



**66TACD2019**

**BETWEEN/**

**Appellant**

**Appellant**

**V**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal concerns the calculation of Vehicle Registration Tax ('VRT') in respect of a vehicle brought into the State from the UK.
2. The vehicle, the subject matter of this appeal, is a Lexus NX300H, registration 191xxxxx with CO2 emissions of 135. The vehicle was assigned an OMSP of €54,796 on registration on 18 January 2019, resulting in VRT payable of €8,911. The Appellant appealed the amount of VRT payable on the vehicle and was notified by the Respondent that the VRT amount of €8,911 was correct and that no refund was due. The Appellant duly appealed to the Tax Appeals Commission by notice of appeal received on 12 March 2019.
3. This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

## **Background**

4. The Appellant purchased a new Lexus NX 300H, a hybrid electric vehicle, from a car dealership in Belfast. The Appellant imported the vehicle into the State and registered the vehicle at the National Car Testing Service ("NCTS") on 18 January 2019. The Appellant paid an amount of €8,911 VRT on registration of the vehicle. The Appellant contends that the VRT charged on the vehicle was excessive and seeks a refund up to approximately €2,228.

## **Legislation (See Appendix 1)**

## **Submissions and Analysis**

5. The Appellant submits that the amount of VRT calculated and charged on her vehicle was incorrect and overstated. The Appellant contends that she is aware of other people who imported the exact same vehicle and were charged less VRT. The Appellant further contends that the dealer from whom she purchased the vehicle in Northern Ireland indicated to the Appellant prior to the purchase of the vehicle, that a significantly less amount of VRT would be payable on the vehicle.
6. In support of her appeal the Appellant has furnished a copy of the dealer's quote for the vehicle which shows an approximate VRT amount payable of €6,809.
7. In addition, the Appellant has also furnished printouts from Revenue's online VRT calculator as follows:
  - a. The VRT calculator for a Lexus NX 300H with statistical code 40487886 which shows a VRT amount payable of €6,683.
  - b. The VRT calculator for a Lexus NX 300H with statistical code 40787886 which shows a VRT amount payable of €6,809.
8. The VRT calculator submitted at a) above is for a vehicle with CO<sub>2</sub> emissions of 121g/km. The vehicle the subject of the within appeal has higher CO<sub>2</sub> emissions of 135g/km. The statistical code for the Appellants vehicle is 41387886.



9. The VRT calculator submitted at b) above is for a vehicle with CO2 emissions of 121g/km. The vehicle the subject of the within appeal has higher CO2 emissions of 135g/km.
10. The Appellant also furnished two redacted copies of the vehicle import receipt for two similar Lexus NX300H vehicles (but with different statistical codes), registered with the NCTS in 2018 and which have CO2 emissions of 121g/km. The receipt showed that VRT amounts of €6,077 and €7,285 respectively were charged on the vehicles.
11. The Appellant submits that her vehicle is identical to the above two vehicles. The Appellant is incorrect in this regard as the Appellant's vehicle has higher CO2 emissions of 135g/km and is a newer version for VRT purposes than the 2018 versions quoted.
12. The Respondent submits that the examples furnished by the Appellant are for vehicles which have lower CO2 emissions than the Appellants vehicle. The Respondent further submits that the VRT calculators submitted by the Appellant have applied depreciation (to account for the passing of time) which would not have applied to the Appellants vehicle as the Appellant's vehicle was only a matter of days old when it was first registered. I accept the Respondents submissions in this regard.
13. The Respondent contends that the Open Market Selling Price applied to the vehicle was €54,796. The correct rate of VRT to be applied to the vehicle is 19% in accordance with Table 2 of section 132 Finance Act 1992, as amended. In addition, the Appellant is entitled to a reduction of €1,500 owing to the fact that the vehicle is a hybrid electric vehicle. This results in an overall VRT charge of €8,911.
14. The amount of VRT applied to a vehicle is calculated by reference to the Open Market Selling Price of the vehicle and the CO2 emissions of the vehicle. In the within appeal the Appellant has not contested the Open Market Selling price of the vehicle nor has the Appellant contested the rate of VRT applied to the vehicle. The basis of the Appellants appeal is that she is aware of other people who have imported what she believes to be an identical vehicle and paid less VRT on registration. The evidence furnished by the Appellant does not support this assertion.



## **Conclusion**

15. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: *'The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer.*
16. While the Appellant contended that the VRT charged of €8,911 was overstated, the Appellant failed to adduce sufficient evidence in support of this contention and thus failed to discharge the burden of proof.
17. On a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine that the VRT charged on the vehicle of €8,911 to be correct.
18. The appeal hereby is determined in accordance with section 949AL TCA 1997.

