AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

60TACD2025

Between

[redacted]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Contents

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as appeals against decisions of the Revenue Commissioners (hereinafter the "Respondent") rejecting claims for refunds of Value Added Tax (hereinafter "VAT") made by the [redacted] (hereinafter the "Appellant").

2. The total amount of tax under appeal is €2,549,924.00.

Background

3. The following background facts have been agreed between the parties.

   3.1. The Appellant promotes the sale of [redacted] to the public.

   3.2. The Appellant receives its income from:

      3.2.1. a [redacted] paid by [redacted] producers;

      3.2.2. [redacted] from the [redacted] for the purpose of the [redacted];

      3.2.3. funding from [redacted] and the [redacted] for the [redacted];

      3.2.4. [redacted]; and

      3.2.5. other economic activity such as [redacted].

   3.3. The Appellant is registered for VAT.

   3.4. It is agreed between the parties that, under settled case law of the Court of Justice of the European Union (hereinafter the "CJEU"), the [redacted], the [redacted] and the [redacted] received by the Appellant are not consideration for the supply of a service and are not taxable.

   3.5. These appeals relate to the rejection by the Respondent of VAT repayment claims submitted by the Appellant for VAT periods in 2016 to 2020 as follows:

Appeal Number	VAT Period	Amount €
[redacted]	Jul / Aug 2016	63,917
[redacted]	May / Jun 2018	183,632

[redacted]	Jul / Aug 2018	72,639
[redacted]	Sep / Oct 2018	110,029
[redacted]	Jan / Feb 2019	73,446
[redacted]	Mar / Apr 2019	73,033
[redacted]	May / Jun 2019	34,614
[redacted]	Jul / Aug 2019	101,121
[redacted]	Sep / Oct 2019	102,745
[redacted]	Jan / Feb 2017	71,128
[redacted]	Mar / Apr 2017	97,900
[redacted]	May / Jun 2017	175,822
[redacted]	Jul / Aug 2017	106,812
[redacted]	Sep / Oct 2017	346,484
[redacted]	Nov / Dec 2017	253,730
[redacted]	Jan / Feb 2018	40,408
[redacted]	Mar / Apr 2018	218,314
[redacted]	Nov / Dec 2018	47,616
[redacted]	Nov / Dec 2019	36,260
[redacted]	Jan / Feb 2020	54,473
[redacted]	Mar / Apr 2020	67,434
[redacted]	May / Jun 2020	66,498
[redacted]	Jul / Aug 2020	27,256
[redacted]	Sep / Oct 2020	72,430
[redacted]	Nov / Dec 2020	52,540

3.6. The total amount under appeal is €2,549,921 and is broken down into four separate appeals as follows:

Appeal Number	Total amount under appeal €
[redacted]	815,176
[redacted]	1,448,587
[redacted]	67,434
[redacted]	218,724

3.7. In 2006 the Appellant lodged an appeal with the former Appeal Commissioners in relation to a decision of the Respondent refusing a repayment of VAT. That appeal was settled between the parties and was not determined by an Appeal Commissioner.

4. A bifurcated oral hearing of this appeal took place over a period of five days.

5. The Commissioner has considered the legislation, case law, the submissions received both written and oral, the documentary evidence and the witness evidence at the oral hearing in making this determination.

Legislation and Guidelines

EU Directives

6. Due to the case law which is relevant to this appeal, it is necessary to set out a history of the EU legal framework relating to VAT.

7. The *First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes* (hereinafter the "First Directive") established a common system of VAT within the then European Community.

8. Article 2 of the First Directive provided for "*a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged*" and provided that VAT would be chargeable on goods and services "*after deduction of the amount of value added tax borne directly by the various cost components*". This is the origin of the principle of VAT as a tax on consumption of goods and services, which is described as "output tax".

9. The First Directive also provided that output tax was subject to a right of deduction or offset of tax incurred on the cost components of such output supplies, that is to say "input tax".

10. The *Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment* (hereinafter the "Sixth Directive"), embedded the foundational principles of the First Directive.

11. Article 2 of the Sixth Directive required VAT to be paid on any "*supply of goods or services effected for consideration within the territory of the country by a taxable person acting as such*". Supplies falling within that description were said to be in scope of VAT.

12. Article 13 of the Sixth Directive provided for certain types of supply to be exempt from VAT.

13. Article 17 of the Sixth Directive established a right of deduction of input tax in so far as the goods and services on which that input tax was incurred were used for the purposes of taxable outputs.

14. Article 17(5) of the Sixth Directive provided that where goods and services were used by a taxable person for both transactions giving rise to a right of deduction and for goods and services in respect of which input tax is not deductible "*only such proportion of the value added tax shall be deductible as is attributable to the former transactions*".

15. *Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax* (hereinafter the "Principal VAT Directive" or "PVD") is a directive consolidating the previous VAT directives.

16. Article 1 of the PVD repeats the foundational principles found in the First and Sixth Directives and provides as follows:

> *"1. This Directive establishes the common system of value added tax (VAT).*
>
> *2. The principle of the common system of VAT entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.*
>
> *On each transaction, VAT, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components.*

The common system of VAT shall be applied up to and including the retail trade stage."

17. Article 2 of the PVD establishes the scope of VAT as being:

"1 The following transactions shall be subject to VAT:

…

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

…"

18. Article 9 of the PVD defines a "*taxable person*" as meaning:

"…any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity".

19. Article 24 of the PVD defines the "*supply of services*" as meaning:

"… any transaction which does not constitute a supply of goods."

20. Article 73 of the PVD provides that:

"In respect of the supply of goods or services, other than as referred to in Articles 74 to 77, the taxable amount shall include everything which constitutes consideration obtained or to be obtained by the supplier, in return for the supply, from the customer or a third party, including subsidies directly linked to the price of the supply."

21. Article 135.1 requires Member States to exempt certain transactions from VAT.

22. Title X of the PVD is headed "*Deductions*", and Chapter 1 of that title is headed "*Origin and scope of right of deduction*".

23. Article 167 of the PVD provides for a right of deduction at the time the deductible tax becomes chargeable.

24. The right of deduction is contained in Article 168 of the PVD as follows:

"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;

(b) the VAT due in respect of transactions treated as supplies of goods or services pursuant to Article 18(a) and Article 27;

(c) the VAT due in respect of intra-Community acquisitions of goods pursuant to Article 2(1)(b)(i);

(d) the VAT due on transactions treated as intra-Community acquisitions in accordance with Articles 21 and 22;

(e) the VAT due or paid in respect of the importation of goods into that Member State."

25. Articles 173 to 175 of the PVD contain provisions for proportional deduction as follows:

"Article 173

1. In the case of goods or services used by a taxable person both for transactions in respect of which VAT is deductible pursuant to Articles 168, 169 and 170, and for transactions in respect of which VAT is not deductible, only such proportion of the VAT as is attributable to the former transactions shall be deductible.

The deductible proportion shall be determined, in accordance with Articles 174 and 175, for all the transactions carried out by the taxable person.

2. Member States may take the following measures:

(a) authorise the taxable person to determine a proportion for each sector of his business, provided that separate accounts are kept for each sector;

(b) require the taxable person to determine a proportion for each sector of his business and to keep separate accounts for each sector;

(c) authorise or require the taxable person to make the deduction on the basis of the use made of all or part of the goods and services;

(d) authorise or require the taxable person to make the deduction in accordance with the rule laid down in the first subparagraph of paragraph 1, in respect of all goods and services used for all transactions referred to therein;

(e) provide that, where the VAT which is not deductible by the taxable person is insignificant, it is to be treated as nil.

Article 174

1. The deductible proportion shall be made up of a fraction comprising the following amounts:

(a) as numerator, the total amount, exclusive of VAT, of turnover per year attributable to transactions in respect of which VAT is deductible pursuant to Articles 168 and 169;

(b) as denominator, the total amount, exclusive of VAT, of turnover per year attributable to transactions included in the numerator and to transactions in respect of which VAT is not deductible.

Member States may include in the denominator the amount of subsidies, other than those directly linked to the price of supplies of goods or services referred to in Article 73.

2. By way of derogation from paragraph 1, the following amounts shall be excluded from the calculation of the deductible proportion:

(a) the amount of turnover attributable to supplies of capital goods used by the taxable person for the purposes of his business;

(b) the amount of turnover attributable to incidental real estate and financial transactions;

(c) the amount of turnover attributable to the transactions specified in points (b) to (g) of Article 135(1) in so far as those transactions are incidental.

3. Where Member States exercise the option under Article 191 not to require adjustment in respect of capital goods, they may include disposals of capital goods in the calculation of the deductible proportion.

Article 175

1. The deductible proportion shall be determined on an annual basis, fixed as a percentage and rounded up to a figure not exceeding the next whole number.

2. The provisional proportion for a year shall be that calculated on the basis of the preceding year's transactions. In the absence of any such transactions to refer to, or where they were insignificant in amount, the deductible proportion shall be estimated

provisionally, under the supervision of the tax authorities, by the taxable person on the basis of his own forecasts.

However, Member States may retain the rules in force at 1 January 1979 or, in the case of the Member States which acceded to the Community after that date, on the date of their accession.

3. Deductions made on the basis of such provisional proportions shall be adjusted when the final proportion is fixed during the following year."

Irish Legislation

26. The provisions of the PVD have been transposed into domestic Irish law under the *Value Added Tax Consolidation Act 2010* (hereinafter the "VATCA 2010") as follows:

27. Section 2 of the VATCA 2010 sets out the following definitions:

"…

"business" means an economic activity, whatever the purpose or results of that activity, and includes any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, and the exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis;

…

"taxable person" means a person who independently carries on a business in the Community or elsewhere;

…"

28. Section 3(c) of the VATCA 2010 transposes Article 2(1)(c) of the PVD into domestic Irish law:

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

…

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

…"

29. Section 5(1)(a) of the VATCA 2010 defines a taxable person:

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

(i)an accountable person, and

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

30. Section 25(1) of the VATCA 2010 transposes Article 24 of the PVD into domestic Irish law and defines the meaning of "supply of services" as:

"In this Act "supply", in relation to a service, means the performance or omission of any act or the toleration of any situation other than—

(a)the supply of goods, and

(b)a transaction specified in section 20 or 22(2)."

31. Section 37(1) of the VATCA 2010 transposes Article 73 of the PVD into Irish domestic law and provides:

"The amount on which tax is chargeable by virtue of section 3(a) or (c) shall, subject to this Chapter, be the total consideration which the person supplying goods or services becomes entitled to receive in respect of or in relation to such supply of goods or services, including all taxes, commissions, costs and charges whatsoever, but not including value-added tax chargeable in respect of that supply."

32. Section 59(2) of the VATCA 2010 transposes article 168 of the PVD into Irish domestic law as follows:

"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,

…"

33. Section 61 of the VATCA 2010 transposes Article 173 of the PVD into Irish domestic law as follows:

"(1)In this section—

"deductible supplies or activities" means the supply of taxable goods or taxable services, or the carrying out of qualifying activities within the meaning of section 59(1);

"dual-use inputs" means movable goods or services (other than goods or services on the purchase or acquisition of which, by virtue of section 60(2), a deduction of tax shall not be made, or services related to the development of immovable goods that are subject to Chapter 2) which are not used solely for the purposes of either deductible supplies or activities or non-deductible supplies or activities;

"non-deductible supplies or activities" means the supply of goods or services or the carrying out of activities other than deductible supplies or activities, and, in the case of immovable goods acquired or developed by an accountable person on or after 1 January 2011, includes any activity consisting of the use of those goods, or part of those goods, for any purpose other than the accountable person's business;

"total supplies and activities" means deductible supplies or activities and non-deductible supplies or activities.

(2)Where an accountable person engages in both deductible supplies or activities and non-deductible supplies or activities, then, in relation to the person's acquisition of dual-use inputs for the purpose of that person's business for a period, the person shall be entitled to deduct in accordance with section 59(2) only such proportion of tax, borne or payable on that acquisition, which is calculated in accordance with this section and regulations, as being attributable to his or her deductible supplies or activities and such proportion of tax is, for the purposes of this section, referred to as the "proportion of tax deductible".

(3)For the purposes of this section, the reference in subsection (2) to "tax, borne or payable" shall, in the case of an acquisition of a qualifying vehicle (within the meaning of section 59(1)) be deemed to be a reference to "20 per cent of the tax, borne or payable".

(4)Subject to subsection (5), the proportion of tax deductible by an accountable person in a taxable period shall be calculated on the basis of the ratio which the amount of the person's tax-exclusive turnover from deductible supplies or activities in the accounting

year in which that taxable period ends bears to the person's tax-exclusive turnover from total supplies and activities in that accounting year.

(5)Where the proportion of tax deductible calculated in accordance with subsection (4) does not—

(a)correctly reflect the extent to which the dual-use inputs are used for the purposes of the person's deductible supplies or activities, or

(b)have due regard to the range of the person's total supplies and activities,

the accountable person shall use any other basis which results in a proportion of tax deductible which—

(i)correctly reflects the extent to which the dual-use inputs are used for the purposes of the person's deductible supplies or activities, and

(ii)has due regard to the range of the person's total supplies and activities.

(6)Where it is necessary to do so to ensure that the proportion of tax deductible by an accountable person is in accordance with this section, the accountable person shall—

(a)calculate a separate proportion of tax deductible for any part of that person's business, or

(b)exclude, from the calculation of the proportion of tax deductible, amounts of turnover from incidental transactions by that person of the kind specified in paragraph 6 of Schedule 1 or amounts of turnover from incidental transactions by that person in immovable goods.

(7)The proportion of tax deductible as calculated by an accountable person for a taxable period shall be adjusted in accordance with regulations if, for the accounting year in which the taxable period ends, that proportion does not—

(a)correctly reflect the extent to which the dual-use inputs are used for the purposes of the person's deductible supplies or activities, or

(b)have due regard to the range of the person's total supplies and activities."

Grounds of Appeal

34. This consolidated appeal relates to four separate Notices of Appeal which were submitted by the Appellant. The Grounds of Appeal as set out in each Notice of Appeal are the same and are as follows:

"The Appellant believes that it has a legitimate expectation to recover its input deduction in full. In 2006, the Revenue Commissioners challenged [redacted] entitlement to full VAT recovery. Following significant argument and correspondence the matter of the Appellants correct proportion of VAT input recovery was listed for Appeal before the Appeal Commissioners. Prior to the hearing the Respondents contacted the Appellant and withdrew from that appeal. When withdrawing the Respondents accepted, in writing, that the Appellant was entitled to full input deduction and thereby settled the appeal by agreement.

It is the Appellant's case that the Revenue Commissioners remain bound by that settlement. In support of this contention the Appellant points out that there has been no material change to the Appellants business model or the law in the interim period between Revenue accepting in writing that the Appellant is entitled to recover its input deduction in full in 2006 and Revenue's new challenge to that entitlement launched in 2018.

Had the Respondents proceeded to hearing at the time of the original hearing this matter could have been resolved and because it wasn't the Respondents are now trying to take advantage of their failure to go to appeal and trying to retrospectively deprive the Appellant of funds that the actions of the Respondents led them to believe were due to them. Should the Respondents be successful this will result in the imposition of punitive interest and penalties on the sums repaid to the Appellant that the Respondents indicated were due to the Appellant.

It is respectfully submitted that the Appeal in 2006 was settled on terms under which the Appellants and Respondents accepted that the Appellant was entitled to full input deduction and that the Respondents cannot, absent a change in law or the business model of the Appellant justifying it, now withdraw from that agreement with retrospective and very punitive effect.

