and the end of July 2015. Hereafter, in this determination this document is referred to as "the supplier's statement".

20. The supplier's statement lists 136 supplies of MGO made, which come to the value of €2,470,412.60 (€1,729,318.58 in period April – December 2014 and €741,094.02 in the period January - July 2015).[2] The supplier's statement also indicates that of the supplies of MGO listed therein, supplies to the value of €32,966.55, received from late April 2015 onwards, had not been paid for by the time of the document's creation. The remainder of the supplies were recorded as having been paid for.

21. On 31 May 2016, the Appellant's agent indicated in correspondence to the Respondent that he had filed VAT returns for the Appellant up to the period December 2015. In these returns, the Appellant claimed VAT deductions in respect of MGO supplies to the gross value of €153,383 for 2014 and €315,432 for 2015 received from A Limited (VAT deductions claimed of €18,243 and €37,388 respectively). The level of supplies evident from the Appellant's VAT returns and the supplier's statement thus stood in stark contrast to one another.

22. On 30 August 2016, the Respondent sent correspondence to the Appellant's agent in which it asked him for details of the bank account from which the Appellant drew the funds to pay A Limited for the supplies of MGO and for copies of the relevant cheques used to pay that supplier. The Respondent also sought:-

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[2] The supplier's statement included transactions of a negligible value described as relating to purchases of 'Addblue'. These supplies have not been included in the calculation of the above figure.

"[…] *a total listing of all oil purchases from 2012 – 2015 from all suppliers. This reconciliation listing should include* <u>*all the invoices*</u> *listed on the statements from* [A Limited] *&*[redacted]*."* [Emphasis original]

23. On 6 October 2016, the Appellant's agent wrote to the Respondent. In this correspondence, he said:-

"[…] *as previously advised we are unable to reconcile the invoices to the bank account. We understand that we have already provided you with statements from the said oil suppliers showing all transactions 2012 – 2015.*

Our client also advises that he had an arrangement with farmers for the purchase and supply of agri-diesel by payment of cash as he was able to purchase at a favourable rate in large quantity. He also advises that a large proportion of the agri-diesel purchased was for the commercial drying [of] *maize crops.*

Our client further advises that he had serious health issues circa 2012 which can be verified by his medic which impacted on his ability to provide us with a list of the farmers for whom he had the agri-diesel supply arrangement. If you require copies of a medical report from his physician we understand that this is available."

24. On 2 June 2017, the Respondent again wrote to the Appellant as part of its investigation. Under the heading "*Reconciliation of purchase invoices/cheque payments",* the Respondent pointed out that there was a discrepancy between the Appellant's purchases of fuel from various suppliers and cheque payments made by him. The Respondent therefore asked that the Appellant provide a "*full reconciliation in each case".* Next in the same correspondence, the Respondent stated under the heading "*Payments to* [redacted] *Bureau"*:-

"*A review of the records provided indicates cheque payments to these two entities as follows:*

i. From account [redacted]*5, €176,226 in 2014.*

ii. From account [redacted]*9, €93,592 in 2014 & 2015.*

Please let me have full details of these payments, together with all related documentation/invoices."

25. It is necessary to note at this point in the Determination that "[redacted] *Bureau"* was in fact reference to a company called [redacted] Limited, which traded as [redacted] Bureau de Change. This company is hereafter referred to in this

Determination as “the Bureau de Change”. It is also necessary to note that the two bank accounts mentioned in the above correspondence were accounts held by the Appellant with [redacted].

26. The next heading in the correspondence of the Respondent of 2 June 2017 was “[A Limited] *and* [redacted] *Limited”.* Under this, the Respondent stated:-

> “*Returns submitted to the Revenue Commissioners (under Regulation 25 Mineral Oil Tax Regulations 2012) by* [A Limited] *and* [redacted] *Ltd show supplies of Ultra Low Sulphur Gas Oil to* [redacted] *as follows:-*
>
> *i.* [A Limited]*, April 2014 to February 2015, 2,881,956 litres.*
>
> *ii.* [redacted] *Ltd, July – September 2014, 132,902 litres.*
>
> *These amounts are considerably in excess of purchases per the VAT purchase records and bank payment records submitted to date and in this regard* [the Respondent] *await*[s] *your client’s reconciliations and explanations including in particular explanations as to the purpose that this Marked Mineral Oil was used and/or the identities of the person/s to whom it was supplied*.”

27. The Respondent then drew the Appellant’s attention to the wording of section 99(10) of the Finance Act 2001 and stated in writing that:-

> “*If* [the Appellant] *is unable to provide satisfactory explanations and supporting documentation as to the use/purpose to which the Marked Mineral Oil outlined above was put, Excise assessments may be raised in respect of the* [MGO] *in question.”*

28. The Respondent concluded the correspondence of 2 June 2017 by referencing invoices from the fuel trader [redacted] Oil Limited, which related to the supply of MGO and were included in the Appellant’s records for the years 2013 and 2014. The Respondent stated that “*Based on* [the Respondent’s] *investigations these were not issued by the supplier concerned and are false. VAT input credits of €8,399 in 2013 and €1,960 in 2014 will be disallowed.”*

29. On 9 June 2017, the Respondent again wrote to the Appellant. In this correspondence it was stated that according to monthly oil movement returns (otherwise known as “ROMs”), submitted by various oil traders to the Respondent, the Appellant had received the following supplies in the years 2013 – 2016 from the following traders:-

2013		

[redacted]	MGO	190,277 litres
[redacted]	MGO	67,590 litres
[redacted]	MGO	47,535 litres
Total		305,402 litres

2014		
A Limited	MGO	2,233,956 litres
[redacted]	MGO	32,552 litres
[redacted]	MGO	132,902 litres
[redacted]	MGO	79,000 litres
Total		2,478,410 litres

2015		
A Limited	MGO	1,176,299 litres
[redacted]	Derv	233,794 litres
Total		1,410,093 litres

2016		
[redacted]	MGO	119,174 litres
[redacted]	Derv	6,000 litres
Total		125,174 litres

30. The Respondent ended its correspondence of 9 June 2017 by asking that the Appellant provide it with:-

"*1. A reconciliation of the litres of fuel purchases listed in the above tables (based on returns made by the suppliers) with your client's VAT purchases schedules and payments records for each year.*

2. The VAT purchase schedules and payments records for the year 2016."

31. On 20 June 2017, the Appellant's agent replied to the Respondent's correspondence of 2 June and 9 June 2017. Attached to the reply of 20 June 2017 was a list of transactions involving the Appellant's bank account [redacted]9. In relation to the request that the Appellant reconcile purchase invoices with records of payments for fuel made by means of cheque, it was stated that:-

"*1. As already advised, we cannot reconcile cheque payments against purchase invoices.*

2. We have submitted to you all supplier statements we held. Please see copy of letter dated 24th May 2016 we issued to all [the Appellant's] *suppliers requesting statements, despite these efforts and follow up telephone requests, only the suppliers who provided the requested information was forwarded to you when we were in receipt of same.*

3. [The Appellant] *advises he did not keep ledger accounts in respect of each of the suppliers covering the years 2013, 2014 and 2015*."

32. In relation to the Respondent's request for information relating to payments made to the Bureau de Change, the Appellant's agent stated:-

"*We hold nothing other than cheque listings for these payments.* [The Appellant] *advises that these cheque payments were made in return for short term borrowing and to support cashflow*."

33. In relation to the Respondent's request for an explanation for the gulf between the Appellant's MGO purchases in 2014 and 2015 from A Limited and [redacted] Limited as recorded in the supplier's statements of these companies and as recorded in the Appellant's own VAT purchase records and bank statements, the agent stated:-

> "*We note your comments and our professional opinion concurs with yours. Our client advises that he cannot provide reconciliations and **his** explanations as for the purpose of the* [MGO] *and identities of the persons to whom supplies were made was already stated in our letter to your dated 06th October 2016, viz;*
>
> *'Our client also advises that he had an arrangement with farmers for the purchase and supply of agri-diesel by payment of cash as he was able to purchase at a favourable rate in large quantity. He also advises that a large proportion of the agri-diesel purchased was for the commercial drying of maize crops'.*" [Emphasis original]

34. In relation to the Respondent's contention in its correspondence of 2 June 2017 regarding the alleged falsity of invoices ostensibly emanating from [redacted] Oil Limited and included in the Appellant's records for 2013 and 2014, the Appellant's agent stated simply that "*Our client denies knowing the supplier's invoices to be false.*"

35. In relation to the information set out in the Respondent's correspondence of 9 June 2017 concerning ROM records, the Appellant's agent stated in the correspondence of 20 June 2017 that:-

> "*1. As already advised we are unable to reconcile litres of fuel purchases with our client's VAT purchase schedules and payment records for each year. All purchase schedules/invoices for VAT periods from 01 January 2014 – 31st December 2016 are available for inspection if required.*
>
> *2. VAT purchase schedule and payments records for 2016 attached.*"

36. On 10 August 2017, the Respondent again wrote to the Appellant. In this correspondence it was noted in relation to the transaction listings furnished with the correspondence of 20 June 2017, that these only covered one of the Appellant's two bank accounts, namely [redacted]9. No transaction listings were provided in relation to the other account, [redacted]5. The Respondent indicated that it also wished to have a list of transactions covering this account.

37. In the same correspondence of 10 August 2017, the Respondent said in relation to payments made in 2014 to A Limited:-

"*Based on Revenue Investigations, the following were payments (by draft) to* [A Limited]*:*

19/05/2014	*WITHDRAWAL 594710*	*15960.00*
23/05/2014	*DRAFT*	*16003.50*

However, these are analysed as drawings in the listings submitted on 20th June 2017. Please clarify and state the basis for this analysis."

38. Next, under the heading "[redacted]", the Respondent stated:-

"*The records of* [A Limited] *show receipt of payments totalling approximately €1.8 million in 2014 and 2015 received by* [A Limited] *from* [redacted]*, for the account of* [the Appellant] *for the supply of fuel to* [the Appellant]. *This means that* [the Appellant] *will have made corresponding payments to* [redacted]*, but I am unable to identify these in the transaction listings provided with your letter of 20th June 2017.*

Please provide full explanations and reconciliations and state the source of the monies paid by [the Appellant] *to* [redacted] *to fund the purchase of fuel by him from* [A Limited]."

39. The Respondent ended the correspondence by stating under the heading "*Sales of Fuel*":-

"*In a letter of 6th October 2016, it was stated that your client supplied agri-diesel to farmers.* [The Respondent has] *been unable to identify any such sales in the transaction listings and accounts provided to date*. [The Respondent has] *also been unable to identify any sales of derv in the records/transaction listings, notwithstanding your client purchased 233,794 litres of this product from* [redacted] *Oils Ltd in 2015.*

The records, linking papers, accounts and submissions provided to date, do not explain the purpose for which large quantities of marked fuel purchased by your client, (in 2014 and 2015 in particular), or the above mentioned derv purchased in 2015 were used. [The Respondent is] *satisfied and the accounts submitted show that these were not all used in the course of his farming activities."*

40. On 1 September 2017, the Appellant's agent replied to the Respondent's correspondence of 10 August 2017. In relation to the Appellant's bank account [redacted]5, this correspondence stated:-

"Please note bank statements for account number [redacted]*5 were not presented to us at the time of Financial Statement preparation for 2014. We were unaware that business activity was ongoing from our client's personal bank account. The Financial Accounts for 2015 reflect both Farm Account and Personal Account*."

41. In relation to payments made to A Limited from the [redacted] bank account [redacted]9, the agent for the Appellant stated "*We have no audit trail as to where the monies were appropriated. We assumed correctly or incorrectly, an appropriation to drawings."* Then, addressing the allegation of payments made to the Bureau de Change, the Appellant's agent repeated verbatim the passage already quoted at paragraphs 23 and 33 of this Determination and added:-

"*We were unaware as to how said fuel suppliers were paid for the product ordered by* [the Appellant] *but according to the records at your disposal, per your letter dated 10th August 2017, it is assumed that* [the Appellant] *exchanged the cash he received for the product for drafts made payable to* [A Limited] *or any other Fuel Company Limited*."

