



**83TACD2021**

**BETWEEN/**

**APPELLANT**

**Appellant**

**AND**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Appeal**

1. This is an appeal against the refusal of a claim by the Appellant, a motor dealer, for a repayment of VRT in accordance with the export repayment scheme. The amount of the VRT under appeal totals €5,386 and relates to two passenger vehicles bearing the registration numbers [REDACTED] and [REDACTED].
2. The Appellant submitted an application for the VRT repayments under the export repayment scheme in respect of the two vehicles. The repayment was refused by the Respondent in accordance with section 135D (5) as he was not the person named on the National Vehicle Driver File (NVDF).
3. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 22 February 2021.



## **Background**

4. The vehicle registration tax export repayment scheme, as provided for in section 135D of the Finance Act 1992 (as amended), allows for the repayment of 'residual' VRT on a vehicle which is permanently exported from the State.
5. The Respondent engaged Applus Car Testing Limited ('Applus') to carry out the VRT export examinations on vehicles registered within the State prior to exportation. These examinations were carried out by Applus on 15 December 2017 in respect of the first vehicle and on 3 February 2018 in respect of the second vehicle
6. The Appellant made first stage appeals to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the Respondent's position in relation to the repayments was not altered. This was communicated in respect of each vehicle to the Appellant in letters dated 22 June 2018.
7. The Respondent advised the Appellant that the repayments were being denied in accordance with section 135D (5) on the grounds that on the date of export examination by Applus as part of its remit as the National Car Testing Service (NCTS) the vehicles were not registered on the NVDF in the Appellant's name.
8. The Appellant was aggrieved by the decision of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commissioners (TAC) against the refusals to make the repayments. A notice of appeal was received by the Tax Appeals Commission on 22 June 2018.

## **Grounds of Appeal**

9. The Appellant submitted the following grounds of appeal in his Appeal to the TAC
  - (a) Grounds as set out in his letters to the Respondent dated 22 March and 4 May 2018 in respect of a first stage appeal in accordance with section 145 of the Finance Act 2001. Both these letters are reproduced at Appendix [REDACTED] and [REDACTED] hereunder.
  - (b) The VRT appeals officer failed to consider the issues raised in relation to the information given by revenue in the VRT manual and the information given by NCTS.
  - (c) The VRT appeals officer fettered her discretion.

## **Agreed Facts**

10. The vehicles exported by the Appellant were not registered on the NVDF in the name of the Appellant when presented for inspection by the Appellant on the respective dates.
11. The quantum of the repayments claimed (€5,386) is not in dispute.
12. The Appellant completed Form VRTER1 (claim for repayment of vehicle registration tax by a business for vehicles permanently removed and re-registered in another EU Member State) in respect of each vehicle.
13. The vehicles were exported by the Appellant.

## **Legislation**

14. Section 135D of the Finance Act 1992 as amended – Repayment of amounts



of vehicle registration tax on export of certain vehicles

*(1) The Commissioners may repay to a person an amount calculated in accordance with this section of vehicle registration tax based on the open market selling price of a vehicle which has been removed from the State,*

*where—*

*(a) the vehicle [was charged the category A rate]*

*(b) the vehicle has been registered under section 131 and the vehicle registration tax has been paid,*

*(c) the vehicle was, immediately prior to being so removed, registered under section 131,*

*(d) within 30 days prior to being so removed—*

*(i) the vehicle and any documentation to which paragraph (b) or (c) relates, and*

*(ii) [where applicable, a valid test certificate (within the meaning of the Road Traffic (National Car Test) Regulations 2017 (S.I. No. 415 of 2017)) or a certificate of roadworthiness (within the meaning of the Road Safety Authority (Commercial Vehicle Roadworthiness) Act 2012), as the case may be, in respect of the vehicle concerned,] have been examined by a competent person and all relevant matters have been found by that person to be in order,*

*(e) at the time of examination to which paragraph (d) relates, the open market selling price of the vehicle (being the price to which subsection (2) relates) is not less than €2,000, and*

*(f) the requirements of subsection (3) have been complied with.*





*(2) The amount of vehicle registration tax to be repaid shall—*

- (a) be calculated by reference to the open market selling price (being that price as determined by the Commissioners) of the vehicle at the time of the examination referred to in subsection (1)(d)*
- (b) include an amount that is calculated by means of one or more than one formula or other means of calculation as may be prescribed by the Minister by regulations made by him or her under section 141, and*
- (c) notwithstanding paragraph (a), not exceed the amount of vehicle registration tax paid on the registration of the vehicle under section 131.*

*(3) A claim for repayment for an amount of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the Commissioners for that purpose and shall be accompanied by—*

