



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

167TACD2025

Between

[REDACTED]

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") by [REDACTED] ("the Appellant") in respect of a demand issued by the Revenue Commissioners ("the Respondent") for the repayment of €7,893.30 in respect of a refund of value-added tax ("VAT") and vehicle registration tax ("VRT") the Appellant received from the Respondent.
2. The Appellant claims *inter alia* in his Notice of Appeal dated 5 December 2023 that the Respondent is not entitled to make a demand for repayment of VAT and VRT. The Appellant submits that the legislation used by the Respondent has been misapplied. The Appellant submits that there is no statutory definition of "*exceptional*" under the prevailing legislation and consequently it is an arbitrary/subjective decision and that exceptional circumstances did prevail. The Appellant submits that the method of assessment used by the Respondent is not proportional, insofar as it does not equate to relevant periods of use; i.e. if one holds the vehicle for 80% of the time one is required to refund to the Respondent in excess of 20% of the rebate of VAT and VRT and that the rebate is based on open marked selling price ("OMSP") which does not take into account the actual vehicle in question.
3. The Appellant's appeal was heard in full on 7 January 2025 by the Appeal Commissioner ("the Commissioner").
4. The Appellant was self-represented.

Background

5. The Disabled Drivers and Disabled Passengers (Tax Concessions), Regulations 1994 provided for in Statutory Instrument 353 of 1994 (as amended) (hereafter 'the Regulations') provide for, *inter alia*, a scheme whereby a person who is responsible for the transportation of a severely and permanently disabled family member may claim a repayment of VAT and VRT in respect of a motor vehicle or in respect of the adaptation of a motor vehicle, subject to conditions.
6. On or about 24 August 2021, the Appellant purchased a Volvo [REDACTED] [REDACTED] motor vehicle with an OMSP of €56,900 ("the Appellant's Volvo Motor Vehicle").
7. On or about 22 June 2021, the Appellant received a repayment from the Respondent in the amount of €9,866.63 in respect of VAT and VRT paid by the Appellant when he bought the Appellant's Volvo Motor Vehicle.

8. On or about 13 January 2023, the Appellant disposed of the Appellant's Volvo Motor Vehicle and he received €47,500 by way of trade in value against another vehicle, a [REDACTED] motor vehicle registration number [REDACTED] ("the Appellant's [REDACTED] Motor Vehicle") which the Appellant bought that same date for €53,500. At the date of disposal, the OMSP of the Appellant's Volvo Motor Vehicle was €51,666.
9. On or about 9 February 2023 the Appellant claimed and subsequently received a repayment of €3,695.91 in respect of VAT and VRT regarding the Appellant's [REDACTED] Motor Vehicle.
10. The Respondent made a demand that the Appellant repay the amount of €7,893.30 to the Respondent in respect of the Appellant's claim regarding the Appellant's Volvo Motor Vehicle. The Appellant submits that the Respondent should have and the Commission should waive the operation of regulation 10(d) of the Regulations because of his "*exceptional circumstances*".
11. The Appellant claims that exceptional circumstances apply to him by virtue of the following issues/events: the Appellant had to trade in the Appellant's Volvo Motor Vehicle for the Appellant's [REDACTED] Motor Vehicle in order to avail of reduced fuel consumption; having a disability is in and of itself an exceptional circumstance; mechanical work was required to be done to the Appellant's Volvo Motor Vehicle and as a consequence the Appellant lost faith in that vehicle; the war in Ukraine; the cost of living and Covid-19.

Legislation

12. Disabled Drivers and Disabled Passengers (Tax Concessions), Regulations 1994 provided for in Statutory Instrument 353 of 1994. See Appendix.

Submissions

The Appellant - Written Submissions.

13. An extract of written submissions made on behalf of the Appellant is set out below:

"The Initial Decision from the Revenue Commissioners (Revenue), 24th April 2023 and subsequently set out in further letter dated 23rd June 2023, did not with respect, set out detailed reasons. It did not explain in any way why there was as decision to refuse. It did say there was a reason to refuse and that exceptional circumstances did not arise but failed to explain why no exceptional circumstances did not arise.

Revenue said in letter dated 23rd June:

“The Regulations provide for a reduction or waiver of the early disposal repayment in exceptional circumstances. There is no exhaustive list of what may be considered exceptional circumstances, an example however, of circumstances which may be considered exceptional could be a vehicle no longer meeting the needs of the person with the disability”

Having reviewed your case I do not see any circumstances that would be considered exceptional for reducing or waiving the repayment". However, in my earlier letter of 4th May I had requested:

I note that the early disposal does not qualify under the "exceptional circumstances " ground but I am unclear what was considered and what the actual reason for declining same was? Perhaps those details can be sent on in order that I can appeal the decision to the VRT section.

It remains something of a mystery as to what was considered and what was discounted as not amounting to an exceptional ground. It is impossible to discern what was actually considered and what was weighted in terms of the consideration.

It is submitted that there is no exhaustive list. There are commonly understood events which could arise such as: A: the vehicle no longer being suitable (identified by Revenue) and

B: the vehicle being destroyed or crashed beyond repair (commonly identified in the literature/documentation).

The intention of the Regulations is to provide some financial support to those either disabled or those persons supporting passengers with a disability. There is a tacit/implicit acknowledgment that there is a financial disadvantage with disability and indeed in caring or supporting those persons with a disability.

Our particular situation is that we as parents are both [REDACTED] and lose approximately [REDACTED] hours per month in hospital or care appointments for our disabled passenger [REDACTED]. Our decision to dispose of a costly vehicle early in the scheme was intended to address the sheer cost of running the said vehicle and move to a more cost effective and environmentally friendly vehicle. It also resulted in a cost saving for Revenue in the immediate term as there is no Fuel Allowance for electric vehicles. Separately , the Erad motor on the disposed vehicle had to be replaced in September 2021 at considerable cost, invoice previously attached which in real terms undermined the vehicle and left us with a lack of confidence in the vehicle. There is a considerable

hidden cost to disability with children. The Regulations go some small way to balancing that cost.

I would respectfully submit that for something to achieve exceptionality, it must be rare or not frequent, unusual or uncommon. The Disabled Driver and Passenger Regulations apply to relatively small, generally vulnerable group within society. They are not comparatively speaking, similar to everyone else or the general population and have been singled out for particular tax treatment. The scheme of it's nature is somewhat exceptional.

The Regulations are intended to be a concession for disabled passengers. The retention period of 2 years for any qualified vehicle can be waived or reduced in exceptional circumstances. The Regulations are not prescriptive about what might be exceptional. I would submit that the early disposal repayment arises relatively infrequently. It is not something that occurs routinely. It therefore has a degree of exceptionality attached. Consequent to that, the reasons behind such early disposal should be considered in the whole. What is the prejudice to Revenue on an early disposal? I would submit that in this instance, none. In fact the opposite is so. The transition from a carbon fuel vehicle to an electric vehicle in this instance, means that no fuel grant will arise into the future. This represents an instant saving for Revenue and ultimately a loss to the user.

The "cost of living crisis" and inflation, is, I would respectfully submit, exceptional, was wholly unforeseeable and unusual in a 20-30 year economic cycle. The background to the current inflationary pressures arises from two main factors, Covid and the War in Ukraine. I do not think it is controversial to suggest that both events are exceptional. Taken with the climate crisis, I would submit this does and did amount to an exceptional event giving rise to a decision to dispose early. However, it appears this has not been considered.

One additional factor which has arisen but was not raised previously, is that my [REDACTED] has reduced [REDACTED] working capacity following [REDACTED]. [REDACTED] can no longer work full time and that has impacted our income which in turn has a further impact on overall resources thereby making the early disposal more necessary. However, it is accepted that this point is a new point.

