



138TACD2021

**BETWEEN/**

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**Appellant**

**V**

## REVENUE COMMISSIONERS

## Respondent

## DETERMINATION

## Introduction

1. The Appellant is a motor dealership specialising in the sale of used [REDACTED] vehicles. This is an appeal against a decision of the Respondent to classify the vehicles the subject of these appeals, as category M1 vehicles. The six individual appeals herein each relate to an individual vehicle on foot of which an individual tax obligation arises with each vehicle having undergone a separate conversion.
2. The Respondent determined that the vehicles the subject of these appeals were category M1 vehicles and assessed the vehicles to VRT at the higher rates. The Appellant submitted that the Respondent was incorrect in this decision and that the correct designation of the vehicles was as category N1 vehicles. The Appellant paid VRT at the higher rates based on the Respondent's classification of the vehicles as category M1 vehicles however, the Appellant herein seeks a repayment of VRT on the basis that the vehicles fall to be classified as category N1 vehicles.
3. The EU designation of the vehicles is relevant to the amount of VRT chargeable upon registration. The VRT rate for category A vehicles defined in section 130 of the Finance ATC 1992, as being M1 vehicles, ranges up to 36% of the open market selling price whereas, the rate of VRT applicable to category B vehicles defined as being N1

vehicles, is 13.3% of the open market selling price. The repayment claimed in relation to the six vehicles the subject of these appeals, totals €123,662.

## Background

4. The Appellant is engaged in the motor vehicle trade and specialises in the sale of used [REDACTED] vehicles. These appeals relate to the amount of VRT assessed to be chargeable upon the first entry of used vehicles on the register. The six vehicles which are the subject of these appeals consist of various models of [REDACTED] vehicles (hereafter 'the vehicles'). All six vehicles are used vehicles, formerly registered outside the jurisdiction.
5. The Appellant submitted that it validly converted the vehicles from their original specification as EU designation M1 passenger vehicles ('M1 vehicles') to N1 light commercial vehicles ('N1 vehicles'). In order to be an N1 vehicle and to avail of the lower threshold of VRT and to avoid falling into the M1 default, a second hand converted vehicle must adhere to (amongst other things) the minimum size requirement for a loading aperture of 800mm and a cargo surface space of 12,800 cm<sup>2</sup>. This requires measurements to be carried out to assess whether the vehicle adheres to those minimum requirements. The measurements are required because of the nature of what a conversion is. New cars conform to a standard while conversions are by their nature variable.
6. The National Standards Agency of Ireland ('NSAI') do not have expertise in relation to second hand vehicles and the Respondent does not have expertise in relation to measurement. As a result, a scheme was identified by the Revenue Commissioners with the assistance of the NSAI whereby appointments of suitably qualified individuals (SQIs) at approved testing centres (ATCs) are made. The qualification of those individuals is set by the Revenue Commissioners, but is awarded by the NSAI. The SQIs at the ATCs measure the vehicles and then produce the evidence that is required for the vehicles to be designated as N1.
7. It appears from the evidence that the NSAI lost confidence in some of the measurements carried out by some of the ATCs, but confidence was not withdrawn from [REDACTED] ([REDACTED]), the ATC which carried out the measurements in these six appeals. The evidence in this appeal was that the



measurements were carried out by an individual who had been qualified to the suitable standard.

8. The NSAI, as a result of its loss of confidence undertook a series of measurements of new and unaltered motor vehicles. It is to be noted that the vehicles in this case are neither new nor unaltered.
9. The Respondent refused to register the vehicles as category N1 and in doing so, relied on information provided by the National Standards Agency of Ireland ('NSAI'). Such information was communicated to the Respondent by way of document referred to as '*NSAI database (listing new vehicles that allegedly do not satisfy Regulations 678/2011)*' (hereafter '*the blacklist*'). In addition, not all of the car models in issue in these proceedings are in fact included on the black list. Two of the vehicles (being the vehicles the subject of Appeals [REDACTED] and [REDACTED]) are models which do not appear on the blacklist. It is not disputed by either of the parties to this appeal nor by NSAI, that the NSAI has no jurisdiction, responsibility or authority regarding second hand, pre-registered vehicles and that any advice provided to the Respondent by NSAI related to the registration of new vehicles only.
10. The six appeals herein are historic insofar as the rules in relation to qualifying criteria changed on 31 July 2017. Section 53 of the 2017 Act introduced more restrictive and exclusionary criteria for classification as a category B vehicle, subject to the lower rate of VRT. However, section 53(2) of the 2017 Act provided that such amendment would not come into operation until 31 July, 2018. Insofar as the Finance Act did, prior to the 2017 Act, provide for a less onerous means of converting an M1 vehicle to an N1 vehicle, this process has been overtaken by section 53 of the Finance Act 2017, from 31 July 2018 onwards. Thus for the purposes of this appeal, the relevant definitions of category A and category B vehicles are those contained in section 130 of the Finance Act prior to amendment by the 2017 Finance Act.
11. The Respondent has specified, in accordance with their statutorily provided role to ensure the proper administration and collection of VRT, that certain requirements must be satisfied prior to the registration of used converted vehicles. The primary submission of the Appellant is that the Appellant has observed and satisfied all of the Respondent's specified requirements relating to the confirmation of the categorisation of used vehicles converted from M1 to N1, in particular, the provision



of certification from an independent NSAI Approved Test Centre confirming the categorisation of the vehicles.

12. The Appellant paid VRT at the higher rate in respect of the vehicles, as assessed by the Respondent and claims herein a repayment of VRT in the aggregate sum of €123,662 on the basis that the correct designation of the vehicles was as category N1 and not M1.

### **Submissions**

13. The Respondent, in accordance with its statutory duties and obligations, specified that certain requirements must be satisfied prior to the registration of a used converted vehicle. The Respondent submitted that the information furnished by the Appellant in this regard was not cogent and that the measurements were not correctly carried out. The Respondent, in refusing the categorisation of the vehicles to category N1, relied on a black list compiled by the NSAI in relation to new unregistered vehicles.
14. The Respondent in its submissions placed considerable reliance on an interpretation of the definition section in Annex II and the Respondent used the term 'minimum functional aperture' to denote the ability of the aperture to accommodate cargo rather than by reference to its ability to be used for loading. The Appellant strongly contended that the aperture was for loading, not for carriage and that the measurement of the aperture was as set out in Annex II.
15. The primary submission of the Appellant is that it observed and satisfied all of the Respondent's specified requirements relating to the confirmation of the categorisation of used vehicles converted from M1 to N1, in particular, the provision of certification from an independent NSAI Approved Test Centre confirming the categorisation of the vehicles. The Appellant submitted that there was no suggestion in the Respondent's submissions that the Appellant did not comply with the various requirements of the Respondent as regards documentation and that the paperwork demonstrated that the Appellant in fact conformed to the Respondent's requirements to the letter. The Appellant stated that despite its compliance with the specified requirements, the Respondent took issue with the measurements carried



out by the NSAI certified Approved Test Centre ( ) who, in accordance with the Respondent's own requirements, measured and certified the six vehicles.

16. The Appellant submitted that the essence of the Respondent's submissions was that the Approved Test Centre got it wrong. This is on the basis that the NSAI produced a list, (the black list) of new vehicles which the NSAI stated did not comply with height and service area requirements in the EU regulation. The Appellant submitted that a fundamental misapprehension as to the competency of the NSAI and the scope of its authority was central to the refusal of the Respondent to register the Vehicles as N1 vehicles. The Appellant submitted that the refusal was incorrect and that the vehicles should be categorised as category N1 vehicles.
17. The Appellant submitted that if the Respondent wished to resist the appeal on the basis that the Appellant's measurements were incorrect (when in view of the Appellant the measurements were certified properly in accordance with the rules set out), the Respondent would have needed to produce evidence in relation to the measurements however, the Respondent did not do so. The Appellant's witness, Mr. , an NSAI certified ATC, is the only individual who measured the vehicles the subject of these six appeals. He did so using NSAI approved Leica DISTO S910 laser distance meter and AutoCad 3D software. The Respondent's second witness, Mr. (NSAI) did not carry out any measurements of either the vehicles the subject of these appeals or the vehicles the subject of NSAI's 'black list'. The Appellant submitted that the evidence was that the measurements were in fact correct. The submissions are set out in further detail below.

## Legislation

18. Annex II of Directive 2007/46/EC was amended by Commission regulation 678/2011 which provides;

*3.8 Criteria for the categorisation of vehicles as N1*

*3.8.1 A vehicle shall be categorised as N1 when all the applicable criteria are met.*



*When one or more of the criteria are not met, the vehicle shall be categorised as M1*

*3.8.3.1 Where the vehicle is fitted with an enclosure type body, the following shall apply:*

*(a) ....*

*(b) the minimum height of the loading aperture shall be at least 800mm and the aperture shall show a surface of at least 12800 cm<sup>2</sup>.*

19. Section 131(1) of the Finance Act 1992, as amended (Registration of vehicles by Revenue Commissioners) provides:

*(1) (a) The Commissioners shall establish and maintain a register of all vehicles in the State (in this Chapter referred to subsequently as ‘the register’)*

*(b) The Commissioners may enter in the register such particulars in relation to a vehicle and its ownership and connected matters as they consider appropriate.*

*(ba) In respect of a vehicle which is within any particular category of vehicle that is specified by the Commissioners for the purposes of this paragraph or is within any other class of vehicle that is specified by the Commissioners, the Commissioners may, as a condition of registration, require confirmation that such vehicle –*

*(i) ..*

*(ii) complies with any matters specified by the Commissioners as they consider necessary for –*

*(I) ...*

*(II) the proper operation of vehicle registration tax, and*

*(III) the collection of the appropriate amount of vehicle registration tax,*



*(bb) Where in respect of a vehicle the Commissioners require confirmation for the purposes of paragraph (ba) they shall register the vehicle only on receipt by them of a declaration made by a competent person in such form as may be specified by the Commissioners that the vehicle –*

*(i) ..*

*(ii) complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii)*

20. Section 131 of the Finance Act provides the Respondent with significant discretion as to what particulars or matters relating to a vehicle they may require to be confirmed prior to the registration of the vehicle. Section 131 also provides for a ‘competent person’ to make a declaration that a vehicle complies with specified matters prior to registration. The Appellant submitted that the concept of ‘competent person’ recognised the Respondent’s limitations regarding the investigation and confirmation of the particulars of vehicles prior to registration. The Appellant submitted that while the Respondent may specify the details relating to the vehicles that are required to be confirmed and the qualifications and/or identity of who needs to confirm them, the Respondent lacked the expertise to investigate and confirm the details of the vehicles themselves and indeed this was accepted by the Respondent in evidence.