42. Further addressing payments made to the Bureau de Change, the Appellant's agent stated:-

"*As our client has medical issues, he could not give us a clear explanation as to who exactly these payments were going to but he confirmed that these payments were made in return for short term borrowings and to support cash flow. He also confirmed that he paid for expenses out of these 'drawings' by payment of cash*."

43. On 24 January 2018, the Respondent wrote to the Appellant and his agent outlining its intention to raise an assessment to excise duty under section 99(10) of the Finance Act 2001, arising from the Appellant's receipt of 3,440,364 litres of MMO from A Limited between 28 April 2014 to 23 July 2015. This Notice of Assessment was issued the following day, 25 January 2018, and calculated the duty payable by the Appellant over this period in respect of such supplies of MMO as being in the amount of €1,648,003.16. Accounting for duty already paid on the MGO in the amount of €351,880.43, this brought the Appellant's liability for the period at issue to €1,296,122.73.

44. Returning to the correspondence of 24 January 2018, the Respondent gave the following explanation for the excise duty assessment:-

"*I refer to my letters to your agent dated 2nd June 2017, 9th June 2017 and 10th August 2017 in which information was requested in respect of Marked Gas Oil purchased from* [A Limited]*. The records, linking papers, accounts, and submissions provided by your* *agent to-date, do not satisfactorily explain the purpose for which large quantities of Marked Gas Oil purchased by you in 2014 and 2015 from* [A Limited] *was used.*

Records submitted to the Revenue Commissioners by [A Limited] *show supplies to you as follows:*

Marked Gas Oil 28/04/2014 – 23/07/2015 3,440,360 litres

You have been unable to reconcile these purchases to your VAT records and bank payment records. You have been unable to provide satisfactory explanations or any evidence as to the purpose that this Marked Gas Oil was used and/or the identities of the persons to whom it was supplied."

45. The Appellant filed an appeal of the excise duty assessment of 25 January 2018 to the Commission on 23 February 2018. In asserting that the excise duty assessed was not due, the Appellant stated in the grounds section of his Notice of Appeal:-

"[…]

2. The taxpayer did not have any arrangement whereby the product (green diesel) was produced, processed, held or moved in the context of this duty being suspended.

[….]

3. *The diesel used in* [the Appellant's] *agri business was green diesel and this is reflected in his Returns in the period of 28 April 2014 to 23 July 2015.*

4. [The Appellant], *in good faith, purchased from various fuel suppliers (including* [A Limited]*) diesel for use in his business at going rate prices for green diesel. The quantities and the sums paid for said diesel are reflected in the taxpayer's documentation which has been made available to Revenue. While he acknowledges he receive*[d] *some diesel from* [A Limited]*, there is no evidence he received the quantity alleged by Revenue, which is an extraordinary amount to suggest his business would be capable of consuming in an approximate fifteen-month period*.

[…]"

46. The Appellant concluded the grounds of appeal section of his Notice of Appeal by stating that he was in no position to pay €1,296,122.72 of excise duty and that were the Respondent to seek to enforce such a debt it would result in the inevitable collapse of his business.

47. On 19 February 2018, a few days prior to the Appellant appealing the excise duty assessment, the Respondent wrote to the Appellant and his agent outlining its intention

to raise VAT and income tax assessments. By way of explanation, the officer of the Respondent raising the assessment stated in this correspondence:-

"[redacted]

The records, linking papers, accounts and submissions provided by your agent to date, do not satisfactorily explain the purpose for which large quantities of Marked Gas Oil purchased by you in 2014 and 2015 from [A Limited] *was used. You have also been unable to reconcile these purchases to your VAT and Bank payments records, nor provide satisfactory explanations or any evidence as to the purpose that this Marked Gas Oil was used and/or the identities of the persons to whom it was supplied. I am therefore disallowing the VAT input credit claimed in 2014 & 2015 on purchases from* [A Limited] *as follows*:

Total May-Aug 2014 €791

Total Sep – Dec 2014 €17,452

Total Jan – April 2015 €25,458

Total May – Aug 2015 €11,930

Also based on the explanation above, I am disallowing for Income Tax purposes the net expense of €135,139 in 2014 & €278,045 in 2015 claimed on the same purchases from [A Limited]. *This will result in the following revised Income Tax assessments.*

Income tax 2014 €50,827

Less tax paid 2014 €550

Additional tax liability €50,277

Income tax 2015 €145,793

Less tax paid 2015 €1,068

Additional tax liability €144,725

[redacted] ***Oil***

[redacted] purchase invoices were included in VAT Returns for 2013 & 2014, but based on Revenue investigations these invoices were not issued by the supplier concerned and no evidence of payment could be found in the Bank Statements provided. These invoices are therefore deemed to be false and the following VAT input credits are being disallowed:

Total May – Aug 2013 €404

Total Sep – Dec 2013 €8,007

Total Jan – Apr 2014 €1,960

Disclosure

As per your Disclosure dated 2nd Jan 2015, the following VAT liability is collectable:

Jan – Apr 2012 €7,778

May – Aug 2012 €2,549"

48. At the end of the correspondence of 19 February 2018, the Respondent stated the Appellant's liability to VAT and income tax for the period covered by the assessment to be €271,331. It should be noted that the question of the Appellant's liability to pay VAT on foot of a disclosure previously made was not discussed in this appeal and is therefore not examined in this Determination.

49. On 20 February 2018, the Respondent issued Notices of Amended Assessment to income tax to the Appellant for the years 2014 and 2015. In the amended assessment relating to 2014, the Respondent assessed the Appellant as having a balance of tax payable of €55,360.63. In the amended assessment relating to 2015, the Respondent assessed the Appellant as having a balance of tax payable of €159,303.88.

50. The Appellant appealed the income tax assessments of 20 February 2018 by way of the delivery to the Commission of a Notice of Appeal dated 20 March 2018. In the grounds of appeal section of the Notice of Appeal, the Appellant stated:-

"1. *The taxpayer, in good faith, purchased from various suppliers (including* [A Limited] *and [redacted] Oil Ltd) Marked Gas Oil for use in his business and, as he has laid out or expended money on said product that was used wholly or exclusively for the purposes of his business he has validly claimed a deduction for same that is not disallowed under any provision of tax legislation. In particular, this expenditure is allowed under the general principles implicit in the wording of section 65(1) TCA 1997, which states that '…tax shall be charged under Case I or Case II of Schedule D on the full amount of* *profits and gains…of the year of assessment'. Furthermore, section 81(2) TCA 1997 provides that in computing such profits or gains, sums falling within certain categories will not be permissible deductions. Having reviewed section 81(2) (and similar legislation), we can see none of these categories applying to the taxpayer and, thus, there is no basis in law for Revenue disallowing this expenditure.*

2. As the quantities acquired, and the sums paid for same, are reflected in the taxpayer's documentation which has been made available to Revenue, it is not clear why Revenue has sought to disallow same where Revenue has no basis in law for so doing."

51. The Appellant also appealed the VAT assessment of 19 February 2018 by way of the delivery to the Commission of a Notice of Appeal dated 16 April 2018. In the grounds of appeal section of the Notice of Appeal the Appellant stated,

"1*. The taxpayer, in good faith purchased from various suppliers (including* [A Limited] *and* [redacted] *Oil) Marked Gas Oil for use in his business and he has validly claimed a deduction for same that is not disallowed under any provision of tax legislation. Section 59(2) VATCA 2010 stipulates the areas in which VAT incurred can be deducted by an accountable person. It provides that in calculating the amount of tax payable for a taxable period, an accountable person (which the taxpayer clearly is) is entitled to deduct VAT charged on goods and services used for the purposes of his taxable business. Thus, there is no basis in law for Revenue disallowing this expenditure.*

2. Revenue also claim in correspondence that invoices issued by [redacted] *Oil and provided to Revenue in good faith by the taxpayer are deemed to be false but Revenue has given no reason for same. Not only is this in breach of Irish VAT law and regulations but it is in breach EU law as well. Judgments of the European Court of Justice ("ECJ"), the ultimate arbiter on these matters, must be taken into account. The facts in the case of PPUH (C-277/14) would appear to mirror the taxpayer's circumstances. That case concerned the Polish Revenue authority's refusal to allow VAT input credits in respect of the VAT element of fuel purchases from what was classified as a missing trader. The ECJ ruling was that the substance of the position was that the fuel was purchased and paid for (including VAT) for use in the taxpayer's business and that the taxpayer was, therefore, entitled to the input VAT credit(s). Thus there is no basis in law for Revenue disallowing this expenditure.*

3. As the quantities acquired, and the sums paid for same, are reflected in the taxpayer's documentation which has been made available to Revenue, it is not clear *why Revenue has sought to disallow same where Revenue has no basis in law for so doing.*"

52. On 29 May 2018, after the issuing of the assessments to excise duty, income tax and VAT under appeal, the Respondent sent further correspondence to the Appellant and [redacted] (who by this stage had recommenced acting as the Appellant's tax agent, [redacted] having ceased to do so). In this correspondence, the Respondent described what had occurred at a meeting, held two weeks earlier on 15 May 2018, at the Respondent's offices in [redacted]. This meeting was attended by the Appellant, [redacted], the Appellant's bookkeeper and officers of the Respondent. In the correspondence, the Respondent stated:-

"*During this meeting you supplied the following information in relation to the supply of MGO from* [A Limited] *in 2014 – 2015:*

1. You stated that the onus was on [A Limited] *to justify that the delivery of MGO ordered is put to legitimate business use.*

2. You stated the supply of MGO from [A Limited] *in 2014 – 2015 did not go into a stationary tanker on delivery to your address at* [redacted]*.*

3. You stated that [redacted] *signed for MGO delivered from* [A Limited] in *2014 – 2015 to your address at* [redacted]*.*

4. You stated [redacted] *is willing to make a statement outlining the delivery process.*

5. You stated that [redacted] *from* [A Limited] *agreed to non payment of your account balance (circa €30,000) on the basis that you say nothing.*

Could you please elaborate on this information by supplying further details on the following points:

1. How much of the MGO supplied from [A Limited] *in 2014 – 2015 was used by you for legitimate business purposes.*

2. If the MGO was not used by you for legitimate business purposes, what was the arrangement on delivery of the MGO from [A Limited] *in 2014 – 2015 to your address at* [redacted]*.*

3. Who initiated the delivery process of MGO from [A Limited] *in 2014 – 2015 to your address at* [redacted]*.*

4. If the MGO from [A Limited] *in 2014 – 2015 was not used by you, who was it delivered onto.*

5. Were you paid for accommodating the delivery of MGO from [A Limited] *in 2014 – 2015 to your address at* [redacted].

6. Who is [redacted] *and what was his role in the delivery of MGO from* [A Limited] *in 2014 – 2015 to your address at* [redacted].

7. Can [redacted] *provide a statement as to the delivery process arrangement.*

8. How were [A Limited] *paid for the MGO delivered in 2014 – 2015 and what was the total consideration given to* [A Limited] *during 2014 – 2015.*

9. Provide details in relation to the source of funds used to pay [A Limited] *for the MGO supplied in 2014 – 2015.*

10. Was the balance to your account (circa €30,000) ever paid to [A Limited]."

53. It should be noted that a written statement made by Mr [redacted], a labourer on the Appellant's farm, was included by the Respondent in its own *"Book of Key Filings".* Therein, Mr [redacted] explained in brief terms that on occasion he signed for deliveries of MGO made to the Appellant's farm by A Limited by means of a fuel lorry. He further stated that these deliveries were made by the lorry into a mobile "*tanker"* located in the Appellant's farmyard. Aside from this, no documentation was furnished to the Commissioner indicating that the information sought by the Respondent in its correspondence of 29 May 2018 was given by the Appellant. It should further be noted that the statement of Mr [redacted] is discussed at a later point in this Determination.

