



11TACD2019

Between/

NAME REDACTED

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeals Commission by way of appeal pursuant to section 146 of the Finance Act, 2001 against a decision of the Respondent's Appeal Officer made on the 25th of April 2016 refusing the Appellant's application for the remission of Vehicle Registration Tax ("**VRT**") and VAT pursuant to Regulation 8A of the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994, as amended, on the Appellant's purchase of a Land Rover Discovery Sport.

B. Facts relevant to the Appeal

2. In late 2015, the Appellant decided to purchase a new [**MAKE AND MODEL OF VEHICLE REDACTED**] for his personal use. He duly applied online to the Respondent, pursuant to the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994, as amended, for the remission of VRT and VAT in relation to his intended purchase of the motor vehicle.



3. The Appellant's application was approved in principle, subject to full compliance with the relevant legislation. By letter dated the 6th of January 2016, the Respondent wrote to the Appellant stating that:-

"I refer to your application for remission of Vehicle Registration Tax. Your application is approved and you will qualify for relief subject to full compliance with Section 92 of the Finance Act, 1989 and the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994 (S.I. 353 of 1994)."

4. The Appellant proceeded with the purchase and arranged to have modifications made to the car to enable him to drive it. An invoice from **COMPANY A** Limited dated the 21st of January 2016 records that work done on behalf of the Appellant included lightening the power steering of the car (at a cost of €1,774.08) and supplying and fitting a beeper system with modified indicators and headlight dip controls (at a cost of €1,228.21).
5. The Appellant gave evidence at the hearing of the appeal, which I accept, that he also had the motor dealers who supplied the car, **COMPANY B** Limited, carry out works to the car to enable him to use it. The works included fitting a steering ball to the steering wheel to enable the Appellant to steer the vehicle, fitting side steps to enable the Appellant to enter and exit the vehicle and fitting an automatic boot system. The Appellant gave evidence that the cost of these works came to €2,000 and they were incorporated into the invoice in respect of the purchase of the car. That invoice, dated the 18th of February 2016, records a sale price of €39,615.45, VAT thereon of €9,111.55 and VRT (after a €10,000 Disabled Driver VRT exemption) of €188, giving a total of €48,915.00; it does not make reference to the additional works carried out to adapt the vehicle for the Appellant.
6. An Individual Vehicle Approval Certificate was issued in respect of the Appellant's vehicle by the National Standards Authority of Ireland on the 1st of February 2016. The Certificate recorded that the vehicle had been fitted with the following adaptation equipment:-
- (i) Indicator and Headlight Dip Switch
 - (ii) Reduce Power Steering Effort by 15-20lbs
 - (iii) Infra Red Bleeper.



7. On the 15th of February 2016, the Respondent, having considered the adaptations made to the Appellant's vehicle and the Individual Vehicle Approval Certificate issued in respect thereof, refused the Appellant's application for tax relief. The letter from the Respondent stated as follows:-

"The relevant legislation governing this scheme is contained in Section 92 of the Finance Act 1989 (as amended), Section 134(3) of the Finance Act 1992 (as amended) and Statutory Instrument No: 353 of 1994 (Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994 (as amended by S.I. No. 634 of 2015).

When you made your initial application to us online, you applied as a Disabled Driver purchasing a new vehicle with "Specific Adaptations". On receipt of the invoice outlining the adaptations made to the vehicle and the Individual Vehicle Approval Certificate (IVA), it appears that your vehicle does not have "Specific Adaptations" in accordance with Regulation 8A. (4) of the aforementioned Statutory Instrument and, therefore, does not qualify under this category..."

8. The effect of the Respondent's decision was that the Appellant was entitled to the basic 'Disabled Driver' exemption pursuant to Regulation 8 of the 1994 Regulations, which is worth up to €10,000, but was not entitled to the increased 'Specific Adaptation' exemption pursuant to Regulation 8A of the 1994 Regulation, which is worth up to €16,000.
9. The Appellant appealed against this decision pursuant to section 145 of the Finance Act, 2001. By letter dated the 25th of April 2016, the Appellant was advised by the Respondent's Appeal Officer that his first stage appeal had been unsuccessful. That letter stated as follows:-

"I note that you received an exemption of €10,000 under the Disabled Drivers and Passengers Scheme.

