



**65TACD2019**

**BETWEEN/**

**NAME REDACTED**

**Appellant**

**-and-**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Appeal**

1. This is an appeal to the Appeal Commissioners pursuant to section 146 of the Finance Act, 2001 (as amended). This appeal is adjudicated in accordance with section 949U of the Taxes Consolidation Act, 1997.

**Facts**

2. The vehicle, the subject matter of this appeal, is a Mercedes Benz E300 Bluetec Hybrid Auto (2013), bearing registration number [REDACTED]. The Appellant registered the vehicle on 4 October 2016. A Declaration was signed at the National Car Testing Service (NCTS) centre on 4 October 2016 which declared the make, model and version of the vehicle as a Mercedes Benz E300 Bluetec 4DR Auto and described the date of first registration of the vehicle as [REDACTED] 2013 with



mileage at the date of registration as 79,412. The Declaration calculated the vehicle registration tax (VRT) as €4,927.

3. On 8 May 2017 the Appellant submitted a letter to the Revenue Commissioners which was described as an appeal against the amount of VRT paid in respect of the vehicle the subject matter of the appeal. The Appellant asserted that an incorrect model of the vehicle was input at the NCTS centre resulting in an overpayment of VRT. On 11 May 2017 the Revenue Commissioners sent a letter to the Appellant in the following terms:

*“Your vehicle was registered on the 5<sup>th</sup> October 2016 and your appeal application was received on the 11<sup>th</sup> May 2017. I regret that it was not accepted for processing as an appeal because it was received outside the legislative time limit.*

*A VRT appeal must be submitted within sixty days from the date of registration.*

*Section 146, Finance Act, 2001, provides for recourse to an oral hearing before the Appeal Commissioners if you are not satisfied with my ruling...”*

A notice of appeal was received by the Tax Appeals Commission on 19 May 2017.

### **Legislation**

4. Section 145 of the Finance Act, 2001 (as amended) provides:

*“(3) Any person who is the subject of a decision of the Commissioners in relation to any of the following matters and who is aggrieved by the decision may appeal to the Commissioners against that decision:*

- (a) the registration of a vehicle, or the amendment of an entry in the register referred to in section 131 of the Finance Act 1992;*

- (b) *the determination of the open market selling price of a vehicle under section 133 of the Finance Act 1992;*
  - (c) *the granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under that section;*
  - (d) *the liability to vehicle registration tax or the repayment of vehicle registration tax.*
- (4) *An appeal under this section shall be made in writing and shall set out in detail the grounds of appeal.*
- (5) *An appeal under this section shall be lodged by the person concerned with the Commissioners within 2 months from the date of the notification by the Commissioners of the decision concerned, or within such longer period as they may, in exceptional cases, allow.*
- (6) *An appeal shall, subject to subsection (12), be determined by the Commissioners within a period of 30 days from its lodgement with the Commissioners.*
- (7) *The Commissioners may appoint one or more of their officers for the purposes of carrying out their functions under this section but no such officer shall determine an appeal under this section in respect of a decision he or she has made.*
- (8) *The Commissioners shall notify in writing an appellant concerned of their determination of an appeal and the reasons for their determination.*

- (9) *Where the Commissioners determine on appeal that the amount due is less than the amount paid, they shall repay the amount overpaid to the appellant concerned.*
- (10) *Where the Commissioners determine on appeal that the amount due is greater than the amount paid, the appellant concerned shall pay the amount underpaid.*
- (11) *For the purpose of determination of an appeal any goods or vehicles to which the appeal relates are to be produced to the Commissioners for inspection, if so required.*
- (12) *Where an appeal has been lodged but not determined in accordance with subsection (6) there shall be deemed to have been a determination by the Commissioners on the last day of the period of 30 days from the date the appeal was lodged that the appeal was not upheld but such deeming shall cease to have effect if a determination is subsequently made by the Commissioners before a determination is made by the Appeal Commissioners under section 146 in respect of the matter concerned.*
- (12A) *Where a person is required to furnish a return or to pay an amount of vehicle registration tax for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of vehicle registration tax.”*
5. Section 146 of the Finance Act, 2001 (as amended) provides:
- “(1) *Except where section 145(3) applies, any person who –*
- (a) *has paid an amount of excise duty,*



- (b) *has received a notice of assessment under section 99A, or is otherwise called upon by the Commissioners to pay an amount of excise duty that, in their opinion, that person is liable to pay, or*
- (c) *has received a repayment of excise duty or has made a claim for such repayment that has been refused,*

*and is aggrieved by any of the matters referred to in paragraphs (a) to (c), may, subject to subsection (3), in respect of the liability to excise duty concerned or the amount of that liability, or the amount of the repayment or the refusal to repay, appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act, 1997 within the period specified in subsection (2).*

*(1A) Any person aggrieved by any of the following matters may appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act, 1997 within the period specified in subsection (2)*

- (a) *a determination of the Commissioners under section 145;*
- (b) *a refusal to authorise a person as an authorised warehousekeeper, or to approve a premises as a tax warehouse, under section 109, or a revocation under that section of any such authorisation or approval;*
- (c) *a refusal to authorise a person as a registered consignee under section 109IA or a revocation under that section of any such authorisation.*
- (d) *a refusal to authorise a person as a registered consignor under section 109A or a revocation under that section of any such authorisation;*
- (e) *a refusal to approve a person as a tax representative under section 109U(2) or a revocation under that section of any such approval;*

(f) *a refusal to grant a licence under section 101 of the Finance Act 1999 or a revocation under that section of any such licence that has been granted.*

(2) *The period specified for the purpose of making an appeal under this section is the period of 30 days after the date of –*

(a) *the payment of excise duty in the case of an appeal under subsection (1)(a),*

(b) *the notice of assessment or other notice calling for payment of the amount concerned in the case of an appeal under subsection (1)(b),*

(c) *the repayment or the notice of the refusal to repay in the case of an appeal under subsection (1)(c), or*

(d) *the notice of the determination, refusal or revocation concerned in the case of an appeal under subsection (1A). ”*

6. Section 133 of the Finance Act, 1992 (as amended) provides:

“(1) *Where the rate of vehicle registration tax charged in relation to a category A vehicle or a category B vehicle is calculated by reference to the value of the vehicle, that value shall be taken to be the open market selling price of the vehicle at the time of the charging of the tax thereon.*

(2) (a) *For a new vehicle on sale in the State which is supplied by a manufacturer or sole wholesale distributor, such manufacturer or distributor shall declare to the Commissioners in the prescribed manner the price, inclusive of all taxes and duties, which, in his opinion, a vehicle of that model and specification, including any enhancements or accessories fitted or attached thereto or supplied therewith by such manufacturer or distributor, might reasonably be expected to fetch on a first arm’s length sale thereof in the open market in the State by retail.*

- (b) *A price standing declared for the time being to the Commissioners in accordance with this subsection in relation to a new vehicle shall be deemed to be the open market selling price of each new vehicle of that model and specification.*
- (c) *Notwithstanding the provisions of paragraph (b), where a price stands declared for a vehicle in accordance with this subsection which, in the opinion of the Commissioners, is higher or lower than the open market selling price at which a vehicle of that model and specification or a vehicle of a similar type and character is being offered for sale in the State while such price stands declared, the open market selling price may be determined from time to time by the Commissioners for the purposes of this section.*
- (d) *Where a manufacturer or sole wholesale distributor fails to make a declaration under paragraph (a) or to make it in the prescribed manner, the open market selling price of the vehicle concerned may be determined from time to time by the Commissioners for the purposes of this section.*
- (3) *In this section –*
- “new vehicle” means a vehicle that has not previously been registered or recorded on a permanent basis –*
- (a) *in the State under this Chapter or, before 1 January 1993, under any enactment repealed or revoked by section 144A or under any other provision to like effect as this Chapter or any such enactment, or*
- (b) *under a corresponding system for maintaining a record for vehicles and their ownership in another state,*



*and where the vehicle has been acquired under general conditions of taxation in force in the domestic market.*

*“open market selling price” means –*

- (a) in the case of a new vehicle referred to in subsection (2), the price as determined by that subsection.*
- (b) in the case of any other new vehicle, the price, inclusive of all taxes and duties, which in the opinion of the Commissioners, would be determined under subsection (2) in relation to that vehicle if it were on sale in the State following supply by a manufacturer or sole wholesale distributor in the State,*
- (c) in the case of a vehicle other than a new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, the vehicle might reasonably be expected to fetch on a first arm’s length sale thereof in the State by retail and, in arriving at such price –*
  - (i) there shall be included in the price, having regard to the model and specification of the vehicle concerned, the value of any enhancements or accessories which at the time of registration are not fitted or attached to the vehicle or sold therewith but which would normally be expected to be fitted or attached thereto or sold therewith unless it is shown to the satisfaction of the Commissioners that, at that time, such enhancement or accessories have not been removed from the vehicle or not sold therewith for the purpose of reducing its open market selling price, and*



- (ii) *the value of those enhancements or accessories which would not be taken into account in determining the open market selling price of the vehicle under the provisions of subsection (2) if the vehicle were a new vehicle to which that subsection applied shall be excluded from the price.”*

### **Submissions and Analysis**

7. All vehicles are subject to VRT on first registration in the State. The rate of VRT is calculated according to the CO<sub>2</sub> emissions. Section 133 of the Finance Act, 1992 (as amended) provides that the value of the vehicle for the purposes of calculating VRT is the open market selling price (OMSP) of the vehicle at the time of charging the VRT. The OMSP of a vehicle other than a new vehicle is the price which the vehicle might reasonably be expected to fetch on a first arm's length sale in the State by retail.
8. The Appellant seeks to appeal the VRT charged on the vehicle the subject matter of appeal on the basis that the incorrect model of the vehicle was input at the NCTS centre resulting in an overpayment of VRT. In support of the appeal, the Appellant provided the following documentary evidence:
- (a) a printout of the online VRT enquiry calculator dated 8 May 2017 which describes CO<sub>2</sub> emissions of 111, a rate of VRT of 17% and the vehicle as a Mercedes Benz E300 Bluetec 4DR Auto with a statistical code of 40587731.
- (b) a printout of a Vehicle Registration Summary which describes registration tax of €4,723, date of registration of 16 July 2016, CO<sub>2</sub> emissions of 111, a rate of VRT of 17% and the vehicle as a Mercedes Benz E300 with an engine type of Diesel\_Electric. The statistical code is given as 40587731.

- (c) a copy of a Declaration dated 4 October 2016 which describes the vehicle as a Mercedes Benz E300 Bluetec 4DR Auto and calculates VRT of €4,927.
  - (d) a copy of a UK Registration Certificate which describes the vehicle as a Mercedes Benz E300 Bluetec Hybrid Auto with type of fuel as Elec/Diesel.
  - (e) a copy of a Vehicle Purchase Details Form (VRTVPD1) dated 4 October 2016 which describes the vehicle as a Mercedes Benz E300 Bluetec Hybrid Auto with a margin scheme invoice price of Stg£16,800.
9. The Appellant relies on the document at 8(a) above to demonstrate that the incorrect model of the vehicle was input at the NCTS centre as the VRT calculated for a vehicle with a statistical code of 40587731 on 8 May 2017 was €2,074 whereas on 4 October 2016 the VRT was calculated as €4,927. The document at 8(b) above is described as a ‘*copy of VRT receipt for amount paid*’. This document refers to a statistical code of 40587731 and has the description ‘Diesel\_Electric’ as the engine type.
10. The Revenue Commissioners delivered a Statement of Case to the Tax Appeals Commission on 13 March 2018. The Revenue Commissioners provide the following explanation on the calculation of the OMSP:
- “The vehicle was registered on 04 October 2016 by the appellant. The Open Market Selling Price (OMSP) used by Revenue to determine the VRT liability was €35,160. This gave a liability of €4,927 when a reduction of €1,050 was applied as the vehicle is a Hybrid Electric. The figure of €4,927 was arrived at as follows:*
- €35160 x 17% = €5,977 less €1,050 = €4,927”*
11. Section 145 of the Finance Act, 2001 (as amended) provides that an appeal under the section shall be lodged by the person with the Revenue Commissioners within 2 months from the date of the notification by the Revenue Commissioners of the



decision concerned, or within such longer period as they may, in exceptional cases, allow. The Appellant sought to appeal against a decision made on 4 October 2016 by letter dated 8 May 2017. The letter from the Appellant to the Revenue Commissioners was not within the 2 months prescribed in section 145. There is no evidence presented that the Appellant's appeal was considered an exceptional case for which the Revenue Commissioners allowed a longer period. In the Statement of Case on behalf of the Revenue Commissioners it is submitted that the Appellant should not succeed in the appeal because the evidence relied upon by the Appellant is an estimate obtained from the online VRT enquiry calculator over seven months after the date of registration of the vehicle and, in any event, even on the Appellant's own documents, the same statistical code of 40587731 is used in document 8(a) and 8(b) above.

12. The Appellant seeks to appeal to the Appeal Commissioners against the letter dated 11 May 2017. A notice of appeal was received by the Tax Appeals Commission from the Appellant on 19 May 2017. Section 146 provides that the period for making an appeal to the Appeal Commissioners under the section is a period of 30 days after the date specified in subsection (2).
13. With regard to the reliance placed on the online VRT enquiry calculator by the Appellant (document 8(a) above), a previous determination (19TACD2017) provides an analysis on the disclaimers with regard to the online VRT enquiry calculator and that analysis equally applies herein. A previous determination (07TACD2019) states that the OMSP of a vehicle for the purposes of calculating VRT must be taken as the value of the vehicle on the date of registration. The document at 8(a) above is dated 8 May 2017, which is seven months after the date of registration.
14. In my view, the evidence relied upon by the Appellant does not support the submission that the incorrect model of vehicle was input at the NCTS centre.

Document 8(a) and 8(b) above use the same statistical code. In addition, document 8(b) refers to the engine type as ‘Diesel\_Electric’, which is similar to the description in document 8(d) above.

### **Determination**

15. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 22) Charleton J. stated: “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable*”.
16. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the appeal by the Appellant to the Revenue Commissioners should have been made within 2 months, and that no exceptional circumstances were presented to allow a longer period. I am further satisfied, even if the Appellant were an exceptional case, that the Appellant has not discharged the burden of proof that the VRT is not payable. In the circumstances, I refuse the Appellant’s appeal, and determine that the VRT calculated on the date of registration of the vehicle stands. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

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**FIONA McLAFFERTY**  
**APPEAL COMMISSIONER**

**15<sup>th</sup> NOVEMBER 2019**