



137TACD2021

Between

**The Appellant**

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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**Introduction**

1. The Appellant is a reputable car dealership. This appeal is unusual in many respects. It involves a dealership who did not register the vehicle in question and had no involvement with the vehicle since 2014. The dealership was not even the owner of the vehicle. But it paid the Vehicle Registration Tax (VRT) on behalf of the owner/registered keeper. The Appellant effectively stepped into the shoes of the owner in order to seek a remedy in this matter. The Tax Appeals Commission (“the Commission”) has accepted the position, otherwise there would be no remedy available to the Appellant and/or any other party. The Respondent has also accepted that position.
2. The Appellant filed a Notice of Appeal on 17<sup>th</sup> January 2019 in respect of VRT on a Hyundai in the sum of €4785. The hearing was originally listed on earlier dates but had to be postponed on request of the parties on several occasions. The hearing took place remotely on 28<sup>th</sup> October 2021. All parties joined remotely. The Appellant attended with three senior personnel from the dealership. The Appellant was unrepresented. The Appellant’s witnesses presented honestly and sincerely. They wished to ensure that their reputation was not besmirched as a result of the matters outlined below. The Respondent attended

with two officers from Customs and Excise unit, again remotely. The Respondent's officers presented professionally and confirmed that they had been in discussion with the Appellant. They confirmed that the Appellant was under no suspicion of malpractice.

3. It is noted that the Respondent was in possession of all the documentation available to the Commissioner and had access to the open source material available to the world, as well as the Commissioner.

## Background

4. The vehicle that is at the centre of this appeal is a Hyundai i800 Model, Irish registration number [REDACTED] ("the Hyundai"). A representative from Hyundai Cars Ireland, Mr Brian Connolly has written an email dated 15<sup>h</sup> May 2019 confirming that the Hyundai i800 model (VIN number [REDACTED]) is an 8 seater people carrier and he confirmed that it was manufactured by Hyundai Motor Corporation in March 2012 as an 8 seater people carrier. The Commissioner accepted this evidence at the hearing. The Commissioner has also corroborated the evidence by open source research, as listed below. The Commissioner is fully satisfied that the Hyundai model i800 was manufactured and sold **only** as an 8 seater people carrier.
5. The Commissioner notes that the Hyundai i800 has the driver seat, the passenger seat and then two rows of three seats with a boot accessed from the back of the vehicle. The two rows of seats are accessed from a sliding side door. The vehicle model is by any appraisal, a large vehicle. It is popular with those who have a substantial family. The car magazine Top Gear praised the vehicle but in the write up stated in the "*bad stuff*" that "*it's a van. A literal van.*" That summarised the vehicle for the Commissioner. The appeal in question in many ways relates to the classification of the vehicle by the authorities who do not count it as a "van" for tax purposes.
6. The Appellant also produced evidence from Devine Coaches of Navan, Co Meath. They confirmed in writing that they had inspected the vehicle registration number [REDACTED], chassis number [REDACTED] and the vehicle had 8 seats including the driver's, there were no extra seats, seatbelts or seat belt anchorage points in the vehicle. Devine Coaches also confirmed that the vehicle was manufactured only with the carrying capacity for 8 people. The Commissioner accepted this evidence as corroborated information in relation to the vehicle, the Hyundai.
7. The Hyundai was traded in on 19<sup>th</sup> March 2014 from a person with the initials TS, with an address in Co Dublin. The Appellant traded in this vehicle in good faith. TS produced a certificate of Registration and Licensing from the Respondent and Department of

Transport. The Appellant was able to produce this copy certificate to the Commissioner. Mr [REDACTED], a sales executive of the Appellant checked the Hyundai at the time of the trade in. The physical vehicle corresponded to the documentation. The chassis was correct and the vehicle had 8 seats. The registration certificate was all in order. The Commissioner has the copy registration certificate when the vehicle was owned by TS. This confirms that the section entitled S1 is completed as having "8 seats". This document was issued by the Respondent and the Department of Transport. It confirms the "certificate is issued in accordance with EU Council Directive 1999/37/EC and 2003/127/EC".

8. The taxation was private, the tax disc confirmed same. The vehicle was all in order and so the trade in was completed. The Appellant's staff understandably thought nothing more about this vehicle. So, all the documentation and the vehicle at that time confirmed that it had 8 seats. The Appellant's representatives confirmed verbally at the hearing that it had 8 seats when it was traded in in March 2014. The Commissioner finds this evidence credible and corroborated by the documentation and all open source information about this particular model.
9. As no doubt happens in a dealership, vehicles remain on the forecourt for some time. In August 2014, Ms [REDACTED] bought the Hyundai. On 8<sup>th</sup> August 2014 she bought the vehicle for €27,000. Again, the Commissioner has in her possession as part of the documentation for the Hyundai the registration certificate issued by the Respondent and the Department of Transport for Ms [REDACTED], which again confirms that it has 8 seats under the section "S1".