You applied for an increase in the basic exemption (€10,000) under the provisions for 'Specifically adapted vehicles'. This category provides VRT AND vat relief of up to €16,000 for the purchase of such vehicles.



The adaptations which for this enhanced relief must be one of the following

- a) A modified rear or side entry incorporating an integrated ramp or lift and a modified floor to facilitate direct wheelchair access, and wheelchair restraints or a wheelchair docking station*
- b) A modified rear or side entry incorporating a lowered and modified floor to facilitate direct wheelchair access, and wheelchair restraints or a wheelchair docking station, or*
- c) **Extensive** reconfiguration of primary controls necessary to enable the vehicle to be driven by the disabled person*

In your appeal letter you indicate that you are applying under 'c' above.

The undersigned being an officer nominated under Section 145 Finance Act 2001 has determined that your appeal is refused on the grounds that:

*From the evidence supplied by you I do not consider that the adaptations carried out were '**extensive** configuration [sic] of primary controls necessary to enable the vehicle to be driven by a disabled person.'*

- 10.** By Notice of Appeal submitted on the 6th of May 2016, the Appellant appealed the foregoing decision to the Tax Appeals Commission.

C. Grounds of Appeal

- 11.** The grounds of appeal advanced by the Appellant in the Notice of Appeal submitted on his behalf on 27 January 2017 were as follows:-

"I disagree with the decision made by Revenue as they original [sic] granted me the exemption of €16,000 for specific adaptations (copy of letter enclosed). When I went



to register the car Revenue would not allow the car to be registered until it was changed back to just disabled driver exemption. I feel it was unfair to grant me the specific adaptations exemption and then all of a sudden just change it back to disabled driver when I went to register the car. I also believe I am entitled to the specific adaptation grant as under the new legislation “reconfiguration of primary controls necessary to enable the vehicle to be driven by a disabled person” allows me to qualify for this. I had a number of specific adaptations done to the vehicle which include:

- 1. Adapted the steering extensively by removing steering rack to make it lighter*
- 2. Fitted a steering ball to enable me to steer the vehicle*
- 3. Side steps fitted to help me get in and out of the vehicle*
- 4. Beeper system fitted which adapted lights, headlights, indicator and horn*
- 5. Automatic boot fitted*

All these clearly are the main controls of the vehicles [sic] and without these adapted I would not be able to drive the vehicle. I purchased this vehicle as it suited my needs with all the adaptations above and an electrical handbrake and gear controls close to me.

*The invoice from **COMPANY A** is €3889 and I also spent over €2000 in having side steps fitted, an automatic boot fitted and a steering ball fitted. This amount is included in the overall invoice from **COMPANY B**. I am relying heavily on this grant to help me pay the adaptations I needed done to the vehicle.”*

D. Submissions of the Parties

- 12.** The submissions made on behalf of the Appellant at the hearing of the appeal were in essence a reiteration of the arguments contained in the Grounds of Appeal detailed above. The submissions made on behalf of the Respondent were founded upon the grounds for refusing the relief set forth in the Respondent’s letter of the 25th of April 2016, detailed above.



13. The Respondent further submitted that much of the work carried out to the Appellant's vehicle did not constitute reconfiguration of the vehicle's primary controls. They referred me to the website of the Road Safety Authority of Ireland as a source of guidance for the difference between a vehicle's primary controls and secondary controls. They also submitted in evidence an e-mail from a [MAKE OF VEHICLE REDACTED] main dealer dated the 2nd of December 2016 which stated:-

"This e-mail is to confirm that the Electronic power steering on a [MAKE AND MODEL OF VEHICLE REDACTED] cannot be adjusted to make the input or output torque lighter or heavier. This information was obtained from the technical department of Land Rover Ireland."