In the event that the TAC does not agree that the Appellant is entitled to full input deduction, on the basis of legitimate expectation, the Appellant believes that it is, in any event, entitled to full input deduction in accordance with the law and case law concerning VAT input deduction. The Appellant conducts a mixture of activities which

are both taxable and outside the scope of VAT. The case law of the CJEU has clarified, in cases such as joined cases C-108/14 and C-`09/14 Laurentia and Minerva, that inputs used by a business both for taxable supplies and for outside the scope of VAT activity enjoy full VAT input deduction notwithstanding their partial utilisation for outside of the scope of VAT activity. The Appellant relies on this case law to prove that it is entitled to full input deduction notwithstanding its right to full input deduction on the basis of legitimate expectation."

Documents

35. In addition to the Notices of Appeal, the Statements of Case and the Outlines of Arguments submitted, the parties were directed to liaise and to submit agreed hearing books in advance of the hearing. A Book of Core Documents of 288 pages was submitted along with a Book of Non-Core Documents of 1,760 pages. In addition, a Book of Additional Documents of 1,881 pages was submitted. The indices to those books are set out in **Annex 1** of this determination.

36. In addition, prior to the hearing a document entitled "[redacted] was submitted by the Appellant.

37. The Commissioner has read and considered all documentation submitted by the parties.

Authorities

38. The parties submitted a Core Book of Authorities of 1,539 pages and a Non-Core Book of Authorities of 422 pages to the Commissioner. The indices to those books are set out at **Annex 2** of this determination.

39. The Commissioner has read and considered all authorities submitted by the parties.

Witness Evidence

40. The Commissioner heard extensive oral evidence in this appeal which was adduced over a period of three days. The Commissioner has had regard to all of the witness evidence which was adduced. The below are summaries of the evidence which was adduced to the Commissioner.

Witness 1 – [redacted]

41. The Commissioner heard evidence from [redacted] (hereinafter "Witness 1"), a self-employed accountant, who has been working with the Appellant since [redacted] as its external accountant. Witness 1 maintains the Appellant's books and records, prepares

the Appellant's management accounts and submits VAT returns on behalf of the Appellant.

42. Witness 1 provided an overview of the financial documentation submitted on behalf of the Appellant to include copies of the disputed VAT returns, a sample of some of the purchase and sales invoices associated with the disputed VAT returns along with copies of purchase and sales ledgers which she maintained on behalf of the Appellant for the relevant periods.

43. Witness 1 outlined the sources of the Appellant's funding as coming from:

    43.1. [redacted];

    43.2. [redacted];

    43.3. The hosting by the Appellant of the [redacted];

    43.4. The [redacted];

    43.5. The [redacted]; and

    43.6. [redacted].

44. Witness 1 stated that the Appellant receives [redacted] which are paid by [redacted] through the [redacted] (hereinafter "[redacted]") to which [redacted]. She stated that the [redacted] and carry out all of the administration such that each [redacted] makes one monthly transfer to the Appellant's bank account with the [redacted], save and except for [redacted] which continues to make the payment by way of cheque.

45. She stated that the Appellant does not apply any of its resources to the collection of the [redacted] apart from lodging the one monthly cheque from [redacted] which it receives. She stated that in total the Appellant receives [redacted] payments each month and the recording of the receipt of those payments to the Appellant's accounts takes approximately 30 minutes per month. In addition, another staff member of the Appellant sends monthly acknowledgements of the [redacted] received which also take approximately 30 minutes. The time which the Appellant devotes to managing the [redacted] received from [redacted] on behalf of [redacted] represents less than 1% of the Appellant's overall available annual manpower hours and represents a "negligible" amount which can be allocated to the Appellant's general overhead costs.

46. Witness 1 stated that the Appellant is in receipt of [redacted], the majority of which is organised and arranged through the [redacted] which is a [redacted]. The application process for [redacted] is managed through the [redacted] and requires the input of one day of the Appellant's Chief Executive's time for each [redacted].

47. She stated that the Appellant is also in receipt of [redacted] in relation to the [redacted], which was being managed by the [redacted] prior to the Appellant becoming involved in it in [redacted]. The [redacted] is a [redacted] which supplies [redacted] along with [redacted], known as [redacted]", to [redacted]. All product and [redacted], such as [redacted], for the [redacted] are [redacted] with the Appellant's [redacted] and are delivered to the [redacted]. She stated that the presence of the Appellant's [redacted] and [redacted] supports the Appellant's reputation and contributes to the Appellant's ability to make sales. The funding for the [redacted] comes from the [redacted] and is a [redacted] which has been approved by [redacted].

48. She stated that, during 2017 the Appellant had one employee who devoted approximately 50% of her time liaising with the [redacted] in relation to the [redacted]. In addition, since [redacted], when the Appellant commenced its involvement in the [redacted], the Appellant has had one full time employee who devotes 100% of her time to the administration of the [redacted] and her salary is 100% funded by the [redacted]. All of the costs of the [redacted] are funded by [redacted] and the [redacted].

49. She stated that prior to its involvement in the [redacted], the Appellant had already been engaged in [redacted] through its [redacted] and the Appellant saw its involvement in the [redacted] as being complimentary to its existing involvement with [redacted].

50. The Appellant, she stated, is also involved in other [redacted] activity through a number of [redacted] such as [redacted] and [redacted] and which, she stated, have the same activities which the Appellant would be carrying out regardless of whether it received [redacted] for them.

51. She stated that all of the [redacted] address issues relating to [redacted]. She stated that the [redacted] are centrally developed by the [redacted] which develop the materials and assets relating to the particular [redacted].

52. The [redacted] materials and assets are then localised and adapted to [redacted] with each [redacted] when used *in situ* in [redacted].

53. She stated that the adaptation and localisation carried out by the Appellant as part of each [redacted] supports the Appellant's brands and names and, in turn, allows the Appellant to [redacted] by way of VATable sales.

54. Witness 1 referred to a document which she prepared which outlines the sources and amounts of the Appellant's income in 2016, 2017, 2018, 2019 and 2020. In addition, the document shows a breakdown of the third party costs and the staff costs allocated to each programme along with a breakdown of the staff hours per programme for the years 2016, 2017, 2018, 2019 and 2020.

55. She stated that the following income was received by the Appellant in 2016 and the percentage which each amount represents of the Appellant's total income for 2016:

Source of Income 2016	€	% of Appellant's total income
[redacted]	[redacted]	89%
[redacted]	[redacted]	3%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	7%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	3%
[redacted]	[redacted]	3%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%

[redacted]	[redacted]	0%
[redacted]	[redacted]	1%
[redacted]	[redacted]	0.3%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
Total Income	[redacted]	100%

56. She stated the Appellant applied the following resources to its activities in 2016:

	2016 3rd Party €	2016 Staff €	2016 Total €	2016 Staff Hours %	2016 Staff Costs %
[redacted]	[redacted]	[redacted]	[redacted]	4%	4%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	1%	2%
[redacted]	[redacted]	[redacted]	[redacted]	2%	3%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%

[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]Total	[redacted]	[redacted]	[redacted]	3%	5%

57. She stated that the following income was received by the Appellant in 2017 and the percentage which each amount represents of the Appellant's total income for 2017:

Source of Income 2017	€	% of Appellant's total income
[redacted]	[redacted]	87%
[redacted]	[redacted]	1%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	11%
[redacted]	[redacted]	6%
[redacted]	[redacted]	0%
[redacted]	[redacted]	3%
[redacted]	[redacted]	3%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%

[redacted]	[redacted]	[redacted]%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0.2%
[redacted]	[redacted]	0.04%
[redacted]	[redacted]	0.2%
Total Income	[redacted]	100%

58. She stated the Appellant applied the following resources to the various programmes in 2017:

	2017 3rd Party €	2017 Staff €	2017 Total €	2017 Staff Hours %	2017 Staff Costs %
[redacted]	[redacted]	[redacted]	[redacted]	5%	5%
[redacted]	[redacted]	[redacted]	[redacted]	9%	8%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	1%	2%
[redacted]	[redacted]	[redacted]	[redacted]	1%	2%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%

[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted] Total	[redacted]	[redacted]	[redacted]	11%	11%

59. She stated that the following income was received by the Appellant in 2018 and the percentage which each amount represents of the Appellant's total income for 2018:

Source of Income 2018	€	% of Appellant's total income
[redacted]	[redacted]	72%
[redacted]	[redacted]	2%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	26%
[redacted]	[redacted]	21%
[redacted]	[redacted]	0%
[redacted]	[redacted]	3%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	2%
[redacted]	[redacted]	0%

[redacted]	[redacted]	0%
[redacted]	[redacted]	0.2%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
Total Income	[redacted]	100%

60. She stated the Appellant applied the following resources to the various programmes in 2018:

	2018 3rd Party €	2018 Staff €	2018 Total €	2018 Staff Hours %	2018 Staff Costs %
[redacted]	[redacted]	[redacted]	[redacted]	5%	4%
[redacted]	[redacted]	[redacted]	[redacted]	17%	12%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	1%	2%
[redacted]	[redacted]	[redacted]	[redacted]	1%	3%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%

[redacted] Total	[redacted]	[redacted]	[redacted]	19%	16%

61. She stated that the following income was received by the Appellant in 2019 and the percentage which each amount represents of the Appellant's total income for 2019:

Source of Income 2019	€	% of Appellant's total income
[redacted]	[redacted]	64%
[redacted]	[redacted]	2%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	34%
[redacted]	[redacted]	25%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	3%
[redacted]	[redacted]	4%
[redacted]	[redacted]	2%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0.2%

[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
Total Income	[redacted]	100%

62. She stated the Appellant applied the following resources to the various programmes in 2019:

	2019 3rd Party €	2019 Staff €	2019 Total €	2019 Staff Hours %	2019 Staff Costs %
[redacted]	[redacted]	[redacted]	[redacted]	5%	4%
[redacted]	[redacted]	[redacted]	[redacted]	20%	15%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	1%	1%
[redacted]	[redacted]	[redacted]	[redacted]	1%	1%
[redacted]	[redacted]	[redacted]	[redacted]	1%	1%
[redacted] Total	[redacted]	[redacted]	[redacted]	23%	18%

63. She stated that the following income was received by the Appellant in 2020 and the percentage which each amount represents of the Appellant's total income for 2020:

Source of Income 2020	€	% of Appellant's total income
[redacted]	[redacted]	72%
[redacted]	[redacted]	1%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	27%
[redacted]	[redacted]	18%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	3%
[redacted]	[redacted]	4%
[redacted]	[redacted]	2%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%
[redacted]	[redacted]	0%

Total	[redacted]	100%

64. She stated the Appellant applied the following resources to the various programmes in 2020:

	2020 3rd Party €	2020 Staff €	2020 Total €	2020 Staff Hours %	2020 Staff Costs %
[redacted]	[redacted]	[redacted]	[redacted]	5%	5%
[redacted]	[redacted]	[redacted]	[redacted]	23%	15%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	0%	0%
[redacted]	[redacted]	[redacted]	[redacted]	1%	1%
[redacted]	[redacted]	[redacted]	[redacted]	2%	2%
[redacted]	[redacted]	[redacted]	[redacted]	2%	2%
[redacted] Total	[redacted]	[redacted]	[redacted]	27%	20%

65. In relation to the sources of income, Witness 1 detailed the following:

65.1. [redacted] Income: She stated that the income received by the Appellant from [redacted] relates to the [redacted] which the Appellant operates in conjunction

with [redacted]. She stated that [redacted] pays the Appellant a contribution of [redacted] to cover the rights to use the [redacted] and [redacted] also pays [redacted] of the third party costs incurred in the running of the [redacted].

65.2. [redacted] income: This is passive income.

65.3. [redacted] income: This relates to [redacted] which the Appellant grants to various [redacted] allowing them the ability to use the [redacted].

65.4. [redacted]: The Appellant's involvement in [redacted]. The income received for this [redacted] is divided [redacted] in relation to [redacted], that is to say [redacted], [redacted] in relation to [redacted] and [redacted] and [redacted] for [redacted]. The funding is received both from the [redacted] and from the [redacted]."

65.5. [redacted] This was a 3-year [redacted] which ended in [redacted].

65.6. [redacted] This 3-year [redacted] commenced in [redacted]. The [redacted] for this [redacted], that is to say the third party costs and did not fund any of the central aspect of the [redacted]. The total costs for this [redacted] borne by the Appellant include third party costs and staff costs. The staff hours were calculated as a percentage of the Appellant's total staff hours for the relevant year.

65.7. [redacted] This 3-year [redacted] commenced in [redacted]. The [redacted] for this [redacted], that is to say the third party costs and did not fund any of the central aspect of the [redacted] The total costs for this [redacted] borne by the Appellant include third party costs and staff costs. The staff hours were calculated as a percentage of the Appellant's total staff hours for the relevant year.

65.8. [redacted] This 3-year [redacted] commenced in [redacted] and was [redacted]

65.9. [redacted] This 3-year [redacted] commenced in [redacted] and was [redacted].

65.10. [redacted]: This 3-year [redacted] commenced in [redacted] and was [redacted].

65.11. [redacted] This relates to a [redacted] from the [redacted] in [redacted].

65.12. [redacted] This relates to a once off [redacted] by the Appellant in [redacted].

65.13. [redacted]: This relates to income received by the Appellant for the renting out to third parties of [redacted]. This source of income commenced in [redacted].

65.14. [redacted]: This relates to the Appellant recouping central costs from [redacted] incurred directly by the Appellant in relation to the [redacted].

66. Witness 1 stated that, in her opinion, it would be incorrect to allocate the Appellant's costs on a turnover basis. She stated that, in the information sheet which she created for the oral hearing, the allocation of overhead and staff costs is done on the basis of the actual staff input into a particular programme or activity and is not done on a basis proportionate to the income received by the Appellant. This, she stated, is on the basis that the [redacted] income received by the Appellant, whilst the largest proportion of income, requires very little activity on the part of the Appellant, that is to say approximately one hour per month.

67. Witness 1 stated that the Appellant holds the following assets in the form of intellectual property:

67.1. [redacted];

67.2. [redacted]; and

67.3. [redacted].

Witness 2 – [redacted]

68. The Commissioner heard evidence from [redacted] (hereinafter the "CEO") who is the Appellant's Chief Executive.

69. She stated that the Appellant has been in existence for [redacted] and is a [redacted]. She stated that the Appellant is [redacted].

70. She stated that the Appellant's remit on behalf of [redacted]. In particular, the CEO stated, this is done by [redacted]"[1] In that regard, the CEO gave evidence in relation to the contents of two documents which the Appellant produced in relation to the Appellant's strategic focus and strategic goals for 2016.

71. She stated that the Appellant has a small office of approximately [redacted] and has a team of [redacted] who are directly employed. She stated that the Appellant is a "*highly matrixed*"[2] organisation which, she stated, means that the Appellant has [redacted].

72. In addition, she stated, the Appellant operates a partnership model which is undertaken with other organisations with the purpose of reinforcing the Appellant as the [redacted]. As an example, the CEO referenced partnerships which the Appellant has with [redacted].

73. She stated that the key benefit of the agency network and partnership arrangements which form the Appellant's matrix is [redacted], which, she stated, is important because [redacted] issued by the Appellant are subject to [redacted].

74. The CEO stated that it is important that the Appellant is, and is seen to be the [redacted] as the Appellant is [redacted] on all matters pertaining to [redacted]. She stated that the Appellant represents [redacted] and, in addition, [redacted]. This, she stated, only has credibility [redacted]. The ability of the Appellant to

[1] Transcript, day 1 page 169 line 1
[2] Transcript, day 1 page 169 line 21

successfully communicate on [redacted] has, she stated, been achieved through the [redacted].

