AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

63TACD2026

Between

[redacted]

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission ("the Commission") by the Appellant against the refusal of the Respondent to allow a claim for repayment of Value Added Tax ("VAT") in accordance with the Value-Added Tax (Refund of Tax) (Touring Coaches) Order 2012 (SI 266/2012). The amount of tax at issue is €34,385.

2. The claim was refused on the basis that the Appellant had failed to demonstrate that his vehicle was used for the carriage for reward of tourists by road under contracts for group transport.

**Background**

3. The Appellant is a bus operator. In May 2024, he purchased a new [redacted] coach ("the vehicle") with the intention of using it for the carriage for reward of tourists by road under contracts for group transport.

4. The Appellant sought to reclaim the VAT paid on the vehicle, in accordance with the provisions of SI 266/2012. Following correspondence between the parties, on 20 March 2025 the Respondent refused the Appellant's claim on the basis that "*there was no*

*evidence provided that any tours have been undertaken with this coach since it was purchased, and there is no evidence of any booked upcoming tours for this business either."*

5. On 11 April 2025, the Appellant appealed against the Respondent's refusal to the Commission. The appeal proceeded by way of a hearing in private on 9 March 2026. The Appellant represented himself and the Respondent was represented by counsel.

**Legislation**

6. SI 266/2012 provides *inter alia* that

"*2. In this Order—*

*"Act" means Value-Added Tax Consolidation Act 2010 (No. 31 of 2010);*

*"qualifying person" means a person who is established in the State and who—*

*(a) is engaged in the business of carriage for reward of tourists by road under contracts for group transport…*

*"qualifying vehicle" means—*

*(a) a single-deck touring coach having dimensions as designated by the manufacturer of not less than 2,700 millimetres in height, not less than 8,000 millimetres in length, not less than 775 millimetres in floor height and with an underfloor luggage capacity of not less than 3 cubic metres, or*

*(b) a double-deck touring coach having dimensions as designated by the manufacturer of not more than 4,300 millimetres in height and not less than 10,000 millimetres in length.*

*3. (1) … a qualifying person who has borne or paid tax on—*

*(a) the supply to such person,*

*(b) the intra-Community acquisition or importation, or*

*(c) the hiring or leasing,*

*of a qualifying vehicle which is for use (for a period of not less than one year where subparagraph (a) or (b) apply, and for a period of not less than 6 consecutive months where subparagraph (c) applies), by such person in the State in the business of the carriage for reward of tourists by road under contracts for group transport shall,*

*subject to the conditions specified in Article 4, be repaid the full tax borne or paid provided that—*

*(i) the supply, intra-Community acquisition or importation of the vehicle which gave rise to the tax occurred when the vehicle was not more than 2 years old, or*

*(ii) the hiring or leasing of the vehicle which gave rise to the tax was on the basis of a contract for hire or lease first entered into when the vehicle was not more than 2 years old…*

*4. The conditions to be fulfilled by a person in order to obtain a repayment of tax under this Order in accordance with Article 3(1) are that the person shall…*

*(b) establish to the satisfaction of the Revenue Commissioners that that person is a qualifying person…*

*5. This Order does not apply to vehicles used, or intended to be used, primarily for the provision of transport services other than transport services consisting of carriage for reward of tourists by road under contracts for group transport…*"

**Evidence**

7. The Appellant gave sworn evidence at the hearing. He stated that he had been a bus operator for [redacted] He has [redacted] buses. He was interested in getting involved in transporting tourists, and in 2024 purchased a new vehicle for that purpose. He received the vehicle in June 2024, but by then everything was already booked for the summer season so he did not get tourism business. He rented out the vehicle to another operator for two or three weeks.

8. Regarding his application for a refund, he understood that other operators had purchased buses to use for the Local Link service and had then sought refunds from the Respondent, but he had not done this. He had set up a website to try to attract tourism business. He did not know if other operators had been refused refunds by the Respondent.