- (a) documentation to prove to the satisfaction of the Commissioners that the vehicle was removed from the State within 30 days of its examination under this section, and*
  - (b) proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union.*
- (4) The amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of—*
- a) the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter, and*
  - b) an administration charge of [€100]*



*(5) Any repayment of vehicle registration tax under this section shall be to the person named, at the time of the examination referred to in subsection (1)(d), on the records maintained under section 60 of the Finance Act 1993.*

### **Submissions and Documents supplied in advance of the hearing**

15. The full text of the Appellant's statement of case to the TAC is attached at Appendix [REDACTED]. The full text of the Appellants outline of arguments are attached at Appendix [REDACTED].
16. The Appellant also submitted the entire correspondence and the Revenue guidelines in support of his Statement of Case.
17. The full text of the Respondent's statement of case to the TAC is attached at Appendix [REDACTED]. The full text of the Respondent's initial and supplementary outline of arguments are attached at Appendices [REDACTED] and [REDACTED].
18. The Respondent submitted an index book to its submissions which include references to legislation, Case Law, EU Authorities and inter party correspondence.

### **Appeal Hearing**

#### *Appellant*

19. The Appellant advised at the outset of the Appeal that he was withdrawing his legal arguments in relation to legitimate expectation and in relation to Article 56 Treaty on the Functioning of the European Union (TFEU).

20. The Appellant confirmed that there are no disputes between the parties in relation to the agreed facts outlined above. He suggested that the facts in this appeal are similar to the facts in a similar TAC determination issued in 2020<sup>1</sup>.
21. The Appellant outlined that he had presented the two vehicles for inspection in advance of exporting them to the UK. He advised that the Respondent had not repaid the residual VRT because the vehicles were not registered in his name on the NVDF at the time of examination by Applus.
22. The Appellant confirmed that he had made an unsuccessful first stage appeal to the Respondent in accordance with section 145 of the Finance Act 2001. Accordingly, he made an appeal to the TAC in accordance with section 146 of the Finance Act 2001.
23. The Appellant referred to his submissions in which he had submitted that the decision not to repay the VRT is disproportionate. In this, the Appellant stated that he was relying on a case called *Meadows -v- Minister for Justice, Equality and Law Reform*. He opined that while that case does not relate specifically to property rights, the Supreme Court has confirmed in a case called *County Council of Meath -v- Murray* that this proportionality test applies also to matters concerning constitutional property rights.
24. The Appellant outlined the background to the legislation governing the repayment of residual VRT when vehicles are exported and suggested that the legislation had been enacted in response to various ECJ judgements to ensure that Irish law was compatible with EU directives and ECJ case law.

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<sup>1</sup> 141TACD2020

25. The Appellant referenced a number of ECJ cases in his arguments and quoted the relevance of Article 17 TFEU in relation to the fundamental rights to property.
26. The Appellant opined that his main submission in the matter concerned the issue of who is entitled to repayments in accordance with the wording of section 135D of the Finance Act 1992.
27. The Appellant further opined that the Respondent in relying on the literal interpretation of section 135D of the above Act had failed to recognise errors in the NVDF database which leads to an element of unfairness in the refusal of the repayments.
28. The Appellant submitted that the critical issue of the timing of the requirement in relation to the person named in the NVDF database should be the date on which the decision maker made the a final decision rather than the date the vehicles were examined by the Respondent's agent Applus.
29. The Appellant advised that he had unsuccessfully sought information on three occasions from the Respondent on whether or not the Respondent had in fact made the relevant repayments to the persons previously named in the NVDF.
30. The Appellant submitted that the requirement to be the person named on the NDVF on the date of examination is disproportionate and repugnant to the Irish Constitution insofar as the registration on the NVDF does not establish the legal ownership but rather captures the registered owner.





31. The Appellant suggested that the Tax Appeals Commission is entitled and in fact obliged to make a reference to the European Court of Justice if there is any question of EU law that is unsettled regarding this particular case.

*Respondent*

32. Counsel for the Respondent in referring to the Appellant's suggestion of referring the case to the ECJ conjectured as to the Appellant's reasons for such a request if the Appellant sought to desist from using his legal arguments in relation to legitimate expectation and in relation to Article 56 TFEU.
33. Counsel noted the Appellant's reference to proportionality and the constitutionality of the legislation in relation to the denial of the repayment claims and pointed out that the jurisdiction of the TAC does not extend to these matters.
34. The Respondent through its counsel outlined the details of the legislation supporting the Respondent's refusal of the repayment and opined that there is no dispute in relation to the operation of section 135D (1) (a) to (f) in relation to the circumstances required to enable the Respondent to make the repayments sought in this Appeal.
35. The Respondent opined that the legislation concerning the eligibility of the person named on the NVDF is clear and unambiguous. Counsel submitted that the clear intention of the law is that the person must be the person referred to in section 135D (5).
36. Counsel further submitted that a clear literal interpretation of the legislation means that the Appellant meets the tests set out in section 135D (1) (a) to (f) of the Finance 1992 as amended but clearly fails the test in subsection (5).