### **The New Charge to VRT**

10. On 27<sup>th</sup> January 2018, the Appellant received an email from a Mr [REDACTED] on behalf of Ms [REDACTED] in relation to the Hyundai. An alleged disparity had arisen between the records held by the Respondent and the number of seats of the vehicle. In 2018, the owner of the Hyundai Ms [REDACTED] had required a certificate of road worthiness for motor insurance. In 2018, the owner brought the vehicle to a commercial roadworthy testing centre. The agent inspected the Hyundai and informed the owner that it was not an M2 registered bus and that modifications had occurred since the registration certificate was issued. The owner wrote that subsequent investigations by the Respondent's central vehicle registration office had "*confirmed that was originally registered in Ireland on 24-Feb-2014 was modified substantially to a different vehicle category without change of the registration certificate.*" The owners confirmed that the Respondent sought additional VRT. As a result the insurance company would not insure the Hyundai unless the vehicle registration was amended.

11. As a result of this correspondence some 4 years after selling the Hyundai, the Appellant contacted Ms ██████ and collected the Hyundai for assessment. They took the Hyundai to Devine Coaches. They confirmed, as stated above, that the vehicle had 8 seats and there was no evidence it ever had 10 seats. In addition, Hyundai Ireland confirmed that Hyundai had been manufactured only as an 8 seater vehicle. In addition, the Appellant has stated in writing and at the hearing that they contacted DVLA in the United Kingdom. The DVLA could not supply the original logbook (V5) to the Appellant as they were not the registered keeper but confirmed on the telephone that the original log book (V5 certificate) had stated that the Hyundai had 8 seats. The Commissioner accepts the verbal and written testimony of the Appellant's representatives given at the hearing with respect to the conversation with the DVLA.
12. The Respondent insisted that there was VRT owing due to the alleged conversion of a 10 seater to an 8 seater. The amount of VRT they alleged was due was €4785 (VRT of €4975 less the €200 paid on registration). In order to ensure that their customer could obtain insurance, the Appellant effectively "stepped into their shoes" and paid the €4785.
13. It appears that the Hyundai had been registered as a vehicle (namely a "bus") with 10 seaters in 2014 and hence only attracted VRT in the sum of €200. Hence, the Respondent sought the shortfall from the new registered owner in 2018, who sought the Appellant pay the shortfall, as the seller of the Hyundai in 2018.

### **Legislation**

14. The legislation engaged is section 130 of the Finance Act 1992 and section 62 of the Finance (No 2) Act 2008, which inserted section 132 of the Finance Act 1992. Section 62 states as follows :-

62 – Section 132 of the Finance Act 1992 is amended –

(a) by substituting the following for paragraph (2):

(2) Vehicle registration shall become due be paid at the time of registration over vehicle or the declaration under section 131(3), as may be appropriate, by –

(a) an authorised person in accordance with section 136 (5)(b),

(b) the person who registers the vehicle,

(c) the person who has converted the vehicle whether prescribed particulars in relation to the conversion have not been declared to the Commissioners in accordance with section 131(3),

(d) the person who is in possession of the vehicle that is a converted vehicle which has not been declared to the commissioners in accordance with section 131 (4),

and while under paragraphs (a) to (d), more than one such person is, in any case liable for the payment of vehicle registration tax liability, then such persons shall be jointly and severally liable.”

15. Section 3A is inserted to section 132 which effectively is a charging mechanism for the shortfall in VRT not paid in accordance with section 132 (2).

16. Section 132 (1) states :-

(1) In addition to any other duty which may be chargeable, subject to the provisions of this Chapter and any regulations thereunder, with effect on and from the 1<sup>st</sup> day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid at whichever of such rates as may stand specified for the time being by an Act of the Oireachtas is appropriate on –

(a) The registration of a vehicle, and

(b) A declaration under section 131(3)

(2) Vehicle registration tax shall become due and be paid at the time of the registration of the vehicle or the making of the declaration aforesaid, as may be appropriate.

## **Submissions**

### *Appellant*

17. The Appellant submits that the VRT of €4785 is not payable by them or any other party in respect of the Hyundai. The under payment at the original registration is as a result and consequence of the incorrect examination and assessment of registration tax due on the vehicle when presented to the Respondent’s appointed agents for payment of the VRT on vehicles imported to Ireland from the UK. The Appellant submits that their evidence shows categorically that they had no hand, act or part in the presentation, examination or calculation of the amount of VRT collected by the Respondent and consequently are not liable for any shortfall in the amount of the VRT collected by the Respondent or their customer Ms [REDACTED].