54. The Appellant's appeal was listed for hearing but adjourned at the request of the Appellant on three separate occasions. On two of these occasions, the hearing was adjourned in circumstances where the Appellant provided a note from his general practitioner indicating that he was not in a position to deal with the hearing due to poor mental health. Though the Commissioner considered these letters from the general practitioner to lack detail, he acceded to the Appellant's applications. On the third occasion, the Appellant again sought an adjournment based on a letter provided by his general practitioner that was similar in its content to those already furnished. On this occasion, and in circumstances where the Appellant had been informed at the time of the previous adjournment that any further application should be grounded on a medical report, the Appellant's application was refused.

55. On the morning of the hearing of the Appellant's appeal, the Appellant was not in attendance at the offices of the Commission, nor was he represented by any agent. There was, however, another person in attendance who identified himself as Mr [redacted]. Mr

[redacted] said that he had come to the hearing to provide assistance and support to the Appellant in the presentation of his appeal. Mr[redacted] further stated that he had been in communication over the phone with the Appellant just prior to the hearing commencing and had been informed by the Appellant that he had been involved in a traffic accident en route to Dublin, had been taken to hospital by ambulance, and would therefore not be in attendance that day. In light of this information, the Commissioner considered the best course to be to adjourn the hearing for a third time. Thereafter, and after a further adjournment request that was refused by the Commissioner, the hearing proceeded on the fourth occasion scheduled, with the Appellant appearing unrepresented and without documentation other than that furnished by the Respondent in its hearing booklets. The Respondent was represented at hearing by solicitor and counsel.

Legislation and Guidelines

56. The following legislative provisions, as worded over the periods relevant to the assessments at issue, are relevant to the Determination of this appeal.

57. Section 94 of the Finance Act 1999 defines "*propellant*" and "*motor vehicle*" in the following way:-

    "'*propellant' means –*

    (a) in relation to mineral oil in the State, mineral oil used for combustion in the engine of a motor vehicle

    […]"

    "'motor vehicle' means a mechanically propelled vehicle which is designed, constructed or modified to be suitable for use on roads, including any vehicle which is designed, constructed or modified to be suitable for traction on a road by a mechanically propelled vehicle, but does not include an agricultural tractor or a road roller or an off-road dumper, or a mobile crane or mobile well drilling equipment or mobile concrete pumping equipment."

58. Section 96 of the Finance Act 1999 provides that an excise duty in the form of mineral oil tax shall be charged at the rates specified in Schedule 2 in that legislation. For the years 2014 and 2015, Schedule 2 provided that the relevant rate for "*heavy oil*", including diesel, used as propellant was €479.02 per 1,000 litres. The rate for "*Other heavy oil*" was set at €102.28 per 1,000 litres.

59. Section 97 of the Finance Act 1999 is headed "*Rates lower than standard rates".* Subsection 2 therein provides that:-

“*The standard rate in relation to light oils means the appropriate rate for petrol and in relation to any other mineral oil product means the rate for that product when it is used as propellant.”*

60. Under section 104 of the Finance Act 199, the Respondent is empowered to make regulations “[…] *for the purposes of managing, securing and collecting mineral oil tax or for the protection of the revenue derived from that tax”*. Section 153 of the Finance Act 2001 gives the Respondent the same regulation making power for the purpose of managing, securing and collecting excise duty generally.

61. The Respondent, in the exercise of the powers granted to it pursuant to section 104 of the Finance Act 1999 and section 153 of the Finance Act 2001 made the Mineral Oil Tax Regulations 2012 (hereafter “the 2012 Regulations”).

62. The 2012 Regulations detail, *inter alia*, the responsibilities of *“mineral oil traders*”. Such persons are defined in Regulation 4 as being “[…] *any person who produces, sells or deals in, keeps for sale or delivery, or delivers, any mineral oil*.”

63. Part 5 of the 2012 Regulations is headed “*Mineral Oil Traders Records*”. Under Regulation 18 therein:-

“(*1) A mineral oil trader shall for mineral oil tax purposes, in addition to any other records required under section 886 of the Taxes Consolidation Act 1997 and section 84 of the Value-Added Tax Consolidation Act 2010 , keep in respect of each specified description of mineral oil a record of—*

(a) the selling or dealing in, receiving, keeping for sale or delivery, or delivery,

(b) the financing or facilitation of any transactions or activities (whether or not those transactions or activities are carried on by the mineral oil trader), and

(c) any supplies of goods or services received, to enable the undertaking of such transactions or activities or in connection with such transactions or activities

by that mineral oil trader.

(2) The records required under paragraph (1) shall be kept in such form as the Commissioners may require, and, subject to paragraph (3)(b), shall show for each purchase, sale, supply and delivery of mineral oil—

(a) the nature and date of such purchase, sale, delivery or supply, and the quantity of mineral oil concerned,

(b) for purchases and sales, the name and address of the person from whom the mineral oil was purchased or to whom it was sold,

(c) for all supplies and deliveries made by the mineral oil trader, the name and, where applicable, the Value-Added Tax registration number and mineral oil trader's licence number of the person to whom the mineral oil was supplied or delivered, and the address of every premises or place concerned,

(d) for deliveries of mineral oil received by the mineral oil trader, the name, and, where applicable, the Value-Added Tax registration number and mineral oil trader's licence number of the person from whom the delivery was received, and the address of the premises or place from which that delivery was dispatched,

(e) a record of every payment made or received, with a clear reference to the transaction concerned.

(3) Any mineral oil trader who is not an authorised warehousekeeper shall keep a record of—

(a) daily measurements or meter readings of the volume of mineral oil of each specified description held by that mineral oil trader in a storage tank or other vessel, and

(b) the aggregate quantities of each specified description of mineral oil supplied on each day in the course of fuelling the fuel tanks of vehicles, and paragraph (2) shall not apply to such supplies.

(4) A mineral oil trader shall keep separate records for each premises or place at which mineral oil is sold, dealt in or kept for sale or delivery."

64. Under Regulation 19 of the 2012 Regulations, a mineral oil trader is required to keep a stock account of all fuel "*received into, held in, or delivered or supplied from, that mineral oil trader's premises or place."*

65. Under Regulation 20 of the 2012 Regulations, a mineral oil trader who is liable for the payment of tax shall keep an account of the excise duty due in respect of each supply of fuel, the quantity of the fuel supplied and the date and method of payment.

66. Regulation 23 of the 2012 Regulations, headed "*Delivery document procedure",* provides, *inter alia*:-

"(*1) In this Regulation "consigning mineral oil trader" means a mineral oil trader who supplies mineral oil and who consigns it for delivery from a premises or place in the State, whether that delivery is carried out by that mineral oil trader or by another person on that mineral oil trader's behalf.*

[…]

(4) A delivery document shall include—

(a) the name, address, Value-Added Tax registration number and the mineral oil trader's licence number of the consigning mineral oil trader,

(b) the address of the premises or place from which the mineral oil is to be consigned for delivery,

(c) the name, address and, where applicable, the Value-Added Tax registration number and mineral oil trader's licence number of each person to whom the mineral oil is to be delivered,

(d) the address of every premises or place to which a delivery is to be made,

(e) the date on which the delivery is dispatched,

(f) the quantity and specified description of mineral oil to be delivered,

(g) the registration number of the vehicle used for the delivery,

(h) in the case of deliveries of marked gas oil or marked kerosene, or any other mineral oil supplied at a reduced rate of tax or subject to a relief from tax, the following statement,

'This mineral oil product is delivered at a reduced rate of tax and must not be used as a propellant or kept in the fuel tank of a motor vehicle.',

and

(i) such other particulars as may be required by any Regulation in Part 8 in relation to any specified description of mineral oil.

[…]

"*(7) For deliveries not exceeding 2,000 litres of marked gas oil or marked kerosene, to a person other than a mineral oil trader—*

(a) a single delivery document may be used where several such deliveries are made in the course of a single journey by the delivery vehicle,

(b) the person in charge of the delivery vehicle may, instead of a copy of the delivery document, provide the person concerned with any other record that includes the information set out in paragraph (4) that is relevant to that person,

(c) an additional delivery that is not included in the delivery document at the time the marked gas oil or marked kerosene is consigned for delivery may be made where—

(i) the details of the delivery are not known at the time the marked gas oil or marked kerosene is removed for delivery, and

(ii) those details are entered on the copy of the delivery document to be returned to the consigning mineral oil trader under paragraph (6)(b)."

67. Regulation 24 of the 2012 Regulations is entitled "*Direct supply of marked gas oil and kerosene"* and provides, *inter alia*:-

"(*1) Where a mineral oil trader supplies marked gas oil or marked kerosene at the premises or place of that mineral oil trader—*

(a) to another mineral oil trader for consignment by that other mineral oil trader, or

(b) to a person other than a mineral oil trader, in a quantity not exceeding 2,000 litres and not for delivery to any other person,

the supplying mineral oil trader shall keep a record, showing all the information relevant to that supply that is required under Regulation 23(4)."

68. Regulation 25 of the 2012 Regulations is entitled "*Return of oil movements by mineral oil traders"* and provides:-

"*(1) A mineral oil trader who—*

(a) is required, under section 101 of the Act of 1999, to hold an auto-fuel trader's licence or a marked fuel trader's licence, or

(b) produces, sells or deals in, keeps for sale or delivery, or delivers liquified petroleum gas, or heavy oil for use for air navigation,

shall furnish to a proper officer, in such form as the Commissioners may require, a return (referred to in these Regulations as a "return of oil movements") of the mineral oil of each specified description produced, sold, dealt in, kept for sale or delivery, supplied or delivered by that mineral oil trader during a month or such other period as the Commissioners may require.

(2) A mineral oil trader shall, for a return of oil movements—

(a) complete a return form issued by the Commissioners for that purpose,

(b) sign a declaration on that form to the effect that the particulars shown are correct, and

(c) furnish the return by the 25th. day following the last day of the month or other period referred to in paragraph (1).

(3) A return of oil movements shall be made by electronic means and in accordance with Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 (No. 39 of 1997).

(4)

(a) A return of oil movements that is specified for the purposes of Chapter 6 of Part 38 of the Taxes Consolidation Act 1997 , by order made by the Commissioners under section 917E of that Act, is specified as a specified return for the purposes of section 917EA of that Act.

(b) A mineral oil trader who is required, under paragraph (1), to make a return of oil movements is specified as a specified person for the purposes of section 917EA of the Taxes Consolidation Act 1997."

69. Section 99 of the Finance Act 2001 is entitled "*Liability of Persons"* and subsection (10) therein provides:-

"*Where any person has received excisable products on which excise duty has been relieved, rebated, repaid, or charged at a rate lower than the appropriate standard rate subject to a requirement that such excisable products are used for a specific purpose or in a specific manner, and where –*

(a) such requirement has not been satisfied, or

(b) any requirement of excise law in relation to the holding or delivery of such excisable products has not been complied with, and it is not shown, to the satisfaction of the Commissioners, that the excisable products have been used, or are held for use, for such purpose or in such manner,

Then the person who has received such excisable products, or who holds them for sale or delivery, is liable for payment of the excise duty on such products at the rate appropriate to them, without the benefit of any such relief, rebate, repayment or lower rate."

