



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

123TACD2024

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) against a number of assessments to Value-Added Tax (“VAT”) and amended assessments to income tax raised by the Revenue Commissioners (“the Respondent”). The total amount of VAT assessed was €154,427.30 and the total amount of income tax assessed was €247,283.80.
2. The appeal proceeded by way of a hearing over three days on 11 December 2023, 28 May 2024 and 29 May 2024.

Background

3. The Appellant is a retired farmer. Following an audit, the Respondent concluded that the Appellant had understated his income for certain years, and had sold agricultural products including silage wrap on which he had not charged VAT. Consequently, the Respondent raised the following assessments/amended assessments on the Appellant:

Date of Notice	Tax Type	Tax Period	Amount €
12 Dec 2018	VAT	May – Dec 2013	146,869.09
21 Dec 2018	Income tax	2013	24,670.97
23 May 2019	Income tax	2014	134,225.70
23 May 2019	Income tax	2015	88,387.13
5 June 2019	VAT	Jan – Feb 2015	7,558.21

4. The Appellant appealed the assessments/amended assessments to the Commission, and the appeals were subsequently consolidated.
5. The hearing of the appeal was listed for one day. Following a number of requests for adjournments of the scheduled dates, the hearing went ahead on 11 December 2023. The Appellant was represented by his solicitor, and the Respondent was represented by senior counsel. It quickly became apparent that the matter would not finish in one day, and that further hearing days would be required. Additionally, the cross-examination of the Appellant finished early on the first day as the Appellant became unwell.
6. The hearing was scheduled to recommence for three days starting 28 May 2024. On 20 May 2024, the Appellant's solicitor provide the Commission with a letter from the Appellant's [REDACTED], which stated *inter alia* that the Appellant was not in a position to be a "reliable witness" due to pre-existing medical conditions. The letter did not give any indication that it was expected that the Appellant's condition would improve in the foreseeable future. The Appellant's solicitor stated that he was in the Commissioner's hands, but that the Appellant was not in a position to further his appeal at the time.
7. In response, the Commission notified the parties that the Commissioner did not agree to an adjournment of the hearing, but that he would excuse the Appellant from giving any further oral evidence. The email from the Commission further stated that:

"The Commissioner is entitled to take a flexible approach to proceedings under section 949H of the [Taxes Consolidation Act 1997 as amended ("TCA 1997"). However, the

Commissioner notes that this is the Appellant's appeal, and therefore the onus rests on him to progress the appeal. The evidential burden also rests on the Appellant. The Commissioner notes that this appeal has been outstanding for a considerable period of time, and that the hearing was previously adjourned to facilitate the Appellant. Therefore, he is not amenable to a further adjournment of the appeal, particularly where it has been part-heard."

8. The hearing resumed as scheduled on 28 May 2024. The Appellant did not attend, although he had not been excused from attendance by the Commissioner. His solicitor stated that the Appellant had been advised on medical grounds not to attend.
9. The Appellant's solicitor had stated, at the commencement of the hearing in December 2023, that it was intended to hear evidence from three additional witnesses for the Appellant (in addition to the Appellant himself). On the resumption of the hearing, the Appellant's solicitor stated that he intended to call only two additional witnesses. One of these was [REDACTED], from whom evidence was heard.
10. The remaining intended witness for the Appellant was [REDACTED], who was described by the Appellant's solicitor as an "accountant technician". The Appellant's solicitor acknowledged that there had been no witness statement provided on behalf of [REDACTED], and that he had been involved in the calculation of the Appellant's tax affairs until recently before the hearing, and stated that he was applying under section 949AC(b) of the TCA 1997 to have his evidence admitted.
11. Counsel for the Respondent objected to [REDACTED] being permitted to give evidence. He stated that it was clear that [REDACTED] had been engaged to act as a bookkeeper by the Appellant, but that this had only been done in the last year, so he was not a witness as to fact and could give no evidence in respect of the years in question, 2013 – 2015. Therefore, he was being called to give expert evidence, but did not have the qualifications necessary to present himself as an expert. Counsel further stated that no report or any other evidence in writing had been provided to the Respondent in respect of [REDACTED] instructions or what he had considered. As a result, counsel argued that the Respondent would be severely prejudiced if [REDACTED] was permitted to give evidence. He was neither an expert nor a witness as to fact, so any evidence he provided would necessarily be hearsay.
12. The Appellant's solicitor stated that he could not disagree with counsel's submissions. He stated that [REDACTED] was being put forward as an expert but accepted that there were issues with his qualifications, and accepted that [REDACTED] was not independent of the

Appellant. He stated that he did not disagree with the Commissioner's suggestion that hearing from ██████████ would be a waste of time. He further stated that he could raise some of the points he hoped to make through cross-examination of the Respondent's witness, and that his case would not be "severely prejudiced" if ██████████ was not called.

13. The Commissioner decided, on balance, not to allow ██████████ to give evidence. While he did not like excluding evidence, the evidence of ██████████ would be too remote and the Commissioner could not have any regard to it, as ██████████ was neither an expert nor a witness as to fact. Consequently, hearing from him would be to no benefit and would constitute a waste of time. If a report or some other written statement of ██████████ evidence had been provided to the Respondent in advance, that might have changed the situation, but in the circumstances the Commissioner did not consider that it would be fair to hear from ██████████. Therefore, the Commissioner did not permit ██████████ to give evidence at the hearing.
14. In pre-hearing submissions, and at the hearing herein, the Respondent stated it wished to reduce the 2013 VAT and income tax assessments. It had applied a 25% mark-up on the purchase price of silage wrap paid by the Appellant to estimate the sales price. However, the calculations for the 2013 assessments were incorrect. Therefore, the Respondent asked the Commissioner to reduce the 2013 VAT assessment to €119,405.76, and to reduce the 2013 income tax amended assessment to €14,938.65.

Evidence

██████████ – *The Appellant*

15. The Appellant stated that he was a retired farmer and lived in ██████████. He stated that he had underlying medical conditions which affected him, and also that he had forgotten to take his medication that morning. He stated that, in 2012, he had two bank accounts in the State, a joint account with AIB and an account held with the Ulster Bank. He also had an account with Bank of Ireland in Northern Ireland.
16. Between 2012 and 2015 he was resident in the State. He stated that he was assisted with his tax affairs, and his dealings with the Respondent, by his tax agent. He had no recollection of receiving correspondence from the Respondent alleging non-compliance by him with the Respondent's audit of him. His agent had fully authority and authorisation to correspond with the Respondent on the Appellant's behalf.
17. He stated that the reason he originally notified the Respondent of only one account, the one held with AIB, because it was the only one that was active. He stated that he met

with [REDACTED], who was a "sterling man" and was having difficulty lodging cheques, so they came to an arrangement "where he could do his business transactions through an account that I wasn't doing much with."