9. On cross examination, he agreed that the Respondent had sought additional information from him following the making of his claim. He stated that he purchased the vehicle with the intention of using it for the carriage of tourists under contracts for group transport. He agreed that he made a second refund claim on 2 August 2024 and a third claim on 6 December 2024. He agreed that he told the Respondent in a phone call on 24 January 2025 that he was not using the vehicle for touring.

10. He accepted that the additional information sought by the Respondent was outstanding as of 20 March 2025. He stated that the only use of the vehicle in 2024 was its rental to [redacted]. It was rented from 28 August to 8 September of that year. Following the issuance of his appeal, additional information was provided to the Respondent. He provided an invoice dated 25 October 2024 regarding the rental to [redacted]. He accepted that this rental did not come within the scope of SI 266/2012. He was asked how the invoice of 25 October 2024 listed a further rental to [redacted] on 18 November 2024 (i.e. post-dating the invoice), and was also asked about the numbering of his invoices.

11. He stated that he set up his website in November 2024 at a cost of [redacted] He was asked about additional invoices submitted by him relating to work done in 2025, which he stated did not involve renting his vehicle to other operators:

> "*[T]hat's the invoice I gave to the people that rented me. That was my bus, my money, my driver. This was an invoice that was given to the people that, they rented the vehicle from me, and they paid for it.*
>
> *[…]*
>
> *All that work was all cash business. All that stuff came in through the phone. All that stuff, that's, I've got no, virtually no business through that website that I've set up. Most of my work has come through flyers, has come through stickers, has come through friends of mine that have passed on work. So someone rang me and that's the work I've done*."

12. Regarding one of the invoices, he stated "*I dropped a bunch of people and I picked them up in* [redacted] *and dropped them down to* [redacted] *I didn't know who they were, but as far as I know they were on a tour. I just dropped them there*." He agreed that the additional invoices concerned the transportation of passengers. In response to the Commissioner, he stated that he believed these were tours, and disagreed with counsel for the Respondent's suggestion that they concerned transport of passengers rather than the provision of tours. He further stated:

> "*So these people rang me up. They rang me up to be brought to various locations. And am I supposed to tell them over the phone, "are you a tourist or are you just going out for the day somewhere?" Am I supposed to ask that question? Answer me that*.
>
> *[…]*

*There were ordinary passengers. They just wanted to go down. Be dropped off above in* [redacted] *or dropped in* [redacted] *I was bringing them down. Someone else was picking them up. These lads were going back and forth, boys or girls or whatever*."

13. In response to a question from the Commissioner, the Appellant confirmed that he hadn't carried out any additional business using the vehicle, other than that set out in the invoices submitted to the Respondent.

**Submissions**

*Appellant*

14. The Appellant stated that he purchased the vehicle because he wanted to get involved in the tourism business. He thought everything would be fine, but believed that he was being penalised because other operators had attempted to reclaim VAT on false pretences. He was attempting to get involved in tourism and considered that it was wrong that he could not reclaim the VAT on the vehicle until he was properly established in the tourism business.

15. In a reply to the Respondent's submissions, the Appellant stated that the passengers he transported seemed to him to be tourists. It was not his fault that he was not getting as much touring business as he had anticipated.

*Respondent*

16. In written submissions, the Respondent stated that the entitlement to reclaim VAT on touring coaches, in circumstances where the supplier did not charge VAT, was a derogation from European Union ("EU") law, and that therefore the scope of the derogation could not be widened beyond what was permitted. It was clear from article 2 of the SI that the taxpayer must be transporting people who were part of a tour group and therefore it could not include persons who were not tourists taking part in an organised tour. This restriction on services was echoed by the wording of article 5 which expressly denied a refund for vehicles which were not primarily used for the provision of transport of tourists pursuant to contracts for group tours.

17. The purpose of SI 266/2012 was to improve the Irish tourism industry by offering and encouraging the use and acquisition of high end quality touring coaches. There was no basis for a refund of tax for coaches that were not primarily used or intended primarily to be used for group tours. In this appeal, the Appellant had failed to provide sufficient documentary evidence to satisfy the Respondent that the coach in question was primarily

used for the carriage for reward of tourists by road under contracts for group transport. The rental of the Appellant's coach to another person who was carrying out their own group contract was a taxable activity and thus was not covered under SI 266/2012.