Finally, the mode of calculation for the repayment is objectively inequitable. It is not calculated on the basis of use but pegged to market value. This is I would submit illogical. If a tax relief is bound by time, in this instance, 2 years, then the repayment calculation should also be time bound and not driven by supposed market conditions.

Open Market Selling Prices are different from prices that are actually achieved and there is a degree of artificiality to those figures. If someone holds onto a vehicle for 80% of the requisite 2 year period, the repayment sum should equate to 20% and not 80% of the amount. The tax relief is calculated on a 2 year period only. If for instance, someone disposed of a vehicle the week before the 2 year anniversary as opposed to a day after the 2 year anniversary , the outcome is disproportionately different and ought not to be so different. There is with respect an irrationality to the calculation of the early repayment sum as calculated.....”

The Appellant - Oral Submissions by the Appellant

14. It was submitted by the Appellant that the matter under appeal comes before the Commission on foot of the decision of the Respondent dated 4 December 2023, which was a reply to a detailed letter from the Appellant dated 25 September 2023. The Appellant further submitted that the Respondent does not in its decision engage in what would constitute "exceptionality". The Appellant further submitted that it was only during the appeal hearing that the Respondent stated that the war in Ukraine, the extraordinary inflationary pressure and Covid were not factors and do not amount to exceptionality.
15. The Appellant submitted that when considering whether exceptional circumstances arise, the Respondent should consider the very specific context of what would constitute an exceptional circumstance in each individual case and not in a general sense. The Appellant submitted that he made very coherent submissions to the Respondent under cover of his letter dated 25 September 2023 in relation to the very specific circumstances that applied to him and his family and how these circumstances were of an exceptional nature and that it was clear that he accordingly qualified for the exemption/waiver provided for under the Regulations.
16. The Appellant submitted that the Respondent failed to engage in any consideration as to the circumstances that applied to the Appellant and how they did constitute exceptional circumstances.

The Respondent - Written Submissions

17. An extract of the Respondent's submissions is set out below:

"2. Background Facts

2.4. By correspondence dated the 13th January 2023, the Appellant contacted the Respondent and advised as follows:

'We have a disabled [REDACTED] and received the disability passenger allowance. We had it on our current car but our circumstances have changed and we have traded this car (a Volvo) in against [a] different car, that will be adapted in a few weeks time. However we did not hold the Volvo for the required 3 years, only 18 months. I know there will be some kind of claw back but is there a form or something that I need to complete to start this process? Thanks.'

2.5. By reply dated the 16th January 2023, the Appellant was advised that there was a 2, as opposed to 3, year requirement. That same day the Appellant queried how the 'clawback' operated. The Appellant was advised as follows:

'If you wish to dispose of your vehicle before the 2-years, you will have to refund Revenue with a percentage of your VAT refund that you received.

Your VAT refund was €9,866.63 and it would be 80%, so the refund due back to Revenue is €7,893.30. [...]

2.6. By correspondence dated the 14th February 2023, the Appellant advised as follows:

'We recently had to change cars earlier than anticipated, i.e. we did not hold the qualified car for 2-years. The new car is registered or logged as registered as the new disabled passenger car. I have (I think) uploaded the vehicle order form, the original invoice showing the VAT element and VRT and the modification invoice. There should be a rebate or refund for the new car. Can I check if I have processed this correctly?'

2.7. By correspondence dated the 16th February 2023, the Appellant was advised that, per the previous correspondence, by reason of the early disposal the Appellant would have to refund €7,893.30 before another vehicle could be approved for the scheme.

2.8. By correspondence later that same day, the Appellant replied and explained the basis for disposing of the Volvo as follows:

'Appreciate the response. Is there some way to seek a waiver or reduction of the early disposal refund/rebate? We had to sell the car due to sheer cost. It has been replaced by a lower cost vehicle, which in turn will save Revenue money longer term as there will be no Fuel Rebate as it is fully electric.

We also held onto the car for 80% of the amount of the time but the early disposal amount is a large proportion of the initial amount.

Is there some way to appeal or seek to vary the amount sought? [sic] I understand the formula but it does seem unreasonable in the overall context.'
[Emphasis added]

2.9. Thereafter, the parties exchanged further communications. On the 24th April 2023, the Respondent advised that Appellant that, unfortunately, the Appellant's situation did not qualify as 'exceptional circumstances' and he was requested to early disposal amount of €7,893.30.

2.10. By reply dated the 4th May 2023, the Appellant queried why his situation was not considered 'exceptional'. The Appellant complained that he was required to refund a portion of the Volvo credit before claiming his [REDACTED] credit.

2.11. On the 23rd June, 3rd July, 18th July, 15th August, 11th September 2023 the parties exchanged further correspondence. Finally, in his letter of the 25th September 2023, the Appellant restated the economic costs of running the Volvo constituted the reason for its replacement with the [REDACTED]. The Appellant also submitted that a scheme of this nature was somewhat exceptional. The Appellant noted that the [REDACTED] would not attract a fuel grant and that this would constitute a saving to the Exchequer. The Appellant referenced the 'cost of living crisis' and inflation which, he submitted, were exceptional, as was the climate crisis. Finally the Appellant contended that the mode of calculation for the repayment was 'objectively inequitable' on the basis that it was 'not calculated on the basis of use but pegged to market value'. The Appellant concluded that '[i]n the circumstances, I would submit that either the whole amount is repayable or a percentage is repayable.'

3. The Relevant Legal Provision

3.1. The relevant portion of the Regulations provide for the repayment or remission of VAT and VRT on the purchase of an adapted vehicle for the transport of a person with specific and severe permanent physical disabilities. There is no dispute between the parties but that the Appellant is eligible to participate in the scheme save for the condition provided for in regulation 10(d).

3.2. Regulation 10(d) provides as follows:

"Where the Revenue Commissioners have accepted a claim for repayment of vehicle registration tax in respect of the transport of a disabled person as passenger under the Disabled Drivers (Tax Concessions) Regulations, 1989, they shall not accept a claim relating to any further vehicle in respect of the

transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted:

Provided that the Revenue Commissioners may waive this provision in exceptional circumstances subject to the refund of a portion of the repayment, calculated in accordance with the formula set out in Regulation 15 (1).”

[Emphasis added]

3.3. The Regulation does not define the term ‘exceptional circumstances’.

3.4. The formula set out in Regulation 15(1) provides as follows:

‘Where a beneficiary of a repayment or remission under Regulation 8 or 10 in respect of a vehicle (in this Regulation referred to as “the first-mentioned vehicle”)—

- (a) sells it or otherwise disposes of it within 2 years of the date of purchase or, in the case of a person referred to in Regulation 8 (3) or 10 (3), within 2 years of the date on which the Revenue Commissioners receive the application for repayment,
- (b) claims a repayment or remission under the same Regulation in respect of a subsequent vehicle purchased by that person within 2 years of purchasing the first-mentioned vehicle, or, in the case of a person referred to in Regulation 8 (3) or 10 (3), within 2 years of the date on which the Revenue Commissioners receive the application for repayment, or
- (c) ceases to use the first-mentioned vehicle as a disabled driver or for the transport of the disabled passenger concerned within 2 years of the date of purchase or, in the case of a person referred to in Regulation 8(3) or 10(3), within 2 years of the date on which the Revenue Commissioners receive the claim for repayment, such person shall refund to the Revenue Commissioners a portion of the amount which was either or both repaid and remitted on the first mentioned vehicle, calculated by the Revenue Commissioners according to the following formula:

$$A \times \frac{B}{(C+D)}$$

where:

A is the open market selling price of the first-mentioned vehicle on the date of its sale or disposal or on the date of purchase of the subsequent vehicle, whichever is applicable,

B is the total amount repaid or remitted in respect of the first-mentioned vehicle and any adaptations thereto,

C is the open market selling price of the first-mentioned vehicle at the time of its purchase by the beneficiary, and

D is the cost including value-added tax of any adaptations to the first-mentioned vehicle on which repayment was claimed by the beneficiary.'