21. Section 132 of the Finance Act 1992, as amended (Charge of excise duty) provides at subsection 3(g):

*The duty of excise imposed by subsection (1) shall be charged, levied and paid –*

*(g) in case it is a vehicle whose category cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, or any other documentation specified by the Commissioners for the purposes of confirming the categorisation of vehicles for the purposes of this Chapter which is produced in support of the declaration for registration, the vehicle shall be deemed to be a category M1 vehicle for vehicle registration tax purposes.*



[emphasis added]

22. The Appellant submitted that if it could not be confirmed by reference to the relevant EC type-approval, or an EC Certificate of conformity, then the vehicle would be deemed M1 unless: *'...other documentation specified by the Commissioners for the purposes of confirming the categorisation of vehicles for the purposes of this Chapter'* was produced in support of the declaration for registration. Section 132 places an onus on the Respondents to specify the *'other documentation'* that is to be considered capable of confirming the categorisation of the vehicle. As the EC Type-Approval Certificate and Certificate of Conformity are issued prior to any conversion, these documents which cannot be re-issued post conversion, will not correctly reflect the category of a converted vehicle. Therefore, in the case of a converted vehicle, the only documentation that will correctly confirm the categorisation of the vehicle will be the *'other documentation'* specified by the Respondent as providing acceptable confirmation of the categorisation of the vehicle. While section 132 requires the Respondent to specify the *'other documentation'* it grants them significant discretion as to what the *'other documentation'* will consist of. The Appellant submitted that if such *'other documentation'* was not specified by the Respondent, then the proper and correct registration of vehicles converted from M1 to N1 category would be rendered impossible. The Appellant submitted that once the documentation and information as specified by the Respondent pursuant to sections 131 and 132 of the Finance Act, confirming the categorisation of the vehicles was validly produced by the taxpayer in the form specified by the Respondent, then the Respondent was not entitled to invoke the default categorisation provided for in section 132.

23. Section 141 of the Finance Act 1992, as amended provides:

*'1(a) The Commissioners may make such regulations as they consider necessary or expedient for the purpose of managing the registration of vehicles and managing, securing and collecting vehicle registration tax.*

...

*(2) In particular, but without prejudice to the generality of subsection (1), regulations under subsection (1) may –*

*(a) prescribe the method of establishment and maintenance of the register,*





*(b) prescribe the particulars to be declared to the Commissioners under section 131,*

*(c) prescribe the manner in which a declaration under section 131 shall be made,..'*

24. The Respondent pursuant to section 141 of the Finance Act, enacted the *Vehicle Registration and Taxation Regulations 1992* ('the regulations'). The relevant regulation is Statutory Instrument no. 318/1992. Regulation 7 (Form and Particulars of Registration) provides:

*(1) A declaration under section 131(2)(a) of the Act shall be in such form as the Commissioners may specify and shall include the following particulars:*

...

*(v) the vehicle category by reference to the relevant EC type-approval certificate or EC certificate of conformity, or any other documentation specified by the Commissioners for the purposes of confirming the categorisation of vehicles for the purposes of Chapter IV of Part II of the Finance ATC 1992...*

*(vi) such other particulars, if any, relating to vehicles as the Commissioners consider necessary for the proper administration [of the tax, and]*

...

25. Regulation 7(1A) provides:

*Where the Commissioners specify further particulars for the purposes of subparagraphs (a)(vi), (b)(ii) or (c)(v) of paragraph (1), the Commissioners shall publish those particulars on their website or in such other form as they consider appropriate.*

26. Thus the regulations expressly provide for how such required information should be specified and communicated by providing that the '*further particulars*' be published on the Respondent's website.



*Directive 2007/46/EC*

27. Directive 2007/46/EC ('the Framework Directive') provides in Article 1 that:

*'This Directive establishes a harmonised framework containing the administrative provisions and general technical requirements for approval of all new vehicles within its scope and of the systems, components and separate technical units intended for those vehicles, with a view to facilitating their registration, sale and entry into service within the Community.'*

28. Article 3 of the Framework Directive provides a number of relevant definitions. In particular, the Finance Act and the Regulations refer to the 'EC Type Approval Certificate' and the 'EC Certificate of Conformity' as acceptable means, in addition to the 'other documentation specified' of confirming the categorisation of a vehicle for VRT purposes. The 'EC Type Approval Certificate' and the 'EC Certificate of Conformity' are issued only to new vehicles. Neither document will be reissued in the event of the conversion of a vehicle. Therefore, the type approval certificate and the certificate of conformity issued in relation to a vehicle which has been converted subsequent to entering service and being used will not correctly reflect the converted vehicles' categorisation. If such 'other documentation' referred to in the Finance Act and the regulations was not specified by the Respondent then the correct registration of vehicles converted from M1 to N1 would not be possible.

*Commission Regulation 678/2011*

29. Commission Regulation 678/2011 amended the Framework Directive by introducing more exacting requirements for a vehicle to be categorised as an N1 vehicle. Clause 3.8.3.1 of annex I provides that an N1 vehicle with an enclosure type body must have a loading aperture with a minimum height of 800mm *'and the aperture shall show a surface of at least 12,800cm<sup>2</sup>'*. Annex I provides the following definitions;

*'Height of the loading aperture' means the vertical distance between two horizontal planes tangent respectively to the highest point of the lower part of the doorway and the lowest point of the upper part of the doorway.'*



*'Surface of the loading aperture' means the greatest surface of the orthogonal projection on a vertical plane, perpendicular to the centreline of the vehicle, of the maximum aperture permitted when the rear door(s) or tailgate is (are) wide open.'*

### **The Respondent's particulars**

30. Pursuant to the powers conferred on them by the Finance Act and the regulations, the Respondent established specific additional requirements for the registration of converted vehicles previously registered in another jurisdiction. The following particulars were published by the Respondent in a document titled '*Conversions*':

*'You must present a Declaration of Conversion and a Suitably Qualified Individual declaration at the NCT centre if the vehicle is registered in another country. You must use this form where you have changed any of the following: ... the EU vehicle category...'*

31. The Respondent's published particulars in relation to suitably qualified individuals provide:

*'An SQI must have the appropriate facilities and equipment to conduct the examination and complete the certification' which comprises certain technical qualifications, experience, facilities and professional indemnity insurance 'or must be an NSAI approved facility (Approved Test Centre (ATC) or Approved Workshop for Conversion of Vehicles for Disabled Drivers).'*

[emphasis added]

32. Further on in the published particulars is the following:

*'Proposal to convert from EU Category N1*

*If you propose to change your vehicle (for example, from a passenger car to a commercial (M1 to N1)) you must have the change certified by the NSAI at one of their Approved Test Centres (ATCs)*



*The test that is carried out is called the Test 48 Masses and Dimensions (not passenger cars). In this test, a laser measuring device measures, and the software approved by the NSAI computes, the vehicle dimensions.*

*Since 1 November 2016, you must confirm this in the Declaration of Conversion documents. From 1 November 2016, no vehicle will be registered or recorded as N1 unless there is a suitable confirmation from an Approved Test Centre.'*

33. Thus, in addition to the certification from the SQI, a declaration of conversion is required together with a Test 48 from an ATC. Further, in addition to the information contained on the Respondent's website, on the 25<sup>th</sup> of October 2016, the Respondent notified the Appellant (a similar notification was sent to all NSAI ATCs by the NSAI), that in relation to converted M1 vehicles that were seeking N1 classification:

*Please note that, effective on 1<sup>st</sup> November, 2016, Revenue will require an additional document confirming that a vehicle meets the criteria for N1 classification. The additional requirement is that the Authorised Test Centre must confirm, on its letterhead, that the specified vehicle's dimensions have been measured using the laser measuring device and computed by the software approved by the National Standards Authority of Ireland for the taking of such measurements. The new requirement is published at <http://www.revenue.ie/en/tax/vrt/vehicle-conversions.html...>'*

34. The Appellant's position was that the letter contained another iteration of the requirement for the report to be prepared by the ATC and provided on their letterhead in relation to the measurements that were taken and the manner in which those measurements were taken.

35. The Respondent's declaration of conversion requires the following declaration to be made:

*I hereby declare that:*

- The above conversions have been carried out by a competent person*
- The converted vehicle conforms to standards for use on a public road as set by the Road Traffic (Construction, Equipment and Use of Vehicles) Regulations, (Statutory Instrument No.190 of 1963)*



- *The conversion details entered above are in accordance with the general definitions, criteria for vehicle categorisation, vehicle types and types of bodywork set out in Commission Regulation (EU) No. 678/2011 and Commission Regulation (EU) No. 1230/2012*
- *The conversions have been certified by a Suitably Qualified Individual and that certificate, duly stamped, is attached to this declaration*
- *This declaration has been stamped by that Suitably Qualified Individual*
- *I accept that it is ultimately my responsibility to ensure that this vehicle, as converted, complies with the requirements of Road Traffic law and is correctly certified as such.'*

36. The document states in the notes section that: *'..in respect of a vehicle not previously registered in Ireland: if the vehicles EU category is changing from M1 to N1, the masses and dimensions must be confirmed by an NSAI Approved Test Centre, whose scope covers 'Test 48, Masses and Dimensions (not passenger cars)....'. And further: '.. a list of NSAI ATCs and their scope is available at <http://www.nsai.ie/Our-Services/Certification/Automotive-Certification/Type-Approval/Approved-Test-Centres.aspx>.*

37. The tests, the subject matter of the applications in these appeals, were carried out at [REDACTED], which is one of the test centres approved by the Respondent. On a document titled *'Scope of the Approved Test Centre (ATC), Company Name: [REDACTED] [REDACTED]'* the scope of the [REDACTED] ATC under test no. 48 (the relevant test) is stated as *'Masses and dimensions (M2, M3 and N). [REDACTED], the NSAI Approved Test Centre ('ATC') that certified the conversions in relation to the vehicles, was at all material times listed and approved by the NSAI as being an ATC with full authority and certification to conduct the required 'Test 48' and to undertake the measurement and certification of the 'Masses and Dimensions' of category N1 vehicles and this was confirmed in evidence.*

38. The declaration is a document produced by the Respondent in exercise of their powers and observance of their duties under the Finance Act, 1992 and the regulations. It sets out the Respondent's specific additional requirements relating to the registration in this jurisdiction of a foreign registered vehicle which has been



converted from an M1 to N1 category vehicle. Such specific additional requirements can be summarised as being;

- Details of the conversion must be provided;
- The conversion must be certified by an SQI (which includes an ATC) and a stamped certificate must be attached to the declaration
- The declaration must be stamped by a SQI
- The masses and dimensions of the vehicle must be confirmed by an ATC whose scope covers 'Test 48. Masses and Dimensions (Not Passenger Cars)'
- A Test 48 Certificate must be provided together with confirmation by the ATC on the ATC's letterhead that the dimensions have been measured using the laser measuring device and computed by the software approved by the NSAI for the taking of such measurements.

39. The Respondent's form headed '*Template for Suitably Qualified Individual, Declaration of Conversion*' provides in the notes section, the following:

*'In respect of a vehicle not previously registered in Ireland: If the vehicle's EU category is changing from M1 to N1, the masses and dimensions must be confirmed by an NSAI Approved Test Centre, whose scope covers 'Test 48 Masses and Dimensions (not passenger cars)': An original of the Test 48 Certificate issued by the ATC must be submitted along with the Declaration of Conversion in these instances.'*

40. Thus it is clear that in addition to the SQI declaration and in addition to the declaration of conversion, there has to be a document on an ATC letterhead identifying the measurements that have been taken and the manner in which those measurements were taken.

41. The Appellant submitted that in relation to the vehicles the subject of the Appeals, the Appellant satisfied the requirements for registration of used converted vehicles in accordance with the requirements set out by the Respondent in its own documentation. The Respondent submitted that the Appellant did not provide '*sufficiently cogent information*' in relation to the Respondent's specifications and the vehicle conversions. In addition, the Respondent submitted that [REDACTED]'s measurements '*directly conflict with, or are at odds with measurements*' provided to it by the NSAI. The Appellant's position was that the reliance by the Respondent on



NSAI measurements was misconceived. Firstly, the NSAI was tasked with providing measurements in relation to new unregistered vehicles only and second, the Appellant was not required to submit confirmation and certification from the NSAI but rather, from an NSAI ATC and the Appellant duly provided the said certification. It is [REDACTED], an independent third party and NSAI ATC, who certified the vehicles as N1 vehicles in accordance with the Respondent's requirements.