18. He stated that he had understood that his agent had provided details of the Ulster Bank and Bank of Ireland accounts to the Respondent. He stated that the notices of assessment were sent to his agent. He stated that he appealed the assessments because "They were off the scale altogether. No one knew what they were about. I've [REDACTED] suckler cows and [REDACTED] families have to live off that. It's unheard of even to audit a man in that situation."
19. He said he had nothing to do with the sale of plastic silage wrap: "I never ordered anything, or received anything, or invoiced for anything." He stated that he did not know who [REDACTED] was, other than from what [REDACTED] had told him. He had no direct relationship with [REDACTED] but [REDACTED] company, [REDACTED] [REDACTED] had dealings with [REDACTED]. He stated that he had no role in the purchase of wrap from [REDACTED] "but I was helping to have the debts paid and that was an arrangement made with a solicitor."
20. He stated that [REDACTED] was selling the wrap and getting paid, which went into an escrow account. He said he had no control over the escrow account, which was his Ulster Bank account. [REDACTED] [REDACTED]. He said that [REDACTED] was an affable man and "he was stuck with these euros and he didn't want them."
21. He stated that he knew there were problems with the wrap because people came to speak to [REDACTED] about it. He had nothing to do with the wrap. He agreed that he used to live in an address in [REDACTED], to which the Respondent had contended some of the wrap was delivered.
22. He was asked by his solicitor about explanations provided on his behalf to the Respondent. He stated that he was a cattle farmer, but was not heavily involved in the sale of cattle. He was only allowed to keep [REDACTED] cows, which was the least profitable end of farming. He stated that he was involved in a "discussion group" of farmers who made plans to purchase fertiliser, fodder, sprays etc. The benefit of working as a group was that it gave them stronger purchasing power.
23. He could not recall having provided any correspondence to anybody regarding plastic wrap. He stated that if people bought hay or baleage off him he would provide a receipt, but he never sold fertiliser or wrap. He stated that, for the period of time under appeal,

most of his income was “*Brussels money*”, i.e. the single farm payment. He was debarred from receiving this payment between [REDACTED], before it was reinstated in 2013. The only other source of income was “*the odd bit of fodder that I'd sell.*”

24. On cross examination, he agreed that he had stated on his income tax return for 2013 that his total receipts were €101,812, and that his profit after expenses was €7,786. For 2014, his taxable profit was stated to be €19,425, and in 2015, it was stated to be €31,288. He agreed that these stated profits were modest.
25. He agreed that his agent told the Respondent in October 2016 that his income came from the single farm payments and from the sale of cattle, together with a small amount of fertiliser sales in 2015 to eight individuals. He stated that he provided receipts when he sold fertiliser from a “*wee red book*”. He did not know if receipts were provided to the Respondent but that he had nothing to hide.
26. He acknowledged that in 2017 his agent told the Respondent that all bank accounts had been notified by him, but that in fact only the AIB account had been at that time. He objected to the suggestion that he was not truthful. His agent also stated that the Appellant did not provide receipts when supplying fertiliser. The Appellant stated that he did not know why his red book was not provided to the Respondent and that it was possibly an oversight.
27. It was put to the Appellant that in 2017 his agent claimed that he had entered into a “facilitation arrangement” with [REDACTED]. The Appellant stated that his former solicitor brokered an agreement to enable [REDACTED] lodge euro cheques to the Appellant’s account. He stated that he did not know why [REDACTED] did not open a bank account in the State to enable them to lodge their euro cheques.
28. He stated that he benefitted “*absolutely nothing*” from the facilitation arrangement, and did it as a favour to [REDACTED]. His agent had stated that the facilitation arrangement “*had enhanced [the Appellant’s] credibility and reputation with the bank*”. It was put to the Appellant that the explanation of the facilitation arrangement was put forward to explain lodgements of approximately €510,000 into his AIB account, but that in his earlier evidence he had stated that the lodgements from [REDACTED] had gone into the Ulster Bank account. He said that he failed to see a problem with this.
29. A reconciliation had been provided by the Appellant’s agent on his AIB account, showing “facilitation expenses” and “facilitation receipts”. The Appellant stated that he was unable to explain what they were. He did not know what “facilitation expenses” were. When it

was put to him that he had argued that he made no money out of the facilitation arrangement, and therefore should not have had any expenses arising from it, he replied, *"I can't get me head around what you're driving at, so you'll have to just forgive me."*

30. When it was put to him that he had failed to disclose his Ulster Bank and Northern Ireland accounts, he stated that he believed the Northern Irish account should never have been disclosed. He stated that *"I only done what I thought was best for me. I can't do any more than that."* He stated that he did not disclose the Ulster Bank account because he effectively had no control of it. He stated that the activity relating to the facilitation arrangement moved from his AIB account to his Ulster Bank one in 2014 because *"It would have been handier because there was an account doing nothing"*. He then said there were two arrangements, one each for his AIB and Ulster Bank accounts.
31. The Appellant was asked about the reconciliation provided on the AIB account by his agent, and was also asked to comment on copy cheques acquired by the Respondent that had been drawn on the account. He was asked about a cheque dated [REDACTED] 2013 in the amount of €44,822 that was described on the reconciliation as a "facilitation expense" but was in fact made payable to the Appellant's wife. He said that he would have to check with his wife. He suggested that *"it's a matter of getting it from one account to the other"* but could not provide an explanation as to why such movement was necessary.
32. Other cheques drawn from the AIB account that had been labelled as facilitation expenses were put to the Appellant, including cheques payable to [REDACTED]. The Appellant was unable to explain why these were categorised as facilitation expenses, and agreed with counsel's suggestion that they added up to significant sums *"when you add them all up in a year that you were only earning less than €8,000, isn't that right?"*
33. He agreed that additional cheques for €2,700 and €2,330 related to [REDACTED] and when asked why his agent had labelled them facilitation expenses, he stated *"Well I don't know, he must have got it arse ways."* He agreed that he had three [REDACTED] tractors and had repayments on loans for them in 2012 of nearly €230,031, and further loan repayments of €88,239 in 2013. He suggested that the repayments came out of his income but was told that they were not accounted for in his income tax returns: *"You must bear with me. I'm flabbergasted by that, I don't know why. I don't know in the name of God how that got there."*

34. It was put to him that the amounts stated to be facilitation expenses were in fact living expenses and farming costs, which suggested that he needed additional income to pay for the expenses than was declared. He replied that he was “bamboozled” by the information provided. Further so-called facilitation expenses that appeared to relate to living and farming expenses for 2014 and 2015 were put to the Appellant but he was unable to explain why they had been described as such.
35. The Appellant was asked about five cheques from a [REDACTED] that were made out to the Appellant between 2014 and 2016 and that [REDACTED] had told the Respondent related to wrap bought by him from the Appellant. The Appellant stated that they were not for wrap but in respect of a tractor that [REDACTED] had bought from him.
36. He was asked about cheques written by him from the Ulster Bank account, which he had claimed he had no control over. The cheques included payment of a credit card bill. He was asked how he could afford credit card expenditure in 2013 of €17,767, and he replied that he would have to “check on that”. He was told that credit card expenditure in 2014 was €24,232 and in 2015 was €20,084. When asked how he made those repayments, he said “I had the pension and I had other things.” He stated that he was out of his depth and “I don’t know what I’m at.”
37. He could not explain a cheque made out to a bar in [REDACTED] 2014 in the amount of €7,153. There was a cheque for €9,011 from the Ulster Bank account to the AIB account which was payable to the Appellant’s wife. The Appellant questioned whether there was “anything against giving your wife money?” but again stated that he could not explain where the money came from.
38. He agreed that income described as “facilitation receipts” properly meant that it was not his income but received by [REDACTED]. However, certain cheques that had been described as facilitation receipts but which were made out to the Appellant were then put to him, including cheques from [REDACTED] in the amounts of €20,151.05 and €1,107.84 for the sale of cattle. He did not accept that he had under declared his income.
39. Counsel stated that there was a meeting between the Appellant’s agent and the Respondent in February 2019, at which the agent handed in a letter from a [REDACTED] on headed [REDACTED] paper, which stated that the Appellant was never supplied wrap by [REDACTED]. The Appellant stated that he was aware of allegations that he purchased wrap from [REDACTED] and wanted “to clear the air”. The Appellant’s solicitor interjected to say that [REDACTED] was on the list of witnesses.