4. Interpreting the Regulations

4.1. It is respectfully submitted that Regulation 10(d) and 15(1) are plain and unambiguous in their wording and meaning. Accordingly, it is submitted that no, or no significant, issue of statutory interpretation arises in the context of this tax appeal.

4.2. Strictly without prejudice to the generality of the foregoing, should the Appellant contend otherwise, it is submitted that the principles of statutory interpretation are well known to the Commission.

4.3. In particular, the Respondent will rely upon the jurisprudence of the Supreme Court per McKechnie J. in Dunnes Stores v The Revenue Commissioners [2019] IESC 50, paragraphs 62 to 72, the judgment of O'Donnell J. in Bookfinders Limited v The Revenue Commissioners [2020] IESC 60, and the Court of Appeal judgment of Murray J. in Used Cars Importers Ireland Ltd v Minister for Finance [2020] IECA 298 ('UCII').

4.4. The principles that emerged from that corpus of jurisprudence are helpfully summarised by McDonald J. in Perrigo Pharma International DAC v John McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General ([2020] IEHC 552) at paragraph 74 wherein it was stated that:

'The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The

Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766: "Now the exemption from tax, with which we are immediately concerned, is governed by the same

considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible'.

4.5. Furthermore, in the context of relieving taxation provisions, the Courts have always been reluctant to extend any relief beyond that intended by the Oireachtas. This principle was made clear by Kennedy, C.J. in *Revenue Commissioners -v- Doorley* [1933] IR 750 at 765 as follows:

"The duty of the Court ... is to reject a prior line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e., within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.

I have been discussing tax and legislation from the point of the imposition of tax. Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary cannons for the interpretation of statutes. This arises from the nature of the subject matter under consideration and is complimentary to what I have already said in its regard. The court is not by greater indulgence in delimiting the area of

exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, excepts for some good reason from the burden of tax thereby imposed generally on that description of subject matter. As the imposition of, so above the exemption from tax, must be brought within the letter of taxing Act as interpreted by the established canons of construction so far as applicable.” [Emphasis Added]

4.6. The dicta of Kennedy C.J. in *Doorley* was endorsed by O’Donnell J. in *Bookfinders*.

4.7. More recently, Murray J. considered the role of legislative intent in the interpretation of all statutes in *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43. In particular, at paragraph 115, Murray J. offered the following guidance to ascertaining what parliament sought to achieve by a given piece of legislation:

[...] the words of a statute are given primacy within this framework as they are the best guide to the result the Oireachtas wanted to bring about. The importance of this proposition and the reason for it, cannot be overstated. Those words are the sole identifiable and legally admissible outward expression of its members' objectives: the text of the legislation is the only source of information a court can be confident all members of parliament have access to and have in their minds when a statute is passed. In deciding what legal effect is to be given to those words their plain meaning is a good point of departure, as it is to be assumed that it reflects what the legislators themselves understood when they decided to approve it.

4.8. Murray J. also, for instance at paragraph 214 of his judgment, clarified that:

‘[...] the onus is on those contending that a statutory provision does not have the effect suggested by the plain meaning of the words chosen by the legislature to establish this.’

4.9. The approach of Murray J. was summarised by the Court of Appeal in *Hanrahan v The Revenue Commissioners* [2024] IECA 113, at paragraph 79, in the following terms:

‘Murray J. was very alive to the dangers of pushing the analysis of the context of the provision too far from the moorings of the language of the legislative section; the line between the permissible admission of “context” and

identification of “purpose” may become blurred if too broad an approach to the interpretation of legislation is taken.’

4.10. In *Statutory Interpretation in Ireland*, paragraph 13.02, it is stated that:

‘Subject to some exceptions and additional rules, the same general principles of interpretation that apply to primary legislation apply to secondary legislation. In general, courts approach the interpretation of secondary legislation in much the same way as they would approach the interpretation of an Act.’

5. Burden of Proof & Jurisdiction

5.1. In *Menolly Homes Ltd v Appeal Commissioners & Revenue Commissioners* [2010] IEHC 49, Charleton J. summarised the position as follow:

‘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.’

5.2. According to the Justis search engine, the dicta of Charleton J. has been cited over 500 times.

5.3. In terms of the jurisdiction of the Commission, at paragraph 12 of *Menolly*, Charleton J. also observed that ‘Revenue law has no equity.’

5.4. Similarly, more recently, in *Kenny Lee v The Revenue Commissioners* [2021] IECA 18, paragraph 20, Murray J. observed that:

‘The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation.’

5.5. Accordingly, it is submitted that the Appellant bears the onus of proof in this appeal and that jurisdiction of the Commission is rooted in the Regulations does not encompass to any equitable jurisdiction.

6. Analysis

- 6.1. *It is important to recall that the Appellant has benefitted from Regulation 10 in that he received a refund of €9,866.63 in respect of the Volvo in 2021 and a further €3,695.91 in respect of his [REDACTED] in 2023. However, it is submitted that the refunds enjoyed by the Appellant pursuant to Regulation 10 are strictly subject to the condition imposed by 10(d).*
- 6.2. *In that regard, it is further submitted that the wording of regulations 10(d) and 15(1) are plain and unambiguous.*
- 6.3. *Insofar as regulation 10(d) provides that '[w]here the Revenue Commissioners have accepted a claim [...] they shall not accept a claim relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted' the use of the term 'shall' is mandatory and not discretionary in nature.*
- 6.4. *The regulation requires 'exceptional circumstances' in order to waive the 2-year time period. The Appellant originally advised the Respondent that '[w]e had to sell the car due to sheer cost' which, although understandable, does not constitute an exceptional circumstance.*
- 6.5. *The Appellant subsequently provided the following additional reasons:*
 - 6.5.1. *Trading in the Volvo XC90 for the [REDACTED] has reduced his fuel consumption;*
 - 6.5.2. *Having a disability is in and of itself exceptional;*
 - 6.5.3. *Mechanical work (replacing an 'ERAD' motor) was performed on the Volvo and he lost faith in that vehicle;*
 - 6.5.4. *The war in Ukraine;*
 - 6.5.5. *The cost of living;*
 - 6.5.6. *Covid-19.*
- 6.6. *It is respectfully submitted that the Appellant owned the Volvo for approximately 18-months and it cannot be plausibly said that the level inflation experienced during that time, whether by reason of the war in Ukraine or the aftermath of Covid-19 or any other reason, was such as to constitute an exceptional circumstance. Similarly, having to perform a repair on a '181' vehicle is not exceptional.*

6.7. *Rather, the decision of the Appellant to trade in a Volvo XC90 for a [REDACTED] to reduce the 'sheer costs' associated therewith may be prudent and entirely understandable, but it is not 'exceptional'. It bears repeating that the Respondent and the Commission have not been conferred with a legal authority to disapply the regulation and must operate within the parameters of the wording of the legislation. Therefore, it is submitted that the operation of Regulation 10(d) cannot be waived.*

6.8. *Insofar as the Appellant objects to the calculation of the amount to be refunded, regulation 10(d) provides that it must be 'calculated in accordance with the formula set out in Regulation 15 (1)'. By way of reminder, that formula is as follows:*

$$A \times \frac{B}{(C+D)}$$

where:

A is the open market selling price of the first-mentioned vehicle on the date of its sale or disposal or on the date of purchase of the subsequent vehicle, whichever is applicable,

B is the total amount repaid or remitted in respect of the first-mentioned vehicle and any adaptations thereto,

C is the open market selling price of the first-mentioned vehicle at the time of its purchase by the beneficiary, and

D is the cost including value-added tax of any adaptations to the first-mentioned vehicle on which repayment was claimed by the beneficiary.