18. The Appellant submits that their evidence demonstrates that several errors occurred during the presentation, assessment and examination of the Hyundai by the Respondent’s agents. But they are not liable for those errors. The Appellant submits that this vehicle was

always an 8 seater, has never been converted to a 10 seater either before arriving in Ireland or converted subsequently. The Appellant has appealed this matter in order to be reimbursed the additional VRT they have paid but also to protect their reputation as a reputable dealer.

*Respondent*

19. Revenue submit that the rate of charging of VRT is not under appeal but it is the issue of classification of the vehicle concerned. They submit that the classification of any vehicle as either Category C or a Category A vehicle is largely dependent on the number of seats in the vehicle. If a vehicle has more than eight seats, it is regarded for VRT purposes as effectively being a bus under Category C vehicle. If a vehicle has eight seats or less, it is regarded for VRT purposes as being a passenger and a Category A vehicle.
20. In this appeal, the Certificate of Permanent Export demonstrates the vehicle concerned as having 10 seats. The Respondent submits that at the time of importation, the vehicle was inspected by the NCT, and it was identified as part of that inspection as having 10 seats and subsequently registered a Category C vehicle. Some years later, having changed ownership during those years, the vehicle, at its annual NCT inspection was identified as having only 8 seats. As a consequence it was reclassified as a Category A vehicle, meaning that it attracted the VRT of €4985.
21. As such, the Respondent maintained that there is an additional VRT liability of €4,785. The Respondent acknowledged that it may be potentially disputed whether the vehicle was originally correctly classified as having 10 seats or whether there was some conversion work done to physically alter the number of seats but they contend that this is largely irrelevant as the correct amount of VRT due is liable to be paid. The Respondent acknowledged in correspondence to the Commission dated 7<sup>th</sup> April 2021 that it was not clear from the available records if the agent's operative physically counted the seats and associated seat belt points or simply relied on the Certificate of Permanent Export.
22. The Respondent in their own submissions confirmed that an **M1 vehicle in category A is a passenger vehicle with not more than 8 seating positions, an M2 vehicle in Category C is a passenger vehicle comprising more than 8 seating positions, and an M3 vehicle in Category C is a passenger vehicle comprising more than 8 seating positions exceeding 5 tonnes.**

## **Research on the Hyundai**

23. The Commissioner has in addition to the documentation also carried out open source research. This was open to all the parties, including the Respondent. The Commissioner is now apprised of more information about the Hyundai i800 that she perhaps ever wanted to know. The Commissioner has researched the internet and the launch of the i800 and reviews at its launch. The Commissioner has studied the layout of the Hyundai and the measurements of the vehicle. It is evident from all open sourced information that this vehicle was manufactured as an 8 seater vehicle. It is evident from all car forums that owners take out seats and there are discussion forums on the removal of seats. But the Commissioner can find no information on adding additional seats. None whatsoever.
24. In addition, the Commissioner has seen photographs on the internet of the vehicle model with seats removed and it is very clear that there are distinct marks on the base of the vehicle model showing the marks of the seats following their removal. In addition, it is very evident from sales videos and official manufacturer videos and their published measurements that there is not sufficient room at the back of the vehicle to put two legally compliant seats into place. It is just not viable and the boot room, as shown on sales videos on the internet and the measurements published confirm same. It would be an impossibility for 2 extra legally compliant seats to be added to this Hyundai. The Commissioner is satisfied based on the Appellant's testimony, the documentation, the Commissioner's own research, that the Hyundai i800 is an 8 seater and it is impossible to convert it to a 10 seater without that being noticed, if it was possible at all.

## **Material Findings of Facts**

25. The Commissioner finds on the balance of probabilities and as the only credible explanation as follows:-
- The Hyundai was only manufactured as an 8 seater;
  - It remained an 8 seater when in the UK (as confirmed by the DVLA);
  - It remained as an 8 seater on import and there is no log book to verify otherwise;
  - The vehicle was never converted from an 8 seater to a 10 seater as there are no physical markings to suggest that was the case;
  - It would have been impossible to insert 2 additional full size seats with correct placings for seat belts into the Hyundai as size restrictions would not allow and so that corroborates the above material finding of fact;

- Either a mistake or deception has been perpetrated on importation but that is not the remit of the Commission.