E. Relevant Legislation

14. Section 92 of the Finance Act, 1989, as amended, provides *inter alia* that the Minister for Finance may make regulations providing for the repayment or the remission of excise duty and value-added tax and the remission of road tax in respect of motor vehicles used by severely and permanently disabled persons, either as drivers or as passengers.

15. Regulation 2(1) of the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994 (S.I. 353 of 1994) includes the following definition:-

"'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;"

16. Regulation 8(1) of the 1994 Regulations, as amended, provides that:-

"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 6,000 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.”

17. The relevant portions of Regulation 8A of the 1994 Regulations, as inserted by the Disabled Drivers and Disabled Passengers (Tax Concessions) (Amendment) Regulations, 2015 (S.I. 634 of 2015) provide that:-

(1) Subject to paragraph (2) –

- (a) the Revenue Commissioners may permit the total amount to be repaid or remitted under Regulation 8 to exceed the amount specified in paragraph (1) of Regulation 9, subject to the limit specified in paragraph (2) of that Regulation, where the adaptations referred to in paragraph (1) of Regulation 8 incorporate any of the relevant adaptations...*

(2) The disabled person concerned shall, when making a claim for repayment or remission in accordance with this Regulation, provide to the Revenue Commissioners -

...

- (b) In the case of a new vehicle, the appropriate vehicle type-approval certificate in respect of that vehicle.*

...

(4) In this Regulation –

“adaptation” includes features that were incorporated in the vehicle at the time it was constructed;

“relevant adaptations” means –

- (a) a modified rear or side entry incorporating an integrated ramp or lift and a modified floor to facilitate direct wheelchair access, and wheelchair restraints or a wheelchair docking station,*



- (b) a modified rear or side entry incorporating a lowered and modified floor to facilitate direct wheelchair access, and wheelchair restraints or a wheelchair docking station, or*
- (c) extensive reconfiguration of primary controls necessary to enable the vehicle to be driven by a disabled person.”*

F. Analysis and Findings

- 18.** The first ground of appeal to be considered is the Appellant’s argument that, having indicated by their letter of the 6th of January 2016 that the application for exemption had been successful, Revenue could not subsequently limit the relief granted to the Appellant to the basic ‘Disabled Driver’ relief of €10,000.
- 19.** I believe that the Appellant cannot succeed on this ground for two reasons. Firstly, the Respondent’s letter of the 6th of January 2016 was not an unconditional confirmation that the Appellant was entitled to the higher ‘Specific Adaptations’ level of exemption. Instead, it stated clearly that the application had been approved and that the Appellant would qualify for relief “*subject to full compliance with Section 92 of the Finance Act, 1989 and the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations, 1994 (S.I. 353 of 1994).*” The letter also included guidance notes which summarised some “*essential conditions*” of the approval.
- 20.** It is clear from the plain wording of the letter that the approval was conditional upon the Appellant meeting the criteria for eligibility contained in the 1989 Act and the Regulations made thereunder. It cannot in any reasonable way be read as an unconditional or absolute confirmation that the Appellant was entitled to the relief for which he had applied. Rather, it made clear that the approval was expressly conditional on the Appellant satisfying the relevant legislative requirements. In the circumstances, I am satisfied that the letter did not in any way operate to preclude or prevent the Respondent from ensuring that the all the appropriate eligibility criteria were met before making a final decision on the Appellant’s eligibility for relief.



21. Secondly, even if the letter of the 6th of January 2016 had been an absolute and unconditional representation by the Respondent that the Appellant was entitled to the ‘Specific Adaptations’ level of exemption, that would not entitle the Appellant to succeed on this ground before the Tax Appeals Commission. Such a representation could potentially give the Appellant a right of action on the basis of a legitimate expectation and/or promissory estoppel, which right of action could be litigated in a court of the appropriate jurisdiction. However, the Tax Appeals Commission has no jurisdiction to consider or determine an appeal advanced on these grounds (see **Kenny Lee –v- Revenue Commissioners [2018] IEHC 46**).