70. Part 8 of the Value Added Tax Consolidation Act 2010 ("the VATCA 2010") concerns "*Deductions*" and Chapter 1 therein "*General Provisions".* Section 59 therein, entitled "*Deductions for tax borne or paid"*, provides at subsection (2):-

"*Subject to subsection (3), in computing the amount of tax payable by an accountable person in respect of a taxable period, that person may, in so far as the goods and services are used by him or her for the purposes of his or her taxable supplies or of any of the qualifying activities, deduct—*

(a) the tax charged to him or her during the period by other accountable persons by means of invoices, prepared in the manner prescribed by regulations, in respect of supplies of goods or services to him or her.

[…]"

71. Section 18 of the TCA 1997 provides that tax under Schedule D shall be charged in respect of the annual profits or gains arising or accruing to—

"*(1) any person residing in the State from any trade, profession or employment, whether situate in the State or elsewhere."*

72. Section 81 of the TCA 1997 is entitled "*General rule as to deductions"* and provides, *inter alia*:-

"*(1) The tax under Cases I and II of Schedule D shall be charged without any deduction other than is allowed by the Tax Acts.*

(2) Subject to the Tax Acts, in computing the amount of the profits or gains to be charged to tax under Case I or II of Schedule D, no sum shall be deducted in respect of—

(a) any disbursement or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade or profession

[…]"

Evidence

Appellant

73. The Appellant gave evidence in the appeal hearing. In so doing, he began by stating that he did not receive all of the MGO that the Respondent had decided pursuant to its assessment that he had received and held in the period in issue.

74. In this respect, the Appellant stated that "*the amount of fuel that I would burn in my business a year would be 300,000 – 350,000* [euros]." He said that the amount that the Respondent had concluded he had received was a *"phenomenal amount"* and that there was no record of him ever having paid for the amount of fuel in question, or any evidence of how he would have gone about doing so.

75. The Appellant was then cross-examined by counsel for the Respondent. Counsel began by confirming with the Appellant that his own evidence was that, while he had received supplies of MGO in the period in issue, he had not received anything like the quantities alleged by the Respondent. The Appellant confirmed that this was so. He also stated in cross-examination that any fuel acquired over the period in issue was used for "*harvesters and tractors and drying grain."*

76. Counsel for the Respondent then asked the Appellant about the supplier's statement from A Limited which, as already noted in this Determination, stated that, between April 2014 and 25 July 2015, the Appellant received supplies of MGO from that source to the overall value of over €2.4 million. Counsel for the Respondent put it to the Appellant that the supplier's statement from A Limited formed the basis of the excise duty assessment raised, with which proposition the Appellant agreed.

77. Counsel for the Respondent then made the point that this supplier's statement from A Limited had in fact been supplied to it by the Appellant's agent in an email of 30 May 2016. This email was sent as a reply to the correspondence of the Respondent of 26 April 2016, in which it requested information relating to the supplies of MGO received by the Appellant over the period under investigation. Counsel for the Respondent asked the Appellant whether his agent was at that point acting under his instructions. Though the Appellant confirmed that he was, he also said:-

> "[…] *I don't recall asking him to send this here to* [the officer of the Respondent]. *Probably* [the officer of the Respondent] *was in contact with him himself."*

78. The Appellant then reasserted that, despite the information set out in the supplier's statement from A Limited, the only purchases he made over the period at issue were those recorded *"in my bank statement".* Shortly after in his evidence, he said "[…] *whatever I paid for through my account is what I bought for my business".* Later, he elaborated on his evidence in this regard by stating that the amount of MGO that he acquired in 2014 and 2015 could be established by reference to his VAT and income tax deductions claimed in his returns for those years arising from purchases made from A Limited. This was, he said, the full extent of what he had purchased over the period at issue. Counsel for the Respondent asked the Appellant, if this was so, how many litres of

MGO he was claiming to have purchased and received over the period at issue. The Appellant did not answer this question, save that he repeated that the amount of MGO he purchased could be established from funds travelling directly from his bank account or accounts to his fuel suppliers and/or from his deductions claimed in his VAT and income tax returns.

79. Counsel for the Respondent asked the Appellant why, if this was true, his agent had ever proffered the supplier's statement from A Limited to the Respondent in response to its request for information relating to the level of his MGO purchases for the period at issue? He put it to the Appellant that there was a vast gulf between the level of MGO that he received according to this document and that which he asserted in his evidence he actually received. Yet despite this gulf, there was no suggestion in correspondence from the Appellant's agent that the supplier's statement furnished was an inaccurate representation of the MGO supplies that the Appellant had received from A Limited. Counsel for the Respondent put it to the Appellant that if the supplier's statement was so unreflective of the supposed true level of supplies received, this would have been made clear in correspondence. The Appellant's answer to this proposition was that, in corresponding with the Respondent, his agent had acted on his own accord and without consulting him.

80. The Appellant then made the observation in the course of cross-examination that the supplier's statement indicated that of the overall amount of MGO recorded as having been supplied over the period at issue, supplies to the value of €32,966.55 remained unpaid for. He then said:-

> "*And the reason why that figure wasn't paid was because when* [the officer of the Respondent] *contacted me looking for all the documentation of any fuel that I had purchased, I went to* [redacted] [the owner of A Limited] *and I asked him for a copy of* [the documentation] *and he said 'why are you looking for them?' and I said that the Revenue was looking for them. And he said, 'I don't know why the Revenue would be looking for them', because the Revenue had been here with him two days prior to that for the fuel, for all the fuel dockets.* [redacted] *turned around and he said to me 'There is a lot of other fuel booked out to me and you keep your mouth shut about it and I'll wipe off a fill of oil for €32,000.'*"

81. Counsel for the Respondent then put it to the Appellant that over the period at issue he had purchased drafts from the Bureau de Change. The Appellant said that he did not recall purchasing any drafts. The Commissioner notes that the Appellant later contradicted this in his own evidence.

82. The Appellant was asked in cross-examination about his interactions with the Respondent in November 2015 following the commencement of its audit of his tax affairs. He accepted that on 17 November 2015 he had, at a meeting with the Respondent's officers, declined their request for a site visit to his farm that day. He said that this was so because he had had to cover a pit of maize in another location. The Appellant did not dispute that when the same officers called to his farm on the following day, in part to inspect invoices relating to the Appellant's MGO purchases, he had informed them that the site visit could not then proceed because he had been summoned to appear in the District Court having been charged with a speeding offence.

83. The Appellant accepted in cross-examination that on 20 November 2015, he had contacted one of the officers conducting the audit to state that he would not be engaging in any aspect of the audit relating to his purchases of oil without a solicitor present. Asked why he had done so in circumstances where all that was being asked of him at that time was to furnish invoices relating to his purchases, the Appellant indicated that he had said this to the Respondent on the advice of his then agent, [redacted]. The Appellant did not agree with the suggestion of counsel for the Respondent that he had in November 2015 displayed reluctance in engaging with the audit process in so far as it concerned providing information relating to his purchases of fuel.

84. Counsel also cross-examined the Appellant about answers he had given to the Respondent in November 2017 in an investigation questionnaire that concerned the matter of his fuel purchase. When asked in this questionnaire about the identities of his suppliers during the years under investigation, the Appellant answered "[redacted] *Fuel,* [redacted] *Oils,* [redacted] *Oil,* [redacted] *Fuels,* [redacted] *Oil".* Why, queried counsel for the Respondent in cross-examination, did the Appellant have such a range of suppliers? In reply, the Appellant said that it was a fact attributable to his practice of purchasing fuel, including MGO, from whichever supplier was offering the best value at the time of purchase.

85. In the same questionnaire, the Appellant was asked about the capacity of his fuel tanks. In answer to this, he indicated that he had a 36,000 litre tank in his yard and a 2,000 litre 'bowser' for trailing behind a 4x4 vehicle. In answer to the question in the questionnaire "*Who is present when the delivery is made"*, the Appellant indicated "*Self or lads in the yard".* When counsel for the Respondent asked the Appellant in cross-examination about the names of the persons who worked in his yard in the years 2014 and 2015, the Appellant said that he could not recall them. Payment, the Appellant wrote in the questionnaire, was by means of "*cheque to the delivery driver".* In cross-examination, the Appellant emphasised that payment for fuel supplies was never in cash.

86. In the same questionnaire the Appellant was asked "*What do you use oil supplies for",* to which question he answered in writing, *inter alia*:-

> "*Drier of maize machine with fuel capacity of 2,000 litres (could use 10,000 per day when in full use).*
>
> *Harvester with fuel capacity of 1,800 litres.*
>
> *Tractor with fuel capacity of 500 litres (new John Deere could have 800 litre capacity).*
>
> *Supply oil to contractor machinery*
>
> […]"

87. The Appellant was asked whether he stood over the claim that a maize drying machine could use 10,000 litres per day. He said that 6/7,000 litres was perhaps a more accurate figure and that "*it all depends on how wet the maize* [is]." He also said that in the years 2014 and 2015 he was growing maize for [redacted] Co-Op and that "*it was in the contract* [that] *had to be above a certain amount of dry matter".*

88. Counsel for the Respondent put it to the Appellant that he had not claimed any capital allowances in respect of any such machine. In answer to this, he said that at the relevant time he did not in fact own a maize drying machine but instead borrowed one from "*a guy up in County* [redacted]*."*

89. In relation to the harvester, the Appellant clarified that it had a tank of 1,300 litres rather than the 1,800 specified in the questionnaire. He also said that the supplies of oil to "*contractor machinery"* that he had referred to were supplies to independent contractors whom he had engaged to draw silage. He said that these supplies of fuel were deducted from "*their bill at the end of the month*". The Appellant did not produce any invoices provided to him by these independent contractors relating to their alleged services rendered.

90. Counsel for the Respondent noted that in early 2016 [redacted] ceased to act for the Appellant and the Appellant's agent began representing him in his dealings with the Respondent. Referring to correspondence of 18 March 2016, counsel for the Respondent observed that the Appellant's agent, answering a request that he provide "*a listing of all payments to oil suppliers reconciled to bank statement payments*", stated that he was at that point "*unable to reconcile payments to oil suppliers to bank statements".* Counsel for the Respondent put it to the Appellant that what this suggested was that, contrary to his evidence given in chief, he was making payments for supplies of fuel by some means

other than funds held in his bank account. The Appellant did not agree with this proposition.

91. Counsel for the Respondent then returned to the content of supplier's statement of A Limited, which it had been provided on 30 May 2016. Counsel for the Respondent noted that, in response to the Respondent's follow-up query of 30 August 2016 seeking information concerning "[…] *from what Bank account each of these invoices*[3] *was paid and provide copies of the front and back of relevant cheques*", the Appellant's agent stated that "[…] *as previously advised we are unable to reconcile the invoices to the bank account. We understand that we have already provided you with statements from the said oil suppliers showing all transactions from the period 2012 – 2015."*

92. In relation to this, counsel for the Respondent asked the Appellant why he had not, when sending the supplier's statement to the Respondent, also informed the Respondent in the clearest terms that it greatly overstated his actual fuel purchases over the period covered and that its content was not accepted as true. In answer to this question, the Appellant said that he had been unaware of the content of the supplier's statement and, in arranging a reply to the Respondent on this topic, his agent had been acting without his knowledge or authority.

93. The Appellant was also questioned about the details of fuel purchases made from the company [redacted] Limited, as disclosed in another supplier's statement furnished by the Appellant's agent to the Respondent. Counsel for the Respondent observed that, as with the supplier's statement of A Limited, the Appellant had been asked in the correspondence of 30 August 2016 to indicate what bank account had been used to pay for these supplies and to provide copies of the cheques made out as payment. It was put to the Appellant, firstly, that there was no trace in his bank records from either of his [redacted] accounts of payments having been made therefrom for fuel supplied by [redacted] Limited, which fact was reflected by the reply of his agent in the correspondence 6 October 2016 that he had been unable to reconcile the Appellant's bank statements to invoices. Secondly, it was put to the Appellant that, despite the request made, copies of cheques made payable to [redacted] Limited had never been furnished to the Respondent. In answer to this, the Appellant asserted that he had made purchases from this company and that the cheques sought must exist.