75. She stated that she is of the opinion that [redacted].

76. She stated that the Appellant is, [redacted]. She stated that the terms of successful [redacted] are quite prescriptive and that all of the organisations which receive [redacted] execute the respective [redacted] within an agreed framework with allowances for local adaptations.

77. She stated that local adaptation for the Appellant means adding [redacted] to measures which contain [redacted] such that [redacted]. This, she stated, is important because the information which is disseminated under [redacted] must be seen as coming from a trusted source, that is to say [redacted].

78. She stated that, with each [redacted] there is a specific construct for the budget in terms of how and for what purpose the [redacted] is spent. In addition, an [redacted] is tasked with working both [redacted]. An [redacted] typically, she stated, comprises a [redacted], along with a [redacted], a [redacted] and in some instances a [redacted]. The actions which are required under the [redacted] are specified in detail under the [redacted].

79. She stated that the advantage to the Appellant of being involved in [redacted] is that it gives the Appellant's [redacted] in a variety of channels, strengthening its market presence and credibility.

80. The CEO stated that the Appellant communicates its' message to [redacted] by way of its relationship with the [redacted], the [redacted] and the [redacted] and through its administration of the [redacted] which is [redacted].

81. She stated that the Appellant began the administration of the [redacted] in [redacted] and that, because the Appellant had carved out its position as a [redacted], it was trusted by the [redacted] to take over the running of it. She stated that the purpose of the [redacted] is twofold: [redacted]

[redacted].

82. The [redacted] and, [redacted]. [redacted] [redacted].

83. In addition to [redacted], she stated that the Appellant, through the terms of [redacted], is also required to deliver [redacted] to [redacted] [redacted]. The Appellant, she stated, incurs charges from third parties in relation to the production and dispatch of [redacted]. In addition the Appellant incurs costs in relation to [redacted] [redacted]. All of the [redacted] are, she stated, [redacted].

84. At [redacted], she stated, the Appellant identified the [redacted]. To that end the Appellant created [redacted]. The [redacted], she stated, [redacted] and allowed the Appellant to make a VATable supply by [redacted].

85. The administration of the [redacted] and the [redacted] has, she stated, strengthened the Appellant's [redacted] and more importantly, she stated, trust in the Appellant's brand. These, she stated, and the enhancement of the Appellants brands are the motivating factors in the Appellant's decision to become involved in these projects.

86. The CEO stated that the purpose of the Appellant's expenditure is *"…always to strengthen the brands…because the stronger they become, the better our ability is to provide a suite of services to the sector which can be a VATable supply*."[3]

87. The CEO stated that two of its employees are dedicated to the area of [redacted]. She stated that their expertise and qualifications are essential to the Appellant's

[3] Transcript day 1 page 178 line 2

ability to answer questions on its [redacted] from within its matrix at conferences or from external entities or individuals. These individuals also play an important role in the information which is contained in [redacted] which the Appellant produces and [redacted].

88. She stated that the Appellant [redacted]. She stated that, although the income received by the Appellant from the [redacted] is small, it is the Appellant's intention and ambition to exploit its brands in a more aggressive and accelerated manner over time. She stated that it takes time for an organisation to build its brands to a level such that exploitation of those brands is possible. She stated that the Appellant is not involved in promotion of product but is involved in the building of brands.

89. The Appellant, she stated, has utilised the paid services of [redacted] from the [redacted] as [redacted] to promote both [redacted] and the Appellant's brand in the wider media arena. This, she stated, helps strengthen the Appellant's brands and ultimately assists in strengthening the Appellant's chances of [redacted].

90. She stated that the Appellant has a significant presence each year at the [redacted] event where it takes a large space and has a large marquee structure. [redacted]. In addition, [redacted] are in attendance.

91. She stated the Appellant runs [redacted] per annum in [redacted] This, she stated, is another example of where the Appellant has the potential to make VATable supplies.

92. In addition, the CEO stated that the Appellant runs [redacted] each year in conjunction and partnership with a third party partner. [redacted]. The judging system involves outside experts examining the entries, shortlisting finalists and an extensive final judging undertaking which involves quality checking. There is, she stated, extensive publicity in relation to the [redacted] involving [redacted] in addition to a [redacted] where category winners and an overall winner are announced. In 2022, she stated, the third party partner brought [redacted].

93. She stated that in or around [redacted] is spent on the [redacted] each year with a significant amount spent on media buying and content creation. She stated that the [redacted] benefits the Appellant by raising awareness of its [redacted] and [redacted], including those of the third party partner.

94. She stated that the concept of the [redacted] had been created by a third party PR company with whom the Appellant used to work. A co-sponsorship arrangement between the Appellant and [redacted] was put in place in [redacted] and the [redacted] was renamed to reflect [redacted] the Appellant and [redacted]. The third party PR company owned the rights to the [redacted] in [redacted] and which the Appellant purchased in [redacted] after the working relationship between the Appellant and the third party PR company came to an end.

95. She stated that the Appellant had involved itself in research through the 18 month funding of an applied research project for [redacted] in [redacted] for the purpose of further knowledge on the [redacted] of [redacted]. The results of the study enabled the Appellant to run an [redacted] promoting [redacted]. The date of the funding was not established by the CEO.

96. The CEO stated that all of the Appellant's activities are undertaken for the purpose of building the Appellant's brands and the ultimate exploitation of those brands.

97. The CEO gave evidence as to the Appellant's sources of income. She stated that the sources of income do not determine the work the Appellant sets out to do. She stated that "*… irrespective of where money is coming from, the [redacted] is in the business of being* [redacted]."[4]

98. In relation to the costs incurred by the Appellant the CEO stated the following:

    98.1. [redacted]: She stated that this [redacted] represented a significant cost to the Appellant with an average annual spend of [redacted], however no evidence of the detail of the spend was adduced to the Commissioner. She stated that a significant amount of staff hours are applied to the organisation and attendance at [redacted], although no evidence of the detail of the staff time was adduced to the Commissioner.

[4] Transcript day 2 page 21 line 2.

98.2. [redacted]: She stated that every year as part of the Appellant's [redacted], a [redacted] is carried out by a third party on behalf of the Appellant. This, she stated, takes the form of an external third party product [redacted] in addition to [redacted] of packaging which bares [redacted] which number approximately [redacted] different packages. It is a necessary part of maintaining the credibility of [redacted]. Workshops in relation to the [redacted] are also conducted with the co-ops. She estimated the annual cost of the third party [redacted] at in or around [redacted]. No evidence as to the Appellant's internal costs relating to the traceability audit was adduced.

98.3. [redacted]: The CEO stated that the Appellant runs campaigns in relation to the [redacted] and promoting the [redacted] and estimated that over a five year period the Appellant would invest between [redacted] in the [redacted].

98.4. [redacted]: [redacted] is described earlier in the CEO's evidence. Witness 2 estimated the Appellant's third party costs in relation to [redacted] as being in or around [redacted].

99. The CEO was taken through a large number of purchase invoices during the course of her direct evidence, all of which the Commissioner has taken account of when coming to this determination, a sample of which are set out in this determination.

	Invoice Date	Supplier	Amount	VAT	CEO's comments
1.	21/07/16	[redacted]	13,200.00	3,042.07	[redacted]
2.	21/07/16	[redacted]	19,066.96	4,394.17	[redacted]
3.	21/07/16	[redacted]	4,033.33	929.53	[redacted]

					[redacted]
4.	20/07/16	[redacted]	4,025.00	925.75	[redacted]
5.	30/06/16	[redacted]	3,000.00	690.00	[redacted]
6.	31/07/16	[redacted]	3,000.00	690.00	[redacted]
7.	29/07/16	[redacted]	10,000.00	2,300.00	[redacted]
8.	29/07/16	[redacted]	27,500.00	6,325.00	[redacted]
9.	31/07/16	[redacted]	7,000.00	1,610.00	[redacted]
10.	31/05/16	[redacted]	25,000.00	5,750.00	[redacted]
11.	27/07/16	[redacted]	2,400.00	552.00	[redacted]

Submissions

Appellant's Submissions

100. The following is a summary of the submissions made both in writing and orally to the Commissioner on behalf of the Appellant. The Commissioner has had regard to all of the submissions whether written, oral or documentary received when considering this determination.

Substantive Matter

101. The Appellant has made a number of written submissions in support of this consolidated appeal.

102. The first of those submissions are the Notices of Appeal which were submitted and in particular the Grounds of Appeal contained therein which are set out at paragraph 34 of this determination.

Statement of Case

103. The second of those submissions is the consolidated Statement of Case submitted by the Appellant dated 25 May 2021 in which it stated the following at section 8 "Outline of relevant facts"

> *"The Appellant believes that it has a legitimate expectation to recover its input deduction in full. In 2006, the Revenue Commissioners challenged* [redacted] *entitlement to full VAT recovery. Following significant argument and correspondence the matter of the Appellants correct proportion of VAT input recovery was listed for Appeal before the Appeal Commissioners. Prior to the hearing the Respondents contacted the Appellant and withdrew from that Appeal. When withdrawing the Respondents accepted, in writing, that the Appellant was entitled to full input deduction and thereby settled the Appeal by agreement.*
>
> *It is the Appellant's case that the Revenue Commissioners remain bound by that settlement. In support of this contention the Appellant points out that there has been no material change to the Appellant's business model or the law in the interim period between Revenue accepting in writing that the Appellant is entitled to recover its input deduction in full in 2006 and Revenue's new challenge to that entitlement launched in 2018.*
>
> *Had the Respondents proceeded to the hearing at the time of the original hearing this matter could have been resolved and because it wasn't the Respondents are now*

trying to take advantage of their failure to go to Appeal and trying to retrospectively deprive the Appellant of funds that the actions of the Respondents led them to believe were due to them. Should the Respondents be successful this will result in the imposition of punitive interest and penalties on the sums repaid to the Appellant that the Respondents indicated were due to the Appellant.

It is respectfully submitted that the Appeal in 2006 was settled on terms under which the Appellants and Respondents accepted that the Appellant was entitled to full input deduction and that the Respondents cannot, absent a change in law or the business model of the Appellant justifying it, now withdraw from that agreement with retrospective and very punitive effect.

In the event that the TAC does not agree that the Appellant is entitled to full input deduction, on the basis of legitimate expectation, the Appellant believes that it is, in any event, entitled to full input deduction in accordance with the law and case law concerning VAT input deduction. The Appellant conducts a mixture of activities which are both taxable and outside the scope of VAT. The case law of the CJEU has clarified, in cases such as joined cases C-108/14 and C- 09/14 Laurentia and Minerva, that inputs used by a business both for taxable supplies and for outside the scope of VAT activity enjoy full VAT input deduction notwithstanding their partial utilisation for outside of the scope of VAT activity. The logic underpinning Larentia and Minerva is echoed in the CJEU judgment in Ryanair Case C-249/17. Despite the fact that the principal purpose of Ryanair's bid for Aer Lingus was to acquire sufficient ownership of the shares in Aer Lingus to gain a controlling interest for the purposes of gaining part ownership of the business (an outside the scope activity), the court granted full VAT input deduction to Ryanair on its share acquisition costs on the basis of Ryanair's intended supply of taxable management services to Aer Lingus after ownership of that company had been acquired. By any measure the intended provision of management services by Ryanair to Aer Lingus after acquisition was a very minor aspect in Ryanair's bid [sic] *takeover bid to take over the ownership of Aer Lingus and yet the Court explicitly gave full VAT input deduction when it would have been expected that it would only be partial input deduction and a small amount of partial deduction at that. It is therefore the case that even relatively minor usage or intended use of inputs for taxable activity can give rise to full input deduction where the costs concerned otherwise relate to outside the scope of VAT activity rather than VAT exempt activity.*

The Appellant relies on this case law to prove that it is entitled to full input deduction notwithstanding its right to full input deduction on the basis of legitimate expectation."

Outline of Arguments

104. In its written Outline of Arguments dated 19 March 2021, the Appellant submitted that:

105. It is entitled to rely on a legitimate expectation that, as a result of the settlement of the 2006 appeal proceedings by the Respondent, the Appellant was entitled to full VAT input deductions on all of its activities.

106. In the alternative, the Appellant submitted that it is entitled to full input deduction in accordance with the law and case law, including that of the CJEU, concerning VAT input deduction. The Appellant submitted that it conducts a mixture of activities commensurate with its purpose and which build and support and/or maintain its reputation/brand and logo. It was submitted that the majority of the Appellant's funding is from non-taxable sources such as [redacted]. It was further submitted that the Appellant leverages its [redacted] which is VATable.

107. It was submitted that the purpose of the Appellant is to market [redacted]. It was submitted that the value of the Appellant's [redacted] and any charges to third parties which can be made from it derives entirely from the [redacted] in which the Appellant engages.

108. In addition, it was submitted that the Appellant's ability and expertise in marketing provides the basis for its "*…sale of product specific marketing to individual product manufacturers and association with the…*"[5] Appellant. It was submitted that, therefore, the costs of the Appellant's everyday activities contribute directly to its ability to make its taxable supplies.

Oral Submissions

109. In oral submissions made to the Commissioner at the oral hearing, the Appellant submitted the entirety of its activities are in scope of the PVD. It was submitted by the Appellant that all of its expenditure has a direct and immediate link with its taxable transactions and, as a result, the Appellant is entitled to full VAT input deduction.

110. It was submitted that the purpose for which the Appellant receives the [redacted] and enters into [redacted]. It was submitted that that by [redacted], the Appellant is carrying out its aims and its objects as contained in its Memorandum and Articles of Association. As a result, it was submitted, all of the expenditure incurred by

[5] Paragraph 29 Appellant's Outline of Arguments.

the Appellant may be attributed to taxable transactions and is, therefore, in scope of the PVD.

111. It was submitted that source of the Appellant's income does not limit the activities which the Appellant may carry out and that the [redacted] paid to the Appellant does not corral the Appellant into what activities it must undertake. Similarly, it was submitted that the [redacted] paid to the Appellant does not corral the Appellant into what activities it must undertake.

112. It was further submitted that the creation of the Appellant's intangible property, that is to say its trade mark which is the [redacted], along with the Appellant's [redacted], has been made possible by all of the activity which the Appellant has undertaken over the years of its existence. The building of those [redacted] has, it was submitted, required a significant expenditure of money by the Appellant over a period of many years. This expenditure, it was submitted, has resulted in the building of the Appellant's reputation [redacted]. As a result of the building of those [redacted] and thereby the building of the Appellant's reputation, it was submitted that the Appellant is now able to exploit its intangible property by [redacted], by [redacted], by [redacted], by [redacted] and by all of the other VATable activities which the Appellant is engaged in.

113. It was submitted that the [redacted], however that occurs, is a side effect of the Appellant's activities, the purpose of which is [redacted]. As a result, the Appellant submitted, there is a direct and immediate link between all of the Appellant's expenditure and therefore all of the Appellant's activities are in scope of the PVD. Therefore, it was submitted, the Appellant is entitled to full VAT input deduction on all of its expenditure.

Legitimate Expectation

114. The Appellant has also submitted that the doctrine of legitimate expectation applies to this appeal in circumstances where in 2006 the Respondent had challenged the Appellant's entitlement to full VAT input deduction. The Appellant submitted that the fact that the Respondent had settled this challenge and had confirmed in writing that the Appellant was entitled to full VAT input deduction means that the Appellant has a legitimate expectation to recover full VAT input deduction on foot of this settlement.

115. It is the Appellant submission that the Respondent is bound by this settlement and supports the contention that there has been no material change to the Appellant's business model or the law in the period between 2006 and 2018.