22. I must therefore refuse to allow the Appellant’s appeal on this ground.

23. Accordingly, the next issue which falls for consideration is whether, on the facts proven or admitted before me, the Appellant meets the eligibility criteria contained in the legislation.

24. Having regard to the facts, submissions and legislation detailed above, it is clear that in order to succeed in his appeal, the Appellant must satisfy me that the adaptations carried out to the Appellant’s vehicle incorporate *“extensive reconfiguration of primary controls necessary to enable the vehicle to be driven by a disabled person.”*

25. I find that in order to be so satisfied, the Appellant must establish **(a)** that the primary controls of his vehicle have been reconfigured to enable him to drive the vehicle, and **(b)** that such reconfiguration has been extensive. I will consider these elements in turn.

26. In considering these requirements, I respectfully adopt the general approach outlined by Kennedy CJ in **Commissioners of Inland Revenue –v- Doorley [1933] 1 I.R. 750**, where he stated:-

“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 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 applicable.”

27. More recently, in a case stated by the Appeal Commissioners to the High Court in relation to the artists’ exemption, Donnelly J in **Coleman –v- Revenue Commissioners [2014] IEHC 662** held that:-

“On the basis of the decision in Doorley, the Appeal Commissioner was obliged to give effect to the clear and express terms of the legislation in considering the artist’s exemption from income tax. The liability to income tax having been established, that exemption must be brought within the letter of the Act of 1997 and the Guidelines made thereunder as interpreted by the established canons of construction. There was no basis in law for adopting any other approach to the interpretation of the Act and the Statutes.”

28. Applying these maxims to the questions before me, I note that primary controls are generally understood to be those controls which a driver uses to accelerate, brake and steer (see, *e.g.*, the Research Institute for Consumer Affairs’ ‘Primary Driving Controls Research Report’, March 2017, and the website of the Disabled Drivers Association of Ireland, www.ddai.ie). They encompass the parts of a vehicle used to control direction, control speed, control gears and control a parking brake. Secondary controls cover everything from the ignition, lights and indicators to heating, air-conditioning and in-car entertainment.

29. On the evidence, I am satisfied and find as a matter of fact that the Appellant has had five aspects of his vehicle modified, namely:-

- (i) adapting the steering system to make it lighter;
- (ii) fitting a steering ball to the steering wheel;
- (iii) fitting side steps to enable access to and egress from the vehicle;
- (iv) fitting a beeper system to control headlights, indicators and the horn; and,
- (v) fitting a system which automatically opens and closes the boot of the vehicle.



- 30.** In relation to the first of the adaptations detailed above, I should record for the sake of completeness that I have not had regard to the e-mail from a [MAKE OF VEHICLE REDACTED] main dealer tendered in evidence by the Respondent, which stated that it was not possible to adapt the vehicle's steering system to make it lighter. No expert evidence was given before me on this issue and the e-mail constitutes hearsay evidence at best. I note that the IVA Certificate issued in respect of the vehicle by the NSAI does record that the vehicle has been modified by **COMPANY A** to reduce the power steering effort by 15-20 lbs. I have therefore found as a fact that the steering of the Appellant's vehicle was lightened as the Appellant contends.
- 31.** I am further satisfied that the lightening of the steering on the Appellant's vehicle and the fitting of a steering ball both had an effect on the controls of the vehicle, namely the steering system. The steering system is a primary control in a vehicle and so I find that the lightening of the steering and the fitting of a steering ball both constitute a reconfiguration of the Appellant's vehicle's primary controls. I also find that these changes were made to enable the Appellant to drive the vehicle.
- 32.** I accept that the fitting of side steps side steps to the Appellant's vehicle may have been necessary to assist his entry to and exit from the vehicle. However, the fitting did not affect any of the controls of the vehicle but was instead in ease of the Appellant's access to such controls. I therefore find that such fitting did not amount to the reconfiguration of a primary control.
- 33.** Fitting a beeper system did affect certain controls of the vehicle, namely the headlights, indicators and horn. However, these controls are secondary controls and I therefore find that such fitting did not amount to the reconfiguration of a primary control.
- 34.** The final adaptation in issue was the automatic boot opening and closure system. Again, while this may have greatly facilitated the Appellant's use of the vehicle, it did not affect any of the controls of the vehicle. Furthermore, an automatic boot opening and closing system was