6.9. *Applying the formula:*

A = €51,666 (i.e. the open marked selling price at the time of the disposal)

B = €9,866.63

C = €50,954

D = €500

Accordingly:

€51,666 x €9,866.63

(€50,954 + 500) = €9,907.28

6.10. Operationally, the Respondent calculated the early disposal repayment as 80% of the relief received by the Appellant in respect of the Volvo (€9,866.63): $80\% \times €9,866.63 = €7,893.30$.

6.11. As a consequence, the Appellant has benefited from a reduction of €1,973.33 versus the formula in Regulation 15(1) – i.e. the refund actually received by the Appellant $€9,866.63 - €7,893.30 = €1,973.33$. For completeness, the Appellant has complained that the open marked selling price of the vehicle is greater than the actual selling price received for the Volvo, however, it is noteworthy that when the actual sales price is used as A above (€47,500) then a refund of €9,108.42 is due by the Appellant, which is still significantly greater than the liability the subject matter of this appeal.

7. Conclusion

7.1. The Appellant has received €9,866.63 in respect of his Volvo and €3,695.91 in respect of his [REDACTED] in accordance with Regulation 10. Regulation 10(d) provides that the Respondent ‘shall not accept a claim relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted’. In order for the requirements of Regulation 10(d) to be waived, there must be ‘exceptional circumstances’. It is respectfully submitted that such circumstances did not exist.

7.2. Therefore, the Respondent was required to calculate the refund by reference to Regulation 15(1), however, the Appellant has, in fact, enjoyed the benefit of a reduction in that figure by €1,973.33.

.....”

The Respondent - Oral Submissions on behalf of the Respondent

18. Counsel for the Respondent submitted *inter alia* that the disposal of the Appellant’s Volvo Motor Vehicle was not done in exceptional circumstances and that was the entire of the Appellant’s appeal.

Material Facts

19. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:

19.1. on or about 24 August 2021 the Appellant purchased the Appellant’s Volvo Motor Vehicle;

- 19.2. on or about 22 June 2021 the Appellant received a repayment from the Respondent in the amount of €9,866.63 in respect of VAT and VRT paid by the Appellant when he bought the Appellant's Volvo Motor Vehicle;
- 19.3. on or about 13 January 2023, the Appellant disposed of the Appellant's Volvo Motor Vehicle and he received €47,500 by way of trade in value against the Appellant's [REDACTED] Motor Vehicle which the Appellant bought that same date for €53,500. At the date of disposal, the OMSP of the Appellant's Volvo Motor Vehicle was €51,666;
- 19.4. on or about 9 February 2023 the Appellant claimed and subsequently received a repayment of €3,695.91 in respect of VAT and VRT regarding the Appellant's [REDACTED] Motor Vehicle;
- 19.5. the Respondent made a demand that the Appellant repay the amount of €7,893.30 to the Respondent in respect of the Appellant's claim regarding the Appellant's Volvo Motor Vehicle.

Analysis

20. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997. In this regard, the jurisdiction of a Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 ("*Lee*") wherein Murray J. stated at paragraph 20:

"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation".

21. The Commissioner refers further to *Lee*, wherein Murray, J. stated at paragraph 76:

"The jurisdiction of the Appeal Commissioners is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes

and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.”

22. The Commissioner also refers to the judgment of *Fahy v the Revenue Commissioners* [2023] IEHC 710; wherein Quinn, J. stated at paragraph 47:

“ Applying the rationale of the jurisprudence summarise and analysed in Lee, the function of the TAC is limited to what is provided in the legislation and factual and legal questions arising therefrom. There is no inherent jurisdiction to consider broader questions ...”

23. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, (“*Menolly*”) wherein 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 Commissioner also refers to paragraph 12 of the case of *Menolly*, wherein Charleton, J, stated:

"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."

25. The Commissioner refers to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, [“Doorley”], in which Kennedy CJ stated:

“.....As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”

26. Further the Commissioner refers to *Doorley* at page 765 in which Kennedy CJ stated:

“The duty of the Court, as it appears to me, is to reject any a priori line of reasoning and to examine the text of the taxing act in question and determine whether the tax in question is thereby imposed expressly and in clear and unambiguous terms on the alleged subject of taxation”.

27. Further the Commissioner refers to *Doorley* in which Kennedy CJ stated:

“For no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to acts of parliament so far as they can be applied without violated the proper character of taxing acts to which I have referred.”

28. All material submitted to the Commission has been assessed by the Commissioner before making this determination.

29. The Commissioner’s role in this appeal is to determine if the Appellant has shown that the Respondent was not entitled to raise the demand for repayment of €7,893.30 in respect of VAT and VRT regarding the Appellant’s Volvo Motor Vehicle.

30. This appeal centres on the interpretation of regulations 10(4)(a-d) of the Regulations, which provides:

“(4) (a) Where a person receives a repayment or remission under paragraph (1) or (2) of this Regulation that person shall undertake—

(i) to use the vehicle in question for the transportation of the disabled passenger in question, for a period of 2 years from the date of purchase, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and

(ii) to abide by the provisions of Regulation 15.

(b) Where a person receives a repayment or remission under paragraph (3) that person shall undertake—

(i) to use the vehicle in question for the transportation of the disabled passenger in question, for a period of 2 years from the date on which the Revenue Commissioners receive the application for repayment, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and

(ii) to abide by the provisions of Regulation 15.

(c) Where the Revenue Commissioners accept a claim under this Regulation in respect of the transport of a disabled passenger, they shall not accept a claim (other than in the circumstances to which Regulation 15 applies) relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted where such claim was made under the provisions of paragraph (1) or (2), and a period of 2 years from the date of receipt of the application by the Revenue Commissioners, where such application was made under the provisions of paragraph (3).

(d) Where the Revenue Commissioners have accepted a claim for repayment of vehicle registration tax in respect of the transport of a disabled person as passenger under the Disabled Drivers (Tax Concessions) Regulations, 1989, they shall not accept a claim relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted:

Provided that the Revenue Commissioners may waive this provision in exceptional circumstances subject to the refund of a portion of the repayment, calculated in accordance with the formula set out in Regulation 15 (1)."
[Emphasis added]

And regulation 15(1) and 15(6) of the Regulations, which provides:

"Refunds to the Revenue Commissioners

15. (1) Where a beneficiary of a repayment or remission under Regulation 8 or 10 in respect of a vehicle (in this Regulation referred to as "the first-mentioned vehicle")—

(a) sells it or otherwise disposes of it within 2 years of the date of purchase or, in the case of a person referred to in Regulation 8 (3) or 10 (3), within 2 years of the date on which the Revenue Commissioners receive the application for repayment, or

(b) claims a repayment or remission under the same Regulation in respect of a subsequent vehicle purchased by that person within 2 years of purchasing the first-mentioned vehicle, or, in the case of a person referred to in Regulation 8 (3) or 10 (3), within 2 years of the date on which the Revenue Commissioners receive the application for repayment,

such person shall refund to the Revenue Commissioners a portion of the amount which was either or both repaid and remitted on the first-mentioned vehicle, calculated by the Revenue Commissioners according to the following formula: [Emphasis added]

$$A \times \frac{B}{(C+D)}$$

where:

A is the open market selling price of the first-mentioned vehicle on the date of its sale or disposal or on the date of purchase of the subsequent vehicle, whichever is applicable,

B is the total amount repaid or remitted in respect of the first-mentioned vehicle and any adaptations thereto,

C is the open market selling price of the first-mentioned vehicle at the time of its purchase by the beneficiary, and

D is the cost including value-added tax of any adaptations to the first-mentioned vehicle on which repayment was claimed by the beneficiary.