40. The Appellant stated that he met [REDACTED] once because there was an issue with faulty wrap. The Appellant had not provided the wrap. Counsel stated that the Respondent contacted [REDACTED] who stated that [REDACTED] was not an employee of theirs and not authorised to provide the letter stating that he had not supplied wrap to the Appellant. The Appellant stated that it was nothing to do with him. He stated that he was a farmer and part of his business was selling bales of silage.

41. At approximately 3.04pm the Appellant's evidence ceased as he was feeling unwell. As set out above, he did not complete his cross-examination, and was not re-examined by his solicitor.

[REDACTED]

42. [REDACTED] stated that he was resident in Northern Ireland. He had known the Appellant since about [REDACTED]. He had owned a [REDACTED] company called [REDACTED] which he sold in and around [REDACTED]

43. The Appellant had sworn an affidavit in 2021 in which he stated that, in the course of [REDACTED], he purchased a quantity of wrap from [REDACTED] and that payments from the wrap were made through the Appellant's account as a personal favour by the Appellant to him. He confirmed that this was his evidence. He stated that his point of contact with [REDACTED] was through [REDACTED]. He said that it was [REDACTED] and [REDACTED] who initiated the dealings in the wrap. The initial plan had been to buy netting but [REDACTED] had encouraged them to buy wrap as well.

44. Regarding payments for the wrap, he stated that they were getting cheques from "everybody" and that the cheques were put into the Appellant's account to facilitate the [REDACTED] [REDACTED] purchased and paid for the wrap through the Appellant's account. The wrap was delivered to several locations at the request of [REDACTED] [REDACTED]. The witness stated that he wasn't "completely hands-on in this", and that he facilitated the purchase of the wrap to help [REDACTED]. The witness stated that he advised the Appellant to set up an escrow account to handle payments, which were made by cheque.

45. He stated that there were problems with the quality of the wrap. In order to cut their losses, the wrap was sold at [REDACTED] in the Republic of Ireland at scrap value. The Appellant's only role was to assist the [REDACTED]. The witness was often out of the country, and said that "This [i.e. the wrap] was supposed to be a side thing to help [REDACTED]"

██████████ *it wasn't to be any major venture*". But ██████████ involvement caused them difficulties.

46. On cross examination, he could not explain why a letter from ██████████ setting up the contract was addressed to him personally, rather than ██████████, at an address of ██████████ ██████████ which had previously been connected with the Appellant. He agreed that he allowed ██████████ to use his company name to facilitate the business arrangement with ██████████
47. He said that ██████████ had been instructed a year previously to prepare the accounts for himself, ██████████ and the Appellant. He said that his intention had been to buy netting from ██████████ and sell it in Northern Ireland, but that ██████████ ██████████ had approached them from ██████████. The netting was fine but the wrap was defective, so it was sold south of the border.
48. He stated that he had nothing to do with the sale of the wrap, which was carried out by ██████████, "*And [the Appellant] was only trying to help him.*" ██████████ was not a good businessman but the Appellant had knowledge of the wrap. He stated that the cheques were lodged to six different accounts, but he could not remember all of the individuals to whom the accounts belonged, although one was ██████████. He stated that the escrow account was set up by a solicitor in ██████████
49. He did not disagree with counsel that there were profits made on the sale of the wrap, and no VAT charged on the sales or income tax paid on the profits. He did not dispute that the Respondent had obtained evidence from six farmers that they had paid around €71 per bale of wrap. He did not dispute that the wrap was bought from ██████████, transported to ██████████, and thereafter sold in the Republic of Ireland. When it was put to him that no tax was paid on the sales, he agreed that he had no knowledge to the contrary. He did not dispute that the Appellant had made money from the sale of wrap.

██████████ – *The Respondent's witness*

50. ██████████ stated that he was an auditor in the tax office in ██████████ and was assigned an investigation case regarding the Appellant. He stated that he drafted the Respondent's Outline of Arguments, and adopted it as his evidence.
51. He stated that the Appellant was asked to provide details of all bank accounts held by him, but at first only notified the Respondent of his AIB account. He stated that the first explanation provided by the Appellant for the lodgements to his account was that they

arose from the sale of cattle, together with a small amount of fertiliser contract work in 2015.

52. The second explanation was that the Appellant provided a facilitation arrangement to [REDACTED]. The Respondent's witness stated that his investigation showed monies being withdrawn to pay for living and farm expenses. There was no indication that large amounts of money were being withdrawn to pass on to anyone else. There were lodgements of around €500,000 in 2013. He carried out a reconciliation on the Appellant's accounts, and when calculating turnover, he did not include transfers from one account to another. He stated that the Appellant had included a cheque from [REDACTED] as a facilitation expense, but had previously included it as income in his income tax return for the year.
53. He stated that the Appellant made out cheques to a [REDACTED] for approximately €180,000 over the periods in question. The Respondent learned about this through an investigation into [REDACTED], as the Appellant had refused to cooperate with the Respondent's investigation regarding himself. On foot of the Appellant's refusal, the Respondent had got access to his financial records by using its powers under section 906A of the TCA 1997. When the Respondent's witness got access to the Appellant's AIB account statements, he saw transactions from the Appellant's Ulster Bank and Northern Ireland Bank of Ireland accounts, which alerted him to their existence.
54. He stated that the Appellant's agent had told him that [REDACTED] was experiencing financial difficulties and that the Appellant provided loans to him to improve his credit worthiness. However he agreed that [REDACTED] had stated, in his evidence, that [REDACTED] was one of the people involved in selling the silage wrap. The Respondent did not believe that the Appellant was lending money to [REDACTED].
55. He stated that similar amounts of money were lodged to the Appellant's Ulster Bank account as were lodged to the AIB account. He stated that the third explanation for the lodgements was that the Appellant was a "major player" in the bulk buying of fertiliser for farmers in the region. He stated that he did not see any evidence from the Appellant's accounts that he was involved in the bulk purchase of fertiliser.
56. The Respondent's witness had contacted nine farmers regarding their dealings with the Appellant. Five of the farmers provided invoices received by them from the Appellant: *"The invoices were for various things, bales of silage, hay, straw, cut sward, silage wrap and round bale wrap. Four of the cases had no invoices. But one of them was able to*

state that he had purchased hay from the Appellant and the other three stated that they had purchased silage wrap, which they confirmed in emails.”