116. The Appellant submitted that following significant argument and correspondence between the parties, the matter of the Appellants correct proportion of VAT input recovery was listed for Appeal before the Appeal Commissioners. It was submitted that prior to the hearing the Respondent contacted the Appellant and withdrew from that Appeal. It was submitted that when withdrawing the Respondent accepted, in writing, that the Appellant was entitled to full input deduction and thereby settled the Appeal by agreement.

117. It is the Appellant's case that the Revenue Commissioners remain bound by that settlement. In support of this contention the Appellant points out that there has been no material change to the Appellant's business model or the law in the interim period between Revenue accepting in writing that the Appellant is entitled to recover its input deduction in full in 2006 and Revenue's new challenge to that entitlement launched in 2018.

Respondent's Submissions

118. The following is a summary of the submissions made both in writing and orally to the Commissioner on behalf of the Respondent. The Commissioner has had regard to all of the submissions whether written, oral or documentary received when considering this determination.

Substantive Matter

119. The Respondent submitted that the Appellant is involved in both in scope and out of scope activities. The Respondent submitted that the Appellant carries out two main activities: the first being out of scope, non-economic activity of promotional activity by promoting [redacted] and the second being in scope, economic activities of [redacted].

120. The Respondent submitted that the Appellant is not entitled to recover VAT costs used for a non-economic activity, that is to say the activity which it carries out involving the [redacted], that is to say in relation to its non-economic activities. The Respondent submitted that Appellant is entitled to recover VAT costs in relation to the licensing of its trade mark, the provision of services to [redacted], the

[redacted], that is to say in relation to its economic activities.

121. The Respondent submitted that where there are economic and non-economic activities, the CJEU has confirmed that a taxable person cannot deduct VAT costs incurred for non-economic activity but has allowed deductibility, on a proportionate basis, where VAT costs incurred have been incurred for the purpose of the taxable supplies.

122. The Respondent submitted that in order for the supply of a service to constitute an economic activity it must be supplied for consideration. It submitted that the [redacted] conducted by the Appellant in relation to the [redacted] is not a taxable economic activity because the [redacted] which the Appellant utilises in order to carry out the [redacted], does not constitute consideration for VAT purposes. Similarly, it is the Respondent's submission that the [redacted] conducted by the Appellant in relation to the [redacted] is not a taxable economic activity because the [redacted], which the Appellant utilises in order to carry out the [redacted], does not constitute consideration for VAT purposes.

123. It was submitted that, that for a supply of a service to be within the charge to VAT there must be both consideration and the existence of a direct link between the service provided and the consideration received. It is the Respondent's submission that, in this appeal, there is not a direct link between the service provided and the consideration received for the [redacted] and/or the [redacted] received by the Appellant.

124. As a result, the Respondent submitted that the Appellant is entitled to VAT input deduction in relation to the economic activity which it carries out, that is to say in relation to the [redacted], the [redacted] and the [redacted].

125. The Respondent submitted that the Appellant is not entitled to VAT input deduction in relation to its non-economic activities.

Legitimate Expectation

126. The Respondent submitted that it does not agree that the withdrawal from an appeal amounts to an acceptance or confirmation that is capable of creating a legitimate expectation to certain tax treatment. The Respondent submitted that there was no settlement agreement in relation to the 2006 appeal and that no heads of agreement were agreed or concluded in terms of the 2006 appeal.

127. In addition, the Respondent submitted that no binding decision was made by the then Appeal Commissioners in relation to the 2006 appeal upon which the Appellant could rely. The Respondent submitted that it had formed a view, based on the relevant case law at the time to withdraw from the 2006 appeal. The Respondent submitted that it is not bound to a decision where the case law of the CJEU has progressed to adopt a position contrary to what was believed in 2006.

128. The Respondent submitted that the Commissioner does not have the jurisdiction to consider arguments out of a claim for legitimate expectation.

Material Facts

Uncontested Material Facts

129. The following material facts are not at issue in the within appeal and the Commissioner accepts same as material facts:

129.1. The Appellant [redacted].

129.2. The Appellant receives its income from:

129.2.1. [redacted]

129.2.2. [redacted]

129.2.3. [redacted]

129.2.4. [redacted]; and

129.2.5. other economic activity such as the [redacted].

129.3. The Appellant is registered for VAT.

129.4. The [redacted], the SMS grant income and the [redacted] received by the Appellant are not consideration for the supply of a service and are not taxable.

129.5. These appeals relate to the rejection by the Respondent of VAT repayment claims submitted by the Appellant for VAT periods in 2016 to 2020 as follows:

Appeal Number	VAT Period	Amount €
[redacted]	Jul / Aug 2016	63,917
[redacted]	May / Jun 2018	183,632
[redacted]	Jul / Aug 2018	72,639
[redacted]	Sep / Oct 2018	110,029
[redacted]	Jan / Feb 2019	73,446
[redacted]	Mar / Apr 2019	73,033
[redacted]	May / Jun 2019	34,614
[redacted]	Jul / Aug 2019	101,121
[redacted]	Sep / Oct 2019	102,745
[redacted]	Jan / Feb 2017	71,128
[redacted]	Mar / Apr 2017	97,900
[redacted]	May / Jun 2017	175,822
[redacted]	Jul / Aug 2017	106,812
[redacted]	Sep / Oct 2017	346,484
[redacted]	Nov / Dec 2017	253,730
[redacted]	Jan / Feb 2018	40,408
[redacted]	Mar / Apr 2018	218,314
[redacted]	Nov / Dec 2018	47,616
[redacted]	Nov / Dec 2019	36,260
[redacted]	Jan / Feb 2020	54,473
[redacted]	Mar / Apr 2020	67,434
[redacted]	May / Jun 2020	66,498
[redacted]	Jul / Aug 2020	27,256
[redacted]	Sep / Oct 2020	72,430
[redacted]	Nov / Dec 2020	52,540

129.6. The total amount under appeal is €2,549,921 and is broken down into four separate appeals as follows:

Appeal Number	Total amount under appeal €
[redacted]	815,176
[redacted]	1,448,587
[redacted]	67,434
[redacted]	218,724

129.7. In 2006 the Appellant lodged an appeal with the former Appeal Commissioners in relation to a decision of the Respondent refusing a repayment of VAT. That appeal was settled between the parties and was not determined by an Appeal Commissioner.

Contested Material Facts

130. The following material facts are at issue in the within appeal:

130.1. The direct and immediate purpose for which the Appellant incurs expenditure on [redacted]

130.2. The direct and immediate purpose for which the Appellant incurs expenditure on [redacted]

130.3. The direct and immediate purpose for which the Appellant incurs expenditure of [redacted].

131. The appropriate starting point for the examination of material facts is to confirm that in an appeal before the Commissioner, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 (hereinafter "*Menolly Homes*"), at paragraph 22, Charleton J. stated:

> *"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".*

132. The standard of proof applicable in an appeal to an Appeal Commissioner is the balance of probabilities.

133. The Commissioner has considered the submissions received from both parties to this appeal, whether written, oral or documentary.

The direct and immediate purpose for which the Appellant incurs expenditure on [redacted]

134. On the one hand, the Appellant asserts that the direct and immediate purpose for which it incurs expenditure on [redacted]. On the other hand, the Respondent submits that the direct and immediate purpose for which the Appellant incurs expenditure on [redacted] is to fulfil the terms of the [redacted] which form the basis of the [redacted].

135. For the periods to which this appeal relates, 2016 to 2020 inclusive, the Appellant was party to [redacted]. The Commissioner has been provided with copies of the [redacted] although detailed direct evidence in relation to the [redacted] was not adduced to the Commissioner.

"[redacted]"

136. The first of those [redacted] is entitled "[redacted]" which was in force from [redacted]. The parties to the contract are [redacted]. This was an [redacted] and which was [redacted], as specified in [redacted]. The CEO confirmed in cross examination that [redacted].

137. On examination of the [redacted], the Commissioner notes that Article 1 of the [redacted] states that the purpose is:

> *"The contactor undertakes to carry out measures the purpose of which is as follows:* [redacted]

138. Article 4 of the [redacted] contract is entitled "[redacted]".

139. The Commissioner notes that Article [redacted] contract states that:

> *"The contractor undertakes, on behalf of the contractor itself, the* [redacted] *and any subcontractors:*
>
> - [redacted]
>
> *…"*

140. Article [redacted] of the [redacted] contract states that:

> *"The contractor shall inform the* [redacted] *by sending it, thirty days before the start of each quarter, a provisional timetable for the planned measures using the specimen in Annex VII. If there are any changes from this provisional timetable, he/she shall send, at least 15 working days in advance, an indication of the dates on which or periods in which the measures are to be implemented.*
>
> *Failure to communicate such information shall mean the costs of the measure or measures shall be disallowed.*
>
> *The* [redacted] *shall forward this information to the Commission without delay."*

141. Article [redacted] of the [redacted] states that:

> *"The contractor shall inform the* [redacted] *immediately in writing of any event likely to prejudice proper performance of this contract within the time limits laid down, providing all the necessary details."*

142. Article [redacted] of the [redacted] contract states that:

> *"The contractor undertakes to send to the* [redacted] *all draft information and* [redacted] *produced within the context of the programme before implementing the measures. The* [redacted] *shall ensure that this draft material complies with the* [redacted]*, in particular with* [redacted] *and with* [redacted]*"*

143. Article [redacted] of the [redacted] states that:

> *"An evaluation of the performance of [redacted] has to be undertaken by an independent external body that is an expert in the field, and which is selected pursuant to the provisions applicable to the [redacted] in question."*

144. Article [redacted] is entitled "[redacted]". Under this Article ([redacted] the Appellant was required to open a bank account under the name [redacted].

145. Article [redacted] provides that the financial contributions [redacted] would be paid within the time limit [redacted] The Commissioner notes that [redacted]

"[redacted]

146. The [redacted] which was in force from [redacted]. The parties to the [redacted]". This was an [redacted] and which was [redacted] The CEO confirmed in cross examination that [redacted].

147. On examination of the [redacted], the Commissioner notes that [redacted] states that the purpose is:

> *"The [redacted] undertakes to carry out measures the purpose of which is as follows:*
> [redacted]

148. Article [redacted] is entitled "[redacted]".

149. The Commissioner notes that Article [redacted] of the [redacted] states that:

"The [redacted]

[redacted]

[redacted]

[redacted]*"*

150. Article [redacted] of the [redacted] states that:

"The [redacted] *shall inform the* [redacted] *by sending it, thirty days before the start of each quarter, a provisional timetable for the planned measures using the specimen in* [redacted]*. If there are any changes from this provisional timetable, he/she shall send, at least 15 working days in advance, an indication of the dates on which or periods in which the measures are to be implemented.*

Failure to communicate such information shall mean the costs of the measure or measures shall be disallowed.

The [redacted] *shall forward this information to* [redacted] *without delay."*

151. Article [redacted] of the [redacted] states that:

"The contractor shall inform the [redacted] *immediately in writing of any event likely to prejudice proper performance of this contract within the time limits laid down, providing all the necessary details."*

152. Article [redacted] of the [redacted] states that:

"The contractor undertakes to send to [redacted] *all draft information and* [redacted] [redacted] *produced within the context of the programme before implementing the measures. The* [redacted] *shall ensure that this draft material complies with* [redacted]

[redacted]*"*

153. Article [redacted] of the [redacted] states that:

"An evaluation of the performance of the programme referred to [redacted] *has to be undertaken by an independent external body that is an expert in the field, and*

which is selected pursuant to the provisions applicable to [redacted]."

154. Article [redacted] of the [redacted] is entitled "[redacted]". Under this Article ([redacted] the Appellant was required to open a bank account under the name [redacted]

155. Article [redacted] provides that the [redacted] would be paid within the time limit laid down in [redacted]. The Commissioner notes that applications for payment pursuant to [redacted].

"[redacted]"

156. The next [redacted] was "[redacted]" which was in force from [redacted]. The parties to the contract are [redacted]". [redacted]. The CEO confirmed in cross examination that the [redacted].

157. On examination of the [redacted], the Commissioner notes that Article [redacted] of the [redacted] is:

"[redacted]."

158. [redacted].

159. Article [redacted] of this contract is entitled "[redacted]" and provides that:

"The beneficiaries must respect the following conditions when carrying out their [redacted]*:*

…

[redacted]

[redacted]

160. No evidence, whether documentary or oral, was adduced in relation to any agreement between the Appellant and [redacted].

"[redacted]"

161. The next [redacted] was [redacted]" which was in force from [redacted]. The parties to the contract are the [redacted]. This was an [redacted]. The CEO

confirmed in cross examination that the [redacted].

162. On examination of the [redacted], the Commissioner notes that Article [redacted] of the [redacted] states that the "[redacted] is:

> "[redacted]."

163. The [redacted] for the [redacted] places reporting and payment application obligations on [redacted].

164. Article [redacted] of this contract is entitled "[redacted]" and provides that:

> "[redacted]

[redacted]

[redacted]

[redacted]"

165. No evidence, whether documentary or oral, was adduced in relation to any agreement between the Appellant and [redacted].

"[redacted]"

166. The next [redacted] was "[redacted]" which was in force from [redacted]. The parties to the contract are the [redacted]". This was an [redacted]. The CEO confirmed in cross examination that the [redacted].

167. On examination of the [redacted], the Commissioner notes that Article [redacted] of the [redacted] states that the "[redacted]" is:

"[redacted]."

168. The [redacted] for the Climate programme places reporting and payment application obligations on [redacted].

169. Article [redacted] of this contract is entitled "[redacted]" and provides that:

"[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]”

170. No evidence, whether documentary or oral, was adduced in relation to any agreement between the Appellant and [redacted].

171. The Commissioner has had regard to the evidence both oral and documentary along with the submissions in relation to this material fact. Having done so, the Commissioner does not find credible the Appellant’s claim that the direct and immediate purpose for which the Appellant incurs expenditure [redacted].

172. The correct approach to interpreting the construction of a contract has been set out by the Supreme Court in the judgment of *Analog Devices B.V. v Zurich Insurance Company* [2005] 1 IR 274 and was expressed by Laffoy J in *UPM Kymmene Corporation v BWG* unreported, High Court, Laffoy J, 11 June 1999 (hereinafter “*Kymmene*”) as follows:

"[T]he basic rules of construction which the Court must apply in interpreting the documents which contain the parties agreement are not in dispute. The Court's task is to ascertain the intention of the parties and that intention must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. Moreover, in attempting to ascertain the presumed intention of the parties, the Court should adopt an objective, rather than a subjective approach, and should consider what would have been the intention of reasonable persons in the position of the parties."

173. The principles of interpretation applicable to contracts or agreements generally are well known having been recorded by Lord Hoffman in *Investors Compensation Scheme v West Bromwich Building Society* [1998] 1 WLR 896 which was confirmed in the UK Supreme Court decision in *Rainy Sky SA v Kookmin Bank* [2011] I WLR 2900 and subsequently confirmed by Kelly J in *Dunnes Stores v Holtglen Limited* [2012] IEHC 93 (hereinafter "*Dunnes*") and summarised by Gross LJ in Al *Sanea Saad Investments Co* Limited [2012] EWCA Civ 313 where he stated as follows:

"…

173.1.1. The ultimate aim of contractual construction is to determine what the parties meant by the language used, which involves ascertaining what a reasonable person would have understood the parties to have meant. The reasonable person is taken to have all the background knowledge which would have reasonably been available to the parties in this situation in which they were in at the time of the contract.