.....

(6) In exceptional cases, and subject to such conditions as they consider necessary in each such case, the Revenue Commissioners may reduce the amount of the refund required under this Regulation" [Emphasis added]

31. The relevant principles regarding statutory interpretation have been examined in the judgment of McKechnie J. in the Supreme Court in *Dunnes Stores v The Revenue Commissioners* [2019] IESC 50 ("*Dunnes Stores*") and the judgment of O'Donnell, J. in

the Supreme Court in *Bookfinders v The Revenue Commissioners* [2020] IESC 60, and which were summarised by McDonald J. in the High Court in *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (“Perrigo”) at paragraph 74:

“(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail”;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. in Dunnes Stores (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning;

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected;

*(g) Although the issue did not arise in Dunnes Stores, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in *Revenue Commissioners v. Doorley* [1933] I.R. 750 (“Doorley”) where Kennedy C.J. said at p. 766: “Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes.*

This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible."

32. The Commissioner refers to the term "exceptional" and notes that the Regulations do not provide a definition for "exceptional". It is noted that the Appellant submits that in the absence of a statutory definition of "exceptional" that the Respondent should and can accept the circumstances as claimed by the Appellant in the Notice of Appeal: the Appellant had to trade in the Appellant's Volvo Motor Vehicle for the Appellant's [REDACTED] Motor Vehicle in order to avail of reduced fuel consumption; having a disability is in and of itself an exceptional circumstance; mechanical work was required to be done to the Appellant's Volvo Motor Vehicle and as a consequence the Appellant lost faith in that vehicle; the war in Ukraine; the cost of living and Covid-19 as satisfying the meaning of "exceptional" circumstances. It is further noted that the Appellant submits that whilst some of the issues claimed by him (as set out above) may not be considered exceptional to the body public at large, they were and are exceptional as they apply to the Appellant and his family and their personal circumstances.
33. The Commissioner has assessed the guidance given by McDonald, J. in *Perrigo* as set out above; "(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail". The Commissioner refers to regulation 10(4)(d) of the Regulations:

"(d) Where the Revenue Commissioners have accepted a claim for repayment of vehicle registration tax in respect of the transport of a disabled person as passenger under the Disabled Drivers (Tax Concessions) Regulations, 1989, they shall not accept a claim relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted:

Provided that the Revenue Commissioners may waive this provision in exceptional circumstances subject to the refund of a portion of the repayment, calculated in accordance with the formula set out in Regulation 15 (1)."

34. The Commissioner refers to the definition of “*exceptional*” in the Oxford English Dictionary as: “[O]f the nature of or forming an exception; out of the ordinary course, unusual, special”; “[R]are”; “[A]n exceptional person or thing; someone who or something which stands apart from the perceived norm; (with the) that which is exceptional.”. The Commissioner in adopting the guidance from McDonald, J. in *Perrigo* (as set out above) finds that meaning of the word “*exceptional*” in regulation 10(4)(d) of the Regulations is plain and its meaning is self-evident. The Commissioner finds that the word “*exceptional*” means some event, act and or thing that was an exception; out of the ordinary course, unusual, special, rare and/or something which stands apart from the perceived norm.
35. The Commissioner has applied the foregoing interpretation to the grounds submitted by the Appellant as to why he claims he does satisfy the criteria of “*exceptional circumstances*”; the Appellant had to trade in the Appellant’s Volvo Motor Vehicle for the Appellant’s [REDACTED] Motor Vehicle in order to avail of reduced fuel consumption; having a disability is in and of itself an exceptional circumstance; mechanical work was required to be done to the Appellant’s Volvo Motor Vehicle and as a consequence the Appellant lost faith in that vehicle; the war in Ukraine; the cost of living and Covid-19.
36. The Commissioner in assessment of the Appellant's claims makes the following findings:
- 36.1. that the Appellant had to trade in the Appellant’s Volvo Motor Vehicle for the Appellant’s [REDACTED] Motor Vehicle in order to avail of reduced fuel consumption. The Commissioner finds that this is not an exceptional circumstance as very large numbers of people worldwide change their motor vehicles for many reasons including fuel consumption efficiencies;
- 36.2. that mechanical work was required to be done to the Appellant’s Volvo Motor Vehicle and as a consequence the Appellant lost faith in that vehicle. The Commissioner finds that this is not an exceptional circumstance as very large numbers of people worldwide change their motor vehicles for many reasons including issues arising with reliability and costs;
- 36.3. the war in Ukraine. The Commissioner finds that this is not is not an exceptional circumstance but is rather an international war that has affected hundreds of millions of people worldwide;
- 36.4. the cost of living. The Commissioner finds that this is not an exceptional circumstance but is an economic factor that has affected millions of people domestically and internationally;

- 36.5. Covid-19. The Commissioner finds that this is not an exceptional circumstance but is an international health and social crisis that has affected millions of people worldwide.
37. The Commissioner in assessment of the Appellant's other claim having a disability is in and of itself an exceptional circumstance, makes the following findings. The Commissioner in assessment of this claim refers again to the definition of "exceptional" in the Oxford English Dictionary cited earlier "[O]f the nature of or forming an exception; out of the ordinary course, unusual, special"; "[R]are"; "[A]n exceptional person or thing; someone who or something which stands apart from the perceived norm; (with the) that which is exceptional.".
38. The Commissioner finds that the word "exceptional" must be assessed in the context of the legislation the subject of the within appeal; the Regulations. The Commissioner notes that the Regulations provide for, *inter alia*, a scheme whereby a person who is responsible for the transportation of a severely and permanently disabled family member may claim a repayment of VAT and VRT in respect of a motor vehicle or in respect of the adaptation of a motor vehicle, subject to conditions. The Commissioner finds that the purpose and effect of the Regulations is to allow persons to apply for a rebate of VAT and VRT regarding a motor vehicle purchase/adaptation based on their qualification under the Regulations as being a party responsible for the transportation of a severely and permanently disabled family member and subject to compliance with statutory conditions. The Commissioner refers again to the guidance from McDonald, J. in *Perrigo* where he stated "(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. in *Dunnes Stores* (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that".
39. In assessment thereof, the Commissioner finds that as the Regulations are intended to give relief and support to persons who qualify for the rebate of VAT and VRT based on them being a party responsible for the transportation of a severely and permanently disabled family member then it cannot be that the disability in and of itself is an "exceptional circumstance" which could allow the party to claim that the statutory condition to retain the ownership and use of the relevant motor vehicle for the statutory period of 2 years would be circumvented. Therefore, the Commissioner finds that the Appellant's personal circumstances did not satisfy the requirement under the Regulations of being "exceptional circumstances". The Commissioner finds that accordingly the Respondent was entitled to raise the demand against the Appellant.

40. The Commissioner having found that the Respondent was entitled to raise the demand against the Appellant has assessed the Appellant's claim that the method of assessment used by the Respondent is not proportional and that the rebate is based on OMSP which does not take into account the actual vehicle in question. The Commissioner finds that as set out in *Lee* the Commissioner has no jurisdiction to amend and/or ignore legislation and the Commissioner is bound to apply the legislation as it is provided. Accordingly, the Commissioner finds that she cannot make any review regarding the mechanics of the rebate provisions.
41. For the reasons set out above the Commissioner is satisfied that the Appellant has not met the burden of proof in establishing that the Respondent was not entitled to raise the demand. The Commissioner finds having assessed all before the Commission that the Appellant's appeal is unsuccessful.