## Evidence

Mr. [REDACTED] SQI

42. The Appellant called in evidence, Mr. [REDACTED] suitably qualified individual operating at [REDACTED], the ATC which carried out the measurements. Mr. [REDACTED] gave the following evidence of his qualifications and experience;

*'Q: What are your own qualifications, Mr. [REDACTED]?*

*A: My qualifications are I am a heavy and light goods mechanic. [REDACTED] achieved qualifications there [REDACTED]. Did Engineering with [REDACTED]. I qualified as an engineering technician [REDACTED] I am also certified and qualified to be vehicle inspector for road worthiness on heavy and light goods vehicles.'*

43. He also provided evidence of the qualifications of the ATC where the inspection was carried out, as follows;

*'Q: Very good. At what point did [REDACTED] apply to be an Approved Test Centre?*

*A: We applied to be Approved Test Centre when -- heavy goods vehicles became that they would need an individual vehicle approval status. So we applied to the NSAI to become one of their test centres to be approved to inspect the fitting of the body and the categorisation of the vehicle. So that was -- I can't remember exactly when that was. I can't remember exactly what year we were approved --*

*Q: Roughly even? [REDACTED]*

*A: [REDACTED], I think.*



*Q: Okay. Is that your current approval as an Approved Test Centre?*

*A: Yes.*

*Q: Can you just tell us exactly what that entitles you to do?*

*A: We are a -- manufacturer would sell a vehicle to an individual, and he would require a body to be fitted to the vehicle. The body would be fitted by a body builder who will submit his application to the NSAI and say, 'Here's the body. This is what I'm doing to build it -- this is the way I'm going to build it, under the guidelines of the NSAI and the EU of course'.*

*Once that prelim is done, that paperwork would be sent to me, and they'd say, 'please certify. The manufacturer and the body builder has built this body for this specification and that it meets all the requirements in the EU regulation'.*

*So that vehicle would then arrive to me, and I would carry out the necessary requirements in accordance with the NSAI guidelines.*

*Q: What sort of guidelines are they?*

*....*

*A: The height has to be a minimum -- for M1 category, with one row seats, minimum height is 600 mm. Two row seats, minimum height is 800. Surface area has to be 12,800 cm<sup>3</sup>.*

44. Mr. [REDACTED] was also questioned in relation to the manner in which the NSAI is satisfied that the ATC is carrying out its measurements properly, as evidenced by the following exchange:

*'Q: Now, are you audited by the NSAI to -- what checks do the NSAI do to make sure you are doing --*

*A: We would have an ISO audit every year on IVA and on our inspections as well. On the IVA side, we would have a ISO audit from -- from the NSAI.*

*Q: When was the last inspection audit carried out on [REDACTED]?*

*A: I think it was May.*

*Q: Of this year?*

*A: Uh-huh.*





*Q: Did any issues arise in that audit?*

*A: No.*

*Q: Have any issues ever arisen in relation to the manner in which you've conducted inspections of vehicles?*

*A: No.*

*Q: Has the NSAI ever written to you, threatening to remove your authority to ATC as an ATC?*

*A: Not to me personally, but they did send out a general letter.*

*Q: What general letter is that?*

*A: Stating that if it was found that any test centre had carried out an inspection that didn't meet the criteria, that the license could be revoked.*

*Q: I think that is probably the -- it was an e-mail, was it?*

*A: Yes, yes.*

*Q: You didn't appear to be one of the recipients of that, but did you get that e-mail?*

*A: I did, yes. It went out to all ATC's.'*

45. Mr. [REDACTED] is also questioned about his SQI qualification, as follows;

*'A: That's the SQI.*

*Q: Now, when you say that, what do you mean?*

*A: SQI is a Suitably Qualified Individual and being approved by the NSAI, if you see there. National Standards Authority of Ireland Approved Test Centre. I would tick that box, which puts me in that category. I would also fill one of the other two categories as well, but like that's the box we use.*

*Q: Very good. Now, the declaration itself, it says; 'I hereby declare that: Having examined vehicle with VIN detailed above, it is my professional opinion that this vehicle now satisfies the requirements of Road Traffic Regulations...I am satisfied that the converted vehicle meets all relevant criteria in Commission Regulation...,*

*Q: What do you do to satisfy yourself on that score?*

*A: I will -- as I said, I will check the measurement around, the laser measurement. I would check that the lashing ring had been changed and fitted to do the proper type of N1 regulation lashing ring which is 678/2011 and that the flat floor is generally flat on the back and that it would also carry the necessary cargo area, 30 percent of the wheelbase. So we would check to make sure that it had 30 percent of the wheelbase .... of the cargo area.*



*Q: And what about the requirements in relation to service area and height of the aperture?*

*A: Well, that's the laser measurement that's carried out.*

*Q: What equipment did you use to carry that out?*

*A: The Leica DISTO.*

*Q: I will get to that letter in a minute. You stamped this SQI declaration, have you?*

*A: Yes.*

*Q: May I take it the fact that you declared it, you were happy that you had conducted the appropriate tests --*

*A: Absolutely, yeah.*

*Q: -- in relation to this particular car?*

*A: Yes.*

*Q: Were you happy that you had conducted appropriate test in relation to the other five cars that are the subject of this Appeal?*

*A: Absolutely, yes.*

*Q: Did you use laser equipment in relation --*

*A: On all, yes.*

*Q: Can I ask you to go back then to the letter prior to that. That's letter of 23rd May, 2017.'*

46. Senior Counsel then put that document to Mr. [REDACTED]. Mr. [REDACTED] was then questioned in relation to Test 48, as follows;

*'Q: If we look at page 30 of 337. Do you see that?*

*A: Yes.*

*Q: Could you tell us what that document is?*

*A: This is the Test 48. It's an NSAI piece of paper. That number there, NSAI No. 90.0019..., is my approval number from the NSAI ...Name of ATC, No. of ATC.*

*Q: And what is the purpose of this Test 48?*

*A: It is to say that, if you read it down there, it says: 'Conversion of M1 registered vehicle to category N1, Inspection for National Approval' which is not -- it's not a national approval certificate.*

*Q: All right.*

*A: The document showing that the lashing points which we would for the vehicle and registered name and address of the ATC which is above.*

*Q: Yes. If you look at 36 of 337. It's page 7 of the 10-page Test 48 Report. Now, you*



*have put some handwritten measurements there, isn't that right?*

*A: Yes.*

*Q: Could you tell us what you were measuring there?*

*A: Well, the length of the cargo bay is the 1,220 mm. The actual height of the loading aperture is 859 mm.*

*Q: All right. On the next page, I think you have the area of the loading aperture for vehicles with two or more seats. You have handwritten the measurements in there?*

*A: Yes.*

*Q: Are you happy that those measurements you made were correctly carried out?*

*A: Yes.*

*Q: Did you do similar measurements on the other five cars, subject of these Appeals?*

*A: Every car.*

*Q: Were you satisfied that you carried them out correctly and that they satisfied the criteria for a change of M1 to N1?*

*A: If they didn't, I wouldn't have signed the document.*

*Q: In your business, you do business regularly with Mr. [REDACTED]; is that right?*

*A: Yes.*

*Q: Do you do business with him exclusively or with other motor importers?*

*A: Any and most in the Dublin area would come to us. We are very strategically based on the [REDACTED], so.*

*Q. All right, Mr. [REDACTED]....'*

47. It is important to note that Mr. [REDACTED]'s evidence was not contradicted. There was no competing account of the measurements, the measurements were carried out by Mr. [REDACTED] and not by any other person.

48. During cross-examination, Mr. [REDACTED] was asked the following question:

*'Q: And going then back to the coloured photograph from Professor [REDACTED]'s report, you measured the maximum aperture there. How would -- for instance, I can see that that takes in the door frame. How would a box of that size -- if you say that that size there -- you measured that at 19,099 cm<sup>2</sup> -- how would a box fit in, given that that takes in the door frame itself clearly and indeed seems part of the lower door frame as well --*



49. Mr. [REDACTED] answered as follows;

*'A: Depends on how you fit the box in. The box could be fit in at an angle. At no stage there, when I read, does it say that the box must go through the hole. What it asks for here, you are asking me a different question I feel than what's required. What's required is for me to measure the greatest orthogonal projection on a vertical plane -- the greatest opening. That's what the legislation has asked me to measure. That's what I've measured.*

*Q: And is that what you understand that the legislation to ask you to measure?*

*A: I do. I believe that, yes.'*

Mr. [REDACTED], NSAI

50. The Respondent called Mr. [REDACTED], mechanical engineer with the NSAI for approximately [REDACTED] years. During direct examination, the following exchange occurred;

*'Q: Could you then tell the Commissioner how -- I suppose maybe, really, first of all, explain the relationship between the National Standards Authority of Ireland and the Approved Test Centres that we have been hearing about earlier on?*

*A: The Approved Test Centres came about as a result of the Framework Directive ... which brought in requirement for the national approval of vehicles, new/unregistered vehicles there were modified or had bodies added to them. As a result of that, the ATC's were the bodies that had the competence, the facilities, the expertise, the equipment necessary to carry out the tests and measurements that would then used by NSAI to issue a national approval for new/unregistered vehicle.'*

.....

*'Q: Tell the Commissioner how the NSAI become involved, if I can put it like that, in matters in relation to the registration of second hand vehicles which is what obviously is involved in this case?*

*A: Okay. I suppose NSAI has no role to play in the registration or the approval of second hand vehicles, but we were starting to notice, I suppose, discrepancies, questions over certain measurements that we have seen over time as time went on.*



*We undertook to carry out our own measurement campaign of vehicles that are out there and as a result of the measurements that we were coming up with, we could see that none of the vehicles that we had measured, Commissioner, would comply with those requirements.'*

51. He was asked whether the models that the NSAI measured were the same as the models of cars, the subject matter of these proceedings and he said that in many cases they were. He stated that the NSAI took measurements themselves:

*'Q: And did the NSAI then take up the task itself of measuring, or did it get involved in measuring vehicles?*

*A: At that stage, yes, this probably would've been around September of 2016. We purchased a laser measuring equipment and a tripod, the DISTO equipment that was referred to earlier, and we began our own measuring campaign. ..As a result of that -- that was in September, I think -- as I said, we were getting very different measurements to what had been reported. We then looked at the regulation and looked at the definitions that were in the regulation and we contacted the approval authorities and the other Member States explaining what we were doing...'*

52. Further on, Mr. [REDACTED] was asked by Senior Counsel for the Appellant:

*'Q: Mr. [REDACTED], perhaps then take us step by step .... What is your experience in relation to carrying out measurements relevant to this general area?*

*A: For these specific measurements, I have not been involved in carrying those measurements. They were carried out by colleagues of mine back in NSAI.*

*Q: I understand.*

*A: That would've been around September 2016.'*

53. As the evidence demonstrates, no witness tendered on behalf of the Respondent measured any of the vehicles that are the subject matter of these proceedings. In addition, to the extent that the Respondent sought to rely on generic measurements of new model cars, no individual who had carried out those measurements attended at hearing to give evidence. A letter from the NSAI to the Respondent dated 26 June, 2017, was then opened to Mr. [REDACTED] and in particular the following excerpt:

*'In the last number of months, NSAI has received communications regarding the use*



*of Test Record 48 by ATCs for vehicles already registered. These communications have questioned NSAI's authority in relation to already registered vehicles and challenged the results of our measurements. NSAI has expended much time and resources in dealing with these queries explaining how our role is confined to dealing with unregistered/new vehicles and the appointment/monitoring of ATCs to support that work. At all times NSAI has made clear that your authority should be approached about matters relating to registered vehicles'.*

54. Mr. [REDACTED] was then asked to explain his understanding of that excerpt, to which he answered:

*A: In all of this, we have always had to, I suppose, explain what our actual role is under the legislation. It's all has to do with the new/registered vehicles. We have no authority to certify or issue an approval to a registered vehicles that's undergone a conversion because as I understand it, there is no legislative basis at the moment to allow that to happen.*

55. Thus, Mr. [REDACTED]'s evidence was that the NSAI had no role in respect of the measurement of second hand converted vehicles.