**PAUL CUMMINS**  
**APPEALS COMMISSIONER**  
**22 NOVEMBER 2019**



## Appendix 1

### Section 132 Finance Act, 1992, as amended:

*(1) [Subject to the provisions of this Chapter] and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid [at whichever of the rates specified in subsection (3) is appropriate] on—*

*(a) the registration of a vehicle, and*

*(b) a declaration under section 131(3).*

*(2) Vehicle registration tax shall become due and be paid at the time of the registration of a vehicle or the making of the declaration under section 131(3), as may be appropriate, by—*

*(a) an authorised person in accordance with section 136(5)(b),*

*(b) the person who registers the vehicle,*

*(c) the person who has converted the vehicle where the prescribed particulars in relation to the conversion have not been declared to the Commissioners in accordance with section 131(3),*

*(d) the person who is in possession of the vehicle that is a converted vehicle which has not been declared to the Commissioners in accordance with section 131(4),*

*and where under paragraphs (a) to (d), more than one such person is, in any case, liable for the payment of a vehicle registration tax liability, then such persons shall be jointly and severally liable.*

*(3) The duty of excise imposed by subsection (1) shall be charged, levied and paid—*

*[(a) in case the vehicle the subject of the registration or declaration concerned is a Category A vehicle (other than a vehicle that is a hybrid electric vehicle or a plug-in hybrid electric vehicle) designed to use heavy oil as a propellant—*



*(i) by reference to Table 1 to this subsection, or*

*(ii) where—*

*(I) the level of CO<sub>2</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and*

*(II) the Commissioners are not satisfied of the level of CO<sub>2</sub> emissions by reference to any other document produced in support of the declaration for registration,*

*at the rate of an amount equal to the highest percentage specified in Table 1 to this subsection of the value of the vehicle or €740, whichever is the greater,]*

*(aa) in case the vehicle the subject of the registration or declaration concerned is a Category A vehicle other than a vehicle charged under paragraph (a)—*

*(i) by reference to Table 2 to this subsection, or*

*(ii) where—*

*(I) the level of CO<sub>2</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and*

*(II) the Commissioners are not satisfied of the level of CO<sub>2</sub> emissions by reference to any other document produced in support of the declaration for registration,*

*at the rate of an amount equal to the highest percentage specified in Table 2 to this subsection of the value of the vehicle or €720, whichever is the greater,*

.....



TABLE 2

<i>CO<sub>2</sub> Emissions (CO<sub>2</sub> g/km)</i>	<i>Percentage payable of the value of the vehicle</i>
<i>0 g/km up to and including 80 g/km</i>	<i>14% or €280 whichever is the greater</i>
<i>More than 80 g/km up to and including 100 g/km</i>	<i>15% or €300 whichever is the greater</i>
<i>More than 100 g/km up to and including 110 g/km</i>	<i>16% or €320 whichever is the greater</i>
<i>More than 110 g/km up to and including 120 g/km</i>	<i>17% or €340 whichever is the greater</i>
<i>More than 120g/km up to and including 130g/km</i>	<i>18% or €360 whichever is the greater</i>
<i>More than 130g/km up to and including 140g/km</i>	<i>19% or €380 whichever is the greater</i>
<i>More than 140g/km up to and including 155g/km</i>	<i>23% or €460 whichever is the greater</i>
<i>More than 155g/km up to and including 170g/km</i>	<i>27% or €540 whichever is the greater</i>
<i>More than 170g/km up to and including 190g/km</i>	<i>30% or €600 whichever is the greater</i>
<i>More than 190g/km up to and including 225g/km</i>	<i>34% or €680 whichever is the greater</i>
<i>More than 225g/km</i>	<i>36% or €720 whichever is the greater</i>

Section 133 Finance Act, 1992, as amended:

*(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 enhancements or accessories have not been removed from the vehicle or not sold therewith for the purposes 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.*

**Section 135C Finance Act, 1992, as amended:**

*(1) [(a) Where a person first registers a category A vehicle or a category B vehicle during the period from 1 January 2011 to [31 December 2019] and the Commissioners are satisfied that the vehicle is a series production hybrid electric vehicle then the Commissioners shall remit or repay to that person an amount equal to the lesser of—*

*(i) the vehicle registration tax which, apart from this subsection, would be payable in respect of the vehicle in accordance with [paragraph (aa)] or (c) of section 132(3), or*



*(ii) the amount specified in the Table to this subsection which is referable to the vehicle having regard to its age.]*

*(b) In this subsection 'age', in relation to a vehicle, means the time that has elapsed since the date on which the vehicle first entered into service.*

TABLE 1

<i>Age of vehicle</i>	<i>Maximum amount which may be remitted or repaid</i>
<i>New vehicle, first registration</i>	<i>€1,500</i>
<i>Not a new vehicle but less than 2 years</i>	<i>€1,350</i>
<i>2 years or over but less than 3 years</i>	<i>€1,200</i>
<i>3 years or over but less than 4 years</i>	<i>€1,050</i>
<i>4 years or over but less than 5 years</i>	<i>€900</i>
<i>5 years or over but less than 6 years</i>	<i>€750</i>
<i>6 years or over but less than 7 years</i>	<i>€600</i>
<i>7 years or over but less than 8 years</i>	<i>€450</i>
<i>8 years or over but less than 9 years</i>	<i>€300</i>
<i>9 years or over but less than 10 years</i>	<i>€150</i>
<i>10 years or over</i>	<i>Nil</i>

