

Determination that open market value applies. VATA s. 10(3A)

38.—(1) The Revenue Commissioners may, where they consider it necessary or appropriate to do so to ensure the correct collection of the tax, make a determination that the amount on which tax is chargeable on a supply of goods or services is the open market value of that supply, if the Commissioners are satisfied—

(a) that the actual consideration in relation to that supply is—

(i) lower than the open market value of that supply where the recipient of that supply—

(I) has no entitlement to deduct tax under Chapter 1 of Part 8,

(II) is not entitled to deduct all of the tax chargeable on that supply, or

(III) is a flat-rate farmer,

(ii) lower than the open market value of that supply, being an exempted activity, where the supplier—

(I) engages in the course or furtherance of business in non-deductible supplies or activities within the meaning of section 61 (1), or

(II) is a flat-rate farmer,

or

(iii) higher than the open market value where the supplier—

(I) engages in the course or furtherance of business in non-deductible supplies or activities within the meaning of section 61 (1), or

(II) is a flat-rate farmer,

and

(b) that—

(i) the supplier and the recipient of that supply are persons connected by financial or legal ties, being persons who are party to any agreement, understanding, promise or undertaking whether express or implied and whether or not enforceable or intended to be enforceable by legal proceedings, or

(ii) either the supplier or the recipient of that supply exercises control (2) over the other.

(2) For the purposes of this Act, a value determined in accordance with this section shall be deemed to

be the true value of the supply to which it applies.

(3) The Revenue Commissioners may make regulations as seem to them to be necessary for the purposes of this section.

(4) An inspector of taxes, or such other officer as the Revenue Commissioners may authorise for the purpose, may make a determination under this section.