Determination

42. The Commissioner determines that the Respondent was entitled to raise the Notices of Assessment and further to the provisions of section 949AL (1)(b) of the TCA 1997 that the amount demanded by the Respondent shall stand.
43. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

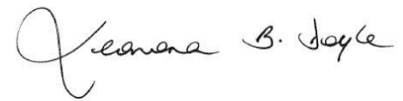
Notification

44. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

45. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The

Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

A handwritten signature in black ink, reading "Leonora B. Doyle". The signature is written in a cursive style with a large, looping initial 'L'.

Leonora B. Doyle
Appeal Commissioner
15 April 2025

Appendix

S.I. No. 353 of 1994 - Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994

1. These Regulations may be cited as the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994, and shall come into operation on the 1st day of December, 1994.

2. (1) In these Regulations—

"adapted", in relation to a vehicle, does not include adaptations of production line models which are available from the manufacturer or assembler thereof as an optional extra, and "adaptation" shall be construed accordingly;

"authorised person" means a person authorised under section 136 of the Finance Act, 1992 (No. 9 of 1992);

"Board medical certificate" means a certificate duly completed in the form prescribed in the Second Schedule and issued by the Disabled Drivers Medical Board of Appeal or a certificate duly completed in the form prescribed in the Second Schedule to the Disabled Drivers (Tax Concessions) Regulations, 1989 (S.I. No. 340 of 1989), and so issued under those Regulations;

"conversion" has the meaning assigned to it in section 130 of the Finance Act, 1992 ;

"disabled driver" means a severely and permanently disabled person who possesses a certificate of the kind referred to in paragraph (a) or (b) of Regulation 4 and whose disablement is of such a nature that the person concerned could not drive a vehicle unless it is specially constructed or adapted to take account of that disablement;

"disabled passenger" means a severely and permanently disabled person who possesses a certificate of the kind referred to in paragraph (a) or (b) of Regulation 4 and for whom a vehicle has been specially constructed or adapted to the extent prescribed in Regulation 10 (1) (a), to take account of that passenger's disablement;

"disabled person" means a person who is severely and permanently disabled, fulfilling one or more of the medical criteria set out in Regulation 3;

"licensing authority" has the meaning assigned to it in section 130 of the Finance Act, 1992 ;

"purchased" does not include any form of lease arrangement;

"qualifying organisation" means a philanthropic organisation which is not funded primarily by—

(a) the State,

(b) any board established by statute, or

(c) any public or local authority,

which organisation is chiefly engaged, in a voluntary capacity on a non-commercial basis, in the care and transport of severely and permanently disabled persons and which is recognised as such, for the purposes of these Regulations, by the Revenue Commissioner;

"registered" has the meaning assigned to it in section 130 of the Finance Act, 1992 ;

"residual value-added tax" means an amount determined by the Revenue Commissioners as being equivalent to the amount of value-added tax which would be included in the open market selling price of a vehicle if it were sold by an authorised person at the time specified in these Regulations;

"residual vehicle registration tax" means an amount determined by the Revenue Commissioners as being equivalent to the amount of vehicle registration tax which would be chargeable if that vehicle were liable for such tax at the time specified in these Regulations;

"vehicle" has the meaning assigned to it in section 130 of the Finance Act, 1992

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- (2) In these Regulations a reference to a Regulation or Schedule is to a Regulation of, or Schedule to, these Regulations and a reference to a paragraph or subparagraph is to a paragraph or subparagraph of the provision in which the reference occurs.*

Medical criteria

3. For the purposes of section 92 (2) (a) of the Finance Act, 1989 , the eligibility on medical grounds of disabled persons who are severely and permanently disabled shall be assessed by reference to any one or more of the following medical criteria:

- (a) persons who are wholly or almost wholly without the use of both legs;*
- (b) persons wholly without the use of one of their legs and almost wholly without the use of the other leg such that they are severely restricted as to movement of their lower limbs;*
- (c) persons without both hands or without both arms;*
- (d) persons without one or both legs;*
- (e) persons wholly or almost wholly without the use of both hands or arms and wholly or almost wholly without the use of one leg;*
- (f) persons having the medical condition of dwarfism and who have serious difficulties of movement of the lower limbs.*

4. Without prejudice to Regulation 5, a claim for repayment or remission under these Regulations shall be allowed only where the person who makes the claim, or in connection with whom the claim is made, is in possession of either—

- (a) a primary medical certificate duly completed in the form prescribed in the First Schedule as evidence of qualifying disablement, signed, dated and endorsed with the official stamp by the appropriate Director of Community Care and Medical Officer of Health, or*
- (b) a Board medical certificate duly completed in the form prescribed in the Second Schedule as evidence of qualifying disablement, signed and dated by a member of the Disabled Drivers Medical Board of Appeal:*

Provided that compliance with this Regulation may be waived by the Revenue Commissioners in the case of a claim made by a qualifying organisation.

5. Any person who is deemed, by virtue of section 92 (3) (b) of the Finance Act, 1989, to be a person who possesses a primary medical certificate shall be deemed to have satisfied the Revenue Commissioners and the licensing authority concerned that that person is a disabled driver or a disabled passenger as the case may be.

Medical Board of Appeal

6. (1) *Subject to Regulation 19 (3), on the nomination of the Minister for Health the Minister for Finance shall appoint, for a period in each case of 4 years, three medical practitioners to the Disabled Drivers Medical Board of Appeal (in these Regulations referred to as "the Board") and any such practitioner may be reappointed by the Minister for Finance on the nomination of the Minister for Health for a further such period or periods.*
- (2) *Every vacancy on the Board shall be filled by the appointment by the Minister for Finance of a medical practitioner, nominated for that purpose by the Minister for Health, for the remainder of the period to which the former member's appointment to the Board had related.*
- (3) *Whenever the Minister for Health so requests, the Minister for Finance shall remove any named person from the Board.*
- (4) *A person who is dissatisfied by a decision of a Director of Community Care and Medical Officer of Health in respect of primary medical certification may appeal to the Board within 28 days, or such longer period as it may allow, of the person first being informed of that decision.*
- (5) *Where the Board adjudicates in favour of the disabled driver or disabled passenger concerned, as the case may be, it shall issue a Board medical certificate.*
7. *Where a licensing authority or the Revenue Commissioners have reason to believe that the person named on a primary medical certificate or a Board medical certificate or who was deemed to have satisfied the said authority or Commissioners under the terms of Regulation 5, does not fulfil any one of the criteria set out in Regulation 3, they shall refer such person to the Board who shall cancel the primary medical certificate or Board medical certificate in question, if they consider it appropriate to do so.*

Reliefs for disabled drivers

8. (1) *Where a person satisfies the Revenue Commissioners that that person is a disabled driver and has borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which—*

(a) is specially constructed or adapted to take account of that person's disablement,

(b) is purchased by that person,

(c) is registered in the name of that person, and

(d) is fitted with an engine whose capacity is not greater than 2,000 cubic centimetres,

that person shall be entitled to be repaid the said amounts of tax and residual vehicle registration tax, subject to the limit specified in Regulation 9 for the purposes of this Regulation:

Provided that the Revenue Commissioners shall repay residual vehicle registration tax only where the person concerned has purchased the vehicle in question from an authorised person.

(2) Where at the time of registration of a vehicle in the name of a person who satisfies the Revenue Commissioners that that person is a disabled driver and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (d) of paragraph (1), the Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 9 for the purposes of this Regulation.

(3) Where, after these Regulations come into force, a person becomes a severely and permanently disabled person who fulfils one of the medical criteria set out in Regulation 3 after that person has purchased a vehicle which complies with the provisions set out at subparagraphs (c) and (d) of paragraph (1), and the vehicle is specially adapted to take account of that person's disablement, that person shall be entitled to be repaid—

(a) the amount of residual value-added tax and residual vehicle registration tax appropriate to the vehicle at the time such person lodges a claim with the Revenue Commissioners, and

(b) the value-added tax charged in respect of the adaptation of that vehicle, subject to the limit specified in Regulation 9 for the purposes of this Regulation.