37. Counsel referred the TAC to paragraphs 43 to 47 in the recent decision of O'Donnel J in the *Bookfinders Ltd v Revenue Commissioners case* [2020] IESC 60 in relation to interpretation.
38. Counsel considered the timing issue as raised by the Appellant and stated that the decision makers have no role in the legislation whatsoever. The timing of the point of repayment being the precise time of the examination in subsection (1) (d) and the person being the person named on the NVDF as set out in section 60 of the Finance Act 1993.
39. The Respondent addressed the fairness issue of the legislation and opined that there was no relevance in the issue of whether or not the previous owners of the vehicles got a repayment in the matter. He further advised that the Respondent was unable to address the issue of any repayment granted or not to 3<sup>rd</sup> parties as the Respondent was obligated to confidentiality in these matters. Furthermore he observed that fairness issues are irrelevant to statutory interpretation.
40. The Respondent addressed the Appellant's notice of appeal to the TAC reproduced at paragraph 9 above. Counsel opined that in accordance with section 949I TCA 1997 the Appellant is not entitled to rely on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the grounds of appeal could not reasonably have been stated in the notice.
41. Counsel submitted that the Appellant failed to include, in his appeal, any reference to the EU law referenced at paragraphs 10, 11, 12, 16, 17 and 18 of his outline of arguments, contained at Appendix [REDACTED] of this determination. Counsel objected to the inclusion of these matters in the

appeal and illustrated that there was no reason why the Appellant could not reasonably have included the matters in his notice of appeal.

42. Notwithstanding his objection in relation to the introduction of additional grounds of appeal by the Appellant, counsel for the Respondent dealt with these matters both in his oral submissions and in the supplementary outline of arguments as illustrated at Appendix [REDACTED] of this determination.
43. In conclusion counsel for the Respondent submitted that the appeal should not succeed for the following reasons:
- a) The legislation is clear and unambiguous and should be read in its interpretative meaning
  - b) The Appellant did not have the vehicles in his own name at the time of examination as required in section 135B (5)
  - c) Notwithstanding the failure of the Appellant to include certain matters in his appeal to the TAC; the reference to Article 56 TFEU is misconceived, there is no benefit to the Appellant from the introduction of Article 17 TFEU and there is no breach of the Appellant's property rights
  - d) And he pointed to his supplementary outline of arguments in support of this.

## Analysis

### *Jurisdiction.*

44. The scope of the jurisdiction of an Appeal Commissioner as discussed in a number of Irish cases, namely; *The State (Whelan) v Smidic* [1938] 1 I.R.



626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49, *the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577 and the case *between Kenny Lee and the Revenue Commissioners* [2021] IECA 18 is confined to the determination of the amount of tax owing by a taxpayer based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. The jurisdiction of the Tax Appeals Commission does not extend to the provision of equitable relief nor to the provision of remedies available in High Court judicial review proceedings.

45. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of the repayment claim based on the alleged unfairness, breach of legitimate expectation, disproportionality or repugnance to the Constitution of Ireland, of the Respondent's application of the statutory requirement contained in section 135D (5), such grounds of appeal do not fall within the jurisdiction of the TAC and thus do not fall to be determined as part of this appeal.
46. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of the repayment claim based on its alleged repugnance to the Irish Constitution insofar as the registration on the NVDF does not establish the legal ownership but rather captures the registered owner, such grounds of appeal do not fall within the jurisdiction of the TAC and thus also do not fall to be determined as part of this appeal.

*Reliance on any ground of appeal not specified in the notice of appeal*

47. I have considered the additional grounds of appeal introduced by the Appellant notwithstanding that the Respondent has objected to the admissibility of same.



48. The previous decision of the TAC in a number of cases has considered many of the issues raised by the Appellant. In addition the Respondent has addressed the issues raised but not specified in the Appellant's notice of appeal.
49. Registration taxes on motor vehicles are not harmonised in EU law. Member States have the right to legislate motor vehicle registration tax as they see fit. However, they cannot do so in a manner contrary to the general principles of EU law, including, in particular, the freedoms of the single market.
50. Case C-552/15, Action for failure to fulfil obligations under Article 258 TFEU, brought on 23 October 2015, European Commission v Ireland. This case concerned only the application of VRT to vehicles leased or rented in another Member State.
51. The case provides some useful information in the general sense in relation to VRT and its *vires* in Ireland or in other Member States.

