



20TACD2022

BETWEEN/

[REDACTED]

Appellant

V

REVENUE COMMISSIONERS

Respondents

DETERMINATION

Introduction

1. This is an appeal against the Respondents' refusal to process a repayment of VRT in relation to a motor vehicle purchased by the Appellant namely, a [REDACTED] [REDACTED] ('the vehicle'),
2. The vehicle was purchased by the Appellant on 17 February, 2020, imported from the UK on 19 February, 2020, and registered in the State on 14 March, 2020. The amount of VRT charged and paid totalled €2,050 which included a nitrogen oxide emissions levy ('NOx').
3. The Appellant appealed to the Respondents seeking a full or partial repayment of the VRT paid. The Respondents refused the appeal and the Appellant appealed to the Tax Appeals Commission by notice of appeal dated 20 March, 2020.

Background

4. On 17 February, 2020, the Appellant purchased the vehicle and imported the vehicle from the UK on 19 February, 2020. On the registration of the vehicle on 14 March, 2020, the Appellant was charged and duly paid VRT of €2,050.
5. The Appellant stated that prior to purchasing the vehicle, he checked the VRT calculator on the Revenue Commissioners' website on the 16th and 17th of February 2020. He stated that *'information about the new tax was very poor'*. The Appellant's position was that he was not adequately notified of the amount of the additional NOx and that had he known, he would have reconsidered his decision to purchase the vehicle. The Appellant submitted that in the circumstances, it was unfair of the Respondents not to return some or all of tax paid as there was insufficient information in relation to the new tax on the official Revenue website prior to the purchase of the vehicle on 17 February, 2020.
6. The Appellant accepted that the new levy was enacted and was chargeable as of 1 January, 2020, however, he stated in correspondence dated 29 April, 2020, and 5 May, 2020, that while the website was updated at the end of February, it should have been updated in line with the introduction of NOx and in particular, the VRT calculator should have been updated to include the NOx from the date of the commencement of same. He accepted that as at the end of February, 2020, the position was clear on the Revenue website however, the Appellant submitted that it should have been clear from 1 January, 2020.
7. On 30 April, 2020, the Respondents wrote to the Appellant confirming that the calculator on the Revenue website had not been updated until the end of February 2020. The Respondents stated that from 5 December, 2019, the VRT pages on the Respondents' website provided information in relation to the charge to NOx. The Respondents submitted that the Appellant had a duty to inform himself of relevant legislative matters which impacted the purchase of his vehicle.

Legislation

Section 50 of the Finance Act 2019 (amending section 132 of the Finance Act 1992, as amended).



Submissions

8. The Appellant's position was that he checked the Revenue Commissioners' website and made his decision to purchase the vehicle, based on the information provided. The Appellant submitted that while the website was updated at the end of February, it should have been updated in line with the introduction of NOx. He submitted that the VRT calculator was the most important tool and that it should have been updated to include NOx from the date of commencement of same. The Appellant in correspondence dated 5 May, 2020, stated: *'I understand the Nox tax was introduced from 1st of January 2020 but I think all websites related to this new tax should be updated on time'*. He sought a repayment on this basis.
9. The Respondents' submitted that the Respondents' statutory duties and obligations required them to act in accordance with legislation and to impose a charge to tax. The Respondents submitted that it was not possible for the Respondents to process a repayment otherwise than in accordance with legislation. The Respondents submitted that a charge to VRT arose in relation to the importation and registration of the vehicle and that there were no grounds, legislative or otherwise, for a repayment of taxes and duties arising in the circumstances of this appeal. The Respondents stated that information in relation to the charge to NOx was contained on the Respondents' website from 5 December, 2019, and that information in relation to this tax and its introduction was viewable online.

Analysis

10. A nitrogen oxide emissions levy was introduced in accordance with section 50 of the Finance Act 2019, amending section 132 of the Finance Act 1992 (as amended). The levy came into operation on 1 January, 2020.
11. The Respondents accepted that the VRT calculator was not updated until the end of February 2020. The Respondents stated that NOx was outlined in detail on the VRT pages on the Respondents' website from 5 December, 2019.



12. The Respondents' position was that the Respondents' statutory duties and obligations required them to act in accordance with legislation and to impose a charge to tax. The Respondents submitted that it was not possible for the Respondents to process a repayment otherwise than in accordance with legislation. The Respondents submitted that a charge to VRT arose in relation to the importation of the vehicle and that there were no grounds, legislative or otherwise, for a repayment of taxes and duties arising in the circumstances of this appeal.
13. The scope of the jurisdiction of an Appeal Commissioner as discussed in a number of cases, namely; *Lee v Revenue Commissioners* [IECA] 2021 18, *Stanley v The Revenue Commissioners* [2017] IECA 279, *The State (Whelan) v Smidic* [1938] 1 I.R. 626, *Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 and *the State (Calcul International Ltd.) v The Appeal Commissioners III* ITR 577 is confined to the determination of the amount of tax owing by a taxpayer in accordance with relevant legislation and based on findings of fact adjudicated by the Commissioner or based on undisputed facts as the case may be. Insofar as the Appellant seeks that the Tax Appeals Commission set aside the refusal of the repayment claim based on grounds of hardship or unfairness caused by the imposition of the charge to tax itself, such grounds do not fall within the statutory remit of the TAC and do not fall to be determined as part of this appeal.
14. 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 assessments to tax are incorrect. 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.'*
15. The onus in this appeal rests on the Appellant and the Appellant in this appeal has not shown that the relevant tax is not payable.

Determination

16. The legislation in this case imposes and a clear and unambiguous charge to tax pursuant to section 50 of the Finance Act 2019, which amended section 132 of the





Finance Act 1992 (as amended). I determine that the VRT charged to the Appellant and paid by him was correct and that the Appellant has not succeeded in establishing a basis for repayment of same. Accordingly, I determine that the Respondents' refusal to process a repayment of taxes in relation to the purchase and importation of the Appellant's motor vehicle, shall stand.

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

A handwritten signature in black ink, appearing to read "Lorna Gallagher".

COMMISSIONER LORNA GALLAGHER

20th day of December 2021

This determination has not been appealed.