57. He stated that the majority of the cheques made payable to the Appellant for wrap were divisible by 70/71, which he believed indicated the average price per bale. He stated that the Appellant had told him that he (i.e the Appellant) did not provide invoices, but he received a copy invoice with the heading “XXXXXXXXXX, *Suppliers of Quality Feeds, Round Bay Silage, straw, hay and fertilisers.*” He said that it appeared there were about three or four different formats of invoices/receipts provided by the Appellant, which were furnished to him by third parties.
58. He stated that the Appellant was receiving cheques made out to him, which he lodged to his account, and issuing receipts in respect of them. He said that it appeared that the wrap was sold for amounts in excess of what would be expected for scrap.
59. He said that the Appellant had total lodgements to his AIB account in 2013 for €511,632, while the declared income on his tax return was €101,812. There were drawings of €29,504 and transfers to family members of €44,822. There were loan payments of €88,239 for the Appellant’s three tractors. A similar exercise was performed for 2014 and 2015.
60. He stated that the Appellant’s agent claimed that the facilitation arrangement ended in 2014, but that multiple cheques continued to be lodged to the Appellant’s account in subsequent years. He said that there were similar payments in 2012, but that the Respondent had not raised an assessment because *“It just took that long to get through the years that I did have, I had to be selective with what I could examine.”* He had been conscious of the four-year rule, although believed that the Appellant had been negligent.
61. He stated that the VAT assessments were calculated by adding a mark-up of 25% to the purchases made during the relevant periods. For 2013, the assessment was €146,689.09 but the Respondent believed it should be reduced to €119,405.76. The income assessments were calculated by including all of the lodgements, and then deducting declared income and transfers between accounts as well as the VAT. The Respondent’s witness also allowed some expenses that had not been declared by the Appellant, including leasing costs and depreciation. For 2013, the additional tax payable was €14,938. For 2014, the income tax payable was €134,225, and for 2015 it was €88,387.13. The VAT for 2015 was €7,558.21.
62. On cross examination, the Respondent’s witness was asked about the investigation of the Appellant. It was put to him that the original request for all of the Appellant’s bank

statements did not specifically reference accounts held outside of the jurisdiction. He was asked to produce the written consent required from the Respondent under section 906A of the TCA 1997.

63. It was put to the Respondent's witnesses that the notices of assessment/amended assessment were not issued to the Appellant (as opposed to his agent). He was asked about a reference in the documents to a mutual assistance request to HMRC in the UK, and stated that it arose because the Appellant had not provided his Northern Ireland bank account to the Respondent. He was also asked about a SCAC request in respect of [REDACTED]
64. It was put to him that the Respondent's investigation gathered material from a variety of sources, and he asked if this material was disclosed to the Appellant. He stated that he provided correspondence to the Appellant's agent, but that he believed the onus was on the Appellant to provide information, and that the Appellant was given "*ample opportunity*" to engage with the Respondent.
65. He stated that the Respondent obtained purchase information regarding the wrap from [REDACTED]. He stated that the wrap was zero-rated for VAT when purchased by the Appellant, as it was purchased in the South and delivered to the North. He stated that he did not investigate [REDACTED] nor did he investigate [REDACTED]. He said that, when calculating the VAT due for the assessments, he had to make certain assumptions due to the limited cooperation provided by the Appellant. He believed the figure of a 25% mark-up on the purchase price to arrive at the sales price was reasonable.

Submissions

Appellant

66. In written submissions, the Appellant's solicitor stated that the Appellant was a trusted member of his local agricultural farming, and as such facilitated the purchase of plastic silage wrap and other farming supplies for no individual profit or gain to himself. It was accepted that the burden of proof rested on the Appellant.
67. The Appellant submitted that the contractual relationship for the sale and purchase of wrap was between [REDACTED]. [REDACTED] zero-rated the supplies, so must have been satisfied that all was in order. Consequently, the Appellant was not the taxable person but merely provided bank facilitation services. The Respondent had not clarified whether it believed the wrap was sold from Northern Ireland into the Republic, or whether it was re-directed to a facility in the Republic of Ireland.

68. Additionally, the Appellant was unfairly prejudiced because he suffered from an evidential deficit compared to the Respondent. The Respondent was able to access the tax records of third parties, as well as receive the benefit of mutual assistance from HMRC and avail of its powers under section 906A of the TCA 1997. The Appellant had been unable to access the same level of information, although the lack of co-operation by the Appellant was acknowledged.
69. In oral submissions, the Appellant's solicitor stated that the failure by the Appellant to fully cooperate with the Respondent's investigation did not affect the Respondent's obligations to act fairly. He said that his understanding was that a SCAC request arose in the context of an allegation of VAT fraud. While no allegation of fraud had been made against the Appellant, the fact of the SCAC request had not been disclosed to him. Furthermore, the mutual assistance request made to HMRC was not disclosed. Neither was the information procured in respect of third parties. There was no evidence of the necessary written consent for section 906A applications having been provided.
70. Consequently, the Appellant's right to defence under EU law had been violated by the Respondent. A lot of the information relied upon by the Respondent was provided to the Appellant after the assessments were raised. The CJEU judgment in *Glencore Agriculture Hungary Case C-189/18 ("Glencore")* was referenced (although it had not been included in the Book of Authorities). The SCAC request brought the matter within the scope of the requirements as set out in the *Glencore* case. However, it was accepted that the circumstances herein were quite different to the allegations of missing trader fraud as pertained in *Glencore*.

Respondent

71. In written submissions, the Respondent contended that the appeal was largely, if not entirely, factual in nature. It stated that it believed that the Appellant was in receipt of significant undisclosed income which he sought to hide by falsely attributing the income and expenditure to third parties and by not disclosing details of all bank accounts held by him. The Appellant's total declared income between 2013 and 2015 was €493,453; however, total lodgements for this period amounted to €2,014,353.
72. During 2013, payments totalling €510,849 were made from the Appellant's accounts to ██████ for the purchase of plastic wrap. No VAT was paid on the purchase of the wrap. In 2014 and 2015, the Appellant declared total turnover of €391,641, whereas he had lodgements totalling €1,043,240. In 2015, there was a payment of €32,336 from the Appellant's Ulster Bank account to ██████

73. The Appellant provided three explanations for the lodgements. The first explanation was that his only source of income was the sale of cattle, together with a small amount of fertiliser sales in 2015. His second explanation was that he provided a facilitation arrangement to [REDACTED]. However, the Respondent identified that the relevant lodgement slips were signed by the Appellant or his wife. At a meeting in February 2019, the Appellant provided a third explanation for the lodgements: that he acted as a bulk buying agent and distributor for other farmers.
74. In oral submissions, counsel stated that there was no suggestion of fraud in this appeal. Counsel was instructed that there was no requirement for an allegation of fraud to raise a mutual assistance request. The evidence put forward by the Respondent's witness, [REDACTED], had not been challenged on cross examination. The burden of proof rested on the Appellant. The Appellant had originally stated that he intended to call [REDACTED] as a witness, which indicated that he knew [REDACTED], but he had not in fact called him at the hearing.
75. It had not been disputed that the plastic wrap had been delivered to an address associated with the Appellant. The wrap was bought in the State and then sold in the State, so VAT should have been charged on the sale of it. The fault lay with the Appellant who had sold the wrap. The evidence of the Appellant had been lacking in credibility. [REDACTED] had been called on behalf of the Appellant but had in fact agreed that it appeared the Appellant had benefited from the sale of wrap.