available as a manufacturer's optional extra on the Land Rover Discovery Sport, and therefore the definition of "*adapted*" contained in Regulation 2(1) of the 1994 Regulations means that the system cannot be treated as an adaptation for the purposes of the Regulations. I therefore find that such fitting did not amount to the reconfiguration of a primary control.

35. By reason of the foregoing, I am satisfied and find as a material fact that the lightening of the steering on the Appellant's vehicle and the fitting of a steering ball to the steering wheel constituted the reconfiguration of primary controls necessary to enable the vehicle to be driven by a disabled person.

36. However, it is not sufficient for me to find that there has been a reconfiguration of the primary controls on the Appellant's vehicle; I must further be satisfied that the reconfiguration has been "*extensive*."

37. There is no definition of 'extensive' contained in the relevant primary or secondary legislation. It is clear from the decision of the Supreme Court in *Inspector of Taxes –v- Kiernan* [1981] 1 I.R. 117, which was applied by Donnelly J in *Coleman –v- Revenue Commissioners*, that:-

"Where statutory provisions are addressed to the public generally, a word should be given the meaning which an ordinary member of the public would intend it to have when using it ordinarily",

and

"[W]hen the word which requires to be given its natural and ordinary meaning is a simple word which has a widespread and unambiguous currency, the judge construing it should draw primarily on his own experience of its use. Dictionaries or other literary sources should be looked at only when alternative meanings, regional usages or other obliquities are shown to cast doubt on the singularity of its ordinary meaning, or when there are grounds for suggesting that the meaning of the word has changed since the statute in question was passed."

38. Applying the foregoing, I construe "*extensive reconfiguration*" as meaning reconfiguration which is significant, wide-ranging, comprehensive and/or thorough.

- 39.** In the appeal before me, I have found that the relevant reconfiguration of the primary controls comprises the lightening of the steering and the fitting of a steering ball to the steering wheel on the Appellant's vehicle. The cost of lightening the steering amounted to €1,774.08. This figure can be considered in the light of the overall cost of the Appellant's vehicle, which came to €39,615.45 net of VAT and VRT.
- 40.** No evidence was given in relation to the cost of the fitting of the steering ball, although I accept that its fitting, together with the fitting of the side steps and the automatic boot opening system, cost the Appellant some €2,000.
- 41.** I have also had regard to the fact that the steering on the Appellant's vehicle was the only primary control to be affected by the adaptations. No adaptation of the accelerator, brakes, gear selector or parking brake was carried out.
- 42.** Having regard to the foregoing factors, I am satisfied and find as a material fact that the reconfiguration of the primary controls on the Appellant's vehicle was not an extensive reconfiguration within the meaning of the 1994 Regulations.
- 43.** Accordingly, I find that the Appellant is not entitled to the 'Specific Adaptation' exemption pursuant to Regulation 8A of the 1994 Regulation

G. Determination

- 44.** For the reasons outlined above, I find that the determination of the Respondent's Appeal Officer made pursuant to section 145 of the Finance Act, 2001, as amended, on the 25th of April 2016 was correct.





45. I therefore refuse the Appellant's appeal and determine in accordance with section 949AL(1) of the Taxes Consolidation Act, 1997, as amended, that the determination of the Respondent's Appeal Officer made on the 25th of April 2016 should stand.

Dated the 20th day of December 2018

MARK O'MAHONY
Appeal Commissioner