173.1.2. The Court has to start somewhere and the starting point is the wording used by the parties in the Contract.

173.1.3. It is not for the Court to rewrite the party's bargain. If the language is unambiguous, the Court must apply it.

173.1.4. Where a term of a contract is open to more than one interpretation, it is generally appropriate for the Court to adopt the interpretation which is most consistent with the business common sense. A Court should always keep in mind the consequences of a particular construction and should be guided throughout by the context in which the contractual provision is located.

173.1.5. The contract is to be read as a whole and an 'iterative process' is called for: '… involving checking each of the rival meanings against other provisions of the document and investigating its commercial consequences'."

174. It is clear from the terms of the [redacted] which the Appellant entered into and to which the Appellant was party, that expenditure incurred by the Appellant in relation to those contracts was for the purpose of fulfilling the objective of each contract. Those objectives are set out in clear terms in each of the [redacted] as being:

[redacted]	Stated Purpose
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

175. Each contract contains details of actions which were required to be carried out by the Appellant and also contains details of payments to which the Appellant was entitled on

completion of those actions. The contracts set out in clear terms that payments would be made retrospectively following application by the Appellant or [redacted] and under the proviso that the expenditure reimbursed would relate to the costs incurred to the specific actions required under the contact. No evidence was adduced to the Commissioner as to the payment mechanism under these contracts, although the Commissioner notes that the CEO stated in her direct evidence that with each [redacted] there is a specific construct for the budget in terms of how and for what purpose the [redacted].

176. The Commissioner notes that each contract contains restrictions on the [redacted]. No evidence was adduced to the Commissioner in relation to those restrictions.

177. It was open to the Appellant to adduce witness evidence from [redacted] or from [redacted] in relation to the terms of the [redacted] and the intentions of those parties when entering into those contracts. It did not.

178. Based on the evidence before the Commissioner, the Appellant has not discharged the burden of proof to establish that the direct and immediate purpose for which the Appellant incurs expenditure on [redacted] is to [redacted].

179. It is clear to the Commissioner that the terms of the [redacted] required that the Appellant undertakes and performs specific steps and tasks which are monitored and evaluated and in return the Appellant received a payment of [redacted].

180. The purposes of the various [redacted] have been set out above and are clearly set out in the agreements, none of which refer to the [redacted].

181. As a result of the above, the Commissioner finds as a material fact that the direct and immediate purpose for which the Appellant incurs expenditure on [redacted] is to [redacted].

The direct and immediate purpose for which the Appellant incurs expenditure on [redacted] is to [redacted];

182. On the one hand, the Appellant asserts that the direct and immediate purpose for which it incurs expenditure on [redacted] is to [redacted]. On the other hand, the Respondent submits that the direct and immediate purpose for which the Appellant incurs expenditure

on [redacted] is to fulfil the terms of [redacted] which form the basis of [redacted].

183. In [redacted], the Appellant entered into [redacted] and the Appellant was approved [redacted].

184. [redacted].

185. The objectives of the agreement are stated at section [redacted] as being:

> "[redacted]
>
> [redacted]
>
> [redacted]
>
> [redacted]
>
> [redacted]
>
> [redacted]"

186. The [redacted] statement of "[redacted]" [redacted]

[redacted]

187. Section [redacted] of the [redacted] identifies [redacted] as being:

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
		[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
		[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]		[redacted]		[redacted]
		[redacted]	[redacted]	[redacted]

188. Section [redacted].

189. The Commissioner has had regard to the evidence adduced, both oral and documentary, along with submissions made in relation to this material fact. Having done so, the Commissioner does not find credible the Appellant's claim that the direct and immediate purpose for which the Appellant incurs expenditure on [redacted].

190. The [redacted] and, according to the evidence adduced to the Commissioner during the course of the oral hearing, all of the expenditure incurred by the Appellant in relation to [redacted].

191. The [redacted] between the [redacted] and the Appellant in relation to [redacted] is clear and sets out the basis on which the Appellant was [redacted].

- [redacted]
- [redacted]
- [redacted]
- [redacted].

192. The Commissioner finds that the terms of the [redacted] and the Appellant in relation to [redacted] are clear and that all of the activities which the Appellant is required to carry out, along with the costs which the Appellant is required to incur pursuant to that agreement, are for [redacted].

193. It was open to the Appellant to adduce witness evidence from [redacted] in relation to the terms of the [redacted] and the intentions of that party when entering into that agreement. It did not.

194. Based on the evidence before the Commissioner, the Appellant has not discharged the burden of proof to establish that the direct and immediate purpose for which the Appellant incurs expenditure [redacted].

195. It is clear to the Commissioner that the terms of the [redacted] relating to [redacted] require that the Appellant [redacted]

196. The purposes of [redacted] have been set out above, none of which refer to the [redacted].

197. As a result of the above, the Commissioner finds as a material fact that the direct and immediate purpose for which the Appellant incurs expenditure on [redacted]

The direct and immediate purpose for which the Appellant incurs expenditure of income received through the [redacted].

198. On the one hand, the Appellant asserts that the direct and immediate purpose for which it incurs expenditure of [redacted] is to [redacted]. On the other hand, the Respondent submits that the direct and immediate purpose for which the Appellant incurs expenditure relating to [redacted] is reflected in the Objects of the Appellant as set out in its Memorandum of Association as follows:

- [redacted]
- [redacted]

[redacted]

[redacted]

[redacted]

199. The Commissioner notes that paragraph 3 of the Appellant's [redacted] Memorandum of Association provides that:

[redacted]

200. Based on the evidence before the Commissioner, the Appellant has not discharged the burden of proof to establish that the direct and immediate purpose for which the Appellant incurs expenditure of income received through [redacted].

201. It is clear to the Commissioner that the Objects of the Appellant as set out in its Memorandum and Articles of Association of the Appellant establish that the Appellant is empowered to [redacted].

202. The Commissioner notes that, under cross examination, the CEO was given the opportunity to point the Commissioner to any provision in the Appellant's Objects which provides for [redacted]. She was unable to do so. Nothing in the documentary evidence opened to the Commissioner during the course of the oral hearing establishes that an Object of the Appellant is [redacted].

203. The CEO in her direct evidence, and on cross examination, has asserted that the [redacted]

204. No documentary evidence to support the CEO's claim in relation to the purpose of the payment of [redacted], other the Appellant's Memorandum and Articles of Association, have been submitted to the Commissioner.

205. It was open to the Appellant to adduce witness evidence from [redacted] in relation to the reasons why they make those payments

and the purposes for which it is intended [redacted] are spent. It did not.

206. As result of the above, the Commissioner finds that the Appellant has not discharged the burden of proof to establish that the direct and immediate purpose for which it incurs expenditure of income received through [redacted] is to [redacted]. As set out above the evidence points the Commissioner to find that, on the balance of probabilities, the direct and immediate purpose for which the Appellant incurs expenditure of income received through the [redacted] is to [redacted].

207. Therefore, the Commissioner finds as a material fact that the direct and immediate purpose for which the Appellant incurs expenditure of income received through the [redacted] is to [redacted].

Findings of Material Facts

208. For the avoidance of doubt, the Commissioner makes the following findings of material facts:

208.1. [redacted].

208.2. The Appellant receives its income from:

[redacted]

208.3. The Appellant is registered for VAT.

208.4. The [redacted], the [redacted] and the [redacted] received by the Appellant are not consideration for the supply of a service and are not taxable.

208.5. These appeals relate to the rejection by the Respondent of VAT repayment claims submitted by the Appellant for VAT periods in 2016 to 2020 as follows:

Appeal Number	VAT Period	Amount €
[redacted]	Jul / Aug 2016	63,917
[redacted]	May / Jun 2018	183,632
[redacted]	Jul / Aug 2018	72,639
[redacted]	Sep / Oct 2018	110,029
[redacted]	Jan / Feb 2019	73,446
[redacted]	Mar / Apr 2019	73,033
[redacted]	May / Jun 2019	34,614
[redacted]	Jul / Aug 2019	101,121
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[redacted]	Mar / Apr 2018	218,314
[redacted]	Nov / Dec 2018	47,616
[redacted]	Nov / Dec 2019	36,260
[redacted]	Jan / Feb 2020	54,473
[redacted]	Mar / Apr 2020	67,434
[redacted]	May / Jun 2020	66,498
[redacted]	Jul / Aug 2020	27,256
[redacted]	Sep / Oct 2020	72,430

[redacted]	Nov / Dec 2020	52,540

208.6. The total amount under appeal is €2,549,921 and is broken down into four separate appeals as follows:

Appeal Number	Total amount under appeal €
[redacted]	815,176
[redacted]	1,448,587
[redacted]	67,434
[redacted]	218,724

208.7. In 2006 the Appellant lodged an appeal with the former Appeal Commissioners in relation to a decision of the Respondent refusing a repayment of VAT. This appeal was settled between the parties and was not determined by an Appeal Commissioner.

208.8. The direct and immediate purpose for which the Appellant incurs expenditure on [redacted].

208.9. The direct and immediate purpose for which the Appellant incurs expenditure on the [redacted]

208.10. The direct and immediate purpose for which the Appellant incurs expenditure of [redacted].

209. The Commissioner emphasises that she has taken all evidence and submissions into account in coming to her findings of material fact in this appeal.

Analysis

210. The Commissioner notes that the Grounds of Appeal contained in the Appellant's Notices of Appeal contain an assertion that "*The Appellant conducts a mixture of activities which are both taxable and outside the scope of VAT*". The Commissioner further notes that at

no stage in the Grounds of Appeal submitted in the Appellant's Notices of Appeal does the Appellant state or imply that the entirety of its activities are in scope of the PVD.

211. The Commissioner further notes that in its consolidated Statement of Case dated 25 May 2021 the Appellant stated "*The Appellant conducts a mixture of activities which are both taxable and outside the scope of VAT*".

212. In addition, the Commissioner notes that in its Outline of Argument, which predates the consolidated Statement of Case and which is dated 19 March 2021, it was stated that *"The Appellant conducts a mixture of activities commensurate with its purpose and which* [redacted] *. The far greater part of its* [redacted] *."*

213. At the oral hearing, the Appellant changed its position, submitting that the entirety of its activities are in scope of the PVD and that all of its expenditure has a direct and immediate link with its taxable transactions.

214. At the beginning of the final day of the oral hearing, the Commissioner raised the issue of the Appellant's change in position with the parties and noted to the parties that section 949I(2)(d) of the TCA 1997 provides that a Notice of Appeal shall specify *"…the grounds for the appeal in sufficient detail for the Appeal Commissioners to be able to understand those grounds*". The Commissioner also noted that section 949I(6) of the TCA 1997 provides that:

> *"A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice."*

215. The parties were given time by the Commissioner to take instructions in relation to this point. In response, it was submitted on behalf of the Appellant that the Appellant's position is that all of its transactions fall 100% in scope of the PVD and that the Grounds of Appeal contained in the Notice of Appeal are sufficiently wide as to allow the Appellant to make the argument at the oral hearing that all of its transactions fall 100% in scope of the PVD.

216. The Respondent did not agree with the Appellant's position that the Grounds of Appeal are sufficiently wide as to allow the Appellant to make the argument at the oral hearing that all of its transactions fall 100% in scope of the PVD.

217. The Commissioner has considered the position that has arisen in relation to the Grounds of Appeal and has considered the submissions made by the parties and the Grounds of

Appeal submitted. Having done so, the Commissioner finds that, whilst the statement in the Grounds of Appeal that "*The Appellant conducts a mixture of activities which are both taxable and outside the scope of VAT*" does not appear to coincide with the Appellant's Ground of Appeal asserted at the oral hearing that all of its transactions fall 100% in scope of the PVD, the statement contained in the Grounds of Appeal that the Appellant "*… is entitled to full input deduction notwithstanding its right to full input deduction on the basis of legitimate expectation*" is sufficiently wide as to allow the Appellant make the argument which it did at the oral hearing.

218. As a result, the Commissioner finds that the Appellant is entitled to rely on a Ground of Appeal that the entirety of its activities are in scope of the PVD and that all of its expenditure has a direct and immediate link with its taxable transaction

Substantive Appeal

219. The Commissioner has considered the evidence adduced, the submissions made and the material facts in this appeal.

220. On the one hand, the Appellant asserts that the entirety of its activities are in scope of the PVD and that all of its expenditure has a direct and immediate link with its taxable transactions. As a result, the Appellant asserts that it is entitled to full VAT input deduction on all of its transactions.

221. On the other hand, the Respondent has submitted that the Appellant conducts a mixture of in scope and out of scope activities. The Respondent agrees with the Appellant that it is entitled to VAT input deduction on its in scope activities. The Respondent also submits that the Appellant is not entitled to VAT input deduction on its out of scope activities.

222. It is agreed between the parties that, under settled case law of the CJEU, [redacted] received by the Appellant are not consideration for the supply of a service and are not taxable.

223. To have an entitlement to deduct VAT the person must be a "taxable person" who performs a taxable economic activity. It is agreed between the parties that the Appellant is a taxable person as defined in section 2 of the VATCA 2010.

224. In order for a supply of a service to constitute an economic activity it must be supplied for consideration.

225. In *Case C-102/86 Apple & Pear Development Council v Commissioners of Customs and Excise***,** Apple & Pear Development Council (hereinafter the "Council") was a body

governed by public law and established by statutory instrument to advertise, promote and improve the quality of apples and pears grown in the United Kingdom. The Council imposed an annual charge on its members based on each hectare planted and the charges levied enabled the Council to meet the expenses incurred by it in the exercise of its functions. The question for the Court was whether the Council, by levying members with an annual charge in this manner, constituted a supply of services effected for consideration. A key feature for the Court to consider was the fact that the members did not pay the charge with reference to any service they received but rather based on the size of the land they owned. The Court held that for a provision of services to be taxable there must be a direct link between the service provided and the consideration received. The Council's functions related to common interests, and there was no direct link with the benefits accruing to the individual growers. Therefore, the Court held that the functions performed by the Council were not a supply of services and not within the scope of VAT. In its judgment, the Court stated:

"12.It must be stated that the concept of the supply of services effected for consideration within the meaning of Article 2(1) of the Sixth Directive presupposes the existence of a direct link between the service provided and the consideration received….

…….

15 Moreover, no relationship exists between the level of the benefits which individual growers obtain from the services provided by the Development Council and the amount of the mandatory charges which they are obliged to pay under the 1980 Order.The charges, which are imposed by virtue not of a contractual but of a statutory obligation, are always recoverable from each individual grower as a debt due to the Development Council, whether or not a given service of the Development Council confers a benefit upon him.

16. It follows that mandatory charges of the kind imposed on the growers in this case do not constitute consideration having a direct link with the benefits accruing to individual growers as a result of the exercise of the Development Council's functions. In those circumstances, the exercise of those functions does not therefore constitute a supply of services effected for consideration within the meaning of Article 2(1) of the Sixth Directive."

226. This has been confirmed by the CJEU in delivering its judgment in *C-40/09 Astra Zeneca UK Limited v Commissioners for Her Majesty's Revenue and Customs*. In addition, in *C-16/93 R. J. Tolsma v Inspecteur der Omzetbelasting Leeuwarden* the CJEU held that:

"14 It follows that a supply of services is effected 'for consideration' within the meaning of Article 2 (1) of the Sixth Directive, and hence is taxable, only if there is a legal relationship between the provider of the service and the recipient pursuant to which there is reciprocal performance, the remuneration received by the provider of the service constituting the value actually given in return for the service supplied to the recipient.

15 In a case such as that which is the subject of the main proceedings, it is clear that those conditions are not fulfilled.