56. The following exchange took place between Senior Counsel for the Appellant and Mr. [REDACTED];

*'Q: Have you -- can I just ask you, for the record, have you ever measured any of the vehicles, the subject matter of this Appeal?*

*A: No, I haven't.*

*Q: Have you ever seen any of the vehicles?*

*A: No. I have seen them on the road, but I have not seen them in a professional --*

*Q: These particular vehicles that are the subject matter of the Appeal?*

*A: No, I have not seen them.*

*Q: So you are not in a position of your own knowledge to tell us how these vehicles are modified; is that right?*

*A: That's correct, yeah.*

*Q: Have you ever carried out an examination yourself on the Leica DISTO S910 laser distance meter and Autocad 3D software?*



A: No, I haven't.

Q: When you saw Professor [REDACTED]'s report, did you meet with him?

A: No, no.

Q: Have you ever met Professor [REDACTED]?

A: No, I have never met him.

Q: So may I take it from that that you haven't discussed his report with him or --

A: Yes, that's correct.

Q: -- or asked him how he arrived at his --

A: That's correct.

Q: This may not be your area because I know you are an engineer, Mr. [REDACTED], but do you know has the NSAI ever questioned [REDACTED]'s right to its ATC certificate?

A: No, we haven't questioned the right to the ATC certificate. I suppose this particular kind of modification is kind of -- it's different or special, if you like, to the normal run of the mill routine work that we do.

As Mr. [REDACTED] mentioned this morning, most of the work that we kind of do is in improving a vehicle -- lateral protection device -- for which there are prescribed measurements to take and tests to carry out and by and large, we don't have any great issues with ATC's when it comes to this kind of work.

This one is a bit different, and it seems fundamentally, we may be measuring two different things. That's possibly at the core of or the main difficulty with this, I would think.

Q: I will come to that later, Mr. [REDACTED]. You have no reason to doubt Mr. [REDACTED] when he says that he's been regularly audited, no one's ever raised any difficulty with his status as ATC or the work he's doing?

A: No, no.

Q: You have been very up front in saying that the NSAI has no jurisdiction in relation to used or registered cars; is that right?

A: Yes.'

57. Thus, Mr. [REDACTED] in his evidence did not cast any aspersions on the work carried out by Mr. [REDACTED] nor his status as ATC. In addition, not only did he not measure the vehicles, nor had he seen the vehicles the subject of the appeal, he did not at any point, use the tools adopted to carry out the measurements themselves.



58. Senior Counsel for the Appellant then asked Mr. [REDACTED]:

*'Q: You see the second last paragraph on that first page of the letter dated 26 June, 2017, from Ms. [REDACTED] of your organisation to Mr. [REDACTED], the [REDACTED]. Three lines down that paragraph is a sentence that starts: 'NSAI has expended much time and resources in dealing with these queries explaining how our role is confined to dealing with unregistered/new vehicles and the appointment/monitoring of ATCs to support that work'.*

*Q: So can I infer from that that you appoint and monitor ATC's to support the work done in relation to the new/unregistered vehicles but not in relation to used or registered vehicles?*

*A: Correct, yes.*

*Q: You go on to say: 'At all times NSAI has made clear that your authority should be approached about matters relating to registered vehicles'. "So you are effectively saying the Revenue must deal with this situation in relation to registered vehicles; not our department?*

*A: Yes.*

*Q: And you say something similar on the next page at the end of the paragraph: "That being said NSAI cannot be placed in the position of or held out to be deciding matters which are clearly the legal responsibility of another authority". So would I be right in thinking, Mr. [REDACTED], that in fact not only did the NSAI not apprise ATC's of its views as to the correct way to carry out an assessment of a vehicle that was changing classification but that it didn't consider it its place to do so, that the NSAI regarded that as being a matter for the Revenue?*

*A: Yeah, for registered vehicles that are undergoing conversions, transformations, yes, we would see that responsibility lying with the Revenue.'*

Mr. [REDACTED], Revenue officer

59. The Respondent also called Mr. [REDACTED] in the vehicle registration tax branch in the Office of the Revenue Commissioners. During direct examination, the following exchange occurred;

*'Q: In relation to the -- you obviously have the -- you referred to the concerns that arose from the information that's provided to you by the NSAI and its view in*





*relation to the list that's prepared for vehicles whose measurements, if you're not satisfied meet the requirements -- but has Revenue carried out any of its own research in relation to any of the vehicles, not just the vehicles involved in this but any other vehicles?*

*A: Not in terms of classification, no. I mean, we don't have competence in Revenue to do that. We rely on the competent authority appointed by the State, which is the NSAI, and we rely on that competent authority; otherwise we don't -- if we don't have the NSAI to rely on, we couldn't rely on anybody. We have to go with the authority that has been appointed by the State as a competent authority. In answer to your question, we wouldn't -- we don't have any other research that we've carried out technically on those vehicles.*

....

*Q: Obviously you're being criticised -- you have heard the criticism and you've seen the written submissions of the Appellant -- criticised for what is regarded as over-reliance on the NSAI adding criteria which are not criteria. How do you respond to that as criticism in relation to the way you've applied your discretion you have under section 132?*

*A: The discretion that we have is only as good as the technical data we have. The technical data that we have comes from the NSAI because they are the competent authority, and we really can't go beyond that.'*

60. It was made clear by Mr. [REDACTED] in his evidence on behalf of the NSAI that the NSAI deal only with new unregistered vehicles. There is no warrant for the Revenue to defer to the NSAI in relation to second hand modified vehicles, nor do the NSAI claim any such authority or expertise.

61. During cross-examination, Senior Counsel for the Appellant questioned Mr. [REDACTED] as follows;

*'Q: And I think you have fairly said that 'we don't have competence to assess technical matters such as a change in registration from an M1 to an N1'; is that right?*

*A: That's correct, yes.*

*Q: You have no personal knowledge of the six cars that are the subject of this Appeal;*



*isn't that right?*

*A: Yes, that's correct.*

*Q: You said in your evidence 'we have to be satisfied from the documentation produced' and you went on to say that 'we have to be satisfied that the vehicle does pass muster'. Can I ask you about the documentation produced. What documentation is that?*

*A: It's the documentation from the ATC or from the SQI.*

*Q: So the ATC's Declaration of Conversion and his SQI statement are the documents that you rely on to decide whether or not there is a proper conversion from M to N; isn't that right?*

*A: Yes.*

*Q: But in relation to these six cars, you haven't done that. You said 'I am not prepared to rely on this documentation'. Stop me if I got this wrong. You've done that because of advice from the NSAI; is that right?*

*A: Yes, essentially yes.*

*Q: The NSAI say that they have no function whatsoever in relation to used or registered cars?*

*A: Yes.*

*Q: That's what you're basing your rejection of the ATC, SQI's declaration?*

*A: Yes.*

*Q: Prior to 2011, Revenue officials carried out these inspections themselves?*

*A: Not for the conversions; purely for registering cars --*

*Q: Sorry, yes, you're right. Well, is it the case then that ATC's always conducted inspections in relation to conversion from M1 to N1?*

*A: Yes.*

*Q: And there's always been a system whereby if I want my car converted from an M1 to an N1, I have to get the ATC to check it out carefully, according to the appropriate regulation and then certify that that's been done properly; is that right?*

*A: That's correct, yeah.*

*Q: That is the system which the Revenue has adopted because Revenue doesn't have the competence to carry out technical examinations themselves?*

*A: Yes.*

*Q: They rely on the ATC's?*

*A: Yes.*

*Q: But you haven't done that in this case?*

*A: In this case, we haven't --*



*Q: In this case, you have six Declarations of Conversion's by a suitably-qualified ATC, and you said 'these don't pass muster, we are not dealing with this'?*

*A: Yes.*

*Q: You've done that on the advice of an organisation that says that it has no role whatsoever in relation to used cars or registered cars?*

*A. Yes."*

62. It is clear from this exchange that the approach taken by the Respondent is not in accordance with the regulations that have been brought in to govern the application of tax on the conversion of vehicles from M1 to N1. The NSAI do not have competence to advise in relation to the conversion of second hand vehicles and have communicated this to the Respondent. The response of the Respondent has been to employ a process of their own whereby they take the data on the black list that has been prepared by the NSAI for new vehicles and they apply it to converted second hand vehicles. This approach is not provided for in the rules.

63. Further, during cross-examination, the following exchange occurred:

*'Q: So Mr. [REDACTED]'s company, which is the taxpayer in this case, did everything that was required of them under the legislation; isn't that right?*

*A: In terms of presenting documentation, yes, but not in terms of the measurements. We had no confidence in the measurements.*

*Q: On the basis of what you had been told by the NSAI who have no competence or jurisdiction in this area at all?*

*A: In respect of what they had, for new vehicles of the same models, yes. I mean, again, it's the view that we took from the tax classification point of view was that if a vehicle -- a new vehicle -- is identical to a used vehicles, if it's the same make, model and mark, the aperture -- I mean --*

*Q: How do you know that these new vehicles are identical to the same models that you are using to register? How do you know what modifications have been made to them?*

*A: We know from the modifications have been made, but if aperture hasn't been increased in size, we just take that it is the same as the new vehicles. It's just a conclusion that we arrive at.'*

64. The Respondent's evidence is that the Respondent proceeded on the basis of an

assumption and did not measure any of the vehicles the subject matter of these appeals. Further, not only is the assumption unsound (as the NSAI have no authority in relation to converted second hand vehicles) but no evidence was adduced by the Respondent to substantiate the assumption. The Respondent did not measure the vehicles the subject of these appeals and did not adduce any evidence in respect of the measurement of the vehicles.

## ANALYSIS

65. The Appellant submitted that the requirements in the legislation, regulations and the documentation were adhered to in full. The relevant documentation in relation to each of the six individual appeals was furnished in evidence and opened at hearing.

*Appeal* [REDACTED]

66. Appeal [REDACTED] concerned a Mercedes GLS 350, registration [REDACTED], previously registered in the UK as [REDACTED]. The report in relation to this vehicle, dated 23 May, 2017, on ATC headed notepaper, completed by Mr. [REDACTED] the SQI provided:

*'This is to confirm that in respect of Vehicle Registration Mark [REDACTED] the dimensions have been measured using the Leica DISTO S910 laser distance meter (approved by the NSAI) and computed by the AutoCad 3D software also used by the NSAI for the taking of such measurements.*

*Height of Loading Aperture = 850mm*

*Surface Area of Loading Aperture = 14099cm<sup>2</sup>*

*Yours..'*

67. As can be seen from this report, the measurements exceeded the minimum qualifications of 800mm for height of the loading aperture and 12,800cm<sup>2</sup> for surface area.



68. Accompanying the report was the SQI declaration, which confirmed that the SQI had 29 years relevant experience, which was stamped by the ATC, together with the stamped and signed declaration of conversion. There is a requirement on the declaration of conversion to provide a '*general description of conversion*' and a small space on the form itself within which to describe the conversion which was described as '*removal of third row of seats and seat belts. Converted from seven seats to five seats*'. The brief description of conversion differs from vehicle to vehicle, depending on the conversion carried out.
69. Accompanying the SQI declaration and the declaration of conversion was the Test 48 form (Form TR048) which confirmed that the minimum qualifications of 800mm for height of the loading aperture and 12,800cm<sup>2</sup> for surface area had been met and that the vehicle met the requirements for goods carrying capacity. The Test 48 form was stamped by the ATC and signed by the SQI.
70. By way of response, the Respondent's letter of 13 October, 2017, provided:

'.....

*Revenue requires the completion and submission of a declaration of conversion as part of the application for registration of a converted vehicle, and requires supporting documents. The declaration form, in respect of a vehicle not previously registered in Ireland, includes the note –*

*If the vehicle's EU category is changing from M1 to N1, the masses and dimensions must be confirmed by an NSAI Approved Test Centre, whose scope covers 'Test: 48. Masses and Dimensions (not passenger cars)'. An original Test 48 Certificate together with confirmation by the ATC on the ATC's letterhead that the dimensions have been measured using the laser measuring device and computed by the software approved by the NSAI for the taking of such measurements must be submitted along with the Declaration of Conversion in these instances.*

*The National Standards Authority of Ireland (NSAI) is Ireland's official standards body, and is the national vehicle type approval authority. Test 48 is a test specified by the NSAI for the purpose confirming the masses and dimensions of candidates for N1*



*categorisation. The NSAI provides its ATCs, those which have Test 48 scope, with a template form, numbered TR048.*

*Revenue's requirements, by specifying the NSAI, and their Approved Test Centres, and NSAI Test 49, reflected Revenue's wish to categorise used vehicles under the terms of Annex II of Directive 2007/46/EC and by reference to the same persons, measurement instruments and methods that apply in the case of new vehicles for categorisation under the same EU legislation.*

....

*The documents in the schedule to the appeal include an NSAI letter dated 23<sup>rd</sup> of May, 2017 which states-*

*As also explained in my letter dated 7<sup>th</sup> April last, NSAI has been dissatisfied for some times with the measurements taken by ATCs and has carried out its own measurements of various vehicle makes and models. For a new unregistered vehicle that is not on the list supplied the ATC must contact NSAI to carry out the measurements. Consequently, it has not been necessary to advise ATCs to use any particular type of measuring equipment.*

*The models measured by the NSAI, and which the NSAI found did not have the required 12,800cm<sup>2</sup> loading aperture, include the Mercedes GLS, of which the subject is an example.*

....

....

71. The reference to models being measured by the NSAI is a reference to the measurements of the individual vehicles the subject matter of this appeal. It is a reference to 'the black list'.
72. The black list was in fact tendered in evidence. This list was prepared alphabetically by manufacturer. While the black list contained a reference to Mercedes GLS, the model of the vehicle the subject of appeal [REDACTED], this was not a reference to a second hand vehicle, nor to the actual vehicle nor to the vehicle in modified form.

73. A significant observation in relation to the black list is that not only does it contain generic measurements of new unmodified vehicles but, the black list does not accommodate all of the models of vehicles that are the subject matter of this appeal. There is a Mercedes GLS, a Range Rover Sport and a Range Rover Vogue. However, there is no Land Rover Discovery 5 and no Mercedes G Wagon. This is important to note given the significance which the Respondent attached to the black list in evidence and in refusing the conversion.

74. The Respondent's letter identifies the grounds of refusal as follows;

*'Having considered all of the above, I am not satisfied that Revenue's requirements, as set out on the declaration of conversion form, were met. Specifically –*

1. [REDACTED] *do not appear to have measured using the laser measuring device and to have computed using the software approved by the NSAI for the taking of such measurements, as NSAI have given no such approval, and*
2. [REDACTED], *although they represented themselves as acting under the NSAI's aegis, by using form TR048, and by referencing their NSAI ATC number, do not appear to have measured in accordance with the NSAI's method. This is indicated by [REDACTED] and Professor [REDACTED] both reporting 14,099cm<sup>2</sup> for the subject, compared with NSAI values of less than 9,000cm<sup>2</sup> for a range of SUVs, and an NSAI maximum value, for a different model, of 12,517cm<sup>2</sup>.'*

75. The first refusal ground appears to be that the Respondent specified that the Appellant was required to measure the vehicles according to the NSAI's approved laser measurement device and measurement software and that as NSAI did not provide it, the Appellant could not do it and thus could not qualify.

76. In evidence, Mr. [REDACTED] stated that he was audited by the NSAI on a regular basis and that no issues had ever arisen in relation to the manner in which he conducted inspections of vehicles. He also gave evidence in relation to the laser tool and the computer software that he used which were NSAI approved. Mr. [REDACTED] of the NSAI in his evidence, although he did not carry out measurements himself, identified precisely the same measuring tools, being the tools employed by the NSAI for the



purpose of measuring the generic model cars that it used for completing the black list.

77. The second refusal ground contains a reference to ██████ representing themselves 'as acting under the NSAI's aegis...' however, this is incorrect. ██████ are an approved test centre in respect of which Mr. ██████ of the NSAI, stated there was no mark over them whatsoever.
78. The second refusal ground provides that ██████ 'do not appear to have measured in accordance with the NSAI's method. This is indicated by ██████ and Professor ██████ both reporting 14,099cm<sup>2</sup> for the subject, compared with NSAI values of less than 9,000cm<sup>2</sup> for a range of SUVs, and an NSAI maximum value, for a different model, of 12,517cm<sup>2</sup>.'
79. In effect, the Respondent here asserts that ██████'s measurements of vehicles (which the Respondent did not measure) did not match up with measurements that the NSAI took of different vehicles and that as a result, ██████'s measurements cannot have been correct.
80. Senior Counsel for the Appellant stated that the Respondent's position did not make sense and was not coherent but that if the Respondent wished to pursue that line of argument they needed to produce a witness to provide evidence to that effect and that they did not do so.
81. The letter continued as follows;
- It is the role of the NSAI to interpret and apply the Annex II Directive 2007/46/EC definitions at 3.8.2.3.1. It would appear to be reasonable and proper for Revenue, in determining the EU category of the vehicle, for the purpose of its registration in the first place, and for the purpose of charging VRT, to have regard primarily to the interpretation and findings of the NSAI, especially where the NSAI has measured a vehicle of the same model.*
82. While the NSAI has a valuable role in the interpretation and application of Annex II, they do not have a role in respect of second hand preregistered and modified vehicles. There is no warrant in the rules outlined by the Respondent, for the





Respondent to reject measurements taken in accordance with their own specifications in favour of measurements of completely different vehicles.

83. The letter further provides:

*Revenue, faced with documents which did not satisfy its published requirements, confined itself when categorising the vehicle as M1, to the NSAI's confirmation that a vehicle of the model, when tested, did not satisfy the surface of the loading aperture requirement and to the Annex II Directive 2007/46/EC provisions at 3.8.1 referenced above.*

*Revenue's interpretation of a tax statute was confined to interpreting the Finance ATC, 1992, to provide that –*

- *The terms of Directive 2007/46/EC applied, and*
- *The vehicle, being a category M1 vehicle by reference to the competent authority's interpretation and application of Directive 2007/46/EC, a type approval statute, was a category A vehicle for VRT*

*Revenue's approach, reflected in its published requirements, has the merit of ensuring, to a high degree, that similar new and used vehicles, for categorisation by reference to the criteria introduced by Commission Regulation (EU) No. 678/2011, are categorised by reference to the same data.*

*It is my view that Finance ATC, 1992, by referencing Annex II of Directive 2007/46/EC, obliges Revenue to defer to the NSAI data over data that conflicts.*

*....'*

*Appeal* [REDACTED]

84. Appeal [REDACTED] related to a Mercedes G Wagon, registration [REDACTED], which was previously registered in the UK as [REDACTED]. The SQI declaration and declaration of conversion were furnished in evidence. The documentation confirmed that the measurements exceeded the minimum qualifications of 800mm for height of the loading aperture and 12,800cm<sup>2</sup> for surface area.



85. The requirement on the declaration of conversion to provide a *'general description of conversion'* was described in relation to this vehicle as *'removal of middle row seat belt and seat. Armrest permanently fixed down. Vehicle now has just four seats and four seat belts'*.
86. Accompanying the SQI declaration and the declaration of conversion was the Test 48 form (Form TR048) which confirmed that the minimum qualifications of 800mm for height of the loading aperture and 12,800cm<sup>2</sup> for surface area had been exceeded and that the vehicle met the requirements for goods carrying capacity. The evidence which was required to be supplied was contained in the accompanying report in the form specified by the Respondent. The Test 48 form was stamped by the ATC and signed by the SQI.
87. The Respondent's response, in correspondence dated 21 November, 2017, is drafted in the same terms as the Respondent's responding letter set out above in appeal [REDACTED], except that it excludes a reference to vehicle models measured by the NSAI, *i.e.* the black list. The reason the black list was not referenced in the letter is because the Mercedes G Wagon is not one of the vehicles that is included in the black list.
- Appeal* [REDACTED]
88. Appeal [REDACTED] relates to a Range Rover Vogue, registration [REDACTED], formerly registered in the UK as [REDACTED]. The SQI declaration and declaration of conversion were furnished in evidence. The documentation confirmed that the measurements exceeded the minimum qualifications of 800mm for height of the loading aperture and 12,800cm<sup>2</sup> for surface area.
89. The requirement on the declaration of conversion to provide a *'general description of conversion'* was described in relation to this vehicle as *'removal of middle two seat belts and arm rest permanently fixed down so seat can no longer be sat on. Not used. Vehicle is now a four seater'*.
90. Accompanying the SQI declaration and the declaration of conversion was the Test 48 report (Form TR048) which confirmed that the height of the loading aperture measured 860mm (thus exceeding the minimum qualification requirement of



800mm) and that the area of the loading aperture which measured 14,549cm<sup>2</sup> exceeded the minimum qualification requirement also. In addition, the Test 48 report confirmed that the vehicle met the requirements of a goods carrying capacity. The evidence which was required to be supplied was contained in the accompanying report in the form specified by the Respondent. The Test 48 form was stamped by the ATC and signed by the SQI.