Material Facts

76. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:
- 76.1. The Appellant is a retired farmer. The Respondent had contended that he had undeclared income for the years 2013 – 2015, and had purchased and sold plastic silage wrap and other agricultural supplies in the State on which he had not charged VAT.
- 76.2. In 2013, the Appellant had declared income of €101,812.00, but had total lodgements to his three bank accounts of €971,112.73, and total expenditure of €915,697.24.

- 76.3. In 2014, the Appellant had declared turnover of €140,319.00, but had total lodgements to his three accounts of €481,401.00 and total expenditure of €506,080.26.
- 76.4. In 2015, the Appellant declared turnover of €251,312.00, but had total lodgements of €544,246.00 and total expenditure of €413,013.28.
- 76.5. The Appellant provided three different explanations for the difference between his declared income and lodgements to his accounts. The first explanation was that his only income was from the sale of cattle, with a small amount of fertiliser contract work in 2015. The second explanation was that he allowed his bank account to be used by two individuals as a “facilitation arrangement”, from which he obtained no pecuniary benefit. The third explanation was that he was a bulk buyer and distributor of agricultural supplies for other farmers.
- 76.6. None of the three explanations provided by the Appellant explained the very significant difference between his declared income and the lodgements to his accounts.
- 76.7. The Appellant had not disclosed two bank accounts held by him (Ulster Bank and NI Bank of Ireland) to the Respondent, despite the Respondent’s request that he provide details of all accounts held as part of its investigation of the Appellant. The Appellant had not cooperated with the Respondent’s investigation, which obligated the Respondent to procure relevant evidence by way of third parties.
- 76.8. The Appellant’s agent had previously provided a “reconciliation” of his accounts to the Respondent, on which certain items income and expenditure were labelled facilitation expenses and facilitation receipts. However, many of these lodgements and withdrawals were for the Appellant’s own benefit and concerned living/farming expenses. The Appellant was unable to provide an explanation for this.
- 76.9. The Respondent had contacted nine farmers who stated that the Appellant had supplied wrap and other agricultural supplies to them. Five of them provided receipts/invoices given to them by the Appellant. The Appellant had previously told the Respondent that he did not provide receipts/invoices.
- 76.10. The Appellant had purchased plastic wrap from [REDACTED]. The wrap was delivered to an address in Northern Ireland that had previously been associated with the Appellant. The wrap was then sold in the State by the

Appellant, together with other individuals, for profit. The average price of a bale of wrap sold by the Appellant was approx. €71. The wrap was supplied on a zero-rated basis by [REDACTED]. The Appellant did not charge VAT on the wrap when he sold it.

Analysis

77. The burden of proof in this appeal rests on the Appellant, who must show that the Respondent was incorrect to raise the assessments/amended assessments to income tax and VAT. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”
78. This appeal is concerned, almost entirely, with factual matters. The evidence before the Commissioner is detailed and relatively complex. The Commissioner considers that a good statement of the evidence upon which the Respondent relied when deciding to raise the assessments is set out in the “Summary” section of the Respondent’s Outline of Arguments. Although itself is lengthy, the Commissioner considers that it would be helpful to include the Respondent’s Summary, as it clarifies the matters that the Appellant needed to address in order to satisfy the burden of proof upon him:

“60. The VAT assessment for 2013 is based on the total purchases by the Appellant from [REDACTED] of plastic sileage wraps in that year and the Respondent based the assessment on all of the plastic sileage wrap being sold by the Appellant in the same period. Based on information outlined above, the Respondent applied a 25% mark-up on the purchase price of the wrap. The actual VAT assessments that issued were incorrect. The correct figure for 2013 VAT due should be a total of €119,405.76, rather than €146,869.09 (being €11,686.99 for May/June, €24,682.93 for July/Aug, €45,252.03 for Sept/Oct and €37,783.81 for Nov/Dec), allowing for 23% VAT included in the sale price. This meant that the original Income Tax assessment raised for 2013 was also reduced, from €24,670.97 to €14,938.65.

61. In calculating the Income Tax assessment for 2013, the Respondent took the total lodgements to AIB and deducted from this the declared income. The Respondent then added the lodgements to Ulster Bank and BOI UK (not including the pension payments which were taken separately) and from that total allowed deductions for transfers between accounts and unpaid cheques. The Respondent then deducted the VAT on

the sale of wrap and gave allowances for the additional business-related expenses identified from its analysis of the expenditure from the accounts to arrive at a net profit figure. So, for example where the Appellant had a withdrawal categorised as a “facilitation expense”, but on analysis it was discovered to be a payment to a [tractor] dealer, the Respondent deducted this as an expense in arriving at the net profit figure.

62. The Respondent followed a similar process for 2014 and 2015, taking the total lodgements into the accounts, deducting the income already declared and not including funds transferred from one account to the other, and allowing as a deduction additional expenses as determined from an analysis of the bank records.

63. The VAT assessment for 2015 was based on the plastic wrap purchased in that year, similar to that for 2013. A 25% mark-up was applied, and 23% VAT taken from that sales price.

64. It is the Respondent’s view that the Appellant has from the outset sought to conceal the true extent of his business activities. The Respondent believes that this began with the non-disclosure of two additional bank accounts and two credit cards. The Appellant’s total declared income between 2013 and 2015 was €493,453.00, however, total lodgements for this period amounted to €2,014,353.00. The Respondent sought confirmation from the Appellant on multiple occasions that he had disclosed all bank accounts held by him and the Appellant falsely confirmed that he had provided details of all accounts held, that being the AIB account and 2 AIB loan accounts.

65. As detailed above, when the Respondent sought to reconcile the bank details for the AIB account, the Appellant attributed the additional income in its entirety to a “bank transactional facilitation arrangement” involving [REDACTED] and stated that he did not make any financial gain from this. When the Respondent obtained further details on the payments in and out of the AIB account it discovered multiple cheques made payable to the Appellant, worth €552,803.05 in the 3 years for which income tax assessments have been raised, in addition to cash lodgements totalling €90,066.31.

66. When the Respondent obtained copies of cheques drawn from the Appellant’s undisclosed bank accounts and presented the Appellant with copies of them asking for an explanation, the Appellant stated that he was no longer willing to co-operate with the investigation. This meant that the Respondent had to obtain the details of the other two accounts by means of a S906A and a mutual assistance request with the UK.

67. The details obtained from the two undisclosed accounts illustrated the full scale of the Appellant's activities and what the Respondent believes are unreturned sales. It was only when assessments were raised that the Appellant re-engaged with the Respondent. This resulted in the Appellant completing a questionnaire on each of the bank accounts and ... the introduction of a new explanation for the additional income that had not been mentioned at all in the year during which they had been engaging. The new explanation was that the Appellant was allegedly a group purchasing agent for farmers in the [REDACTED] and beyond, and similar to the bank transactional facilitation arrangement, this too was done for no profit or gain. This also allegedly involved the sale of fertilizer to as far as [REDACTED]

68. From this it also emerged that the Appellant claimed that he sells cattle for other farmers for no profit or gain for himself and that he provides sileage wrap to other farmers on an emergency basis, also for no profit. The Appellant also stated that he had sold some sileage wrap to farmers in [REDACTED], also on a no profit basis.