[3] I.e. those relating to the transactions listed in the A Limited supplier's statement.

94. Counsel for the Respondent also turned to a document, supplied by the Appellant's agent as an attachment to his correspondence of 10 August 2016. This document consisted of the listing of purchase invoices dating from 2014 that related to input deductions claimed in the Appellant's VAT return for that year. In opening this document to the Appellant in cross-examination, counsel for the Respondent pointed out that the first four purchases listed therein were stated to be from a company called [redacted] Oil Limited. In response to this observation, the Appellant denied having any recollection of having purchased fuel from this company and thus appeared to disavow that part of the content of the listing, which had been supplied to the Respondent on his behalf.

95. Counsel for the Respondent adverted to the fact that Appellant had said in his evidence in chief that his farming business had need for a maximum of €300,000 – €350,000 of MGO per year. Having done so, he drew the Appellant's attention to the fact that in the correspondence of 6 October 2016, his agent had stated:-

> "*Our client also advises that he had an arrangement with farmers for the purchase and supply of agri-diesel by payment of cash as he was able to purchase at a favourable rate in large quantity. He also advises that a large proportion of the agri-diesel purchased was for the commercial drying of maize crops*."

96. Counsel for the Respondent then suggested to the Appellant that this passage was clearly intended to be an explanation as to why it was that he had acquired fuel in the quantity evident from the supplier's statement. The Appellant's response to this was to say, in direct contradiction of what was said on his behalf in the correspondence of 6 October 2016, that he had never acquired MGO for the purpose of then supplying it on to other farmers. It was put to the Appellant that, in providing this written explanation to the Respondent, his agent could only have been acting on his instructions. The Appellant denied that this was so and said that he could not understand why his agent would have given the explanation to the Respondent in circumstances where it was baseless. He called into question why it was that the Respondent had not called his agent to give evidence as a witness in the appeal hearing.

97. Counsel for the Respondent made the point in his cross-examination of the Appellant that, in correspondence of 20 June 2017, his agent had stated to the Respondent "[the Appellant] *advises he did not keep ledger accounts in respect of each of the* [fuel] *suppliers covering the years 2013, 2014 and 2015."* In reply to this, the Appellant stated that he was not aware that he was required to keep any accounts or records relating to supplies received.

98. Counsel for the Respondent put it to the Appellant that records that he had kept for 2014 indicated that he had made cheque payments in the amount of €176,226 from his [redacted] account [redacted]5 to the Bureau de Change. What, counsel asked, was the purpose of these payments? In answer to this question, the Appellant said:-

> *"I remember buying…any time I would buy machinery in England I would pay* [the Bureau de Change] *with a cheque and they would send the sterling over to England then to the Shetland auctions or whoever*."

99. Later in his evidence, the Appellant stated that the level of payments to the Bureau de Change in 2014 also was attributable to his entering into an agreement with [redacted] Co-Op in [redacted] for the provision of maize, which in turn gave rise to the need to then purchase "*a lot of machinery".* It was put to the Appellant that his capital allowances claimed in respect of that year did not suggest that he had made such purchases. In reply to this the Appellant said that, notwithstanding any absence of such claims, that was the reason for his making of payments to the Bureau de Change. As he put it "*Any money that* [went to the Bureau de Change] *that's what that money was for."*

100. Counsel for the Respondent then put it to the Appellant that in the correspondence of 20 June 2017, his agent had stated in relation to payments made by cheque to the Bureau de Change that "*Our client advises that these cheque payments were made in return for short term borrowing and to support cashflow."* He suggested to the Appellant that this statement was in direct contradiction of his evidence given orally to the effect that payments made to the Bureau de Change were so that he could acquire Sterling to be used to purchase farm equipment in the United Kingdom. In answer to this the Appellant said:-

> "[…] *Any time I would buy a machine in England that would, maybe, cost 20,000. I would get 30,000 off* [the Bureau de Change] *and the 10,000 extra would be for cash flow until I get money in for farmers*."

101. When it was then put to the Appellant that there could be no possible cashflow advantage to this arrangement given that he was paying for the drafts from the Bureau de Change in advance by way of cheque, he repeated:-

> "*They would give me a Sterling bank draft back, whatever machine I was buying in England, and they would also give me some euros as well to help my cash flow*."

102. Thereafter in his evidence, the Appellant said:-

"*Any time I needed cash to help me* […] *I would get it off* [the Bureau de Change]. *And sometimes I would get cash off them. I would write them a cheque, I would write the Bureau a cheque and if I was borrowing, maybe, 5,000 off the Bureau I would write them a cheque for 5,500 and they would hold that cheque for a week or ten days until I got money in and then I would lodge the 5,000 into my account, which would be shown in the bank statement, so I could use that as cash flow. And sometimes it could be 10,000. In other words, I was buying money off them for two weeks, maybe, if farmers were waiting to get money in from milk cheques*."

103. Counsel for the Respondent then put it to the Appellant that purchases from A Limited and [redacted] Limited, as recorded in the supplier's statements from these companies, were much higher than the level of purchases evident from the documentation supporting the Appellant's VAT returns. Counsel for the Respondent asked the Appellant why his agent, when requested in correspondence of 2 June 2017 to reconcile this discrepancy in records, stated that he could not provide any such reconciliation and that his client's explanation was, *inter alia*, that:-

"[…] *he had an arrangement with farmers for the purchase and supply of agri-diesel by payment of cash as he was able to purchase at a favourable rate in large quantity*."

104. The Appellant's answer to this was that this statement of his agent in written correspondence to the Respondent did not in fact reflect reality. It was, he said, "[…] *lunacy… and I don't accept that. Because I never made him aware of that. I never told him that either."* The Appellant further gave evidence that as time passed, he came to doubt that his agent was acting in his interests and that their relationship deteriorated as a result.

105. Counsel for the Respondent then asked the Appellant why it was that in correspondence of 1 September 2017, his agent had suggested that the Appellant had at times paid over cash in exchange for drafts from the Bureau de Change. The Appellant said that he did not know the answer to this question and it was implicit in his answer that he denied that he ever did pay cash and then receive such drafts.

106. Counsel for the Respondent drew the Appellant's attention to another part of the correspondence of his agent of 1 September 2017. On the first page, the agent stated that the [redacted] bank account [redacted]5 had not been presented to him at the time when the Appellant's financial statement for 2014 was being prepared. He then said "*We were unaware that business activity was ongoing from our client's personal bank account. The Financial Accounts for 2015 reflect both Farm Account and Personal Account."* Why, counsel for the Respondent asked, had the Appellant withheld relevant material from his

agent when preparing his accounts? In answer to this, the Appellant disagreed with his agent's description of the bank account in question as being a personal account. He said that it had always been an account set up for his business and, furthermore, that the Respondent was aware of the existence of this account prior to commencing its investigation into his affairs.

107. Counsel for the Respondent also questioned the Appellant on how MGO delivered to his farm was stored. In this respect, counsel pointed to the document included in the Respondent's Book of Key Filings, which on its face purported to be an affidavit sworn by the labourer employed on the farm named [redacted]. Therein, [redacted] stated:-

> "*To the best of my knowledge there* [were] *two mobile tanks in the yard, one a bowser which boys pull behind the jeep and holds about 2000 litres and there was another one which holds artic load approx. 36000 litres*."

108. Counsel for the Respondent then put it to the Appellant that, at a meeting held in 2018 with the Respondent's investigating officers, he had denied that MGO delivered to his farm was ever supplied into a "*stationary tanker".* It was clear that counsel for the Respondent interpreted the Appellant's denial in this interview and the statement of [redacted] as being in contradiction of one another.

109. In relation to this matter, the Appellant indicated in his evidence that there was only one 'mobile' tank in use on his farm at the time in question. This was, as [redacted] had stated in his affidavit, a bowser with a capacity of 2,000 litres. The other tank, the Appellant said, was one with a 36,000 litre capacity that sat atop a trailer or chassis from which the wheels had previously been removed. It was not, therefore, in his view a "*tanker"* capable of movement.

110. Counsel for the Respondent then brought the Appellant to a document contained in one of the Respondent's hearing booklets, entitled "*Booklet of Additional Documents",* at page 196. He put it to the Appellant that this document, which appeared to be an "*Invoice/Delivery Note"* from A Limited for the supply to "[redacted] *Agri"* of 19,001 litres of MGO on 13 June 2014, had been signed for by [redacted]. This supply was not, it should be observed, one included in the VAT input deduction listing compiled by the Appellant's agent. Counsel for the Respondent observed that the same section of the Booklet of Additional Documents contained the invoices for the other deliveries set out in the supplier's statement. These, he said to the Appellant, appeared to have been signed for either by himself or by [redacted].

111. In relation to this material, the Appellant stated that the only invoices from A Limited of which he was aware, were those representing purchases of MGO made by means of funds drawn from his [redacted] bank accounts and in respect of which he had claimed VAT deductions. He then made the point that the invoice of 13 June 2014 was made out to [redacted] Agri, a business title that he said he did not use.

112. Counsel for the Respondent also drew the Appellant's attention to copies of 80 drafts from the Bureau de Change, 18 [redacted] bank drafts and 13 cheques bearing the Appellant's bank account numbers and his signature, appended to the Respondent's Statement of Case. These, it was stated, had been supplied to the Respondent by A Limited and were attributable to the account of the Appellant. Counsel for the Respondent made the point that the cheques and drafts included in the booklet corresponded in their dates and amounts to supplies set out in the supplier's statement that were recorded as having been paid. So too, he observed, did the amounts made payable in the cheques and bank drafts match the payments in respect of supplies received recorded in the supplier's statement. The Appellant stated again that he had not received supplies from A Limited in the volume indicated in the supplier's statement.

Submissions

Appellant

113. The Appellant submitted that the assessments under appeal should not stand. This was so because his evidence was that he had not purchased fuel from A Limited in the quantity suggested in the course of 2014 and 2015. He reiterated his oral evidence that he had not made supplies of fuel to other farmers in the area.

Respondent

The excise duty assessment

114. In first addressing the excise duty assessment, counsel for the Respondent submitted that it fell to the Appellant to prove his assertion in the appeal that he was not, over the period 28 April 2014 – 23 July 2015, the recipient of 3,440,364 litres of MGO from A Limited. As authority for this, counsel for the Respondent relied on the judgment of the High Court in *Menolly Homes v Appeal Commissioners & Anor* [2010] IEHC 49.

115. Counsel for the Respondent submitted that it was clear that the Appellant had not in his appeal overcome this burden. During the investigation, the Appellant had, through his agent, provided the supplier's statement from A Limited to the Respondent, which

document covered the period in question and was the foundation of the excise duty of €1,296,122.73 assessed as owing. Counsel for the Respondent made the point that, when this document was provided on 30 May 2016, no indication had been given that it constituted an inaccurate description of the level of supplies that the Appellant had received.

116. Moreover, in answer to questions from the Respondent regarding why the Appellant was purchasing MGO at the level evident from the supplier's statement, the Appellant's own agent had said in correspondence of 6 October 2016 that the Appellant had an arrangement with farmers in the locality for the supply of MGO in return for cash. What the Appellant had done, therefore, was to give an explanation as to why he had received such large quantities for MGO. What he had not then done was assert that the supplier's statement amounted to a major overstatement of the supplies of MGO that he had in fact received from A Limited over the period in question. This explanation was then repeated in correspondence of 20 June 2017 and 2 September 2017.

117. Counsel for the Respondent then submitted that under section 97 of the Finance Act 1999, the "*standard rate*" of excise duty is applicable to heavy oils such as diesel when it is *"used as propellant"*. When otherwise used, most notably in the context of farming activities, heavy oils are subject to a reduced duty rate. The standard rate applicable at the period material to this appeal was, pursuant to section 96 of the Finance Act 1999, €479.02 per 1,000 litres, and the reduced rate was €102.28 per 1,000 litres.

