



36TACD2021

BETWEEN/

REDACTED

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Appeal Commissioners pursuant to section 146 of the Finance Act, 2001 (as amended) against a determination made by the Revenue Commissioners.
2. This appeal relates to the method of calculation of the CO₂ emissions of a vehicle for Vehicle Registration Tax (VRT) in accordance with section 130(3) of the Finance Act 1992, as amended ('FA 1992').
3. This appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts



4. The vehicle, the subject matter of this appeal, is a petrol powered Ford Kuga 1.5 ECOBOOST ST line, first registered in Ireland on 27 May 2019 bearing the registration number REDACTED.
5. The Appellant returned to work in Ireland in April 2019. He was granted relief from VRT on the above vehicle under Transfer of Residence rules. The vehicle was registered in Ireland and ascribed a CO₂ emissions rate of 194 g/km.
6. The Appellant made a first stage appeal to the Respondent, in relation to the CO₂ emissions rate determined for his vehicle, in accordance with section 145 FA 2001. The Respondent in its determination of the appeal, amended the CO₂ emissions rate to 176 g/km in accordance with a document supplied by the Appellant from the German Authorities which showed the combined CO₂ emissions rate of 176 g/km for the particular vehicle.
7. The Appellant was aggrieved by the determination of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commissioners (TAC) against the determination. A notice of appeal was received by the Tax Appeals Commission on 24 July 2019.

Legislation

8. Section 146 Finance Act 2001

Section 146 Finance Act 2001 provides as follows;

“A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.”



9. Section 130 of the Finance Act 1992 - Interpretation

['CO₂ emissions' means—

(a) in the case of a passenger or a light duty vehicle—

(i) unless the matter falls within subparagraph (ii) or (iii), the level of carbon dioxide (CO₂) emissions for a vehicle measured in accordance with the provisions of Commission Regulation (EC) 715/2007 of 20 June 2007 and listed in Annex VIII to Council Directive 2007/46/EC of 5 September 2007, or

(ii) for a vehicle whose certificate of conformity issued on or after 1 September 2018, the level of carbon dioxide (CO₂) emissions measured in accordance with Commission Regulation (EU) 1151/2017 of 1 June 2017, or

(iii) the level of carbon dioxide (CO₂) emissions for a vehicle measured in accordance with the Regulation referred to in subparagraph (ii) and determined using the correlation tool provided for in Commission Regulation (EU) 1153/2017 of 2 June 2017,

Submissions and Analysis

10. The Appellant submitted that the CO₂ emissions rate for his vehicle should be 145 g/km rather than 176 g/km.
11. The Appellant provided an example of a similar Ford Kuga from the Respondent's website showing that the CO₂ emissions rate to be 145 g/km.
12. The Appellant submitted a comprehensive guide to the Ford Kuga range of motor vehicles from the Ford Motor Company website including comprehensive analyses of varying CO₂ emissions from various models and engine sizes of the Ford Kuga.

13. The Respondent submitted the German registration document for the vehicle which displayed the emissions for the vehicle the subject of this appeal to be 176 g/km.
14. The Respondent provided the legislative background to the application of CO₂ emissions rates to vehicles in Ireland and in the European Union.
15. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 22) Charleton J. stated: “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable*”.
16. The Appellant was unable to demonstrate that his particular vehicle had an emissions rate of 145 g/km.
17. The Respondent provided evidence of why the rate of 176 g/km was applied to the vehicle on appeal.
18. The spectrum of CO₂ emissions rates for the Ford Kuga 1.5 ECOBOOST ST line displayed in the document from the Ford Motor Company ranges from 145 to 173 g/km and provides no assistance to the Appellant in relation to the rate of CO₂ emissions of his particular vehicle.
19. The most reliable evidence of the correct rate of CO₂ emissions is the registration document from the German Authorities declaring the emissions rate to be 176 g/km.

20. Based on a careful consideration of the submissions and evidence provided by both parties, I determine that the amended CO₂ emissions rate of 176 g/km shall stand.

Determination

21. For the reasons set out above, I determine the CO₂ emissions rate of 176 g/km for the vehicle registration no REDACTED.

22. This appeal is determined in accordance with section 949AL 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
11 JANUARY 2021