69. In making these claims, the Appellant has on multiple occasions contradicted previous explanations for both the source of lodgements and the purpose of expenditure.

70. The Appellant also sought to conceal the extent of his business activities by failing to provide the Respondent with copies of invoices issued by him, indeed going so far as to confirm that he did not issue invoices. The Respondent has since obtained a number of invoices issued by the Appellant for the sale of hay, sileage and plastic wrap. In a separate Revenue intervention into a [REDACTED], Revenue obtained a cheque reconciliation detailing payments from [REDACTED] bank account, stating that cheques were issued from [REDACTED] bank account to purchase plastic wrap. An examination of the Appellant's bank accounts for these periods show [REDACTED] cheques then being lodged into the appellant's bank account a few days after they were issued by [REDACTED].

71. As part of his alleged explanations for the lodgments, the Appellant produced a document purporting to be from [REDACTED] that was in fact an unauthorised letter printed on a photocopy of the company's headed paper that the company have stated they did not endorse or authorise.

72. At the outset the Appellant stated that the alleged "bank transactional facilitation arrangement" was started due to the "catastrophic" loss of his single farm payments and thus his poor financial state, yet in 2014 he claims to have been able to lend

€160,854 to [REDACTED]. There is no logic to the explanation. Whether or not this alleged loan was repaid, and the Respondent could only confirm that €27,711.00 was lodged back from [REDACTED] account, such is the myriad of 3rd party cheques in the accounts, it does not explain where the Appellant got the money to lend to [REDACTED] in the first place. Also, from Revenue records, it is clear that the Appellant's single farm payments were fully restored in 2013. Also, in 2013 the Appellant transferred €44,822 from his AIB account to his Ulster bank account, with no explanation for the source of these funds. As noted earlier, the Appellant made loan repayments from his AIB account totalling €88,239.79 in 2013. €51,822.79 went against an AIB loan. The balance of €36,417 was also classified as loan repayments, however the Respondent does not have details of the loan to which they pertain. No explanation was provided as to how the €88,239.79 in repayments was funded.

73. It is the Respondent's firm belief that in 2013 the Appellant was in receipt of additional income derived from the sale of plastic wrap, silage, feed, fertiliser and contract work. The Respondent does not believe it plausible that in a period when he claims to have been in serious financial difficulty, the Appellant was allowing his bank accounts to be used in an alleged "facilitation arrangement" for no monetary gain; that he maintained and sold cattle for other farmers who had no land or herd numbers for no monetary gain; that he provided plastic wrap to farmers on an emergency basis for no gain or that he acted as a bulk buying agent and provider for dozens of farmers countrywide, for no monetary gain. As set out in paragraph 41 above, an examination of the actual expenditure from the Appellant's bank accounts clearly illustrates that the additional funds are not simply leaving his account for onward transmission to pay for feed or fertilizer. Paragraph 36 above sets how the Appellant's agent claimed that cash lodged was subsequently withdrawn to pay suppliers in relation to the claimed bulk buying activity. In 2013 cash lodgements to the Appellant's accounts totalled €64,243.37. Total cash withdrawals amounted to €34,038.38, €4,570 of which was in amounts under €500 at a time, which does not indicate bulk purchasing. Also, the justification for this activity was that there were discounts obtained by the Appellant for bulk purchasing, yet none of the invoices provided relating to the purchase of feed or fertiliser show any discount on the sale price.

74. Paragraphs 38 to 40 above provide an analysis of the expenditure from the Appellant's accounts in 2013, which does not support any of the Appellant's claims, be it that he was involved in a bank transactional facilitation arrangement, or that he was a bulk buying agent for farmers in the [REDACTED] and beyond for no profit or

gain. Indeed, the only activity that the Appellant is acknowledging that he was involved with in 2013 for monetary gain is the sale of his dry stock cattle, which amounted to €46,522 before expenses. The Appellant in his AIB bank reconciliation classified €24,770.17 as being related to "facilitation receipts" and then claimed that these funds actually belonged to other farmers which if true further reduces his ability to pay for the purchases made. Despite the Appellant's various contradicting explanations for the source of the funds in his accounts, an examination of the expenditure from his accounts clearly shows that along with the €510,849.00 paid to [REDACTED], the balance of the funds was spent either on goods and services in the nature of drawings or for use on his own farm. These purchases simply could not be funded from the Appellant's income declared on his Form 11, meaning he under declared his income on his Form 11.

75. In 2014 and 2015, it is the Respondents belief that as in 2013 the Appellant was in receipt of undeclared income of which he was the beneficiary. As in 2013 there were multiple lodgements to the Appellant's bank accounts made up of 3rd party cheques, cheques made payable to the Appellant and cash, far in excess of the turnover the Appellant has declared in his Form 11 for the year. The Appellant has stated initially that he was not the beneficiary of these funds, then later a new explanation was introduced whereby he stated that much of the funds were lodged and then withdrawn to pay for feed and fertilizer in connection with his role as a group purchasing agent, however in paragraphs 43 to 50 above, an analysis of the expenditure from his bank accounts shows that the majority of the actual expenditure was in the nature of drawings and on expenses proper to his farming activities that could not have been funded from the income declared by the Appellant in Form 11 returns. In 2015 there were cash withdrawals of €105,109.10, higher than in the other 2 years. The Appellant claimed purchases of Fertiliser in the Cost of Sales in his Trial Balance of €86,831.00. No invoices were provided for this however the Respondent has allowed for this expense deduction in arriving at the revised liability.

76. As per the specific examples in points 46 to 50 above, there were many instances of expenditure which in the bank reconciliation was attributed to "facilitation expenses", which on further examination were indisputably expenses incurred by the Appellant in the running of his farm and which had involved considerable expense, the funding of which the Respondent believes was from the additional income earned by the Appellant. No explanation has been offered by the Appellant to explain how he has funded the additional expenses, be it those he himself identified in his bank

reconciliation, or the ones outlined to him by the Respondent in the questionnaires. The Respondent believes that the Appellant was indeed providing feed, fertiliser, silage and wrap but that he was making a profit on these sales and it is this profit that was used to fund the expenditure over and above that of his levels of declared income.

77. With regard to the purchases from ██████████, the Appellant has claimed that he does not sell plastic wrap however the letter produced by the Appellant purporting to be from ██████████ has been refuted by the company. The Respondent has assembled evidence that shows the involvement of the Appellant in the sale of plastic wrap from start to finish. The wrap was paid for by cheques signed by the Appellant and issued from his bank accounts. Although invoiced to 3rd parties this wrap was then delivered to an address that is associated with the Appellant. Cheque lodgements were then made to the Appellant's account, the cheques physically lodged by the Appellant or his wife, some with the details of the price, quantity and/or brand of wrap that they were in payment for. The Respondent also obtained confirmation from a number of 3rd party farmers that they bought plastic wrap from the Appellant, in addition to obtaining two invoices issued by the Appellant for the sale of wrap, despite the Appellant advising that he had [not] issued any invoices. Also, as a result of a Revenue intervention involving ██████████, the Respondent obtained information that a number of cheques from ██████████ bank account were subsequently lodged to the Appellant's bank accounts and were in payment for plastic wrap. And finally, the Appellant himself admitted selling plastic wrap on a number of occasions.