118. Counsel for the Respondent then referred to section 99 of the Finance Act 2001 (as amended) relating to *"liability of persons"*. Section 99(10) provides that where there has been non-compliance with the law regarding the holding or delivery of an excisable product taxed at a reduced rate, and it is then "*not shown to the satisfaction of the* [Revenue] *Commissioners"* that the excisable product has been used for a specific purpose or in a specific manner prescribed by law, the person who holds or receives the product for sale or delivery is liable to pay the standard rate of excise applicable.

119. In relation to the Appellant's compliance with the law on the holding or delivery of MGO, counsel for the Respondent submitted that the Appellant, having admitted in correspondence that he sold or delivered MGO to others, was thus over the period in question a "*mineral oil trader"* under the Mineral Oil Tax Regulations 2012. This being so, the Appellant had record keeping obligations under this secondary legislation, made by the Respondent pursuant to the powers conferred on it by section 97 of the Finance Act 1999, to which he had failed to adhere. Types of records not kept by the Appellant included, *inter alia*, books of account and ledgers in which were recorded his purchases

and sales of MGO, the date on which these purchases and sales occurred, and the identity of the persons from whom MGO was acquired and to whom it was then sold. Counsel for the Respondent also submitted that the Appellant had failed in his obligation to keep delivery dockets relating to sales made. In written legal argument, the Respondent submitted that the Appellant had not, in accordance with Regulation 25 of the 2012 Regulations, supplied monthly "*returns of oil movements*" to the Respondent in respect of MGO that he had then sold or kept for sale or delivery.

120. Counsel for the Respondent submitted that the excise duty assessment under appeal had, in accordance with the requirements of section 99(10) of the Finance Act 2001, been raised firstly on account of this failure of record keeping. Having failed to keep these records, the Appellant had, moreover, failed to satisfy the Respondent in the course of its investigation that the MGO he had acquired from A Limited had in the end been used for purposes allowed by law – in other words for farming activities.

121. Counsel for the Respondent then stated that the task of the Commissioner would be to decide whether or not he shared the doubts of the Respondent regarding the end use of the MGO acquired by the Appellant from A Limited. He submitted that the Commissioner should on the evidence available share them. In so submitting, counsel for the Respondent pointed to the content of the supplier's statement itself and the fact that the Appellant had in the investigation process proffered it to the Respondent without ever contesting its accuracy.

122. Reiterating his view that the evidence pointed to the Appellant having received large supplies of MGO from A Limited, which had been subject to excise duty at a reduced rate, counsel for the Respondent then submitted that there was in fact no evidence before the Commissioner to suggest what the true end use of this MGO acquired had been. This was so because the Appellant had in the appeal process retracted his account given in the course of the investigation to the effect that he had been engaged in supplying other farmers in his locality with MGO. Counsel for the Respondent said that the Appellant had, in essence, nothing at all to say about what he had done with the MGO that, the Respondent contended, had been acquired from A Limited.

123. Counsel for the Respondent then submitted that, just as in relation to the question of whether the Appellant had or had not received supplies of MGO to the level giving rise to the excise duty assessment, the burden rested with the Appellant to prove what he had done with MGO he had held for sale or delivery. In so submitting, counsel for the Respondent cited the previous Determination of the Commission, *59TACD2019*. There, the Appeal Commissioner determining that appeal held that, in accordance with *Revenue*

Commissioners v Doorley, [1933] 1 IR 750 and *McGarry v Revenue Commissioners* [2009] ITR 133 a person seeking to avail of an exemption from tax or some form of remission shouldered the burden of proving their entitlement to it. Given the effective absence of any explanation as to what he had done with the volume of MGO that he had acquired from A Limited, counsel for the Respondent submitted that the Commissioner could not be satisfied in the manner required by section 99(10) of the Finance Act 2001 and, as a consequence, the Appellant's appeal of the excise duty assessment should fail.

*The income tax assessm*ents

124. Counsel for the Respondent then addressed the income tax assessments in legal submission. It was not in dispute that the sums assessed, €55,360.63 for 2014 and €159,303.88 for 2015, arose from the Respondent's refusal of deductions previously claimed by the Appellant on expenditure incurred on purchases then made from A Limited. The value of the purchases giving rise to the deductions in question were €135,139 for 2014 and €278,045 for 2015.

125. Counsel for the Respondent submitted that in order for the deductions claimed to be allowable pursuant to section 81 of the TCA 1997, they would have to have been relatable to expenses "[…] *wholly and exclusively laid out or expended for the purposes of* [the Appellant's] *trade or profession".* The trade in question could only be that of farmer or agricultural contractor, however by the Appellant's own evidence he had no need for anything like the level of supplies received from A Limited. Counsel for the Respondent submitted that the Commissioner should therefore conclude that deductions claimed by the Appellant in relation to expenditure on MGO from this source were not deductions relating to expenditure incurred for the purpose of his trade. They were, rather, deductions relating to expenditure incurred for another purpose altogether. This being so, the deduction claims of the Appellant in question for the years 2014 and 2015 were ones falling outside of the parameters of section 81 of the TCA 1997 and were, as a result, correctly refused.

The VAT assessment

126. Lastly, counsel for the Respondent made submissions concerning the VAT assessment, which arose from the refusal of VAT deductions claimed by the Appellant under section 59 of the VATCA 2010 arising from purchases made from A Limited in 2014 and 2015, as well as from [redacted] Oil Limited in the same years.

127. In relation to purchases from [redacted] Oil Limited, counsel for the Respondent claimed that the position could not be any clearer. The Appellant, in cross-examination, had been

asked whether he had ever made any purchases from this supplier and he had denied ever doing so in absolute terms. It was therefore an agreed fact that, notwithstanding the Appellant's claimed deductions in this context, which stood at €10,371, there was no such VAT ever incurred by the Appellant. As a result, this deduction claimed by the Appellant stood to be recovered from him.

128. In relation to deductions claimed for VAT incurred on purchases from A Limited, which stood at €55,631, counsel for the Respondent said that, in similar fashion to the income tax assessment, the overall level of purchases from that source, coupled with the fact that the Appellant had purchases from other suppliers in the years 2014 and 2015, suggested that the supplies were not incurred in connection with the Appellant's farming and contracting activity. Counsel for the Respondent suggested that for this reason, this VAT incurred on input supplies, which he claimed as a credit, stood to be recovered.

Material Facts

129. The facts material to the determination of this appeal are as follows:-

- in the years under appeal the Appellant operated as a farmer, agricultural contractor and haulier;
- in the years 2014 and 2015, the Appellant acquired supplies of MGO from A Limited;
- in 2014 and 2015 the Appellant made deduction claims in respect of VAT incurred on the purchase of MGO from A Limited in the respective amounts of €18,243 and €37,388 (the cost of the supplies including VAT being €153,383 and €315,432);
- in 2014 and 2015 the Appellant made income tax deduction claims of €135,139 and €278,045 respectively arising from purchases of MGO from A Limited.

130. In addition, for the reasons set out in the Analysis section of this Determination, the Commissioner finds as facts material to the determination of this appeal that:-

- in 2014 the Appellant acquired MGO to the value of €1,729,318.58 from A Limited;
- in 2015 the Appellant acquired MGO to the value of €741,094.02 from A Limited;
- in the years 2014 and 2015 the Appellant acquired 3,440,364 litres of MGO from A Limited;
- the Appellant was engaged in 2014 and 2015 in the supply of MGO to other persons.

Analysis

The burden of proof

131. It is appropriate at the outset of this part of the Determination to deal with the question of the burden of proof in these tax appeals.

132. In *Menolly Homes v Revenue Commissioners* [2010] IEHC 49, Charleton J, citing the earlier judgment of Gilligan J in *T.J. v. Criminal Assets Bureau* [2008] IEHC 168, held 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."*

133. Both Charleton J in *Menolly Homes v Revenue Commissioners* and Gilligan J in *T.J. v Criminal Assets Bureau* emphasised that a tax appeal is not a *lis inter partes*, but rather an inquiry carried out so as to establish the correct liability of a taxpayer. In finding that the burden of proof rested with the taxpayer in this inquiry, they held that it is the taxpayer who should have at their disposal the information necessary to establish their correct charge to tax.

134. This statement of the law regarding where lies the burden of proof, and the reasons why it does so lie, has been reaffirmed by the Courts in subsequent judgments (see for example *McNamara v Revenue Commissioners* [2023] IEHC 15). Moreover, in *Quigley v Revenue Commissioners* [2023] IEHC 244, the High Court held that the burden of proof rests with the Appellant in the specific context of appeals of excise duty assessments made on foot of a liability arising under section 99(10) of the Finance Act 2001. In so doing, Phelan J held at paragraph 101 that:-

> "*Consistently therefore with the dicta of Charleton J. in Menolly, the Court of Appeal has endorsed the established position that in taking an appeal, the taxpayer undertakes the burden of appeal, within the relevant statutory formula, as to the relief which he might be granted if successful. It is for the tax payer to establish an entitlement to the relief and thereby upset the assessment raised by the Revenue. Murray J. restates this proposition throughout his judgment in Lee reiterating with regard to the jurisdiction of the Tax Appeals Commission to determine issues arising (at para. 39):*

> *'…they are always issues that come back to the question of whether there is a charge to tax properly applied in accordance with the relevant statutory provisions and, if so, its amount. That liability, and those questions, all arise from the assessment to tax which defines the appellant body's jurisdiction.'"*

135. Then, at paragraph 106, Phelan J stated:-

> "*In view of the authorities cited above and recalling that the question which frames the Commissioner's jurisdiction on appeal is whether the Tax Appeals Commission is satisfied that there has been compliance with the requirements of excise law in relation to the holding or delivery of MGO and it is shown that the product has been used or held for use for a rebated purpose, the Applicant is required to meet the s.99(10) test with reference to his own books, records and customer base and any witness evidence he may wish to call* […]"

136. Thus, it falls to the Appellant to prove in this appeal that the assessments at issue are incorrect. With regard to the excise duty assessment, the Appellant has sought to do this, firstly, by asserting that he did not receive all of the 136 supplies of MGO from A Limited set out in the supplier's statement, which supplies ground the Respondent's assessment that he received 3,440,364 litres of MGO taxable at the standard rate of excise duty. Secondly, he has done so by asserting that those supplies that he did receive from A Limited over the relevant period were used for purposes allowed by law (i.e. other than for combustion in the engines of vehicles designed for road use). These are both matters in respect of which the burden of proof rests with the Appellant.

The legislative framework for 'mineral oil traders'

137. As stated above in the section of this Determination enumerating relevant legislative provisions, and as observed by Phelan J in *Quigley v Revenue Commissioners,* under the 2012 Regulations "*any person who produces, sells or deals in, keeps for sale or delivery, or delivers, any mineral oil*" shall be a "*mineral oil trader".* Such persons are required to take and keep records enumerated in Part 5 of that legislation. These include:-

- Under Regulation 18, a record in respect of each type of mineral oil of "*the selling or dealing in, receiving, keeping for sale or delivery, or delivery* […] *by that mineral oil trader."* Regulation 18 further requires that this record show, in particular, the date of each purchase, sale, delivery or supply made by the mineral oil trader and the quantity involved; the name and address of the person from whom fuel was purchased or to whom it was sold or delivered; and the payment made or received by the mineral oil trader.