(4) Where a person receives a repayment or remission under paragraph (1) or (2), that person shall undertake—

(a) to use the vehicle in question for a period of 2 years from the date of purchase, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and

(b) to abide by the provisions of Regulation 15.

(5) Where a person receives a repayment or remission under paragraph (3), that person shall undertake—

(a) to use the vehicle in question for a period of 2 years from the date on which the Revenue Commissioners receive the application for the repayment, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and

(b) to abide by the provisions of Regulation 15.

9. The total amount to be repaid and remitted under Regulation 8 or under paragraph (3) and, in so far as it relates to that paragraph, paragraph (4) of Regulation 12 shall not exceed £7,500 in respect of any vehicle.

Reliefs for disabled passengers

10. (1) Where a person satisfies the Revenue Commissioners that that person is a severely and permanently disabled passenger or a family member of such a disabled passenger residing with and responsible for the transportation of that disabled passenger and such person has borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which—

(a) has been specially constructed or adapted for use by that disabled passenger, and where the vehicle is so adapted, the cost of such adaptation excluding value-added tax consists of not less than the amount specified for the purpose in section 92 (1) of the Finance Act, 1989 :

Provided that in calculating the cost of adaptation of such vehicle, if the Revenue Commissioners so approve, there shall be included—

(i) the cost of conversion of that vehicle, excluding the additional vehicle registration tax incurred in such conversion, and

(ii) the purchase cost excluding value-added tax of any adaptations previously fitted to another vehicle adapted for use by that disabled passenger, and refitted to the vehicle in question,

(b) has been purchased by the disabled passenger or by the said family member of that disabled passenger for the purpose of transporting that person, and

(c) is fitted with an engine whose capacity is not greater than 4,000 cubic centimetres,

the person who has borne or paid the said amounts of tax and residual vehicle registration tax shall be entitled to be repaid same, subject to the limit specified in Regulation II for the purposes of this Regulation:

Provided that the Revenue Commissioners shall repay residual vehicle registration tax only where the said person has purchased the vehicle in question from an authorised person.

(2) Where at the time of registration of a vehicle by a severely and permanently disabled passenger or by a family member of a severely and permanently disabled passenger residing with and responsible for the transportation of that disabled person and the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (c) of paragraph (1), the Revenue Commissioners shall remit the vehicle registration tax payable, subject to the limit specified in Regulation 11 for the purposes of this Regulation.

(3) Where, after these Regulations come into force, a person becomes a severely and permanently disabled person who fulfils one of the medical criteria set out in Regulation 3 after that person or a family member of that person residing with and responsible for the transportation of that person has purchased a vehicle which complies with the provision set out at paragraph (1) (c) and the vehicle is adapted to the extent outlined in paragraph (1) (a) for the disabled person's use as a passenger, the person who has purchased the vehicle shall be entitled to be repaid—

(a) the amount of residual value-added tax and residual vehicle registration tax appropriate to the vehicle at the time such person lodges a claim with the Revenue Commissioners, and

(b) the value-added tax charged in respect of the adaptation of that vehicle,

subject to the limit specified in Regulation 11 for the purposes of this Regulation.

- (4) (a) Where a person receives a repayment or remission under paragraph (1) or (2) of this Regulation that person shall undertake—*

(i) to use the vehicle in question for the transportation of the disabled passenger in question, for a period of 2 years from the date of purchase, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and

(ii) to abide by the provisions of Regulation 15.

- (b) Where a person receives a repayment or remission under paragraph (3) that person shall undertake—*

(i) to use the vehicle in question for the transportation of the disabled passenger in question, for a period of 2 years from the date on which the Revenue Commissioners receive the application for repayment, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that person, and

(ii) to abide by the provisions of Regulation 15.

(c) Where the Revenue Commissioners accept a claim under this Regulation in respect of the transport of a disabled passenger, they shall not accept a claim (other than in the circumstances to which Regulation 15 applies) relating to any further vehicle in respect of the transport of the same passenger for a period of 2 years from the date of purchase of the vehicle for which the claim was accepted where such claim was made under the provisions of paragraph (1) or (2), and a period of 2 years from the date of receipt of the application by the Revenue Commissioners, where such application was made under the provisions of paragraph (3).

(d) Where the Revenue Commissioners have accepted a claim for repayment of vehicle registration tax in respect of the transport of a disabled person as passenger under the Disabled Drivers (Tax Concessions) Regulations, 1989, they shall not accept a claim relating to any further vehicle in respect of the transport of the same passenger for a

period of 2 years from the date of purchase of the vehicle for which the claim was accepted:

Provided that the Revenue Commissioners may waive this provision in exceptional circumstances subject to the refund of a portion of the repayment, calculated in accordance with the formula set out in Regulation 15 (1).

(5) (a) *In exceptional circumstances, the Revenue Commissioners may waive the condition concerning residency of a claimant under Regulation 10.*

(b) *The Revenue Commissioners shall waive the conditions concerning both family membership and residency of a claimant under Regulation 10 in the case of a claim lodged by a person appointed by the President of the High Court to act on behalf of a disabled passenger who is a Ward of Court.*

11. *The total amount to be repaid and remitted under Regulation 10 shall not exceed £12,500 in respect of any vehicle.*

Reliefs for qualifying organisations

12. (1) *Where a qualifying organisation satisfies the Revenue Commissioners that it has borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which, subject to paragraph (2)—*

(a) is specially constructed or adapted for the transport of disabled persons, and where the vehicle is so adapted the cost of such adaptation, excluding value-added tax, consists of not less than the amount specified for the purpose in sub section 92 (1) of the Finance Act, 1989 :

Provided that in calculating the cost of adaptation of such vehicle, if the Revenue Commissioners so approve, there shall be included—

(i) the cost of conversion of that vehicle, excluding the additional vehicle registration tax incurred in such conversion, and

(ii) the purchase cost excluding value-added tax of any adaptations previously fitted to another vehicle adapted for use by that qualifying organisation, and refitted to the vehicle in question,

(b) is purchased by that organisation,

(c) is registered in the name of that organisation, and

(d) is fitted with an engine whose capacity is not greater than 4,000 cubic centimetres,

that organisation shall be entitled to be repaid the said amounts of tax and residual vehicle registration tax, subject to the limit specified in Regulation 13 for the purposes of this paragraph:

Provided that the Revenue Commissioners shall repay residual vehicle registration tax only where the said organisation has purchased the vehicle in question from an authorised person.

(2) Where the vehicle referred to in paragraph (1) has been specially constructed or adapted for the transport of 5 or more disabled persons, the provisions of subparagraph (1) (d) and of Regulation 13 shall not apply where the seating capacity in the vehicle for passengers who are not disabled persons is not greater than twice the seating capacity for disabled passengers.

(3) Where a qualifying organisation satisfies the Revenue Commissioners that it has borne or paid value-added tax, vehicle registration tax or residual vehicle registration tax in respect of a vehicle or in respect of the adaptation of a vehicle which—

(a) is specially constructed or adapted to take account of the disablement of a disabled person as driver,

(b) is purchased by that organisation,

(c) is registered in the name of that organisation, and

(d) is fitted with an engine whose capacity is not greater than 2,000 cubic centimetres,

that organisation shall be entitled to be repaid the said amounts of tax and residual vehicle registration tax, subject to the limit specified in Regulation 9 for the purposes of this paragraph:

Provided that the Revenue Commissioners shall repay residual vehicle registration tax only where the said organisation has purchased the vehicle in question from an authorised person.

(4) Where, at the time of registration of a vehicle by a qualifying organisation, the Revenue Commissioners are satisfied that the vehicle in question complies with the provisions set out at subparagraphs (a), (b) and (d) of paragraph (1)

or set out at subparagraphs (a), (b) and (d) of paragraph (3), as appropriate, they shall remit the vehicle registration tax payable.

(5) The Revenue Commissioners shall give a repayment or remission under this Regulation only where they are satisfied that the vehicle in question is a reasonable requirement of the organisation making the claim, having regard, *inter alia*, to the number of disabled persons being transported by that organisation, and the number and capacity of vehicles already owned by that organisation.

(6) Where an organisation receives a repayment or remission under paragraph (1) or (3) that organisation shall undertake—

(a) to use the vehicle in question for a period of 2 years from the date of purchase, and to inform the Revenue Commissioners immediately if any circumstances arise during that period where the vehicle is sold or otherwise disposed of by that organisation, and

(b) to abide by the provisions of Regulation 15.

(7) The Revenue Commissioners shall consult the National Rehabilitation Board in respect of each organisation which applies to them under these Regulations.

(8) Where the Revenue Commissioners have reasonable cause to believe that a qualifying organisation should no longer be entitled to the benefit of these Regulations, they shall consult the National Rehabilitation Board and may withdraw the concessions from such organisation.

13. The total amount to be repaid and remitted under paragraph (1) and, in so far as it relates to that paragraph, paragraph (4) of Regulation 12 shall not exceed £12,500 in respect of any vehicle.

Passenger vehicles qualifying more than once

14. Where a repayment or remission has been granted under Regulation 10 or 12 in respect of a vehicle which is subsequently purchased for the transport of a different disabled passenger or by a different qualifying organisation, and the adaptations remain in the vehicle at the time of such subsequent purchase, the requirements set out at Regulation 10 (1) (a) or 12 (1) (a), as the case may be, shall be deemed to be fulfilled.

Refunds to the Revenue Commissioners

15. (1) *Where a beneficiary of a repayment or remission under Regulation 8 or 10 in respect of a vehicle (in this Regulation referred to as "the first-mentioned vehicle")—*

(a) sells it or otherwise disposes of it within 2 years of the date of purchase or, in the case of a person referred to in Regulation 8 (3) or 10 (3), within 2 years of the date on which the Revenue Commissioners receive the application for repayment, or

(b) claims a repayment or remission under the same Regulation in respect of a subsequent vehicle purchased by that person within 2 years of purchasing the first-mentioned vehicle, or, in the case of a person referred to in Regulation 8 (3) or 10 (3), within 2 years of the date on which the Revenue Commissioners receive the application for repayment,

such person shall refund to the Revenue Commissioners a portion of the amount which was either or both repaid and remitted on the first-mentioned vehicle, calculated by the Revenue Commissioners according to the following formula:

$$A \times \frac{B}{(C+D)}$$

where:

A is the open market selling price of the first-mentioned vehicle on the date of its sale or disposal or on the date of purchase of the subsequent vehicle, whichever is applicable,

B is the total amount repaid or remitted in respect of the first-mentioned vehicle and any adaptations thereto,

C is the open market selling price of the first-mentioned vehicle at the time of its purchase by the beneficiary, and

D is the cost including value-added tax of any adaptations to the first-mentioned vehicle on which repayment was claimed by the beneficiary.

(2) The refund referred to in paragraph (1) shall be paid to the Revenue Commissioners within one month of the sale or disposal of the first-mentioned vehicle, but where the circumstances referred to at paragraph (1) (b) apply,

not later than the time of the repayment or remission of any tax in respect of the subsequent vehicle.

- (3) *Where a qualifying organisation which receives a repayment or remission under Regulation 12 in respect of a vehicle sells it or otherwise disposes of it within 2 years of the date of purchase such organisation shall refund to the Revenue Commissioners a portion of the amount which was either or both repaid and remitted on the vehicle, calculated by the Revenue Commissioners according to the following formula:*

$$A \times \frac{B}{(C+D)}$$

where:

A is the open market selling price of the vehicle on the date of its sale or disposal,

B is the total amount repaid or remitted in respect of the vehicle and any adaptations thereto,

C is the open market selling price of the vehicle at the time of its purchase by the organisation, and

D is the cost including value-added tax of any adaptations to the vehicle on which repayment was claimed by the organisation.

- (4) *The refund referred to in paragraph (3) shall be paid to the Revenue Commissioners within one month of the sale or disposal of the vehicle in question.*
- (5) *The Revenue Commissioners shall not repay or remit any tax or residual vehicle registration tax under Regulation 8, 10 or 12 in respect of any vehicle unless the provisions of paragraph (2) or (4), as the case may be, have been fulfilled.*
- (6) *In exceptional cases, and subject to such conditions as they consider necessary in each such case, the Revenue Commissioners may reduce the amount of the refund required under this Regulation.*

Fuel repayments

16. (1) *The excise duty paid on any fuel used for combustion in the engine of a vehicle on which repayment or remission of tax, or residual vehicle registration tax has*

been granted in accordance with these Regulations shall be repaid by the Revenue Commissioners where the use of the fuel was related to the transportation of the disabled person or persons concerned whether as driver or passenger.

- (2) Where the repayment or remission of tax or residual vehicle registration tax was made under Regulation 8 or 10, the repayment of excise duty on fuel referred to in paragraph (1) shall be limited to the duty on an annual maximum of 600 gallons per beneficiary.*
- (3) Where the repayment or remission of tax or residual vehicle registration tax was made under Regulation 12, the repayment of excise duty on fuel referred to in paragraph (1) shall be limited to the duty on an annual maximum of 900 gallons per vehicle.*
- (4) The excise duty paid on any fuel used for combustion in the engine of a vehicle which would have qualified for repayment or remission of value-added tax, vehicle registration tax or residual vehicle registration tax in accordance with these Regulations but for the fact that the vehicle was purchased prior to the coming into effect of these Regulations, shall be repaid by the Revenue Commissioners where the use of the fuel was related to the transportation of the disabled person or persons concerned whether as driver or passenger, and the provisions of paragraphs (2) and (3) shall apply with any necessary modifications.*

Road Tax

17. The licensing authority shall remit the excise duty which would, but for this provision, be payable under section 1 of the Finance (Excise Duties) (Vehicles) Act, 1952 (No. 24 of 1952) (being the duty known as road tax), on any vehicle which qualifies for relief under regulation 8, 10 or 12.

General

18. (1) A person or organisation wishing to avail of the provisions of Regulation 8, 10 or 12 shall complete the Declaration in the Third Schedule in respect of each vehicle involved, and such claim form as may be provided for the purpose by the Revenue Commissioners and present them to the Revenue Commissioners, together with such documentary evidence as they shall require.

(2) A person or organisation wishing to avail of the provisions of Regulation 17 shall apply to the appropriate licensing authority and produce to it evidence that the vehicle has qualified for relief under Regulation 8, 10 or 12, and, in the case of an applicant who has qualified for relief under Regulation 8, a valid current driving licence.

Revocation and transitional provisions, etc.

19. (1) The Disabled Drivers (Tax Concessions) Regulations, 1989 (S.I. No. 340 of 1989), are hereby revoked.

(2) Any primary medical certificate or other certificate issued under the Regulations revoked by paragraph (1) shall be deemed to be a valid certificate for the purposes of these Regulations, and such certificate and person named thereon shall be subject to the provisions of Regulation 7.

(3) Notwithstanding paragraph (1), the Board appointed under Regulation 6 of the Disabled Drivers (Tax Concessions) Regulations, 1989, shall continue for the period of its appointment as if appointed under these Regulations and Regulation 6 (1) of these Regulations shall be construed accordingly.