78. The Appellant's different explanations for the source of additional lodgements and purposes of payments all finish with him making no profit or gain as a result, be it from his sales of cattle on behalf of others, the provision of plastic wrap in cases of emergency, bulk buying and supplying feed and fertilizer for farmers up and down the country, loaning money or a bank facilitation arrangement. However, an analysis of the actual expenditure from his bank accounts reveals that the Appellant has made purchases that are applicable to both his farming business and in the nature of drawings that far exceed the level of income he has declared on his tax returns for the periods. The Appellant could not have funded the purchases on the basis of his declared income and the only logical explanation is that he is enjoying a profit from the additional funds that are going through his accounts.

79. The Appellant has clearly sought from the outset to frustrate the Respondent's investigation, by attempting to conceal bank accounts, by not providing invoices that he issued, by withdrawing his cooperation, by providing a letter purporting to be from

██████████ that was not issued by the company and by offering contradictory explanations for many of the transactions as a result of changing his story midway through the investigation. In doing so he has also contradicted his own Form 11 returns by claiming previously declared sales to belong to 3rd parties. When the Appellant's actual expenditure is analysed it is apparent that his claim to have no income other than that declared on the Form 11 for each year is simply not true. As such the Respondent has raised assessments based on what ██████████ believes are the Appellant's actual levels of income for the years in question. The Respondent has done so by carefully analysing the lodgements to the Appellant's accounts, taking account of the income and expenses already declared, and looking in detail at the actual expenditure from the accounts and allowing deductions for those which pertain to the Appellant's farming enterprise."

79. In short, the Commissioners finds that the Appellant has failed to demonstrate that the Respondent was incorrect to raise the assessments to VAT and the amended assessments to income tax against him. The Commissioner is satisfied that he did not put forward any meaningful explanation for the very large differential between his declared income and the amount of lodgements to his bank accounts. His purported explanation that he provided a "facilitation arrangement" to others to use his bank account to lodge cheques, from which he gained no benefit, was illogical and wholly lacking in credibility.
80. The Appellant was unable to complete his cross examination due to ill health. However, the Commissioner is satisfied that, even taking his examination in chief at its height, he has not met the burden of proof upon him. The Commissioner found the Appellant's evidence to be vague, extremely general in nature and, even on its own terms, contradictory (e.g. he said both that he did not provide the Respondent with details of his Ulster Bank account because he did not consider it necessary to do so, and that he understood that his agent had provided the details). There was no engagement by the Appellant with the substance of the allegations against him, and therefore, even if he had not been cross examined at all, the Commissioner would not have been able to find that he had demonstrated that the Respondent had incorrectly raised the assessments against him.
81. Having said that, the Appellant was cross examined by counsel for the Respondent, during which he was unable to explain why lodgements that had been described as "facilitation receipts", and withdrawals that had been described as "facilitation expenses", appeared to concern his own income and living/farming expenses. Some of these

included cheques payable to [REDACTED]. There were also payments to the Appellant's wife, payments to a pub, and payments connected with the Appellant's [REDACTED]. In its Outline of Arguments, the Respondent provided a detailed analysis of the Appellant's expenditure based on its review of his AIB and Ulster Bank accounts. The Commissioner is satisfied that the Appellant failed to substantively challenge any of the findings of the Respondent's analysis of his expenditure.

82. In its Statement of Case and Outline of Arguments, the Respondent stated that the Appellant had declared income in 2013 of €101,812.00, but had total lodgements to his three accounts of €971,112.73, and total expenditure of €915,697.24. In 2014, he had declared turnover of €140,319.00, but had total lodgements to his three accounts of €481,401.00 and total expenditure of €506,080.26. In 2015, the Appellant declared turnover of €251,312.00, but had total lodgements of €544,246.00 and total expenditure of €413,013.28. These figures were not challenged by the Appellant, and the Commissioner accepts them as a correct statement of fact.
83. The Commissioner is satisfied that the Appellant failed to explain the substantial discrepancy between his declared income, and the transactions into and out of his accounts. Even if the Commissioner were to accept one or more of the explanations provided by the Appellant (and, for the avoidance of doubt, he does not), they would still leave unexplained why the Appellant had income and expenditure far in excess of his declared turnover and profits for the years in question.
84. The Respondent contended that the Appellant had made payments to [REDACTED] for silage wrap of €510,849 in 2013, and €32,336 in 2015. The Respondent had not identified any payments in 2014. The Appellant's evidence was that his former solicitor set up a "facilitation arrangement" whereby [REDACTED] [REDACTED] [REDACTED] [REDACTED] purchased wrap from [REDACTED] and then sold it, while using the Appellant's bank accounts to lodge euro cheques, and that the Appellant gained no monetary benefit from this arrangement.
85. The Commissioner does not accept the Appellant's explanation of his involvement in the purchase and sale of wrap. Firstly, it is clear from the Respondent's analysis of his accounts, that the Appellant paid for wrap himself, and received cheques from farmers payable to him for wrap and other agricultural supplies. The Respondent procured relevant evidence, including:

- A cheque dated 16 June 2014 from [REDACTED]” in the amount of €700 for “silage wrap”;
- A cheque dated 21 June 2013 from [REDACTED]” in the amount of €700;
- A cheque dated 20 June 2014 from [REDACTED]” in the amount of €2450, which was for 100 bales of straw;
- A cheque dated 14 June 2014 from [REDACTED]” in the amount of €1,050 (invoice provided by Appellant, illegible);
- A cheque dated 8 July 2013 from [REDACTED]” in the amount of €375, stated to be for “rolls of plastic”;
- Invoices from “[REDACTED]” dated 9 June 2015 and 14 August 2015 in the amounts of €1,820 and €1,440, respectively, for bales of hay;
- A cheque dated 30 May 2015 from [REDACTED]” in the amount of €520, with a receipt from the Appellant stating it was for bales of silage;
- A cheque dated 13 August 2014 from [REDACTED]” in the amount of €1,850, with a receipt from the Appellant stating it was for bales of hay;
- A cheque dated 14 July 2015 from [REDACTED]” in the amount of €2,285, with an invoice from the Appellant stating it was for bales of winter barley straw;
- A cheque dated 16 June 2014 from [REDACTED] in the amount of €750, stated to be for silage wrap.

86. There were also emails provided to the Respondent on behalf of farmers stating that they purchased wrap from the Appellant. No explanation for the above cheques, or the emails, was provided by the Appellant.