- Under Regulation 19, the mineral oil trader must keep a stock account for each type of mineral oil received into, held in, or delivered or supplied from their premises.
- Under Regulation 20, the mineral oil trader must maintain a "*mineral oil tax account".*
- Under Regulation 23, the mineral oil trader must, in respect of deliveries of MGO exceeding 2,000 litres, create and retain endorsed copies of delivery documents that contain the information set out in sub-regulation (4) therein. This delivery document information shall include: the names and addresses of the persons to whom MGO is to be delivered; the place at which delivery is to be made and the date of dispatch; the quantity and description of the MGO to be delivered; and the registration number of the delivery vehicle used. In respect of deliveries of MGO not exceeding 2,000 litres, although it is permissible for a trader to create a single delivery document covering several different deliveries made by a delivery vehicle, the obligation on the mineral oil trader to record relevant details specified in Regulation 23(4) remains in place.
- Under Regulation 24, for "*direct supplies"* of MGO not exceeding 2,000 litres (i.e. supplies not exceeding this quantity made at the premises of the mineral oil trader and not by way of delivery), a mineral oil trader is required to keep all information specified in Regulation 23(4) that is relevant to those supplies.
- Under Regulation 25, a mineral oil trader is required to furnish to the Respondent at monthly intervals and by electronic means a "*return of oil movements*". In this return, a mineral oil trader must specify each type of fuel that they have "*produced, sold, dealt in, kept for sale or delivery, supplied or delivered."*

138. As is set out hereunder in this Determination, it falls to the Commissioner to determine whether the Appellant, over the years 2014 and 2015, met the statutory definition of a mineral oil trader and, if it is found that he did meet that definition, determine whether he kept the records required of him under legislation. Before proceeding to consider this, the Commissioner addresses the question of the amount of MGO received by the Appellant in those years, which the Appellant asserted in this appeal was far below that set out in the excise duty assessment.

The Appellant's receipt of MGO

139. The Commissioner now turns to the question of the amount of MGO received by the Appellant in 2014 and 2015. In this appeal, the Appellant denied in his oral evidence that he received anything approaching the quantity of MGO specified in the excise duty assessment. His account was that the totality of the MGO that he received from A Limited was discernible from the supplies paid for from funds in his bank accounts and in respect of which his agent made claims for credit for VAT incurred.

140. The Commissioner finds that the Appellant has failed to discharge the burden resting with him to prove that the amount of MGO that he received in 2014 and 2015 was, as he asserted in his evidence, below the level set out in the excise duty assessment, namely 3,440,364 litres. In this appeal, it was incumbent on the Appellant to produce documents corroborating his oral evidence regarding the level of his MGO supplies received and/or to call other persons as witnesses who could give corroborating oral evidence to the same effect. In the event, he produced no corroborating documentation whatsoever, nor did he call other persons with knowledge of the fuel supplies he received as witnesses. Instead, the Appellant sought to challenge the excise duty assessment by making the claim that the sum assessed represented an "*absurd*" amount of MGO for use on a maize farm or for agricultural contracting. The absence of any corroboration of the Appellant's bare assertions regarding the level of MGO that he received in 2014 and 2015 causes the Commissioner to doubt his oral evidence on this matter and to find that it lacks credibility. As such, there is no basis upon which to conclude that the excise duty assessment was in error on the grounds that it overestimated the level of MGO received by the Appellant in the relevant years.

141. Moreover, the Commissioner's view regarding the lack of credibility of the Appellant's evidence concerning the level of MGO that he received is bolstered by the factual background leading to the making of the excise duty assessment. In this respect, it should be emphasised that it was the Appellant who, having obtained the supplier's statement from A Limited listing 136 supplies to the value of €2,470,412.60, provided this document, through his agent, to the Respondent on 30 May 2016. In supplying this document, no comment was made in the covering email denying the truth of its contents. The Commissioner agrees with the point made by counsel for the Respondent that making no comment at this point would have been an extraordinary course of action if the supplier's statement did overstate the true extent of the Appellant's purchases of MGO to the degree claimed by him in evidence.

142. Furthermore, the subsequent correspondence of the Appellant's agent concerning the question of the Appellant's receipt of MGO reduces the credibility of the Appellant's oral

evidence. In this respect, on 6 October 2016 the Appellant's agent provided a response to detailed inquiries from the Respondent regarding, among other things, the source of the funds used by the Appellant to purchase MGO from A Limited. In so doing, the Appellant's agent, far from seeking to dispute the content of the supplier's statement that he had provided some months earlier on behalf of his client, stated that the Appellant had:-

> "[…] *an arrangement with farmers for the purchase and supply of agri-diesel by payment of cash as he was able to purchase at a favourable rate in large quantity. He also advises that a large proportion of the agri-diesel purchased was for the commercial drying* [of] *maize crops."*

143. The Commissioner concludes that this was an attempt to give an explanation for, rather than to deny the existence of, the receipt by the Appellant of supplies of MGO that together reached a level far beyond what one would expect would be needed in the normal course by a farming or agricultural contracting enterprise. The Commissioner finds that it is not credible that the Appellant would, through his agent, have given such an explanation, and not disputed the accuracy of the supplier's statement, had the supplier's statement been so unrepresentative of reality and so damaging to his interests.

144. Likewise, the correspondence of the Appellant's agent of 20 June 2017 contained no assertion that the content of the supplier's statement was inaccurate. In this correspondence, the Appellant's agent indicated their inability to reconcile cheque payments made by the Appellant to A Limited against any purchase invoices, and then stated that the Appellant did not keep ledgers of his acquisitions of fuel in the years 2013 – 2015. In addition, the Appellant's previous explanation concerning the purpose of his MGO acquisitions was repeated verbatim and, moreover, it was emphasised by the Appellant's agent, lest there had been any doubt on this question, that the explanation given in this regard was one that came directly from the Appellant himself.[4]

145. The final matter raised in the correspondence of 20 June 2017 on the supplies received from A Limited was that the Appellant was unable, because of *"health issues suffered circa 2012*", to identify those farmers to whom he had, by his own admission, supplied the MGO in question in the years 2014 and 2015. In his oral evidence the Appellant confirmed that this explanation for his failure or inability to provide to the Respondent information that it requested at various points was correct. The Commissioner considers this explanation to lack credibility as it is clear that the Appellant was in sufficient health

[4] See the emphasis in this correspondence on "***his** explanation"* (i.e. the Appellant's explanation).

in the years 2013 – 2016 to engage in business activity. Moreover, the Appellant's oral evidence in this context also points to a tendency on his part to use the elements of his agent's correspondence with the Respondent that suit his overall narrative, and to disown those parts that do not. This undermines still further the credibility of the Appellant's claims that his agent was acting without instructions in engaging with the Respondent.

146. On 1 September 2017, the Appellant's agent sent a letter to the Respondent indicating, for a third time, that the explanation originally given in the correspondence of 6 October 2017 remained the Appellant's stated position. What followed was the Respondent's correspondence of 24 January 2018, in which it gave its reasons for its imminent excise duty assessment and then, a day later, the excise duty assessment itself. It is an obvious point that the Appellant could, through his agent, at any stage from the correspondence sent on his behalf on 6 October 2017 to 25 January 2018 have made clear that the supplier's statement constituted an enormous misrepresentation of his MGO receipts. The Appellant did not do so and the documentation in this appeal indicates that the first time that the Appellant made the point that he did not receive supplies of the kind evident from this document, was in his Notice of Appeal of the excise duty assessment, delivered to the Commission on 25 February 2018. Again, this further diminishes the credibility of the Appellant's oral evidence concerning the level of his MGO supplies received from A Limited.

147. As observed above, it was a feature of the appeal hearing that the Appellant sought to suggest that his agent, in providing the supplier's statement and in corresponding with the Respondent on the purpose for which his client had acquired his supplies of MGO from A Limited, had been acting of his own accord and without instructions. Pressed by counsel for the Respondent on what was the exact meaning of his evidence in this respect, the Appellant clearly implied that there was a deliberate attempt on the part of his agent and a person or persons associated with A Limited to tie him to supplies of MGO that, according to him, he had in reality nothing to do with.

148. The Commissioner cannot accept this as being a credible account given by the Appellant. In making this allegation, it was for the Appellant in this appeal to establish on the balance of probabilities that his agent, whom he had authorised to be his representative in his dealings with the Respondent, was in so representing him acting outside of any instructions given and against his interests. Establishing this required more than the bare assertions of the Appellant made for the first time in the course of the oral hearing. If it was the fact that there was a determined effort on the part of others, including the Appellant's agent, to ensure that the Appellant took responsibility for supplies of MGO

that he never really received, it would have been an obvious course for the Appellant to seek to call those persons as witnesses in the hearing.

149. In this respect, counsel for the Respondent, faced in cross-examination with the Appellant's denials that what his agent had put in writing was true, suggested to the Appellant that it was incumbent on him to have called his agent as a witness in the hearing. The Appellant, however, took the opposite view and suggested that it was the responsibility of the Respondent to call his agent as a witness and criticised the Respondent for having failed to do so. This proposition on the part of the Appellant was misguided. Having regard to the burden of proof in tax appeals, it was for the Appellant to seek to have the agent attend the appeal to give evidence, if he desired such evidence to be given. If the agent would not undertake to attend on foot of a request by the Appellant that he do so, it was open to the Appellant to make an application to the Commission asking that it summon his agent under section 949AE of the TCA 1997. It is clear that the Appellant made no effort to ensure the attendance of his agent as a witness, despite the fact that the agent's evidence would, according to the Appellant's account given at hearing, have been of the utmost importance to him. The Commissioner concludes that the Appellant did not want to call his agent. Precisely the same observation applies in respect of the owner of A Limited, [redacted], who the Appellant asserted in his oral evidence had said to him that MGO that he had not in reality received had been "*booked out*" to him and that he would have a fill of MGO "*wiped off*" if he "*kept his mouth shut*" on this matter. The Appellant did not give an explanation for his failure to call this person as a witness, save that he asserted that this was something that it fell to the Respondent to do. Again, this view of the Appellant was misguided in light of the fact that it is the Appellant who bears the burden of proof in the tax appeals process.

150. There was, in addition to the supplier's statement, further documentary material included by the Respondent in its books of appeal and put to the Appellant in cross-examination so as to test his oral evidence regarding his supposed non-receipt of the supplies set out in the supplier's statement of A Limited. Such documents included, in particular, invoices/delivery dockets in the name of A Limited, which counsel for the Respondent pointed out matched the MGO transactions evident in the supplier's statement. Such documents also included cheques ostensibly coming from the Appellant's [redacted] bank accounts and drafts from the Bureau de Change made out to A Limited, which likewise matched supplier's statement transactions. The Commissioner is prepared to accept these documents as evidence supporting what is clear from the supplier's statement, namely that in 2014 and 2015 the Appellant received supplies of MGO from A Limited to

the value of €2,470,412.60. These are so admitted in accordance with the Commissioner's power under section 949AC(b) of the TCA 1997.

The Appellant's compliance with the 2012 Regulations

151. Having determined that the Appellant received supplies of MGO from A Limited in the period January 2014 – July 2015 to the value of €2,470,412.60, the Commissioner now proceeds to the next questions, which are the reasons why the Appellant held the MGO and whether in so holding it he complied with any "*requirements of excise law".*

152. In his correspondence of 6 October 2016, 20 June 2017 and 2 September 2017, the Appellant indicated in the clearest terms that he used the MGO acquired to, on the one hand, supply other farmers in the locality, presumably for profit. On the other, he said that a portion of the MGO was also used in the pursuance of his agricultural activity, specifically the drying of maize.

153. At hearing the Appellant sought to retract what was said in this correspondence regarding his onward supply of fuel. As with the question of the level of the Appellant's supplies received, the Commissioner views the revised account of the Appellant, to the effect that all of the MGO he acquired was used in the course of his farming and agricultural contracting activities, as being unconvincing. The Commissioner views it as probable that the Appellant was, as he admitted in writing, himself engaged in the supply of MGO to other persons. This explains the level of purchases that the Appellant made in a way that the Appellant's carrying on of farming and agricultural contracting, does not. The Commissioner so finds as a matter of fact and, in arriving at this factual finding that he was engaged in the supply of MGO to third parties, has also had regard to the absence of any corroborating evidence proving that the scale of farming and farm contracting business was such that it could ever give rise to the need to make over €2.4 million of MGO purchases from A Limited alone in the period April 2014 – July 2015.

