



49TACD20210

BETWEEN/

APPELLANT

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, ('FA') 2001 (as amended) against a determination made by the Revenue Commissioners.
2. This appeal relates to Vehicle Registration Tax in accordance with section 132(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 Ford Transit 100 T350 Van, first registered in Ireland on 24 June 2020 bearing the registration number **REDACTED**.
5. The Appellant acquired the vehicle in Northern Ireland and paid VRT of €1,135 based on 13.3% the estimated Open Market Selling Price (OMSP) of the vehicle as determined by the Respondent.
6. The Appellant made a first stage appeal to the Respondent in accordance with section 145 FA 2001 and this appeal was refused on the basis that the vehicle did not qualify for the €200 rate in accordance with s.132 (3)(d)(ii) as the vehicle was not a category N1 vehicle that 'at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats'. As a result, the Appellant was charged VRT as above in accordance with s.132 (3)(c) FA 1992.
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 8 September 2020.
8. Section 130 of the Finance Act 1992, as amended, provides that a 'category B vehicle' means a category N1 vehicle or a motor caravan'. The vehicle, the subject of this appeal, was a category B vehicle in accordance with section 130 FA 1992.
9. On 24 June 2020, VRT in the amount of €1,135 was charged to the Appellant in respect of the vehicle in accordance with section 132(3)(c) FA 1992.
10. A declaration of conversion dated 29 March 2020 provided that the vehicle, originally a category N1 vehicle with seven seating positions, had been converted to a category N1 vehicle containing three seating positions.





11. The conversion involved the removal of a four seater bench from the rear of the vehicle cab, the removal of the rear seat belts and ancillaries as well as the strengthening of this area to accommodate tools etc.
12. A goods only declaration dated 2 July 2020 and stamped by An Garda Siochana provided that the vehicle would be used only for the carriage of goods in the course of the Appellant's business and would not be used for social, domestic or pleasure purposes.

Legislation

13. 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.

14. Section 130 of the Finance Act 1992 - Interpretation

‘category B vehicle’ means a category N1 vehicle or a motor caravan

15. Commission Regulation (EU) No. 678/2011

Category N1 vehicle is defined in EU Regulation 678/2011 as follows; “*Motor vehicles designed and constructed for the carriage of goods and having maximum laden mass of 3.5 tons.*”

16. Section 132(3) of the Finance Act 1992





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

—

(c) In case it is a category B vehicle, at the rate of an amount equal to 13.3 per cent, of the value of the vehicle or €125, whichever is the greater,

...

(d) in case it is —

(i) ...

(ii) a vehicle that, at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats and has, at any stage of manufacture, a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order,

At the rate of €50, or in case such vehicle is registered on or after 1 May 2011, at the rate of €200

Submissions and Analysis

17. The Appellant submitted that the vehicle is a commercial vehicle and a light tipper truck. In support of this the Appellant provided photographic evidence of the conversion together with appropriate certificates detailing that the vehicle is now a three seater version of the original Ford Transit 100.
18. The Appellant submitted that the rear space is now used for holding tools only and cannot be used for any other purpose and accordingly the respondent has mis-categorised the vehicle as a non-commercial vehicle on which the appropriate VRT charge should be €200.
19. The Respondent accepted that the Appellant's vehicle was a category N1 vehicle within the meaning of Commission Regulation 678/2011 but stated that the vehicle





did not qualify for the €200 VRT rate as the vehicle was originally manufactured with seven seats. The Respondent emphasised that this fact was not in dispute.

20. The Respondent submitted that the UK registration document V5C provided for the vehicle states the van was registered in the UK with 7 seats.

21. The Respondent submitted that qualification for the lower VRT rate of €200 applies to a vehicle that:

[...that, at all stages of manufacture, is classified as a category NI vehicle with less than 4 seats and has, at any stage of manufacture, a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order... (section 132(3)(d)(ii))]

22. As a result, the Respondent submitted that the appropriate taxing section was section 132(3)(c) FA 1992 and that a VRT charge of €1,135 was the correct VRT amount payable in respect of the vehicle.

23. 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*".

24. The Appellant was unable to demonstrate that the vehicle '*at all stages of manufacture, is classified as a category NI vehicle with less than 4 seats*' in accordance with s.132(3)(d)(ii) FA 1992.





25. It is not disputed that prior to conversion, the vehicle was a category N1 vehicle with seven seats. Thus, I determine that as the vehicle was not '*at all stages of manufacture, a category N1 vehicle with less than 4 seats*' the vehicle does not satisfy the requirements of s.132(3)(d)(ii). In conclusion, I determine that the VRT charge of €1,135 shall stand.

Determination

26. For the reasons set out above, I determine the VRT charge of €1,135 shall stand.

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

**CHARLIE PHELAN
APPEAL COMMISSIONER
8 FEBRUARY 2021**