87. Secondly, the Appellant had called [REDACTED] as a witness, who had stated in an affidavit sworn in 2021 that he had purchased wrap from [REDACTED] using his company, [REDACTED], and that payments for the wrap were made through the Appellant’s account as a “*personal favour*” to [REDACTED]. However, on cross examination, [REDACTED] was not able to explain why a letter from [REDACTED] which purportedly concerned the opening of the account with him for the sale of wrap, was addressed to him personally rather than his company, and why it was sent to an address to which he had no connection but which

had previously been connected with the Appellant. He also said that he had nothing to do with the sale of the wrap, which was organised by [REDACTED]. He did not disagree with the evidence showing that no VAT had been charged on the wrap, and that the Appellant had made profits from the wrap.

88. The Commissioner did not consider [REDACTED] contention that the Appellant provided him with the use of his account as a “*personal favour*” to be convincing, and found it significant that he admitted he had little day to day involvement in the purchase and sale of the wrap. Ultimately, the Commissioner did not consider that [REDACTED] evidence was helpful to the Appellant.
89. Thirdly, the Appellant had stated that the “escrow account” for the facilitation arrangement was his Ulster Bank account, and that he had no control over it. However, he could not provide an explanation as to why, in 2013, cheques connected with the sale of wrap were lodged to his AIB account, and that the lodgements did not go into his Ulster Bank account until 2014. Furthermore, it was evident that the Appellant made lodgements and withdrawals to both his accounts, and therefore his contention that he had no control over the “escrow account” (whichever account that was) was ill-founded.
90. Consequently, the Commissioner is satisfied that the Appellant has not demonstrated that the Respondent was incorrect to conclude that he was involved in the purchase of wrap from [REDACTED], which was delivered to an address in Northern Ireland previously connected to him, and was subsequently sold to farmers in the Republic of Ireland for profit and without VAT being charged on the sales.
91. The Respondent had raised assessments to VAT by marking up the Appellant’s purchases of wrap from [REDACTED] by 25%, and assuming the wrap was sold in the same period as it was purchased. The Commissioner considers that this approach was reasonable and appropriate in the circumstances.
92. The 2013 assessment to VAT was in the amount of €146,869.09. However, the Respondent stated that this was incorrectly calculated, as the VAT amount was not netted off the profits before being assessed. Therefore, the correct amount of VAT for 2013 was €119,405.76. For the same reason, the Respondent asked that the amended assessment to income tax for 2013 be reduced from €24,670.97 to €14,938.65.
93. The Commissioner acknowledges that the Appellant’s solicitor was placed in a difficult position by the failure of the Appellant to attend the second and third days of the hearing. Nevertheless, the Commissioner considers it notable that, in his cross examination of the Respondent’s witness, the Appellant’s solicitor did not challenge the factual evidence put

forward by the Respondent. Rather, his questioning seemed aimed to show that the Respondent had been procedurally unfair to the Appellant in its investigation.

94. The Commission has no supervisory jurisdiction over the Respondent, and does not have any jurisdiction in Irish law to consider allegations of unfairness or errors in procedure on the part of the Respondent in its investigations of taxpayers. In *Lee v Revenue Commissioners* [2021] IECA 18, Murray J stated that

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

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

95. Consequently, the Commissioner is satisfied that he cannot consider allegations of procedural errors or unfairness on the part of the Respondent. Any such allegations could only be addressed by way of judicial review proceedings in the High Court. In any event, the Commissioner did not consider that there was any evidence of the Respondent acting in a manner that was unfair to the Appellant. On the contrary, the Respondent, through ██████████, carried out an extremely thorough and careful investigation into the affairs of the Appellant, during which it provided numerous opportunities to him to explain his position. Furthermore, in calculating the assessments, ██████████ evidence was that he ensured that he did not double count the Appellant’s income, and he allowed deductions expenses that had not been claimed by the Appellant.

96. The Appellant’s solicitor contended that the Appellant was at an “*evidential deficit*” compared to the Respondent, and argued that the Appellant’s right to defence under EU law had been breached. In this regard, the Appellant’s solicitor sought to rely on the CJEU’s judgment in *Glencore*. Firstly, the Commissioner notes that the attempt to rely on *Glencore* was raised for the first time during closing submissions, and that there was no allegation of a breach of the right to defence at an earlier stage of the proceedings. No good reason was put forward as to why the matter had not been raised previously, and it seemed to the Commissioner that it was an attempt to ambush the Respondent at a very late stage of the proceedings.

97. In any event, *Glencore* was concerned with allegations of missing trader VAT fraud, while the Respondent countered that there was no allegation of fraud against the Appellant herein. The Commissioner is satisfied that the circumstances under consideration in this appeal, where the Respondent alleged that the Appellant purchased wrap which he then sold without charging VAT, are very different to those pertaining to *Glencore*. Furthermore, the Commissioner accepts the submission of the Respondent that it was obliged to carry out a wide-ranging investigation into the Appellant's tax affairs because of his refusal to cooperate with it. The Commissioner is satisfied that the evidence procured by the Respondent, such as the Appellant's own bank account statements, invoices/receipts provided by him to purchasers of wrap and other agricultural supplies, and copy cheques drawn on his account, were all items to which the Appellant himself had access. In this regard, the Commissioner notes the comments of Gilligan J in *TJ v Criminal Assets Bureau* [2008] IEHC 168 (as quoted in *Menolly Homes*) that "*it has to be borne in mind that since an assessment can only relate to the applicant's own income and gain, any materially relevant matter would have to be or have been in the knowledge and in the power procurement and control of the applicant.*"
98. Consequently, the Commissioner does not agree that the right to defence under EU law is engaged in this appeal. Even if it was, given his non-cooperation with the Respondent's investigation, the Commissioner would not agree that the Appellant's right to defence had been breached. The Commissioner does not consider that the Appellant was at an "evidential deficit" as claimed by him, in circumstances where he refused to engage with the Respondent, which was therefore obliged to utilise other methods of procuring the evidence to allow it to properly review and analyse the Appellant's tax affairs.
99. Finally, the Appellant had contended that he was not a taxable person for VAT purposes, as the agricultural wrap was supplied by ██████ on a zero-rated basis. The Commissioner notes that ██████ tax affairs are not before him, and therefore he can make no findings in respect of its actions. However, he is satisfied that the Appellant purchased wrap in this jurisdiction, which he subsequently sold in this jurisdiction, and therefore VAT should have been charged on the sale by the Appellant of wrap.
100. Consequently, for the reasons set out herein, the Commissioner is satisfied that the Appellant has failed to meet the burden of proof on him to show that the Respondent incorrectly raised the assessments to VAT, and amended assessments to income tax, and consequently the appeal is unsuccessful. The Commissioner confirms the amended assessments to income tax for 2014 and 2015, and the assessment to VAT for 2015. As

requested by the Respondent, he reduces the assessment to VAT for 2013 to €119,405.76, and the amended assessment to income tax for 2013 to €14,938.65.

Determination

101. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner determines that:

101.1. The amended assessment to income tax for 2014 in the amount of €134,225.70, and the amended assessment to income tax for 2015 in the amount of €88,387.13, stand;

101.2. The assessment to VAT for 2015 in the amount of €7,558.21 stands;

101.3. The amended assessment to income tax for 2013 is reduced to €14,938.65; and

101.4. The assessment to VAT for 2013 is reduced to €119,405.76.

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

Notification

103. 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

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



Simon Noone
Appeal Commissioner
4th July 2024

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