16 If a musician who performs on the public highway receives donations from passers-by, those receipts cannot be regarded as the consideration for a service supplied to them.

17 Firstly, there is no agreement between the parties, since the passers-by voluntarily make a donation, whose amount they determine as they wish. Secondly, there is no necessary link between the musical service and the payments to which it gives rise. The passers-by do not request music to be played for them; moreover, they pay sums which depend not on the musical service but on subjective motives which may bring feelings of sympathy into play. Indeed some persons place money, sometimes a considerable sum, in the musician's collecting tin without lingering, whereas others listen to the music for some time without making any donation at all."

227. In C-316/18 *Commissioners for Her Majesty's Revenue and Customs v The Chancellor, Masters and Scholars of the University of Cambridge* the University received donations and endowments that were placed into a third party managed fund and invested. The University made a claim on the deduction of the VAT relating to the fees paid for the management of the relevant fund arguing that the income generated by that fund had been used to finance the whole range of its activities. The CJEU found that:

"29 … it must be found that, in raising and collecting donations and endowments, the University of Cambridge is not acting as a taxable person. In order to be considered to be a taxable person, a person must carry out economic activities, that is to say activities for consideration. As the donations and endowments — which are essentially made for subjective reasons on charitable grounds and on a random basis — are not consideration for any economic activity, the raising and collection of them do not fall within the scope of the VAT Directive (see, to that effect, judgment of 3 March 1994, Tolsma, C-16/93, EU:C:1994:80, paragraphs 17 to 19). As is apparent from paragraph 24 above, it follows that the input VAT paid in respect of any costs incurred

in connection with the collection of donations and endowments is not deductible, regardless of the reason why those donations and endowments were received.

30 Both the activity consisting in the investment of donations and endowments, and the costs associated with that investment activity must be treated in the same way for VAT purposes as the non-economic activity consisting in the collection of donations and endowments and any costs associated with the latter. Not only does such financial investment activity constitute, for the University of Cambridge, much like a private investor, a means of generating income from the donations and endowments raised, but it is also an activity that may be directly linked to their collection and, consequently, is merely a direct continuation of that non-economic activity. Accordingly, input VAT paid in respect of the costs associated with that investment is also non-deductible.

31 It is true that the fact that costs are incurred in the acquisition of a service in the context of a non-economic activity does not, in itself, preclude those costs giving rise to a right to deduct in the context of the taxable person's economic activity, if they are incorporated into the price of particular output transactions or into the price of goods and services provided by the taxable person in the context of that economic activity (see, to that effect, judgment of 26 May 2005, Kretztechnik, C-465/03, EU:C:2005:320, paragraph 36).

32 However, in the present case, it is apparent from the documents before the Court that, first, costs relating to the management of donations and endowments invested in the fund concerned are not incorporated into the price of a particular output transaction. Second, as it is apparent from the documents before the Court that (i) the University of Cambridge is a not-for-profit educational establishment and (ii) the costs at issue are incurred in order to generate resources that are used to finance all of that university's output transactions, thus allowing the price of the goods and services provided by the latter to be reduced, those costs cannot be considered to be components of those prices and, consequently, do not form part of that university's overheads. In any event, as there is no direct and immediate link in the present case either between those costs and a particular output transaction or between those costs and the activities of the University of Cambridge as a whole, the VAT relating to those costs is not deductible."

228. In circumstances where input costs have been used for the purposes of both non-economic activities and taxable economic activities, deductibility can only be claimed to reflect the proportion of such costs that have been used for the purposes of taxable economic activities as provided for in Articles 173 to 175 of the PVD.

229. In *Case C-492/11 Portugal Telecom SGPS SA v Fazenda Publica, Ministerio Publico* (hereinafter "*Portugal Telecom*") the Court held as follows in relation to the right to deductibility of VAT:

> *"36. For VAT to be deductible, the input transactions must have a direct and immediate link with the output transactions giving rise to a right of deduction. Thus, the right to deduct VAT charged on the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the cost of the output transactions that gave rise to the right to deduct (see Cibo Participations, paragraph 31; Case C-465/03 Kretztechnik [2005] ECR I-4357, paragraph 35; Case C-435/05 Investrand [2007] ECR I-1315, paragraph 23; Securenta, paragraph 27; and SKF, paragraph 57).*
>
> *37 However, a taxable person also has a right to deduct even where there is no direct and immediate link between a particular input transaction and an output transaction or transactions giving rise to the right to deduct, where the costs of the services in question are part of his general costs and are, as such, components of the price of the goods or services which he supplies. Such costs do have a direct and immediate link with the taxable person's economic activity as a whole (see, in particular, Kretztechnik, paragraph 36; Investrand, paragraph 24; and SKF, paragraph 58).*
>
> *38 As regards the regime applicable to the right to deduct, in order to give rise to the right to deduct under Article 17(2) of the Sixth Directive, the goods or services acquired must have a direct and immediate link with the output transactions in respect of which VAT is deductible. The ultimate aim pursued by the taxable person is irrelevant in this respect (see Case C-98/98 Midland Bank [2000] ECR I-4177, paragraph 20; Case C-408/98 Abbey National [2001] ECR I-1361, paragraph 25; and Cibo Participations, paragraph 28).*
>
> *39 Furthermore, Article 17(5) of the Sixth Directive lays down the rules applicable to the right to deduct VAT where the VAT relates to input transactions used by the taxable person 'both for transactions covered by paragraphs 2 and 3, in respect of which [VAT] is deductible, and for transactions in respect of which [VAT] is not deductible', limiting the right of deduction to that proportion of the VAT which is attributable to the former transactions. It follows from that provision that, where a taxable person uses goods and services in order to carry out both transactions in respect of which VAT is deductible and transactions in respect of which it is not, he may deduct only that proportion of the VAT which is attributable to the former (Cibo Participations, paragraphs 28 and 34).*

40 It follows from that case-law, first, that the deduction system provided for in Article 17(5) of the Sixth Directive only covers cases in which the goods and services are used by a taxable person to carry out both economic transactions which give rise to a right to deduct and those which do not, that is to say, goods and services for mixed use and, second, that Member States may use one of the methods of deduction referred to in the third subparagraph of Article 17(5) only for those goods and services.

41 On the other hand, the goods and services which are used by the taxable person solely to carry out economic transactions giving rise to a right to deduct do not fall within the scope of Article 17(5) of the Sixth Directive, but are covered, as regards the deduction system, by Article 17(2) thereof.

42 Finally, the Court has held that the rules in Article 17(5) of the Sixth Directive concern the input tax chargeable on expenses relating exclusively to economic transactions and that the determination of the methods and criteria for apportioning input VAT between economic and non-economic activities within the meaning of the Sixth Directive is in the discretion of the Member States which, when exercising that discretion, must have regard to the aims and broad logic of the directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to those two types of activity (Securenta, paragraphs 33 and 39)."

230. The case of *C-28/16 Magyar Vilamoz Muvek v Nemzeti Adó - és Vámhivatal Fellebviteli Igazgatósága* (hereinafter "MVM") related to a state-owned power company which carried out the taxable activity of leasing power plants and fibre optic cables. MVM also held subsidiaries to whom it provided management services, along with services, for which it did not charge, provided to members of the corporate group to which it belonged. MVM sought to reclaim all input VAT incurred by it on the cost of providing the management services to its subsidiaries. The CJEU held, *inter alia*, that:-

"48 … Articles 2, 9, 26, 167, 168 and 173 of [the PVD] must be interpreted as meaning that, in so far as the involvement of a holding company, such as that at issue in the main proceedings, in the management of its subsidiaries, where it has charged those subsidiaries neither for the cost of the services procured in the interest of the group of companies as a whole or in the interest of certain of its subsidiaries, nor for the corresponding VAT, does not constitute an 'economic activity', within the meaning of that directive, such a holding company does not have the right to deduct input VAT paid in respect of those services in so far as those services relate to transactions falling outside the scope of that directive"

231. In circumstances where a mixture of both economic and non-economic activities are carried out, the CJEU has found that where there is non-economic activity, VAT deductibility must be restricted proportionate to the taxable economic activity carried out.

232. In *Beteiligungsgesellschaft Larentia + Minerva mbH & Co. KG v Finanzamt Nordenham (C-108/14), Finanzamt Hamburg-Mitte v Marenave Schiffahrts AG (C-109/14)* (hereinafter "*Larentia and Minerva*"), the issue which was before the Court in the first case (C-108/14) was whether the holding of shares was an economic activity which resulted in an entitlement to deduct VAT. The issue which was before the Court in the second case (C-108/14) was the extent to which deductions were allowed in relation to input tax incurred on acquisition and issue costs in a company restructure.

233. In *Larentia and Minerva*, the Court held that where there is non-economic activity, VAT may only be deducted in proportion to what is inherent to the economic activity and at paragraph 33 stated as follows:

> *"… Article 17(2) and (5) of the Sixth Directive must be interpreted as meaning that:*
>
> *– the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in their management and which, on that basis, carries out an economic activity must be regarded as belonging to its general expenditure and the VAT paid on that expenditure must, in principle, be deducted in full, unless certain output economic transactions are exempt from VAT under the Sixth Directive, in which case the right to deduct should have effect only in accordance with the procedures laid down in Article 17(5) of that directive;*
>
> *– the expenditure connected with the acquisition of shareholdings in subsidiaries incurred by a holding company which involves itself in the management only of some of those subsidiaries and which, with regard to the others, does not, by contrast, carry out an economic activity must be regarded as only partially belonging to its general expenditure, so that the VAT paid on that expenditure may be deducted only in proportion to that which is inherent to the economic activity, according to the criteria for apportioning defined by the Member States, which when exercising that power, must have regard to the aims and broad logic of the Sixth Directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to economic and to non-economic activity, which it is for the national courts to establish."*

234. Further, in *C-566/17 Związek Gmin Zagłębia Miedziowego w Polkowicach v Szef Krajowej Administracji Skarbowej* the referring court referred the following question to the CJEU:

'Do Article 168(a) of [the VAT Directive] and the principle of VAT neutrality preclude a national practice where the right is granted to a full deduction of input tax in connection with the purchase of goods and services used both for the purposes of a taxable person's transactions falling within the scope of VAT (taxed and exempted) and falling outside the scope of VAT, owing to the absence in national law of methods and criteria for apportioning the input tax in relation to those types of transaction?'

235. In considering the question referred, the Court recalled the legal bases of the right to deduct VAT, as specified in the VAT Directive and in the case law of the CJEU and stated:

"25 In the first place, arrangements relating to the right of deduction are governed, in particular, by Article 168 of the VAT Directive. Under Article 168(a), a taxable person is entitled to deduct from the VAT which he is liable to pay the VAT due or paid in respect of supplies to him of goods or services, carried out or to be carried out by another taxable person, in so far as the goods and services are used for the purposes of his taxed transactions.

26 The structure of the system established by the VAT Directive is based on neutrality. Only the input tax charged in respect of goods or services used by a taxable person for his taxed transactions may be deducted. In other words, the deduction of input taxes is linked to the collection of output taxes. Where goods or services acquired by a taxable person are used for the purposes of transactions that are exempt or do not fall within the scope of VAT, no output tax can be collected and no input tax deducted. However, where goods or services are used for the purposes of taxed output transactions, deduction of the input tax charged in respect of those goods or services is required in order to avoid double taxation (see, to that effect, judgment of 16 June 2016, Mateusiak, C-229/15, EU:C:2016:454, paragraph 24 and the case-law cited).

27 Thus, the question of whether there is a right to deduct presupposes, first, that a taxable person acting as such acquires goods or services and uses them for the purposes of his economic activity (see, inter alia, judgment of 16 February 2012, Eon Aset Menidjmunt, C-118/11, EU:C:2012:97, paragraph 69). Second, for VAT to be deductible, the input transactions must, as a general rule, have a direct and immediate link with the output transactions giving rise to a right of deduction. Ultimately, the right to deduct VAT charged in respect of the acquisition of input goods or services presupposes that the expenditure incurred in acquiring them was a component of the

cost of the taxed output transactions (see, to that effect, judgments of 13 March 2008, Securenta, C-437/06, EU:C:2008:166, paragraph 27; of 6 September 2012, Portugal Telecom, C-496/11, EU:C:2012:557, paragraph 36; and of 16 July 2015, Larentia + Minerva and Marenave Schiffahrt, C-108/14 and C-109/14, EU:C:2015:496, paragraphs 23 and 24).

28 In the second place, where a taxable person uses goods and services to carry out both economic transactions in respect of which VAT is deductible and economic transactions in respect of which it is not (that is, exempt transactions), Articles 173 to 175 of the VAT Directive lay down rules for determining the share of deductible VAT, which must be proportional to the amount attributable to the taxable person's taxed economic transactions. In that regard, the Court has stated that those rules concern the input VAT chargeable on expenditure relating exclusively to economic transactions, distinguishing between economic activities which are taxed and give rise to a right of deduction and those which are exempt and do not give rise to such a right (see, to that effect, judgments of 13 March 2008, Securenta, C-437/06, EU:C:2008:166, paragraph 33; of 6 September 2012, Portugal Telecom, C-496/11, EU:C:2012:557, paragraph 42; and of 16 July 2015, Larentia + Minerva and Marenave Schiffahrt, C-108/14 and C-109/14, EU:C:2015:496, paragraph 27). However, so as not to compromise the objective of neutrality guaranteed by the common system of VAT, transactions falling outside the scope of the VAT Directive must be excluded from the calculation of the deductible proportion referred to in those provisions (see, to that effect, judgments of 14 November 2000, Floridienne and Berginvest, C-142/99, EU:C:2000:623, paragraph 32; of 27 September 2001, Cibo Participations, C-16/00, EU:C:2001:495, paragraph 44; and of 29 April 2004, EDM, C-77/01, EU:C:2004:243, paragraph 54).

29 In the third place, it should be borne in mind that the Court has already held that, since the VAT Directive is silent on this point, the determination of the methods and criteria for apportioning input VAT between economic and non-economic activities falls within the discretion of the Member States. When exercising that discretion, Member States must have regard to the aims and broad logic of the VAT Directive and, on that basis, provide for a method of calculation which objectively reflects the part of the input expenditure actually to be attributed, respectively, to those two types of activity (see, inter alia, judgment of 25 July 2018, Gmina Ryjewo, C-140/17, EU:C:2018:595, paragraph 58 and the case-law cited)."

236. In conclusion, the Court held that:

"In the light of the foregoing considerations, the answer to the question referred is that Article 168(a) of the VAT Directive must be interpreted as precluding a national practice which permits a taxable person to deduct the input VAT charged in respect of mixed expenditure in full, owing to the lack of specific rules in the applicable tax legislation regarding the criteria and methods of apportionment which would enable that taxable person to determine the share of that input VAT which must be regarded as being connected to his economic and non-economic activities respectively."

Application of the law to the facts:

237. The parties to this appeal are in agreement, and the Commissioner has found as a material fact, that [redacted] received by the Appellant are not consideration for the supply of a service and are not taxable. Therefore, this income falls outside of the scope of the PVD.

238. As a result, the Commissioner must determine that the Appellant is involved in both economic and non-economic activity.

239. The argument put forward by the Appellant is that, despite the fact that the [redacted] income and the [redacted] income which it receives are not consideration for the supply of a service and are not taxable, all of its transactions fall 100% in scope of the PVD and it is therefore entitled to full input VAT deduction on all of its expenditure.

240. The case law set out in this determination establishes that, where there is a mixture of economic and non-economic activity, for VAT to be deductible, the input transactions of the non-economic activity must have a direct and immediate link with the output transactions giving rise to a right of deduction.