91. The Respondent's response, in correspondence dated 14 February, 2018, provides:

*'The papers presented to the NCTS for the purpose of registration of the subject vehicle included papers which purported that the vehicle met the criteria for categorisation, with 2 rows of seats, as N1. Revenue however determined that the vehicle as presented for registration was category M1, in accordance with the provisions of 3.8.1, as the National Standards Authority of Ireland (NSAI) had indicated to Revenue that it had tested an example of the L405 model and had found that it did not satisfy the criterion at 3.8.2.2.'*

92. The Range Rover Vogue model was included on the black list. In evidence Mr. [REDACTED] confirmed that what in fact was tested was a generic new unmodified model of this vehicle. And further:

*'Revenue's (sic) categorises converted used vehicles, such as the subject, by reference to the current terms of Annex II and is guided by the NSAI, the State's official standards body and national vehicle type approval authority. It is the role of the NSAI to interpret and apply Annex II in relation to new vehicles. It would appear to be reasonable and proper for Revenue, in determining the EU category of a converted used vehicle, a function Revenue undertakes in the first place as a prerequisite for its registration, and in the second place for the purpose of charging VRT, to have regard to the same provisions as the NSAI, and to the NSAI's interpretations and findings, especially where the NSAI has measured a vehicle of the same model.'*

93. The Appellant submitted that this position did not stand up in circumstances where the Respondent had set out a complex and precise series of rules by which one effected a conversion from M1 to N1. On behalf of the Appellant it was submitted that the Respondent was not at large in determining how it is to assess a converted vehicle because the law in this regard must be public and precise and insofar as the



Respondent employed a methodology for reaching that assessment, it was impermissible for such methodology to be withheld from the taxpayer.

*Appeal* [REDACTED]

94. Appeal [REDACTED] related to a Range Rover Sport, registration [REDACTED], formerly registered in the UK as [REDACTED].
95. The SQI report is contained on [REDACTED] headed paper and is signed [REDACTED] Mr. [REDACTED]. The report specifies the manner in which the measurements have been taken i.e. *'the dimensions have been measured using the Leica DISTO S910 laser distance meter (approved by the NSAI) and computed by the AutoCad 3D software also used by the NSAI for the taking of such measurements.'* The report provided that both measurements exceeded the qualifying minimum requirements in that the height of the loading aperture measured 835mm while the surface area of the loading aperture measured 13,008cm<sup>2</sup>.
96. The SQI declaration and declaration of conversion were furnished in evidence. The documentation confirmed that the measurements exceeded the minimum qualifications of 800mm for height of the loading aperture and 12,800cm<sup>2</sup> for surface area.
97. The requirement on the declaration of conversion to provide a *'general description of conversion'* was described in relation to this vehicle as *'removed third row of seats. Removed third row of seat belts. Vehicle is now a five seater.'*
98. Accompanying the SQI declaration (stamped by the ATC and signed by the SQI) and the declaration of conversion was the Test 48 report (Form TR048) which confirmed that the conversion was of an M1 registered vehicle to a category N1. The report records the height of the loading aperture as 835mm (thus exceeding the minimum qualification requirement of 800mm) and the area of the loading aperture which measured 13,008cm<sup>2</sup> which exceeded the minimum qualification requirement also. In addition, the Test 48 report confirmed that the vehicle met the requirements of a goods carrying capacity. The evidence which was required to be supplied was contained in the accompanying report in the form specified by the Respondent. The Test 48 form was stamped by the ATC and signed by the SQI.



99. The Respondent's response, in correspondence dated 13 October, 2017, asserted reliance on the black list in similar terms to their letter of even date in Appeal [REDACTED] above because the Range Rover Sport was on the black list. The letter provided:

*Having considered all of the above, I am not satisfied that Revenue's requirements, as set out on the declaration of conversion form, were met. Specifically –*

1. [REDACTED] *do not appear to have measured using the laser measuring device and to have computed using the software approved by the NSAI for the taking of such measurements, as NSAI have given no such approval, and*
2. [REDACTED], *although they represented themselves as acting under the NSAI's aegis, by using form TR048, and by referencing their NSAI ATC number, do not appear to have measured in accordance with the NSAI's method. This is indicated by [REDACTED] and Professor [REDACTED] both reporting 14,099cm<sup>2</sup> for the subject, compared with NSAI values of less than 9,000cm<sup>2</sup> for a range of SUVs, and an NSAI maximum value, for a different model, of 12,517cm<sup>2</sup>.*

100. The Appellant reiterated its submissions set out above in relation to these grounds.

*Appeal [REDACTED]*

101. Appeal [REDACTED] relates to a Range Rover Sport, registration [REDACTED], formerly registered in the UK as [REDACTED].

102. The SQI report is contained on [REDACTED] headed paper and is signed by Mr. [REDACTED]. The report specifies the manner in which the measurements have been taken i.e. *'the dimensions have been measured using the Leica DISTO S910 laser distance meter (approved by the NSAI) and computed by the AutoCad 3D software also used by the NSAI for the taking of such measurements.'* The report provided that both measurements exceeded the qualifying minimum requirements in that the height of



the loading aperture measured 835mm while the surface area of the loading aperture measured 13,008cm<sup>2</sup>.

103. The SQI declaration and declaration of conversion were furnished in evidence. The documentation confirmed that the measurements exceeded the minimum qualifications of 800mm for height of the loading aperture and 12800cm<sup>2</sup> for surface area.
104. The requirement on the declaration of conversion to provide a *'general description of conversion'* was described in relation to this vehicle as *'Removal of middle seat belt. Arm rest permanently tied to door. Middle seat is completely disabled. Vehicle is now a 4 seater.'*
105. Accompanying the SQI declaration (stamped by the ATC and signed by the SQI) and the declaration of conversion was the Test 48 report (Form TR048) which confirmed that the conversion was of an M1 registered vehicle to a category N1. The report records the height of the loading aperture as 835mm (thus exceeding the minimum qualification requirement of 800mm) and the area of the loading aperture which measured 13,008cm<sup>2</sup> which exceeded the minimum qualification requirement also. In addition, the Test 48 report confirmed that the vehicle met the requirements of a goods carrying capacity. The evidence which was required to be supplied was contained in the accompanying report in the form specified by the Respondent. The Test 48 form was stamped by the ATC and signed by the SQI.
106. The Respondent's response, in correspondence dated 13 October, 2017, a [REDACTED] reliance on the black list in similar terms to their letter of even date in Appeal [REDACTED] above because the Range Rover Sport is on the black list: The letter provided:
- Having considered all of the above, I am not satisfied that Revenue's requirements, as set out on the declaration of conversion form, were met. Specifically –*
1. [REDACTED] do not appear to have measured using the laser measuring device and to have computed using the software approved by the NSAI for the taking of such measurements, as NSAI have given no such approval, and



2. [REDACTED] although they represented themselves as acting under the NSAI's aegis, by using form TR048, and by referencing their NSAI ATC number, do not appear to have measured in accordance with the NSAI's method. This is indicated by [REDACTED] and Professor [REDACTED] both reporting 14,099cm<sup>2</sup> for the subject, compared with NSAI values of less than 9,000cm<sup>2</sup> for a range of SUVs, and an NSAI maximum value, for a different model, of 12,517cm<sup>2</sup>.
107. The Appellant reiterated its submissions set out above in relation to these grounds.

*Appeal* [REDACTED]

108. Appeal [REDACTED] relates to a Land Rover Discovery 5, registration [REDACTED], formerly registered in the UK as [REDACTED]
109. The report, dated 15 June 2018, is contained on [REDACTED] headed paper and is signed by Mr. [REDACTED] SQI. The report specifies the manner in which the measurements have been taken i.e. *'the dimensions have been measured using the Leica DISTO S910 laser distance meter and computed by the AutoCad 3D software also used by the NSAI for the taking of such measurements.'* The report provided that both measurements exceeded the qualifying minimum requirements in that the height of the loading aperture measured 860mm while the surface area of the loading aperture measured 14,509cm<sup>2</sup>.
110. The SQI declaration and declaration of conversion, both dated 15 June, 2018, were furnished in evidence. The SQI declaration did not contain a reference to the TR 48 report as the Respondent had produced a new version of the declaration at that point and had withdrawn the TR048 forms. The notes appended to the new form provided as follows;

*'CONVERTED FOREIGN-REGISTERED VEHICLE:*

*A vehicle owner must present the Declaration of Conversion and related Suitably Qualified Individual declaration to the NCTS when declaring a vehicle of this type*





*for registration.... In addition, the total cost of conversion in Euros including VAT must be supported with a list of invoices/receipts showing dates and amounts.'*

111. The requirement on the declaration of conversion to provide a 'general description of conversion' was described in relation to this vehicle as 'Removal of rear seats and rear belts. Conversion and re-classification from M1 to N1 Vehicle is now a 5 seater N1. All dimensions have been measured using the Leica DISTO S910 Laser distance meter and computed by the AutoCAD 3D software also used by the NSAI for the taking of such measurements.'

112. At hearing, a letter from the NSAI dated 26 June, 2017, addressed to the Respondent, was opened, and the relevant excerpt provided as follows;

*In the last number of months NSAI has received communications regarding the use of Test Record 48 by ATCs for vehicles already registered. These communications have questioned NSAI's authority in relation to already registered vehicles and challenged the results of our measurements. NSAI has expended much time and resources in dealing with these queries explaining how our role is confined to dealing with unregistered/new vehicles and the appointment/monitoring of ATCs to support that work. At all times NSAI has made clear that your authority should be approached about matters relating to registered vehicles.*

*NSAI has identified that Revenue's use of the TR 48 form is a contributing factor to the confusion amongst market operators about NSAI's role and responsibilities. I must therefore request that references to that form, ATCs, and to NSAI approved measuring equipment and software be immediately removed from any Revenue information and forms regarding conversions of registered vehicles. We will be changing NSAI documentation accordingly and issuing the revised editions of the NSAI documentation to all ATCs.*

*Given that there has always been good cooperation between both authorities it is regrettable that the current issues surrounding the reclassification of registered vehicles has forced us to take this decision and to clearly distinguish NSAI's role from that of the Revenue Commissioners. That being said, NSAI cannot be placed in the position of or held out to be deciding matters which are clearly the legal responsibility of another authority.*





*By letter of 20 January 2017 NSAI gave no commitment to Revenue to continue to advise or provide guidance for post registration conversions. NSAI holds the view that this matter can only be solved by the introduction of appropriate legislation to provide the legal basis for decisions made on the reclassification of vehicles. We are available to provide clarification and assistance if necessary.*

*Yours etc. ..'*

113. The legislation referred to in the final paragraph of this letter was enacted and became operative from 31 July, 2018, onwards.

*NSAI authority*

114. The NSAI has in correspondence and in evidence stated repeatedly that it has no authority or jurisdiction to measure or certify in relation to the categorisation of second hand, registered, converted, used vehicles. Mr. [REDACTED] from NSAI was clear in his evidence that the NSAI has authority and jurisdiction to measure new unregistered vehicles only. Correspondence from the NSAI to the Appellant's solicitor dated 7 April, 2017, provided:

*'... as explained above, NSAI is concerned with the assessment and issue of EC type approvals and national approvals for new vehicles whereas the reclassification of used/second hand vehicles is the responsibility of the Revenue Commissioners who should be contacted regarding the criteria for such reclassification as this appears to be where your client has difficulties..'*

115. In correspondence to the Appellant's solicitor dated 23 May, 2017, the NSAI stated:

*Dear Mr. [REDACTED],*

*I acknowledge receipt of your letter on behalf of your client [REDACTED]  
[REDACTED], dated 4<sup>th</sup> May 2017 and received by NSAI on  
8<sup>th</sup> May 2017.*



*I would first like to re-iterate that NSAI has no involvement or responsibility with regard to registered vehicles. NSAI's responsibilities concerning vehicle approval lies solely with new unregistered vehicles as regards compliance with safety and environmental requirements.*

*With regard to your first question: As explained in my letter dated 7<sup>th</sup> April last, where a new unregistered vehicle undergoes a change of category, for example M1 to N1, it is not merely a simple reclassification, it is a new type which must be assessed against all applicable requirements for that category.*

*....*

*The ATCs are appointed by NSAI to provide the necessary test and inspection services required to grant national approvals to new unregistered vehicles. When an application for national approval for a new unregistered vehicle requires the assessment of the vehicle masses and dimensions the ATC must assess the vehicle and complete Test Record No. TR48. As also explained in my letter dated 7<sup>th</sup> April last, NSAI has been dissatisfied for some time with the measurements taken by ATCs and has carried out its own measurements of various vehicle makes and models. For a new unregistered vehicle that is not on the list supplied the ATC must contact NSAI to carry out measurements. Consequently, it has not been necessary to advise ATCs to use any particular type of measuring equipment.*

*NSAI is aware that the Revenue Commissioners have chosen to use NSAI appointed ATCs and Test Record No.: TR48 to demonstrate compliance with the relevant requirements for the reclassification of used/registered vehicles. With this in mind TR48 was amended to facilitate its dual use by the ATCs. Questions in relation to use of TR48 in the context of registered vehicles should therefore be directed to the Revenue Commissioners.'*

116. The Appellant submitted that a fundamental misapprehension as to the competency of the NSAI and the scope of its authority has been central to the refusal of the Respondent to register the Vehicles as N1 vehicles.



117. In correspondence dated 20 July 2017, the Respondent, responding to a query from the Appellant's solicitor as to why vehicles such as the vehicles that are the subject of Appeal [REDACTED] and Appeal [REDACTED] which were not on the blacklist, were being refused registration as N1 vehicles stated as follows:

*'The impression from your letter is that if a vehicle is not on the NSAI list then it cannot be questioned. This is an incorrect interpretation. Any number of vehicles that could be presented as conversions from M1 to N1 but that do not qualify as N1 are not on the NSAI list. This includes the range of models of the Mercedes G and, as there is a range of such models on the list, Revenue's conclusion is that the particular model G Wagon would not qualify for N1 status. However, as with all of these vehicles, the Mercedes can be registered as an M1.*

*Revenue depends on the competent authority for the State, the NSAI, to indicate what vehicles can be legitimately modified to a new type and can be registered as such. If the vehicle has not been measured and approved by the NSAI, Revenue cannot register the vehicle as a new type'.*

118. However, the NSAI position at all times was that its authority related only to new vehicle registrations. In correspondence dated 26 July 2017, the NSAI stated: *'As the national type approval authority NSAI has and continues to provide clarification and advice on queries from the Revenue Commissioners and the tax offices but only as regards new vehicle registrations.'*

119. In further correspondence from NSAI to the Appellant's solicitors on 28 August, 2017, the NSAI stated:

*'... since our last letter NSAI officials have met with their counterparts in the Revenue Commission regarding the confusion that has arisen over advice given by NSAI to Revenue officials which your client claims has caused difficulties for registration of his vehicles. NSAI has made it clear to the Revenue officials that NSAI advices are given strictly regarding requirements for registration of new vehicles and that NSAI procedures are in place for the assessment of conformity of new/unregistered vehicles. My officials now await Revenue's response to their concerns.'*



120. The Respondent's decision to prefer measurements which have been admitted by the NSAI to have no application to used, converted vehicles, over certification provided by an approved ATC expressly designated by the Respondent for such purpose, is simply incorrect. The Respondent, as justification for the approach, stated that the NSAI had misgivings in relation to some measurements carried out by some ATCs.

121. The Appellant submitted that if the NSAI or the Respondent was dissatisfied with the performance of an ATC in relation to the certification of used converted vehicles, then the appropriate response would be for the NSAI to take action against such ATC or for the Respondent to amend its specified requirements relating to the conversion of used vehicles. The Appellant submitted that the availability of such remedies to the NSAI is clearly shown by a letter dated 24 October, 2016, from the NSAI to various ATCs in which the NSAI stated:

*'Please note that if NSAI becomes aware that ATCs sign off a Revenue Declaration of Conversion of a vehicle and/or TR-48 for vehicles which do not meet the criteria per the NSAI M1-N1 Database, their appointment as an ATC will be revoked.'*

122. The Respondent at no point revoked [REDACTED]'s appointment as an approved ATC nor did the Respondent amend their specified requirements, nor did the Respondent remove [REDACTED] from the list of ATCs specified as being acceptable to certify conversion. In evidence, Mr. [REDACTED] of the NSAI did not cast any aspersions on the work carried out by Mr. [REDACTED] nor his status as ATC. In these circumstances, the Appellant submitted that the Respondent was not entitled to disregard the cogency of the certification provided by [REDACTED].

123. The only witness who measured the vehicles the subject of this appeal was Mr. [REDACTED] SQI of approved NSAI ATC, [REDACTED]. I find that Mr. [REDACTED] measured in accordance with the requirements of the regulation and the Respondent's specified requirements and I accept as correct, the measurements carried out by Mr. [REDACTED]. The Respondent did not measure the vehicles and did not adduce evidence in relation to the vehicles and their measurement. The Respondent challenged the measurements by relying on the black list which related to new unregistered vehicles



and not used converted vehicles. It is noted that two vehicles the subject of these consolidated appeals were not contained on the black list.

124. Further, the NSAI made clear repeatedly, and it was not disputed by the Respondent, that the NSAI's authority applied in relation to new unregistered vehicles and that the NSAI had no authority or jurisdiction in relation to the measurement of second hand, used, converted vehicles and thus, the Respondent's reliance on the black list was misconceived and was incorrect.

*Specified requirements*

125. One of the specified requirements relating to the registration of converted used vehicles is that an NSAI ATC must certify the conversion of the vehicle to its modified N1 status and provide evidence and proof of the measurements upon which the certification is based. It is the Respondent who considers the NSAI ATC to have the technical competencies to certify such conversions. [REDACTED] ATC was at all material times listed and approved by the NSAI as being an NSAI ATC with full authority, certification and approval to perform the measurements of N1 vehicles. No action has ever been taken against [REDACTED] either by the Respondent or by the NSAI.
126. The Appellant's witness, Mr. [REDACTED] SQI with [REDACTED], an NSAI approved ATC, is the only individual who measured the vehicles the subject of these six appeals. He did so using NSAI approved Leica DISTO S910 laser distance meter and AutoCad 3D software. The Respondent's second witness, Mr. [REDACTED] (NSAI) did not carry out any measurements of either the vehicles the subject of these appeals or the vehicles the subject of NSAI's 'black list'.
127. The Respondent's central justification for refusing to recognise the converted status of the vehicles is that none of the vehicles met the threshold for N1 classification in respect of the rear aperture of the vehicles. The Appellant submitted that this contention was unsustainable in circumstances where the only party, [REDACTED], which had measured or examined the vehicles provided certification that the vehicles met the required threshold. [REDACTED], which is indisputably an NSAI ATC



designated by the Respondent to provide the required certification, measured the vehicles using NSAI approved equipment and certified the measurements according to the requirements of the Respondents. The Appellant submitted that measurements of 'similar' new vehicles i.e. the black list are of no relevance or evidential value in relation to the six vehicles the subject matter of these appeals, each of which is a second hand, pre-registered, modified vehicle presented to the Respondent for re-categorisation, having undergone a conversion.

*The black list*

128. The Respondent refused to register the vehicles due to an alleged failure to provide 'cogent' information. This alleged failure related to the Respondent's submission that [REDACTED]'s measurements conflicted with measurements of new vehicles provided to the Respondent by the NSAI. Thus the vehicles the subject of these proceedings were refused by the Respondent on the basis that the NSAI measured different vehicles (which had not been converted) and received different results in terms of measurements, to the measurements in issue in these proceedings. Two of the vehicles (being the vehicles the subject of appeals [REDACTED] and [REDACTED]) are models which do not appear on the black list.
129. The Appellant submitted that the Respondent specified the documents and information that it required and would accept as confirmation of the N1 categorisation of a converted vehicle, prior to the registration of the vehicle. The Appellant submitted that it satisfied the requirements in the precise manner specified by the Respondent. The Appellant submitted that the Respondent's decision to prefer measurements which were admitted by the NSAI to have no application to used converted vehicles, over certification provided by an ATC expressly designated by the Respondent for such purpose was simply wrong.
130. The Appellant submitted that, having observed the requirements of the Finance Act, the regulations and the Respondent's specification and procedures, the Appellant was entitled to register the vehicles as N1 vehicles and was entitled to the repayment of €123,662.



131. I am satisfied that the Respondent's decision to prefer measurements which were admitted by the NSAI to have no application to used, converted vehicles, over certification provided by an ATC expressly designated by the Respondent for such purpose, is simply incorrect. In relation to the Respondent's specified requirements, I am satisfied that the Appellant satisfied the requirements as the measurements were certified by Mr. [REDACTED] SQI at [REDACTED], an NSAI ATC and because the Appellant completed and furnished the requisite information, documentation, measurements and certification.

### *Statutory Interpretation*

132. The Respondent in its submissions placed considerable reliance on an interpretation of the definition section in Annex II and the Respondent used the term 'minimum functional aperture' to denote the ability of the aperture to accommodate cargo rather than by reference to its ability to be used for loading. The Respondent furnished a number of legal authorities including *Menolly Homes Limited v Appeal Commissioners* [2010] IEHC 49, *Lawlor v Minister for Agriculture* [1990] 1 IR, *Revenue Commissioners v O'Flynn* [2013] 3 IR 533, *Revenue Commissioners v Doorley*, [1933] IR 750, *Prodanov v The Revenue Commissioners* [2016] IEHC 708, *Revenue Commissioners v Bus Eireann* [2004] 3 IR 313, in support of the Respondent's interpretation of Annex II. However, the expression 'minimum functional aperture' is not used in the legislation nor in Annex II. The Appellant submitted that the Respondent's interpretation of Annex II was incorrect.

133. The Appellant submitted that no reference was made anywhere in the relevant forms, that the Respondent's particular statutory interpretation would be applied to the measurements and that there is no reference in those forms to the particular aperture which is required to be measured. The Appellant stated that the representative from the NSAI who gave evidence did not criticise the ATC, nor the SQI, nor the measurements that were taken by the Appellant in these appeals.

134. The Appellant submitted that the Respondent's interpretation of the provisions in Annex II was wrong on the basis that firstly, the Respondent was unable





to identify an authority in support of the proposition relied upon and secondly that the plain meaning of the words did not support the interpretation contended for.