Para 39

*"In the present instance, the action brought by the Commission relates to the Irish system of registration tax applicable to vehicles leased or rented in another Member State, as in force on the date on which the period laid down in the additional reasoned opinion expired."*

Para 71

*"It should be recalled that, apart from certain exceptions not relevant to the present case, taxation of motor vehicles has not been harmonised at*

*EU level. The Member States are thus free to exercise their powers of taxation in that area provided that they do so in compliance with EU law (judgment of 21 November 2013, X, C-302/12, EU:C:2013:756, paragraph 23 and the case-law cited)."* **Emphasis added**

52. I concur with the views expressed in the previous TAC<sup>2</sup> decisions and in the submissions in the matter from the Respondent in relation particularly to the emphasis placed on TFEU Directives and ECJ case law. I can find no merit in support of the Appellant's case in relation to the additional grounds of appeal raised.
53. For completeness I am not satisfied that the additional grounds of appeal could not reasonably have been stated in the Appellant's notice of appeal. Accordingly such additional grounds of appeal should not be admitted.

*Lawful owner entitled to repayment as distinct from the owner set out in the NDVF*

54. The Appellant contended in his submissions that the Respondent's interpretation of the phrase 'at the time' is illogical and incorrect. He opined that consideration of whether or not a repayment is due is made by a decision-maker after an examination has taken place and the relevant claim form and documents submitted. He argued that it is at this point in time that the decision-maker must satisfy themselves that 'at the time' of the examination the claimant was named on the relevant records. The Appellant submitted that when the original decision-maker reviewed his claims and compared the examination date with the NVDF file, they would

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<sup>2</sup> [www.taxappeals.ie](http://www.taxappeals.ie)

have found that the names matched.

55. The wording in section 135D (5) is clear and unambiguous and states clearly:

*Any repayment of vehicle registration tax under this section shall be to the person named, at the time of the examination referred to in subsection (1)(d), on the records maintained under section 60 of the Finance Act 1993.*

56. Section 60 permits the Minister for Transport, Tourism and Sport and licensing authorities, to establish and maintain records in relation to licences under Part III of the Road Traffic Act 1993 and driving licences and provisional licences under Part III of the Road Traffic Act 1961. Thus, it is the officially recorded owner at the material time who may benefit from a claim for the repayment of residual VRT affecting a motor vehicle on its exportation. The records referred to by reference to section 60 FA 1993 are those held on the NVDF database.

57. I have determined that ‘*at the time*’ referred to in the legislation is the time of the examination of the vehicles and not the time at which any decision-maker makes or reviews a decision.

## **Conclusion**

58. Section 135D (5) FA 1992 provides; ‘*Any repayment of vehicle registration tax under this section shall be to the person named, at the time of the examination referred to in subsection (1)(d), on the records maintained under section 60 of the Finance Act 1993.*’

59. Section 60 of the Finance Act 1993 established the National Vehicle Driver



File ('NVDF') and the records maintained in accordance with section 60 are records contained on the NVDF.

60. The '*examination*' referred to in Section 135D (5) relates to an examination '*by a competent person*' in accordance with section 135D(1)(d) namely, Applus Car Testing Limited. The '*records maintained under section 60 of the Finance Act 1993*' are those contained on the NVDF.
61. The Appellant cannot achieve a remedy which would involve the Respondent taking an approach which it is not empowered to take such as by overlooking the statutory requirements of section 135D(5). The statutory wording contained in section 135D(5) is clear and unambiguous and the position is that the Appellant was not the registered owner of the vehicles on the NVDF system at the time of the VRT export examination carried out by Applus, and thus the requirements of section 135D(5) FA 1992, as amended, were not met.
62. I accept the submissions of the Respondent and I refer again to the statutory language used in section 135D(5) which contains an express requirement that the repayment issue to '*the person named, at the time of the examination referred to in subsection (1)(d), on the records maintained under section 60 of the Finance Act 1993*'. As the Appellant was unable to satisfy the requirements of section 135D (5), the Respondent was unable to issue a repayment to the Appellant in accordance with the provision and the Appellant's claim for repayment was refused.
63. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable.





64. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 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.'*
65. The Appellant has failed to provide the necessary proof that on the balance of probabilities he is entitled to the repayments sought.

### **Determination**

66. In this appeal, the Respondent has complied with the requirements of section 135D(5) in refusing to issue a repayment of VRT to a person other than the person named on the NVDF at the time of the vehicle examination. For the reasons set out above and in accordance with the provisions of section 135D FA 1992, I determine that the Appellant is unable to succeed in his claim for repayment of VRT pursuant to the export repayment scheme.
67. This appeal is hereby determined in accordance with s.949AL TCA 1997.

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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**11 March 2021**

**Appendices have been removed from the published version of this determination.**