18. The Respondent filed supplemental submissions following the issuance of the High Court judgment in *Cummer Coaches Ltd v Revenue Commissioners* [2025] IEHC 508 ("*Cummer Coaches*"). It argued that the judgment supported its decision to refuse the Appellant's claim for a refund.

19. Kennedy J held that the taxpayer was not a qualifying person in circumstances where the taxpayer's business was the transportation of the public on a regular and scheduled basis as prescribed by its licence. Similarly, the Appellant in this appeal appeared to be providing coach rentals and therefore was not engaged in the "*business of the carriage of tourists by road for reward*" for the purposes of the SI. It was submitted that whether the passengers were tourists was irrelevant for the purposes of the SI, even if tourists occasionally used the coach rentals.

20. In oral submissions, counsel for the Respondent stated that the Appellant was not a qualifying person under article 2 of SI 266/2012, and furthermore that he had not used the vehicle primarily for the provision of transport services consisting of the carriage for reward of tourists by road under contracts for group transport. Rather, he had used the vehicle primarily for the simple transportation of passengers.

21. Furthermore, counsel submitted that there were inconsistencies with the documentation submitted by the Appellant. Even if he was a qualifying person under article 2, article 5 of the SI operated to disentitle him to a refund of VAT. In response to a question from the Commissioner, counsel stated that applications for a refund under SI 266/2012 could be made within the first year after the acquisition of the qualifying vehicle.

**Material Facts**

22. 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:

    22.1. The Appellant is a bus operator. He has carried out [redacted] and similar work for a number of years.

    22.2. He was interested in getting involved in transporting tourists, and in 2024 purchased a new [redacted] ("the vehicle") for that purpose. The vehicle was registered on 9 May 2024.

22.3. The Appellant purchased the vehicle with the intention of using it for the carriage for reward of tourists by road under contracts for group transport.

22.4. The only use made of the vehicle in 2024 was its rental to another tour operator ([redacted]).

22.5. In January 2025, the Appellant told the Respondent that he had not yet used the vehicle for "*touring*".

22.6. The Appellant produced a number of invoices for work carried out in 2025, dating from 14 February to 22 April. However, these were for informal contracts that were primarily to provide standard coach rental transportation of passengers from point-to-point, rather than group tours. The client was stated to be "*Sales*" in each instance and the details of each transaction were stated to be "*Coach rental of [the vehicle]*." The start and end points of the journeys were also stated on the invoices.

22.7. The Appellant believed that at least some of the passengers he transported were tourists, but did not confirm in advance of transporting them.

22.8. The Appellant made three claims for a refund of VAT paid by him to the Respondent. The first claim was on 17 May 2024. The second claim was on 2 August 2024. The third claim was on 6 December 2024. The Respondent sought additional information from him to support his claims.

22.9. On 20 March 2025 the Respondent refused the Appellant's claim on the basis that "*there was no evidence provided that any tours have been undertaken with this coach since it was purchased, and there is no evidence of any booked upcoming tours for this business either."*

22.10. On 11 April 2025, the Appellant appealed against the Respondent's refusal to the Commission. The additional invoices for work carried out in 2025 (referred to at sub-paragraph 22.6) were submitted to the Respondent after the issuance of the decision refusing his claim on 20 March 2025.

**Analysis**

23. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*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. Article 371 of Directive 2006/112/EC as amended ("the VAT Directive") permits EU Member States to maintain exemptions from VAT which existed prior to 1 January 1978. Paragraph 14(3) of Schedule 1 to the VATCA 2010 exempts from VAT "*Transporting passengers and their accompanying luggage."* This exemption from VAT has been in place in Ireland since before 1978 and is therefore permitted by Article 371 of the VAT Directive.