154. The consequence of this finding is that the Appellant was, for the purposes of the 2012 Regulations, a "*mineral oil trader",* obligated in 2014 and 2015 to keep records mandated by that secondary legislation. As noted above in this Determination, the record keeping required of the Appellant included, under Regulation 18, that he have kept the names and addresses of the persons from whom he purchased and to whom he supplied mineral oil, including MGO, as well as the quantities in question and the dates of the relevant transactions. He was also then obligated, under Regulation 19, to have kept stock accounts of the MGO held and, under Regulation 20, to have recorded the excise duty due in respect of each sale that he carried out, as well as the method of payment used by the customer to whom he supplied the fuel in question. If the Appellant was delivering

the fuel he was supplying, he was required to keep the delivery document information specified under Regulation 23(4). In the alternative, for "*direct sales"* on his own premises, the information specified under Regulation 24 had to be recorded and maintained. Lastly, the Appellant was required, in like manner to his own suppliers, to remit monthly ROMs electronically to the Respondent in respect of his trading in MGO. This obligation is prescribed under Regulation 25 of the 2012 Regulations.

155. None of this information was kept by the Appellant and, as such, the Commissioner finds that he has failed to adhere to the requirements of excise law regarding his holding of MGO, which is a product subject to a reduced rate of excise. Section 99(10) of the Finance Act 2001 provides that where a person has failed to adhere to any requirement of excise law relating to the holding or delivery of an excisable product subject to a reduced rate on condition that it is used for a specific purpose, then that person is to be liable for payment of excise duty at the standard rate unless "[…] *it is shown to the satisfaction of* [the Respondent]*, that the exciseable products have been used, or are held for use, for such purpose or in such manner."*

Satisfaction as to the 'end use' of the MGO received by the Appellant

156. The Respondent was not satisfied that the Appellant's supplies of MGO received from A Limited in 2014 and 2015 were used for a purpose allowed by law (i.e. other than as propellant) and thus raised the excise duty assessment under appeal. As this assessment is now before the Commission, it therefore falls to the Commissioner to decide whether he is or is not so satisfied regarding the end use of the MGO at issue.

157. In the course of 2014 and 2015, the Appellant received supplies of MGO from A Limited to the value of €2,470,412.60, which led the Respondent to raise an assessment in respect of the receipt of 3,440,364 litres of such fuel. It is inevitable that the Commissioner cannot be satisfied that the end use of the majority of this MGO was for the specific purpose allowed by law. This is so because at hearing the only supplies in respect of which the Appellant was prepared to give evidence were those that he paid for by means of funds in his [redacted] bank account and in respect of which he later claimed credit arising from VAT incurred, though only pursuant to VAT returns delivered late and after the commencement of the Respondent's investigation into his business. Having resiled from his explanation, given to the Respondent on repeated occasions in correspondence, that he was supplying fuel to other farmers in the locality, no explanation was given regarding his purpose in receiving the balance of the supplies set out in the supplier's statement.

158. The Commissioner will return to the matter of the supplies paid for by means of funds in the Appellant's [redacted] accounts and in respect of which he claimed credits for VAT incurred

and income tax deductions. At this point however it might be observed that the Appellant's original explanation that he was himself engaged in the onward supply of MGO received from A Limited represented a legitimate cause for serious concern on the part of the Respondent regarding that fuel's end use. The Appellant, both in investigation correspondence and at hearing, was asked to provide the names of the farmers to whom he claimed to have supplied MGO. Despite this request, he did not provide any. Had the Appellant maintained at hearing that he was engaged in the onward supply of MGO to other persons, the Commissioner would, on the information available, likewise not have been satisfied that it was supplied for use other than as propellant.

159. As regards the supplies of MGO sourced from A Limited paid for from his [redacted] bank accounts and in respect of which the Appellant claimed credits for VAT incurred and income tax deductions, these being supplies in relation to which he did give evidence, again the Commissioner cannot be satisfied that the end use of these supplies was legitimate. Firstly, on the scant information provided by the Appellant in relation to his farming activities, there is inadequate evidence on which to find (a) that he had in 2014 the need for supplies of MGO to the value of €153,383 and (b) that in 2015 he had the need for supplies of MGO to the value of €315,432.

160. In this respect, in his own evidence the Appellant pointed to, in total, three specific items of farm machinery in his possession that he fuelled with MGO. These items of machinery were a combine harvester with a fuel tank of 1,300 litres, a tractor with a tank of either 500 or 800 litres (it was not clear which) and a maize drying machine with a capacity of 2,000 litres. In respect of the last of these items, the Appellant had claimed no capital allowances and, when pressed on this fact under cross-examination, he explained that this was so because he had borrowed it from an unidentified farmer in [redacted]. Even if one disregards this lack of evidence regarding the Appellant's possession of a grain dying machine, the Appellant did not give cogent answers to questions concerning how such machinery could result in him requiring supplies of MGO to the level that he was willing to admit in his evidence. Nor, crucially, did the Appellant call any person with knowledge of the agricultural activities on his farm to corroborate his assertions regarding his MGO consumption in that context. This lack of corroboration applies also to the Appellant's claim that he gave a portion of the MGO that he received in 2014 and 2015 to sub-contractors that he had hired to carry out agricultural contracting work on his behalf. Having claimed that the price of the MGO he supplied to them was deducted from the payment otherwise due to these sub-contractors, the Appellant provided not one invoice to verify and support this claim, nor did any contractor come to give evidence at the appeal hearing.

161. It bears repetition that it is the Appellant in this appeal who bears the burden of satisfying the Commissioner that the end use of the MGO that he has been found as a fact to have received was for purposes allowed by the law. Under the 2012 Regulations, MGO must be used other than as propellant, in other words other than for combustion in the engines of vehicles designed for road use. The explanation that the Appellant has given is that the fuel that he acquired was used for farming and agricultural contracting purposes, however this evidence has not been corroborated by either any documentary material or the evidence of other persons. The Commissioner finds therefore that the Appellant has failed to discharge the burden that rests with him to prove that the MGO acquired from A Limited in the period April 2014 – July 2015, which as has been found was to the value of €2,470,412.60, and was assessed in the excise duty assessment under appeal as being in the amount of 3,440,364 litres, was used other than as propellant, as is required by the 2012 Regulations. As such, the Respondent's excise duty assessment of 25 January 2018 must be held by the Commissioner to stand.

The VAT and income tax assessments

162. This leads to the matters of the VAT assessment and the income tax assessments. Dealing first with the VAT assessment in respect of which the Appellant was assessed to have a balance due of €54,072, the Commissioner finds this to stand for the following reasons.

163. As regards the part of the overall sum assessed attributable to credits of €8,411 and €1,960 claimed in respect of transactions involving [redacted] Oil Limited occurring in the years 2013 and 2014, the Appellant has himself confirmed in his evidence that he entered into no such transactions.[5] He was therefore entitled to claim no such credits.

164. In relation to the part of the overall sum concerning a disclosure made by the Appellant in respect of the year 2012, being in the amount of €10,327, no ground of appeal was advanced in respect thereof.

165. As regards the balance of the sum assessed, relating to credits claimed in respect of the purchase of MGO from A Limited, this too must stand. Under section 59 of the VATCA 2010, deductions may be claimed only in respect of VAT incurred on goods or services acquired that are then "*used by him or her for the purposes of his or her taxable supplies".* Moreover, in understanding the meaning of this provision it is helpful to have regard to

[5] Transcript of hearing, page 65.

the wording of Article 168 of the VAT Directive, which appears in Chapter 1 of Title X that is headed "*Origin and scope of right of deduction".* Article 168 provides that:-

> "*In so far as the goods and services are used for the purposes of the* ***taxed transactions*** *of a taxable person, the taxable person shall be entitled, in the Member State in which he carries out these transactions, to deduct the following from the VAT which he is liable to pay:*
>
> *(a) the VAT due or paid in that Member State in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person;* [Emphasis added]
>
> […]"

166. In view of the findings already made by the Commissioner concerning the end use of the MGO acquired by the Appellant from A Limited, there is no evidence on which to find that the VAT incurred on these supplies was related to input connected to taxed output transactions of the Appellant. This being the case, the VAT deductions claimed in this context cannot be allowed and the assessment under appeal must stand.

167. Lastly, the Commissioner must address the income tax assessments for the years 2014 and 2015. It was an agreed fact that the Appellant made claims for the deduction of MGO purchase expenses incurred in respect of income generated in the conduct of the trade of "*Agri contractor"* (as described in his 2014 income tax return) and "*farmer and agri-contractor*" (as described in his 2015 income tax return). Section 81 of the TCA 1997 provides that, in computing profits or gains chargeable to tax, no sum shall be deducted in respect of expenses "*not being money wholly and exclusively laid out or expended for the purposes of the trade or profession".* Just as was set out in the part of this Determination concerning the excise duty assessment, the Commissioner is not, on the balance of probabilities, satisfied on the available evidence that the Appellant's expenditure on the MGO in respect of which he claimed deductions, was used for the purpose of his farming and agricultural contracting trade. There was no evidence that he had machinery that would necessitate such a level of expenditure on MGO. Moreover, the Appellant, in presenting his appeal, sought to call no one who would provide any detail regarding the usage of MGO in his farming and agricultural contracting business. Thus, there exists no corroborating evidence of the Appellant's bare assertions made in evidence. It is therefore not possible for the Commissioner to find that the Appellant's expenditure on MGO was "*wholly and exclusively laid out for the purposes of the trade or profession",* the trade in question being farming and agricultural contracting. For these reasons, the Appellant's appeals of the income tax assessments, whereby he was

assessed by the Respondent as having balances due in the sums of €55,360.63 for 2014 and €159,303.88 for 2015, must stand affirmed.

Conclusion

168. The Appellant's appeals of all four assessments, namely the excise duty assessment, the VAT assessment and the income tax assessments for 2014 and 2015, have not succeeded and the sums assessed thereunder must stand. In relation to the excise duty assessment, this is so because the Appellant has failed to satisfy the Commissioner that the MGO that he received in 2014 and 2015, being in the amount of 3,440,364 litres, was used for the specific purposes allowed by law. In relation to the VAT assessment, this is so because (a) there is no evidence that the MGO acquired from A Limited, in respect of which the Appellant incurred VAT, was used by the Appellant for the purpose of making taxed supplies and (b) because by his own admission he never made any purchases of MGO from [redacted] Oil Limited. In relation to the income tax assessments for 2014 and 2015, there is no evidence that the expenses incurred were used wholly and exclusively for the purposes of the Appellant's trade, this being that of, in 2014, "*Agri contractor",* and in 2015, *"farmer and agri-contractor".*

Determination

169. The Commissioner's determination is as follows:-

(a) the excise duty assessment of 25 January 2018, relating to the period 28 April 2014 – 23 July 2015, under which the Appellant was assessed to owe excise duty in the form of mineral oil tax in the amount of €1,296,122.73 stands;

(b) the VAT assessment of 28 March 2018, relating to the periods covering 1 May 2013 – 30 April 2015, under which the Appellant was assessed to have VAT due in the amount of €54,072 stands;

(c) the amended income tax assessments of 20 February 2018, relating to the years ending 31 December 2014 and 2015, under which the Appellant was assessed to have income tax due in the amounts of €55,360.63 and €159,303.88 stand.

170. This Appeal is determined in accordance with Part 40A of the TCA 1997 section 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

171. 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

172. 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.

Conor O'Higgins
Appeal Commissioner
15 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.