135. In the recent Supreme Court case of *Bookfinders Ltd. v The Revenue Commissioners* [2020] IESC 60, the principles governing statutory interpretation were comprehensively reviewed. Leading the judgment of the Court, O'Donnell J. stated at paragraph 39: *'It is worth emphasising that the starting point of any exercise in statutory interpretation is, and must be, the language of the particular statute rather than any pre-determined theory of statutory interpretation.'*

136. The Court at paragraph 53 of the judgment quoted and approved the judgment of McKechnie J. in the Supreme Court case of *Dunnes Stores v the Revenue Commissioners* [2019] IESC 50 including *inter alia*, the following paragraphs:

*'63. As has been said time and time again, the focus of all interpretive exercises is to find out what the legislature meant: or as it is put, what is the will of Parliament. If the words used are plain and their meaning self-evident, then save for compelling reasons to be found within the instrument as a whole, the ordinary, basic and natural meaning of those words should prevail. "The words themselves alone do in such cases best declare the intention of the law maker" (Craies on Statutory Interpretation (7th Ed.) Sweet & Maxwell, 1971 at pg. 71). In conducting this approach "...it is natural to inquire what is the subject matter with respect to which they are used and the object in view" Direct United States Cable Company v. Anglo – American Telegraph Company [1877] 2 App. Cas 394. Such will inform the meaning of the words, phrases or provisions in question. McCann Limited v. O'Culachain (Inspector of Taxes) [1986] 1 I.R. 196, per McCarthy J. at 201. Therefore, even with this approach, context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that.*

*64. Where however the meaning is not clear, but rather is imprecise or ambiguous, further rules of construction come into play. Those rules are numerous both as to their existence, their scope and their application. It can be very difficult to try and identify a common thread which can both coherently and intelligibly explain why, in any given case one particular rule rather than another has been applied, and why in a similar case the opposite has also occurred. Aside from this however, the aim, even when invoking secondary aids*





*to interpretation, remains exactly the same as that with the more direct approach, which is, insofar as possible, to identify the will and intention of Parliament.*

65. *When recourse to the literal approach is not sufficient, it is clear that regard to a purposeful interpretation is permissible. There are many aspects to such method of construction: one of which is where two or more meanings are reasonably open, then that which best reflects the object and purpose of the enactment should prevail. It is presumed that such an interpretation is that intended by the lawmaker.'*

137. Commission Regulation 678/2011, at Part A, clause 1.2, defines category N vehicles as *'Motor vehicles designed and constructed primarily for the carriage of goods'*. A vehicle which started as an M1 will be converted to N1 where alteration works are carried out and are deemed to be sufficient to alter the design of the vehicles so that its primary purpose becomes the carriage of goods. Pursuant to clause 3.6 of the regulation, category N vehicles are required to show a goods carrying capacity equal to or higher than the person carrying capacity expressed in kilogrammes. The reason there is so much attention paid to the removal or disabling of seats in the vehicles converted is to ensure that more cargo than passengers is carried in them. The second purpose is to generate flat space which is required in order to render the vehicles primarily utilised for the purpose of carrying cargo.

138. Clause 3.8.2.2.(ii) provides: *'..in the case the vehicle is fitted with two or more rows of seats, the minimum height of the loading aperture shall be at least 800mm and the aperture shall show a surface of at least 12800cm<sup>2</sup>.'*

139. The Respondent used the term 'minimum functional aperture' to denote the ability of the aperture to accommodate cargo rather than by reference to its ability to be used for loading. However the expression 'minimum functional aperture' does not appear in the legislation nor in Annex II. The Appellant strongly contended that the aperture was for loading, not for carriage and that the measurement of the aperture was as set out in Annex II.

140. Where the aperture on a vehicle is wider at the commencement of the aperture than at the termination of the aperture into the cargo space of the vehicle, one nonetheless loads cargo through the aperture. The fact that one cannot pack cargo



fully to the rim of the aperture is not the requirement in Annex II. The requirement is that one loads the cargo through the aperture. The Respondent during evidence, raised questions around whether an 800mm box could be positioned through the aperture all the way to the back of the cargo space of the vehicle. However, I am satisfied that the function of the aperture is to load the cargo, not to store the cargo during carriage. The aperture in Annex II is described as a '*loading aperture*'.

141. In submissions, Senior Counsel for the Appellant submitted that the Respondent's proposition of 'minimum functional aperture' was incoherent and that this was clear when one considered, for example, the transportation of shoe boxes rather than large boxes, in the context of the Respondent's submission on 'minimum functional aperture'. Further, there is no definition included in the Annex, of the scope or design or permutations of boxes or containers that will be carried as cargo in converted vehicles. However, there is a definition of 'goods'. The definition of goods, at clause 1.3 provides: '*goods*' means primarily any moveable things. The term '*goods*' includes products in bulk, manufactured goods, liquids, living animals, crops, indivisible loads.'

142. Based on the plain wording of Annex II and the clear definitions contained therein, I am satisfied that the interpretation contended for on behalf of the Respondent in relation to 'minimal functional aperture' is not supported by the regulation and I am satisfied that the function of the loading aperture is to load goods through the aperture and not, as contended by the Respondent, to understand the aperture as a measure of cargo capacity rather than the ability to load cargo in and out.

### **Determination and findings**

143. The only individual who measured the vehicles the subject of these appeals was Mr. [REDACTED] SQI at [REDACTED], an NSAI certified ATC. The Respondent, although it did not accept the measurements, called no evidence in opposition to the measurements. I find that Mr. [REDACTED] SQI, measured in accordance with the requirements of the regulation and in accordance with the Respondent's specified requirements and I accept as correct, the measurements carried out by Mr. [REDACTED].



144. The Respondent identified with detailed particularity, the information and documentation that needed to be provided. In relation to the Respondent's specified requirements, I am satisfied that the Appellant complied with the specified requirements and that the Appellant completed and furnished the requisite declarations of conversions, SQI declarations, Test 48 reports and measurement certification containing the requisite information and documentation.

145. I find that the Respondent was incorrect in asserting that the documents '*... did not satisfy its published requirements...*' in their correspondence. The documents as furnished, did comply. The Respondent's approach was incorrect because the Respondent equated the measurement of new generic unmodified vehicles with the measurements of the second hand pre-registered altered and converted vehicles with which it was presented in the context of these appeals.

146. The Respondent's decision to prefer measurements which were admitted by the NSAI to have no application to used, converted vehicles, over certification provided by an ATC expressly designated by the Respondent for such purpose, was incorrect.

147. Section 132 of the Finance ATC 1992, as amended (Charge of excise duty) provides at subsection 3(g):

*The duty of excise imposed by subsection (1) shall be charged, levied and paid –*

*(g) in case it is a vehicle whose category cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, or any other documentation specified by the Commissioners for the purposes of confirming the categorisation of vehicles for the purposes of this Chapter ...'.*

148. The Respondent identified, the information and documentation required and that information was provided by the Appellant. Yet the Respondent's position was that it could not be confirmed by reference to the said information and documentation, that the vehicles had in fact been validly converted to N1.



149. One of the specified requirements in relation to the registration of converted, used vehicles is that an NSAI ATC must certify the conversion of the vehicle to its modified N1 status and provide evidence and proof of the measurements upon which the certification is based. As is clear from the evidence, the said certification was duly provided, together with all other relevant information and documentation.
150. The Respondent submitted that the critical issue was what was required to be measured. However, the measurements taken were the measurements that the Respondent requested to be taken with the assistance of the SQI and NSAI approved test centre (ATC) in the context of the forms and declarations which required completion.
151. As regards the measurements taken, Mr. [REDACTED], Revenue officer, in evidence, conceded during cross-examination that the Respondent did not possess the expertise to make a judgment call in relation to the accuracy of the measurements. Instead, to ensure the accuracy of those measurements, the Respondent sub-contracted the measurement activity to the ATC and SQI and employed a qualification procedure by reference to the NSAI for those who carried out those activities.
152. It was submitted that the Respondent was entitled to refuse the applications for re-categorisation if the Respondent had reason to doubt the accuracy of the measurements based on credible information. This in principle is correct and while it is the Appellant who bears the burden of proof in tax appeals, in the face of cogent and detailed evidence submitted on behalf of the Appellant, the Respondent adduced no credible or cogent evidence which justified their decision to refuse the re-categorisation. The Respondent did not measure the vehicles the subject of the appeal and they produced no evidence in relation to the measurements of the vehicles the subject of these appeals. Mr. [REDACTED], of the NSAI, who gave evidence on behalf of the Respondent, not only had not measured the vehicles the subject of this appeal, he had not measured the vehicles on the black list.
153. The Respondent submitted that it would be incorrect in the adjudication of this appeal, for this Commission to substitute the approved test centre for the Respondent however, it is not that one substitutes the ATC for the Respondent but that the Respondent required the ATC to carry out certain actions and to furnish



certain information and documentation. These actions, information and the documentation formed part of the Respondent's requirements.

154. The Appellant submitted that it had complied with the specified rules for conversion of the vehicles, had had the vehicles measured by an NSAI certified ATC in circumstances where those measurements demonstrated that each of the six vehicles exceeded the minimum qualifying requirements, had supplied the requisite information and documentation and that accordingly, the Appellant should be entitled to avail of the NI designation in relation to the vehicles converted. Mr. [REDACTED] SQI at [REDACTED], an NSAI certified ATC, was the only person who measured the vehicles the subject matter of this appeal and who at all material times remained an SQI operating at an ATC with no blemish on his record in respect of the measurements that he had taken. The default categorisation provided for in section 132(g) applies only where the '*... category cannot be confirmed by reference to..... any other documentation specified by the Commissioners for the purposes of confirming the categorisation of vehicles.*' The Respondent specified that confirmation and certification from an NSAI ATC of the converted status of a used vehicle would confirm the categorisation of the vehicle. That confirmation was provided in relation to all six vehicles the subject of these appeals.

155. The Respondent in its submissions placed considerable reliance on an interpretation of the definition section in Annex II and the Respondent used the term 'minimum functional aperture' to denote the ability of the aperture to accommodate cargo rather than by reference to its ability to be used for loading. However the expression 'minimum functional aperture' is not contained in the legislation. For the reasons set out above, I am satisfied that the function of the aperture is to load the cargo, not to store the cargo during carriage. The aperture in Annex II is described as a '*loading aperture*'.

156. The charge to tax which is the subject matter of this appeal is one which is governed by the relevant legislation and by the Respondent's specified requirements. The Respondent identified those rules and requirements and the Appellant tendered in documentary form and by way of oral evidence, comprehensive, precise and cogent evidence of the Appellant's compliance with those rules.



157. No evidence was called by the Respondent to contradict either the measurements taken in respect of the six vehicles the subject of these appeals nor to contradict the evidence of compliance tendered by the taxpayer. In addition, no basis has been advanced by the Respondent for a departure by the Respondent from their own rules in relation to the charge to tax, the subject matter of the appeals.
158. For the reasons set out above, I determine that the vehicles the subject of these six appeals fall to be designated as category N1 vehicles and that as the lower rate of VRT applies, the Appellant is entitled to a repayment of tax in the sum of €123,662.
159. In relation to the sixth appeal, TAC reference [REDACTED], the Appellant's application was furnished to the Respondent on 19 June, 2018, in advance of the alteration of the rules on 31 July, 2018. Thus the Appellant lodged the application prior to the rule change and in accordance with the rules then in force. The Appellant contended that it was not open to the Respondent to require an application to be completed in accordance with particular rules and strictures, to not deal with the application during the currency of the operation of those strictures and to then rely on the passage of time to deny the Appellant an entitlement that arises from the Appellant's compliance with those rules.
160. Section 949AL TCA 1997, which provides for appeals against matters other than assessments, provides that: '*the Appeal Commissioner shall, if they consider that the decision, determination or other matter, as the case may be, ought to be varied, determine that the decision, determination or other matter be varied...*' For the reasons set out above, I am satisfied that the Appellant's application in relation to appeal reference [REDACTED], which was submitted on 19 June, 2018, prior to the rule change, complied with the rules then in force prior to 31 July, 2018, and that the Appellant was entitled to a category N1 designation for the purposes of registration in accordance with those rules and accordingly, I determine that the Respondent's decision ought to be varied so that the vehicle is designated as a category N1 vehicle.





161. This appeal is hereby determined in accordance with s.949AL TCA 1997.

A handwritten signature in black ink, reading "Lorna Gallagher".

**COMMISSIONER LORNA GALLAGHER**

**6<sup>th</sup> day of October 2021**

**This determination has not been appealed.**