25. Article 105a of the VAT Directive allows Ireland to retain certain VAT exemptions and reduced rates that existed prior to 1 January 2021. The Value-Added Tax (Refund of Tax) (Touring Coaches) Order 2012 (SI 266/2012) provides for a refund to exempt coach operators, subject to certain conditions, of VAT paid in respect of the acquisition of new touring coaches of certain dimensions.

26. The correct interpretation of SI 266/2012, and in particular articles 2 and 5 thereof, was considered by the High Court in *Cummer Coaches.* Kennedy J stated at paragraph 14 that "*the critical elements (which go to both ss.2 & 5) are whether the appellant was carrying "*tourists*" and operating under "*contracts for group transport*"*." He noted that the purpose of the SI was "*to improve the Irish tourism industry.*"

27. In considering the definition of "tourist", he stated that

> "*While people travelling for leisure may generally be tourists, I am not convinced that the term "*tourist*" as used in the SI is necessarily intended to encompass all visitors travelling outside their usual environment for any purpose, including business, family or any other personal reasons, other than to be employed by a resident entity in the place visited. I am sceptical of the suggestion that the term would incorporate individuals travelling other than for the purposes of rest and recreation and for seeing the sights in Ireland*."

28. The judge noted that the taxpayer was carrying passengers pursuant to a public transport licence, and stated at paragraph 17 that

> "*Nonetheless it was predictable that many, perhaps most, customers availing of the service might well be tourists (even if a narrower definition is employed). However, there is no evidence that the split between tourists and other commuters mattered to the licence holder, let alone the appellant. Presumably, it was the total number of occupied seats which mattered to the licence holder. The proportion of tourists mattered even less to the appellant. It was paid the same, irrespective of the number of customers and also irrespective of the numbers of tourists. The split between tourists and consumers was incidental to the primary purpose of the provision of the service by the appellant to the licence holder and by the latter to all customers availing of its service, including any tourists*."

29. Furthermore, the judge stated at paragraph 19 that

> "*There was nothing in s.2 to say that a business such as the Appellant couldn't be deemed to be in the "*business of the carriage of tourists by road for reward*" if they also carried members of the public. I agree that there is no express wording in para. 2 to say that such businesses must be devoted exclusively (or even mainly) to tourists, but it seems to me that the plain meaning of the italicised expression, read in the context of the SI as a whole, would not encompass a licensed public bus route even if a majority of its customers happened to be tourists*."

30. At paragraph 22, the judge reiterated that

> "*In my view, expanding the short s.2 definition into a four-pronged test would complicate and actually obscure the meaning of the passage as a whole. When read in its totality, and particularly when ss.2 & 5 and, indeed the entire SI, are read holistically as they should be, the definition's meaning is plain and is to be applied by consideration of the application of the phrase as a whole rather than breaking it into a four-stage test… there is no indication in the SI that it was sufficient if the "*business*" referenced in para. 2 included some, or even a majority of, tourists among its passenger base or that there was single group contract, albeit one which related to the operation of a public licensed bus route and which did not pertain to tourists per se.*"

31. In considering the requirement for "group contracts", Kennedy J stated that the use of the plural "*together with the context, history and purpose of the SI tends to suggest an intention to limit the exemption to parties engaged in multiple contracts for the carriage of tourists, rather than one off transactions which are not specifically linked to the carriage of tourists and only incidentally encompass their carriage*."

32. The judge went on to note that the SI was a derogation and therefore must be interpreted strictly. Regarding the "disapplication clause" set out in article 5, he agreed with the interpretation of the word "primarily" as "*to a greater or the greatest degree; for the most part; mainly*". He agreed that, even if the taxpayer came within the definition of a qualifying person under article 2, an entitlement to a refund of VAT was disapplied by article 5, as the taxpayer was primarily engaged in the provision of transport services other than transport services consisting of carriage of tourists by road and the contract for group transport.

33. Therefore, in considering this appeal, it is first necessary to determine whether the Appellant is a "qualifying person" under article 2 of SI 266/2012. If the Commissioner determines that he is a qualifying person, it will then be necessary to consider whether

the “disapplication clause” in article 5 applies. In passing, the Commissioner notes that there did not appear to be any dispute that the vehicle in question is a “qualifying vehicle” as defined by article 2.