241. The evidence which was adduced to the Commissioner set out the following economic activities which were carried out by the Appellant and the Commissioner determines that the following economic activities of the Appellant give rise to a right of deduction in these appeals:

    241.1. [redacted];

    241.2. [redacted];

    241.3. [redacted]; and

    241.4. [redacted].

242. For the reasons set out, the Commissioner has already found as material facts that:

242.1. The direct and immediate purpose for which the Appellant incurs expenditure on [redacted] is to fulfil the objectives and purposes of those [redacted].

242.2. The direct and immediate purpose for which the Appellant incurs expenditure on [redacted] is to fulfil the objectives and purposes of the [redacted] relating to [redacted].

242.3. The direct and immediate purpose for which the Appellant incurs expenditure of income received through [redacted] is to [redacted].

243. As the parties are agreed that the [redacted], the [redacted] and the [redacted] which it receives are not taxable, therefore they are non-economic activity. The findings of material fact relating to the direct and immediate purpose of the expenditure of that income, mean that:

243.1. the direct and immediate purpose for which the Appellant incurs expenditure, and therefore incurs input VAT, on [redacted] is to fulfil the objectives and purposes of those [redacted];

243.2. the direct and immediate purpose for which the Appellant incurs expenditure, and therefore incurs input VAT, on [redacted] is to fulfil the objectives and purposes of the [redacted]; and

243.3. the direct and immediate purpose for which the Appellant incurs expenditure of income, and therefore incurs input VAT, received through [redacted] is to [redacted].

244. The Commissioner must determine that the purpose of the input VAT incurred by the Appellant in relation to expenditure relating to the non-economic activity of the Appellant, that is the [redacted], the [redacted] and the [redacted] received by the Appellant, does not have a direct and immediate link with the output transactions giving rise to a right of deduction. Therefore, the Appellant is not entitled to deduct the input VAT incurred in relation to its non-economic activity relating to the [redacted], the [redacted] and the [redacted].

245. It is not disputed by the Respondent, that the Appellant is involved in economic activity. Following from the findings of material fact and based on the evidence adduced to the Commissioner, the Commissioner determines that the economic activities in which the

Appellant was engaged during the period 2016 to 2020 were all activities excluding the Appellant's non-economic activities, that is to say:

245.1. The [redacted];

245.2. The [redacted];

245.3. The [redacted]; and

245.4. [redacted].

246. Having so determined, the Commissioner must also determine that the costs incurred by the Appellant for both economic and non-economic activity must be apportioned pursuant to the provisions of Articles 173 to 175 of the PVD as envisaged by the CJEU, that is to say where there is has a direct and immediate link with the Appellant's output transactions which give rise to a right of deduction.

247. The evidence adduced at the oral hearing and the documentary evidence submitted to the Commissioner does not place the Commissioner in a position to specify the precise apportionment which should take place. The Commissioner understands why this is the case. For the parties to have done so would have required the Commissioner to have been brought through each and every item of expenditure incurred by the Appellant for the years 2016 to 2020 and for the Commissioner to make a determination as to apportionment of same. Such an exercise would have required an oral hearing of weeks if not months.

248. The Commissioner notes that, in its oral submissions, the Respondent accepted that the parties will have to undertake a detailed apportionment exercise to establish the precise details and amounts.

Legitimate Expectation

249. On the one hand, the Appellant contends that it is entitled to rely on a legitimate expectation that, as a result of the settlement of the 2006 appeal proceedings by the Respondent, the Appellant was entitled to full VAT input deductions on all of its activities.

250. On the other hand, the Respondent denies that its withdrawal from the appeal proceedings in 2006 gave rise to a legitimate expectation that the Appellant was entitled to full VAT input deductions on all of its activities.

251. The Commissioner notes that the Appellant's written submissions emphasised legitimate expectation as its main ground of appeal, whilst the submissions relating to legitimate

expectation made at the oral hearing were brief and the main ground of appeal relied on by the Appellant related to the substantive issue.

252. It is established law that an Appeal Commissioner has not been conferred by statute with the jurisdiction to decide on matters relating to claims of legitimate expectation.

253. The Commission is a creature of statute and the powers conferred on Appeal Commissioners were at the time of the judgment in *Menolly Homes* to be found in section 934 of TCA1997 and are now set out in section 949(K) of TCA1997 (as inserted by the Finance (Tax Appeals) Act, 2015), subsection (2) of which provides that:

> *"If, on an appeal against an assessment that—*
>
> *(a) assesses an amount that is chargeable to tax, and*
>
> *(b) charges tax on the amount assessed,*
>
> *the Appeal Commissioners consider that the appellant is overcharged or, as the case may be, undercharged by the assessment, they may, unless the circumstances of the case otherwise require, give as their determination in the matter a determination solely to the effect that the amount chargeable to tax be reduced or increased."*

254. The position as set out by Charleton J in his decision in *Menolly Homes* is relevant in this regard. He stated at page 11 that "*Revenue law has no equity…*" and went on to state that:

> *"How tax becomes payable, what exceptions avoid general liability as and when these genuinely arise, when payment is due, what records have to be maintained by taxpayers, which levels of taxation are applicable to what transactions or events and how the power of the tax collector is both defined and circumscribed are all precisely defined by modern legislation. In a similar way, what remedy that taxpayer has against a taxation demand is not general but specific. It is cut from the cloth whereby the precise liability is set by statute law and tailored individually by the legislature in the way that suits their perception of how an income tax, a corporation tax, a capital gains or acquisitions tax or a value added tax appeal should be set up as to the scope of appeal, the procedure on that appeal and the remedies available to the appellate body."*

255. The decision of Charleton J was more recently considered in *Lee v Revenue Commissioners* [2021] IECA 18 where Murray J, giving the decision of the Court of Appeal, held that:

"64. … From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge. The 'incidental questions' which the case law acknowledges as falling within the Commissioners' jurisdiction are questions that are 'incidental' to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the TCA, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment. That is why the Court in Aspin v. Estill framed the powers of the equivalent tribunal in that jurisdiction as directed to whether the assessment has been properly prepared in accordance with the applicable statutes. As I have explained earlier in this judgement, that conclusion is firmly aligned both with the approach adopted in the older cases and the analysis suggested by the decisions in Menolly and in Stanley.

65. When that jurisdiction is matched against the legal character of an agreement by Revenue to compromise a tax liability, the difficulty in fitting an inquiry as to whether a liability to Revenue has been compromised into the Appeal Commissioner's function becomes more pronounced. Where Revenue settles such a claim the sum tendered is received by Revenue pursuant to contract, and to that extent loses its character as tax, interest or penalties (IRC v. Woollen [1992] STC 944). Revenue's cause of action in that circumstance is on foot of the contract, and the remedy available to it is to recover the sums in question by an action in debt (id. at p. 948 per Dillon LJ). There is accordingly a distinction in principle between 'what the Revenue collect under the contract and what they might otherwise be entitled to collect under the statute' (id. at p. 950 per Nolan LJ). As Hirst LJ. put it in Woollen – the liability 'sounds in debt and not in tax'. That logic readily transfers to the issue in this case - for the same reason the liability under a contract is not 'in tax', it is not within the jurisdiction of the Appeal Commissioners. Those Commissioners have a jurisdiction in tax, not in contract and the function they discharge is to determine the taxes due under the statute, not under the contract. These are entirely distinct, and it is my view that a jurisdiction conferred under the former cannot without express provision extend to the determination of issues regarding the latter. None of these principles, I should say, are affected by the decision in Stockler v. IRC [2010] STC 2584 which was referred to at the hearing of this appeal. There, it was held that the particular compromise in issue in that case did not preclude the imposition of penalties for the purposes of certain provisions of the relevant English legislation: in fact the essential theory that a contract debt and a sum

due 'as tax' were legally distinct was emphatically confirmed (see Mummery LJ at para. 118).

66. The decisions addressing the relationship between the powers of the Appeal Commissioners and public law principles are in one sense irrelevant to the distinct issue of whether the Commissioners have the power to determine whether a liability has been settled. Both Charleton J. in Menolly and this Court in Stanley directed their attention to whether the Commissioners had a power to determine the 'validity' of the assessments in issue in those cases, and both Courts decided that they did not. However, in addressing these cases it is important to define the issues with which they were concerned more closely.

67. For reasons I have explained earlier, in neither case was there any question of the Commissioners embarking upon a determination as to 'validity' as that term is narrowly and technically understood. The issue instead was whether the Commissioners had jurisdiction to apply public law principles to determine whether a specific assessment should be abated. While in these cases the focus was upon the issue of whether judicial review was the appropriate vehicle for the agitation of the taxpayers' complaints, in both decisions the Courts touched on the nature of the power vested in the Appeal Commissioners, and in each the Judges framed that power in a manner consistent with the case advanced by Revenue here. Charleton J. described the function of the Commissioners in a VAT appeal as limited to 'scrutinising the amount of VAT due' (at para. 22) and referred to the Appeal Commissioners as being 'concerned with the amount of the assessment only' (at para. 45) while Peart J. said that 'the Appeal Commissioners' function is confined to determining whether the quantum of a lawful assessment is correct'. All of these descriptions address themselves to the underlying legislation and neither captures a power to look beyond the charging provisions pursuant to which the assessment issued.

68. The public law cases, however, highlight another issue with the argument advanced by the plaintiff here. Whatever about fitting an inquiry into whether an Inspector of Taxes has acted reasonably or in good faith in issuing an assessment within the statutory framework, if a taxpayer can agitate before the Appeal Commissioners whether a liability has been settled, it is not at all apparent to me that there is any rational basis on which it can be said that he should be prevented from contending that the Inspector should be precluded from proceeding to issue an assessment by either a legitimate expectation, or an estoppel. The proposition that legitimate expectation is an exclusively 'public law remedy' does not in my view provide

a convincing explanation. I struggle to see how categorising a remedy as one derived from 'public law' advances the debate. A claim in contract is one in 'private law' and a claim of estoppel may be one in 'equity'. None of these labels actually addresses the inquiry as to why a claim falling within one or other such description is not within the Commissioner's remit. The real point is that none of these forms of action has been entrusted to the jurisdiction of the Appeal Commissioners not because of their general legal categorisation, but because that jurisdiction is directed to the assessment and statutory charge alone. Arguments as to contract, legitimate expectation, estoppel or other theories which might, through one or more aspects of the general law operate to prevent Revenue from issuing, acting on or (as the case may) enforcing that assessment do not come within the jurisdiction so defined."

256. As can be seen from the earlier analysis in this determination, the Commissioner has considered the PVD and the VATCA 2010 and their application to the circumstances of this appeal.

257. In addition, the Commissioner has considered the documentation received and the submissions made in relation to the 2006 appeal on which the Appellant's claim of legitimate expectation is based.

258. Whilst it is agreed by the parties that the 2006 appeal was an appeal by the Appellant against a refusal by the Respondent of a VAT refund for the VAT period May / June 2005 to the former Appeal Commissioners, no direct evidence as to the circumstances of the 2006 appeal has been adduced to the Commissioner.

259. The Commissioner is in receipt of the following emails in respect of the 2006 appeal:

259.1. 9 March 2006: Email from the Appellant's former tax advisor to the Respondent:

"I note you have listed the appeal for hearing on 31 March 2006. To date, we have not received a copy of the Revenue submission from the Appeal Commissioner (we submitted ours on 6 February 2006).

Can you confirm if you have made a submission and if you have received a copy of ours?"

259.2. 21 March 2006: email from the Respondent to the Appellant's former tax advisor:

"Please note that Revenue accepts that full deductibility is due in this case and consequently the appeal will not be defended. As your client has received VAT repayments for all periods up to and including Nov/Dec '05 please let me have your agreement that this appeal may be regarded as settled."

260. As no evidence, whether oral or documentary, as to the detail and substance of the 2006 appeal which was lodged with the former Appeal Commissioners has been adduced to the Commissioner, the Commissioner has no evidence on which to understand the basis of the settlement of the 2006 appeal save and apart from the email chain submitted.

261. It was open to the Appellant to adduce evidence to the Commissioner as to the detail and substance of the 2006 appeal in the form of documentary evidence. It did not.

262. It was open to the Appellant to adduce evidence to the Commissioner as to the detail and substance of the 2006 appeal in the form of witness evidence from its former staff members and/or former tax and/or legal advisors who were privy to the settlement of the 2006 appeal. It did not.

263. It was open to the Appellant to adduce evidence to the Commissioner as to the detail and substance of the settlement of the 2006 appeal and / or whether any formal settlement agreement was entered into between the parties in the form of witness evidence from its former staff members and/or former tax and/or legal advisors who were privy to the settlement of the 2006 appeal. It did not.

264. Therefore, the Appellant has not adduced evidence to the Commissioner on which to base a determination in relation to a claim of legitimate expectation that, as a result of the settlement of the 2006 appeal proceedings by the Respondent, the Appellant was entitled to full VAT input deductions on all of its activities.

265. The Commissioner notes that the email of 21 March 2006 from the Respondent to the Appellant's then tax advisor states "*Please note that Revenue accepts that full deductibility is due in this case…*". The words "*in this case*" are clear in their meaning and indicate that the Respondent was referring only to the 2006 appeal and nothing in that email tends to indicate that the Respondent was referring to any future repayment claims which the Appellant may make.

266. As a result of the above, the Commissioner has no basis on which to make a finding that the Appellant is entitled to rely on a legitimate expectation that, as a result of the settlement of the 2006 appeal proceedings by the Respondent, it was entitled to full VAT input deductions on all of its activities.

Conclusion

267. In conclusion, the Commissioner has determined that:

267.1. The Appellant is involved in both economic and non-economic activities.

267.2. The following economic activities of the Appellant give rise to a right of deduction in these appeals:

267.2.1. The [redacted];

267.2.2. The [redacted];

267.2.3. The [redacted]nts; and

267.2.4. [redacted].

267.3. The direct and immediate purpose for which the Appellant incurs expenditure on [redacted].

267.4. The direct and immediate purpose for which the Appellant incurs expenditure on [redacted].

267.5. The direct and immediate purpose for which the Appellant incurs expenditure of income received through [redacted].

267.6. The purpose of the input VAT incurred by the Appellant in relation to expenditure relating to the [redacted], the [redacted] and the [redacted] received by the Appellant does not have a direct and immediate link with the output transactions giving rise to a right of deduction pursuant to the provisions of the PVD.

267.7. During the period 2016 to 2020, the Appellant was engaged in the following economic activities which give rise to a right of input VAT deduction:

267.7.1. [redacted];

267.7.2. [redacted];

267.7.3. [redacted]; and

267.7.4. [redacted].

267.8. The input costs, and the input VAT, incurred by the Appellant for both economic and non-economic activity must be apportioned pursuant to the provisions of Articles 173 to 175 of the PVD as envisaged by the CJEU, that is to say where there is a direct and immediate link with the Appellant's output transactions which give rise to a right of deduction.

267.9. As the Commissioner has not been put in a position where she can carry out the necessary apportionment exercise, and as agreed by the parties in their oral submissions, the parties will need to engage in a detailed apportionment exercise.