## Analysis

26. The Respondent in its evidence at the hearing could not produce the V5 log book of the Hyundai from the UK. The Respondent was asked by the Commissioner as to how a vehicle could be imported and accepted by the Respondent without the log book. The Commissioner notes that in other appeals, the Respondent always relies on the V5 or now VC5 form and even refers to it as the “*birth certificate*”. An officer from the Respondent gave evidence that in an auction in the UK, the V5 form may not always be available. The Commissioner does not agree with this evidence and has again checked open source material including many auction sites in the UK. It is evident that a log book is required and all car trading websites state clearly to the public that they should not purchase a vehicle without one, as it could be stolen. It appears that the Respondent did not have the log book V5 or VC5 on the importation of this vehicle. That does not assist the Respondent in this appeal.

27. The Respondent provided a copy of a Certificate of Permanent Export, number [REDACTED] dated 4<sup>th</sup> November 2013 in the name of the keeper [REDACTED] Ltd. It states that the vehicle was a 10 seater Bus. It is a simple document. The stamp of the DVLA is a very simple one. There is no evidence that the DVLA have been contacted to confirm that this is a true copy of the original form or that the number [REDACTED] is the same number on their records and/or that the signature (which does not have a corresponding printed name) belongs to one of their officials. There was a gap of 3 months between the Certificate of Permanent Export with registered keeper [REDACTED] Ltd and the NCT Declaration and it appears two registered keepers were involved. The Respondent has a NCT Declaration dated 14<sup>th</sup> February 2014 from the then registered keeper TS stating it was a 10 seater. The Respondent has a document entitled VRT registration which has a drop down box and it states that there are 10 seats. However, there is no V5 log book.

28. On another document, 10 days later on 24<sup>th</sup> February, there is an official document issued by the Respondent in the name of TS declaring that the vehicle has **8 seats**. This document travelled with the vehicle and remained as 8 seats on the transfer to Ms [REDACTED] on 8<sup>th</sup> August 2014. Therefore, the Commissioner has different sets of official documentation for the same vehicle with different numbers of seats set out in this different official documentation. The Irish “log books” state 8 seats and the UK log book DVLA (as confirmed to the Appellant on the telephone) confirm it was 8 seats.



29. So, the Commissioner has conflicting official evidence as to whether this vehicle was an 8 seater and changed to a 10 seater and then back again to an 8 seater or in fact was always an 8 seater. As stated above, this is an unusual case.
30. The Respondent could provide no explanation as to why the manufacturer has stated that this Hyundai was only manufactured with 8 seats, it could not give any explanation as to why the evidence produced demonstrated that the Hyundai had no holes or marks to demonstrate either the insertion or subsequent removal of 2 seats. In addition, the Respondent could not provide any credible explanation as to when the alleged conversion from a 10 to an 8 seater was meant to have taken place. They could not confirm that the number of seats had been counted in the vehicle on registration. They could only point to the NCT declaration form completed by the original importer TS on 14<sup>th</sup> December 2014 which stated it was 10 seater. They pointed to a computer generated form by the NCT that specified a drop down box of 10 seats. But they could not provide evidence that any personnel counted the seats. The fact that a computer states that a vehicle has 10 seats does not make it so. This appeal had all the attributes of the rather proverbial comedic phrase “the computer says no”.
31. The Commissioner has over her working life had to adjudicate on false documentation. It is not a challenge to produce credible fake passports and other official documentation. The Commissioner has not had to adjudicate on the authenticity of the documentation but at no stage did the Respondent’s appear to even consider that duplicity may have occurred in respect of the importation documentation.
32. The original car was only manufactured as an 8 seater. This is confirmed by the manufacturer. The Commissioner accepts that evidence. There is a missing log book but DVLA confirmed to the Appellant that the Hyundai was registered with them as an 8 seater. There is a document dated November 2013 as the Certificate of Permanent Export in a different name from the individual who imported the vehicle in 2014. The individual who imported the Hyundai completed a self-declaration stating that the Hyundai had 10 seats. The inspector completes a form stating that it has 10 seats but there is no evidence from the Respondent that the seats were counted. All the inspections from Devine Coaches and the Appellant’s evidence state that this vehicle, the Hyundai, never had 10 seats, as there are no markings to show holes or seatbelts for the 10 seats.
33. It is evident that the official Respondent Registration certificate issued by the Respondent and the Department of Transport in 2014 was potentially **incorrect** according to their own submissions as set out above in terms of classifications. The section (J) (i.e. the vehicle category) was M2, the section (J.1) (the VRT vehicle category) was C and yet the S1

category (number of seats) was 8. So, the official document was already potentially all incorrect because according to the Respondent's own submissions a M2 Category C vehicle has more than 8 seats. But the registration document stated 8 seats which should have been an impossibility. So, that mistake was not noticed by the issuing department namely the Respondent and the Department of Transport. This mistake was on both registration documents for TS and for Ms [REDACTED]. It was not the Appellant's responsibility to know the intricate categories of EU law and spot that an M2 Category C vehicle had to have more than 8 seats. If the Respondent's computer did not notice that this was an impossibility, then it was not up to the Appellant to know the intricate rules of EU classifications. The Appellant was entitled to note that the registration document stated 8 seats (which it did) and the Hyundai had 8 seats (which it did). The chassis number was correct and matched the paperwork. The tax and other paperwork was correct. The Appellant did their due diligence.

34. The Commissioner does not find it credible that this vehicle had 8 seats at the commencement of its journey, had an additional 2 seats inserted (despite the boot not allowing for an additional 2 seats) and yet there is no evidence of their removal. On a balance of probabilities, the Commissioner finds that this Hyundai was manufactured as an 8 seater and has remained as an 8 seater. What happened between the Certificate of Permanent Export in a different keeper's name from the person who imported the vehicle and self-declared a 10 seater is not in the remit of the Commission. But, just because the computer says it is 10 seater does not make it so.
35. The log book in Ireland states it is 8 seater, so something has gone awry from the computer records kept by the Respondent and yet the issue of the registration certificate (log book) states it is 8 seats. It is highly unlikely the importer TS was able to remove two seats between February 2014 and trade in to the Appellant a month later, without the garage noticing the difference. If the owner at that time, TS, was able to effectively put in 2 additional seats but they were not fixed or part of the vehicle and the inspector did not notice, that is either a fraud or mistake. That does not make it a conversion later on. The Appellant is not responsible for that fraud or mistake. Therefore, they have no liability to pay the VRT.
36. The Commission does not have any remit to deal with matters outside its statutory remit but it notes that if this matter came before the High Court, it is very likely that the law of mistake and estoppel would be engaged and third party privity of contract. Hence the payment could not be enforced against an innocent third party.

37. The Commissioner notes that the Appellant was wholly innocent and had no role in the registration of this vehicle. All the documentation presented stated it was an 8 seater and the vehicle in reality was an 8 seater. It would be a stretch if dealerships and/or the public were liable for mistakes and/or frauds in respect of the registration/importation of a vehicle many years later. That would create uncertainty in a market and a new industry would have to be developed whereby the public would seek undertakings in respect of the initial VRT that was paid. That cannot have been the intention of the legislation. On the basis of the material findings of fact, the Commissioner finds that there was no conversion. The documentation that had to be completed on the alleged conversion is a fiction to assist the owner of the vehicle get the vehicle insured. A documentary fiction does not make the conversion a reality.
38. The legislation only allows for additional VRT to be engaged on the event of a conversion. The VRT is payable at the time of the registration of the vehicle or on the declaration under section 131(3). Section 132(2)(c) specifies that the VRT is due by the person who has converted the vehicle or the person who is in possession of the vehicle "that is a converted vehicle". In both instances in section 132(2)(c) and (d) the vehicle has to have been converted. It makes no sense otherwise. There has to have been a conversion to engage the legislation and so an additional VRT liability attaches.
39. The Respondent are relying on the legislation in respect of a conversion to charge additional tax. This was set out in correspondence to the Appellant, their submissions to the Commission, all correspondence to the Commission and at the hearing. As there was no conversion and this vehicle was always an 8 seater, this legislation does not apply. Therefore, no additional VRT can be collected without that actual conversion. There is nothing in the legislation that refers to a notional or fictional conversion.
40. The other instance where VRT is payable is on registration. If there has been a mistake by the Respondent in terms of their inspection or computer records or a deception or mistake by the owner at that time that is not the responsibility of the present registered keeper or the Appellant. As such the Appellant is successful in their appeal. There is no legislative provision which transfers the mistake or deception to another entity some 4 years after the registration.
41. The Commissioner also confirms that she was entirely satisfied with the evidence provided by the Appellant and hopes that there has been no damage to their customer relations as a result of this matter. Their reputation remains intact.

## Determination

42. The Commissioner finds that the Hyundai was always an 8 seater. As such, there was no conversion back from a 10 seater to an 8 seater. As such, the right to claim additional VRT falls away. The Appellant is successful in their appeal and they are due the full refund of €4795 VRT paid. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the Taxes Consolidation Act 1997.



Marie-Claire Maney  
Appeal Commissioner  
Chairperson  
8<sup>th</sup> November 2021