34. Article 2 defines a qualifying person as someone “*engaged in the business of carriage for reward of tourists by road under contracts for group transport*”. The first point to note is that, strictly speaking, this appeal and determination is concerned with the position as at the date of the Respondent’s refusal of the Appellant’s application for a refund; i.e. 20 March 2025. Additionally, article 4 requires an applicant for a refund to satisfy the Respondent that he or she is a qualifying person.

35. The Commissioner is satisfied that the Appellant failed to demonstrate to the Respondent that he was a qualifying person as of 20 March 2025. This is because the evidence before the Commissioner is that the Appellant had not provided any evidence to the Respondent as at that date that he was a qualifying person. He accepted that the vehicle was idle in 2024 apart from its rental to another bus operator. The Commissioner considers that such rental cannot satisfy the requirements of SI 266/2012. Furthermore, the Appellant did not deny that he told the Respondent in January 2025 that he had not used the vehicle for touring at all.

36. Therefore, as of the date of the Respondent’s decision, the Commissioner concludes that the Appellant had provided no evidence to it to demonstrate that he was a qualifying person. This in itself is sufficient to conclude that the appeal cannot succeed.

37. However, the position was complicated somewhat by the provision of additional invoices by the Appellant to the Respondent following the issuance of his appeal. These invoices concerned what appeared to be ad hoc, verbal agreements by the Appellant to transfer people from place to place using the vehicle. The invoices provided that the service was provided to “*Sales*” in each instance and the details of the transactions were stated to be “*Coach rental of [the vehicle]*.” The start and end points of the journeys were also stated on the invoices.

38. The Appellant believed that some of the people he transported were tourists, but also appeared to state that he did not confirm whether or not they were tourists before he agreed to transport them. He also described them as “*ordinary passengers*”. Having regard to the judgment in *Cummer Coaches*, the Commissioner considers that the evidence of the Appellant shows that he was not engaged in the business of the carriage for reward of tourists by road under contracts for group transport, but that he was rather engaged in one-off transactions for the point-to-point transportation of passengers. Some or perhaps even most of these passengers may have been tourists, but it is clear that this

in itself is not sufficient to demonstrate that the Appellant was a qualifying person for the purposes of SI 266/2012.

39. Counsel for the Respondent raised what she stated were inconsistencies in some of the Appellant's invoices. The Commissioner does not consider it necessary to make any findings in this regard. While the Appellant's explanation for a discrepancy on the invoice relating to [redacted] was unclear, overall, the Commissioner found his evidence to be truthful and honest. He accepted that he did not carry any tourists in 2024, and also accepted that he did not confirm the identity of his passengers in 2025 prior to transporting them.

40. Therefore, the Commissioner concludes that the Appellant is not a "qualifying person" for the purposes of SI 266/2012 and consequently determines that the Respondent was correct to refuse his claim for a refund of VAT. As a result, it is not necessary to consider the disapplication clause set out in article 5. However, in passing, the Commissioner notes that article 5 acts to disapply an entitlement to reclaim VAT where a vehicle is used or "*intended to be used*" primarily for the provision of transport services other than transport services consisting of carriage for reward of tourists by road under contracts for group transport. Having considered the evidence of the Appellant, the Commissioner is satisfied that he purchased the vehicle intending to use it primarily for the purpose envisaged by the SI.

41. The Commissioner appreciates that this determination will be disappointing for the Appellant. However, he is satisfied that the Appellant is not a qualifying person for the purposes of article 2 of SI 266/2012, as interpreted by the High Court in *Cummer Coaches*, and therefore the appeal cannot succeed.

**Determination**

42. In the circumstances and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner determines that the Respondent's decision to refuse the Appellant's claim for a refund of VAT shall stand.

43. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular section 949AL 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.

Simon Noone
Appeal Commissioner
7 April 2026

**The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.**