Determination

268. The Commissioner determines that the Appellant has succeeded in part in showing that the Respondent was incorrect in refusing the Appellant's claims for repayment of VAT in the following periods and for the following amounts:

VAT Period	Amount €
Jul / Aug 2016	63,917
May / Jun 2018	183,632
Jul / Aug 2018	72,639
Sep / Oct 2018	110,029
Jan / Feb 2019	73,446
Mar / Apr 2019	73,033
May / Jun 2019	34,614
Jul / Aug 2019	101,121
Sep / Oct 2019	102,745
Jan / Feb 2017	71,128
Mar / Apr 2017	97,900
May / Jun 2017	175,822
Jul / Aug 2017	106,812
Sep / Oct 2017	346,484
Nov / Dec 2017	253,730
Jan / Feb 2018	40,408
Mar / Apr 2018	218,314
Nov / Dec 2018	47,616

Nov / Dec 2019	36,260
Jan / Feb 2020	54,473
Mar / Apr 2020	67,434
May / Jun 2020	66,498
Jul / Aug 2020	27,256
Sep / Oct 2020	72,430
Nov / Dec 2020	52,540

269. The Commissioner determines pursuant to the provisions of section 949AL of the TCA 1997 that the Respondent's decision to refuse the Appellant's claim for the repayment of VAT shall be varied and the Respondent shall repay to the Appellant the input VAT incurred by the Appellant relating to the economic activities of the Appellant for the periods July / August 2016 to November / December 2020.

270. In addition, the Commissioner determines pursuant to the provisions of section 949AL of the TCA 1997 that the Respondent's decision to refuse the Appellant's claim for the repayment of VAT shall be varied and the Respondent shall, following a detailed apportionment exercise between the parties, repay to the Appellant the input VAT incurred by the Appellant relating to the non-economic activities of the Appellant where there is a direct and immediate link with the Appellant's output transactions which give rise to a right of deduction for the periods July / August 2016 to November / December 2020.

271. This appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the Taxes Consolidation Act 1997.

Notification

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

Act 1997. This notification under section 949AJ of the Taxes Consolidation Act 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

273. 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 Taxes Consolidation Act 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

Clare O'Driscoll
Appeal Commissioner
29 January 2025

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.

Annex 1

274. Index to Book of Core Documents:

*"**1. Periods Under Appeal***

1.1. VAT claim rejected (March/April 2020)

1.2. VAT claims rejected (May/Jun, Jul/Aug, Sep/Oct and Nov/Dec 2020)

1.3. VAT claims rejected (July/Aug 2016, May/June 2018, July/Aug 2018, Sept/Oct 2018, Jan/Feb 2019, Mar/April 2019, May/June 2019, July/Aug 2019 & Sept/Oct 2019)

1.4. VAT Notice of Assessment of Tax Payable (Jan/Feb, March/April, May/June, July/Aug, Sep/Oct and Nov/Dec 2017 VAT periods, and Jan/Feb, March/April and Nov/Dec 2018 VAT periods, dated 27 January 2021. We are also appealing Revenue's refusal of the VAT claims relating to the Nov/Dec 2019 (€36,260) and Jan/Feb 2020 (€54,473) VAT periods).

2. TAC Pleadings

*2.1. **Appellants Notice of Appeal** (July/Aug 2016, May/June 2018, July/Aug 2018, Sept/Oct 2018, Jan/Feb 2019, Mar/April 2019, May/June 2019, July/Aug 2019 & Sept/Oct 2019), dated 13 February 2020 (Tax Appeals Reference Number: 249/20).*

*2.2. **Appellants Notice of Appeal** (Jan/Feb, March/April, May/June, July/Aug, Sep/Oct and Nov/Dec 2017 VAT periods, and Jan/Feb, March/April and Nov/Dec 2018 VAT periods. We are also appealing Revenue's refusal of the VAT claims relating to the Nov/Dec 2019 (€36,260) and Jan/Feb 2020 (€54,473) VAT periods), dated 25 March 2021 (Tax Appeals Reference Number: 473/21).*

*2.3. **Appellants Notice of Appeal** (March/April 2020), dated 25 May 2020 (Tax Appeals Reference Number: 604/20).*

*2.4. **Appellants Notice of Appeal** (May/Jun, Jul/Aug, Sep/Oct and Nov/Dec 2020), dated 28 January 2021 (Tax Appeals Reference Number: 232/21)*

*2.5. **Appellant's Statement of Case** dated 25 May 2021.*

*2.6. **Respondents Statement of Case** dated 27 May 2021.*

*2.7. **Appellant's Outline of Arguments** dated 19 March 2021.*

*2.8. **Respondents Outline of Arguments** dated 19 March 2021.*

*2.9. **Statement of Agreed Facts** dated 19 June 2022.*

3. Inter Partes Correspondence

3.1. Email 9 March 2006 Confirmation of full deductibility

3.1.1 Letter from Appellant dated 19 September 2016

3.2. Letter from Revenue dated 18 July 2019

3.3. Letter from Revenue dated 16 October 2019

3.4. Email chain from 12 August to 9 December 2019

3.5. Letter from Revenue dated 13 January 2020

3.6. Email 19 January 2021 at 11:49:38

3.7. Email 27 January 2021 at 09:33:28

3.8. Emails 13 May 2020

3.9. Email 25 May 2021 at 16:35:50

3.10. Email Thursday 27 May 2021 14:32

3.11. Email Wednesday 29 September 2021 14:19

3.12. Email Thursday 30 September 2021 15:33

3.13. Email chain from 29 to 30 September 2021

4. Correspondence with TAC

4.1. Letter from [redacted] 12 February 2020

4.2. Emails 13 & 17 February 2020

4.3. Emails Thursday 14 May 2020 10:16

4.4. Email dated Wednesday 13 May 2020 17:11

4.5. Emails 3 December 2020 to 3 March 2021

4.6. Email Friday 29 January 2021 11:32

4.7. Email 26 February to 2 March 2021

4.8. Email dated Friday 19 March 2021 19:31

4.9. Emails 25 & 26 March 2021

4.10. Emails 1 & 8 June 2021

4.11. Email dated Thursday 17 June 2021 13:24

4.12. Email Chain 13 July to 30 September 2021

4.13. Letter from Deloittes dated 28 September 2021"

275. Index to Book of Non-Core Documents:

"***1.*** [redacted]

2. VAT Returns & Supporting Schedules

2.1. 2016

2.1.1. VAT Return July Aug 2016

2.1.2. Schedule

2.1.3. Purchase VAT Analysis

2.1.4. Purchase VAT Analysis

2.1.5. Purchase Ledger Invoices & Analysis

2.1.6. Purchase Ledger Invoices & Analysis

2.1.7. Cashbook Transfer Report

2.2. 2017

2.2.1. Jan – Feb

5.1. Index

5.2. Invoices

6. [redacted] Purchases Index & supporting documents

6.1. Index

6.2. Invoices"

276. Index to Book of Additional Documents:

*"**1. [redacted] Reports and Financial Statements (Financial year ended 31 December 2020)***

2. Memorandum and Articles of Association

2.1. Memorandum of Association

2.2. Articles of Association

3. Trade Mark Licence Agreements between [redacted] and

3.1. [redacted]

3.2. [redacted]

3.3. [redacted]

3.4. [redacted]

3.5. [redacted]

3.6. [redacted]

[redacted]

3.7. [redacted]

3.8. [redacted]

3.9. [redacted]

3.10. [redacted]

3.11. [redacted]

4. [redacted]

4.1. [redacted]

4.2. [redacted]

5. [redacted]

5.1. [redacted]

5.2. [redacted]

5.3. [redacted]

5.4. [redacted]

[redacted]

5.5. [redacted]

5.6. [redacted]

5.7. [redacted]

5.8. [redacted]

5.9. [redacted]

5.10. [redacted]

5.11. [redacted]

6. Sales listings and Invoices

6.1. Sales listings and Invoices 2016

6.2. Sales listings and Invoices 2017

6.3. Sales listings and Invoices 2018

6.4. Sales listings and Invoices 2019

6.5. Sales listings and Invoices 2020”

Annex 2

277. Index to Core Book of Authorities:

"***1.EU Legislation***

1.1. Sixth Directive, Directive 77/288/EEC of 17 May 1977

1.1.1. Article 5

1.2. Council Directive 2006/112/EEC

1.2.1. Article 2

1.2.2. Article 9

1.2.3. Article 17

1.2.4. Article 24

1.2.5. Article 49

1.2.6. Article 74

1.2.7. Article 168

2. EU Case Law

2.1. ***Apple & Pear Development Council v Commissioners of Customs and Excise*** *Case 102/86*

2.2. ***RJ Tolsma v Inspecteur Der Omzetbelasting*** *Case C-16/93*

2.3. ***BPL Group Plc v Commissioners of Customs & Excise*** *Case 4/94*

2.4. ***Commissioners of Customs & Excise v Midland Bank plc*** *Case C-98/98*

2.5. ***Marks & Spencer*** *Case C-62/00*

2.6. ***Office des Produits Wallons ASBL v Belgium*** *Cas 184/00*

2.7. ***Cibo Participations*** *Case 16/00*

2.8. ***Commission v France*** *Case 243/03*

2.8.1. ***Commission v France*** *Case 243.03 - Opinion Maduro*

2.9. ***Commission v Spain*** *Case C-204/03*

2.9.1. ***Commission v Spain*** *Case C-204,03 Opinion Maduro*

2.10. ***Elmeka****, Joined Cases C-181/04 to C-183/04.*

2.11. ***Securenta*** *Case 437/06*

2.12. ***Vereniging Noordelijke Land-en Tuinbouw Org*** *Case 515/07*

2.13. ***Astra Zeneca*** *Case C – 40/09*

2.14. ***Portugal Telecom*** *C-496/11*

2.15. ***Varzim Sol*** *Case C-25,11*

2.16. ***Laurentia &Minerva*** *Cases C-108/14 and C-109/14*

2.16.1. ***Laurentia & Minerva*** *Cases C-108,14 and C-109,14 Opinion Mengozzi*

2.17. ***Salomie & Oltean*** *Case 183/14*

2.18. ***Odvolaci financni reditelstvi v Cesky Rozhlas*** *Case 11/15*

2.19. ***Kreuzmayr GmbH v Finanzamt Linz Case 628/16***

2.20 .***Magyar Vilamoz Muvek v Nemzeti Adó - és Vámhivatal Fellebviteli Igazgatósága*** *("**MVM**") C-28/16*

2.21. ***Zwiazek Gmin Zaghbia Miedziowego w Polkowicach v Szef Krajowej Administracji Skarbowej*** *Case C-566/17*

2.22. ***Ryanair*** *Case (C-249/17)*

2.22.1. ***Ryanair*** *Case 249/17 Opinion Kokott*

2.23. ***Garda V WRC*** *Case C-378/17*

2.24. ***Ente Público Radio Televisión Madrid*** *Case 694/18)*

2.25. ***HMRC v The Chancellor, Masters and Scholars of the University of Cambridge*** *Case C 316/18*

2.26. ***Balgarska natsionalna televizia Case C 21/20***

2.26.1. ***Balgarska natsionalna televizia Case C 21/20 Opinion Szpunar***

3. Irish Legislation

3.1. Section 12 VATA 1972

3.2. Section 2 VATCA 2010, Interpretation — general FA 2016

3.3. Section 2 VATCA 2010, Interpretation — general FA 2020 (Art 9 PVD)

3.4. Section 3 VATCA 2010, Charge of value-added tax FA 2016

3.5. Section 3 VATCA 2010, Charge of value-added tax FA 2020 (Art 2 PVD)

3.6. Section 5 VATCA 2010, Persons who are, or who may become, accountable persons FA 2016

3.7. Section 5 VATCA 2010, Persons who are, or who may become, accountable persons FA 2020

3.8. Section 25 VATCA 2010, Meaning of supply of services FA 2016

3.9. Section 25 VATCA 2010, Meaning of supply of services FA 2020 (Art 24 PVD)

3.10. Section 37 VATCA 2010, General rules on taxable amount FA 2016

3.11. Section 37 VATCA 2010, General rules on taxable amount FA 2020 (Art 73PVD)

3.12. Section 59 VATCA 2010, Deduction for tax borne or paid FA 2016

3.13. Section 59 VATCA 2010, Deduction for tax borne or paid FA 2020 (Art 168PVD)

3.14. Section 60 VATCA 2010, General limits on deductibility FA 2016

3.15. Section 60 VATCA 2010, General limits on deductibility FA 2020 (Art 168PVD)

3.16. Section 61 VATCA 2010, Apportionment for dual-use inputs FA 2016

3.17. Section 61 VATCA 2010, Apportionment for dual-use inputs FA 2020

3.18. Section 111 VATCA 2010, Assessment of tax due FA 2016

3.19. Section 111 VATCA 2010, Assessment of tax due FA 2020

3.20. Regulation 17 VAT Regulations

4. Irish Case Law

4.1. ***Howard v Commissioner of Public Works*** *[1994] 1 IR 101 (Supreme Court),*

4.2. ***Wylie v Revenue Commissioners*** *[1994] 2 IR 160,*

4.3. ***Glencar Exploration v Mayo County Council****, [2002] 1 IR 84*

4.4. ***Terence Keogh v CAB****, [2004] 2 IR 159*

4.5. ***Menolly Homes Ltd v The Appeal Commissioners and Others*** *[2010] IEHC 49,*

4.6. ***Lett and Company Limited v Wexford Borough Corporation, Minister for Communications****, [2007] IEHC 195*

4.7. ***Lett & Company Limited v Wexford Borough Corporation & Others****, [2012] 2 IR 198.*

4.8. ***Cork Opera House v Revenue Commissioners*** *[2012] 2 IR65*

4.9. Minister for Justice, Equality and Law Reform v Devine *[2015] IECA 182,*

4.10. 06TACD2016

4.11. Sarlingford v Appeal Commissioner Kelly *[2017] IEHC 416*

4.12. Kenny Lee V Revenue Commissioners*, [2021] IECA 18*

4.13. 81TACD2022

5. UK Case Law

5.1. Eagerpath Limited v Edwards *[2001] STC 26, 73 TC 427*

5.2. HMRC v Frank A Smart & Son *[2019] UKSC 39*

5.3. Colin Newell v HMRC *[2021] UKFTT 0199 (TC)*

6. ***Commentary***

6.1. Section 37 RNG VATCA 2010, General rules on taxable amount FA 2017

6.2. Section 59 RNG VATCA 2010, Deduction for tax borne or paid FA 2017

6.3. Section 60 RNG VATCA 2010, General limits on deductibility FA 2017

6.4. Section 61 RNG VATCA 2010, Apportionment for dual use inputs FA 2017"

278. Index to Non-Core Book of Authorities:

"***1. Irish Case Law***

1.1. ***Doorley v Revenue Commissioners*** *[1933] I.R. 750,*

1.2. ***Inspector of Taxes v Kiernan****, [1981] 2 IR 449,*

1.3. ***McGrath v McDermott*** *[1988] 2 IR 258,*

1.4. ***Texaco Ireland Ltd v Murphy (Inspector of Taxes)*** *[1991] 2 IR 449,*

1.5. ***Mullins v Hartnett*** *[1998] 4 IR 426,*

1.6. ***MacCarthaigh v Cablelink*** *[2003] 4 IR 510,*

1.7. ***JC Savage Supermarket Ltd and another v An Bord Pleanala*** *[2011] IEHC 488,*

1.8. ***Glenkerrin Homes v Dun Laoghaire Rathdown County Council****, [2007] IEHC 298, [2011] 1 IR 417.*

1.9. ***Gaffney v Revenue Commissioners*** *[2013] IEHC 651,*

1.10. ***Dunnes Stores v Revenue Commissioners*** *Supreme Court [2019] IESC 50,*

1.11. ***Bookfinders Limited v The Revenue Commissioners****, Supreme Court, 29 September 2020.*

1.12. ***Perigo Pharma International DAC v Revenue Commissioners & Others****, [2020] IEHC 552 High Court JR decision.*

2. ***UK Case Law***

279. 2.1. Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB”