



14TACD2022

Between

**The Appellant**

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

---

**Determination**

---

**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to section 146 of the Finance Act, 2001 (as amended) against a determination made by the Revenue Commissioners (“The Respondent”).
2. The appeal is in relation to a charge to vehicle registration tax (“VRT”) on the importation of a vehicle into the State. The Appellant believes that he has been overcharged VRT on the basis that the Respondent has misclassified the vehicle for VRT purposes and that the vehicle qualifies for a lower flat rate of VRT. This appeal relates to highly technical EU Directives.

**Background**

3. The Appellant purchased a Land Rover Discovery (year of manufacturer 2013) 2 seater vehicle at auction in the United Kingdom (UK) in November 2019. The vehicle is a converted [REDACTED] with no seats in the back, purchased for use as a commercial vehicle. The vehicle was brought into the State shortly thereafter and was presented for registration at the VRT office in [REDACTED] in December 2019.

4. The Appellant, having carried out its own research prior to importation of the vehicle expected that the vehicle would be registered as a category N1 vehicle for which he would be required to pay a VRT amount of €200. The Appellant further submitted that he read on the Respondent's website that commercial vehicles pay VRT of €200.
5. The Appellant was advised at the VRT office that there was an administrative issue with the official registration document that accompanied the vehicle (i.e. the V5C). The Appellant was advised that the vehicle could not be registered until the details on the V5C were corrected.
6. The Appellant wrote to the Driver and Vehicle Licensing Agency ("DVLA"), the organisation in the UK that maintains the official register of vehicles, requesting that they issue a corrected copy of the V5C.
7. When the Appellant received the corrected V5C he returned to the VRT office to register the vehicle. The Appellant was advised that the computer system could only accept the vehicle as a vehicle for which VRT is calculated as a percentage of the open market selling price ("OMSP") of the vehicle, rather than at a flat rate of €200. The Appellant was charged €2,041 VRT which he duly paid. The vehicle was assigned the registration number [REDACTED].
8. The Appellant appealed the VRT charge to the Respondent on the grounds that the vehicle had been misclassified at the VRT office and that the lower rate of VRT applicable to category N1 vehicles should have been applied.
9. The Respondent notified the Appellant by letter dated 25<sup>th</sup> March 2020 that the matter had been examined in some detail but that no refund of the VRT paid was due. The Appellant appealed this decision of the Respondent to the Commission by notice of appeal received on 29<sup>h</sup> April 2020.
10. A physical hearing took place at the offices of the Tax Appeals Commission on 7<sup>th</sup> October 2021. Mr [REDACTED] attended the hearing representing the Appellant. Mr [REDACTED] attended the hearing to assist Mr [REDACTED] with regard to the classification of the vehicle, and due to his extensive knowledge, having worked in the motor trade for a considerable period of time. Mr [REDACTED]'s career has been in the motor trade. The Appellant's representatives presented at all times as honest and credible. The Commissioner commends them for the preparation and bundle of documentation for the hearing. It was impeccable and many legal representatives could learn from the Appellant in this appeal.
11. The legislation in relation to the charge to VRT for these vehicles is complex, opaque and challenging to the longest serving trained lawyers. Hence, the Commissioner has the

utmost sympathy for the Appellant. The Respondent's representatives presented as honest but also became confused during the hearing regarding the legislation. They were not always able to provide an accurate legislative picture. It has taken the Commission a considerable time to essentially work out the domestic and European framework and that is set out below.

12. The Commissioner appreciates that it cannot direct the Respondent in respect of the general matters going forward but it is hoped that the Respondent will consider further explanation on its website in relation to this legislation, so other citizens' expectations can be managed and they can be informed. This was not the only appeal from individuals and organisations with respect to this legislation.

### **Legislation and Guidelines**

13. The legislation engaged in this appeal is Regulation (EU) 2018/858 (repealing Directive 2007/46/EC) as follows:-

#### **Article 4 - Vehicle categories**

*(a) Category M consists of motor vehicles designed and constructed primarily for the carriage of passengers and their luggage, divided into:*

*(i) Category M<sub>1</sub> : motor vehicles with not more than eight seating positions in addition to the driver's seating position and without space for standing passengers, regardless of whether the number of seating positions is restricted to the driver's seating position;*

*(ii) Category M<sub>2</sub> : motor vehicles with more than eight seating positions in addition to the driver's seating position and having a maximum mass not exceeding 5 tonnes, regardless of whether those motor vehicles have space for standing passengers; and*

*(iii) Category M<sub>3</sub> : motor vehicles with more than eight seating positions in addition to the driver's seating position and having a maximum mass exceeding 5 tonnes, regardless of whether those motor vehicles have space for standing passengers;*

*(b) Category N consists of motor vehicles designed and constructed primarily for the carriage of goods, divided into:*

*(i) Category N<sub>1</sub> : motor vehicles with a maximum mass not exceeding 3,5 tonnes;*

*(ii) Category N<sub>2</sub> : motor vehicles with a maximum mass exceeding 3,5 tonnes but not exceeding 12 tonnes; and*

*(iii) Category N<sub>3</sub> : motor vehicles with a maximum mass exceeding 12 tonnes;*

14. Section 130 of the Finance Act 1992 – Interpretation Section

*'category A vehicle' means—*

(a) a category M1 vehicle, or

(b) a category N1 vehicle, that has 4 or more seats and to which a BE bodywork code has not been assigned;

**'category B vehicle'** means—

(a) a category N1 vehicle that has 3 seats or less,

(b) a category N1 vehicle to which a BE bodywork code has been assigned, or

(c) a motor caravan;

**'category C vehicle'** means a category M2 vehicle, a category M3 vehicle, a category N2 vehicle, a category N3 vehicle, a category T1 vehicle, a category T2 vehicle, a category T3 vehicle, a category T4 vehicle, a category T5 vehicle or a listed vehicle;

**"category D vehicle"** means one of the following vehicles, namely, an invalid carriage, a refuse cart, a sweeping machine, a watering machine used exclusively for cleansing public streets and roads, an ambulance, a road roller, a fire engine, a fire-escape, a vehicle used exclusively for transport (whether by carriage or traction) of road construction machinery used only for the construction or repair of roads and a vehicle used exclusively for the transport (whether by carriage or traction) of life boats and their gear or any equipment for affording assistance in the preservation of life and property in cases of shipwreck or distress at sea;

**'category M1 vehicle'**, **'category M2 vehicle'**, **'category M3 vehicle'**, **'category N1 vehicle'**, **'category N2 vehicle'** and **'category N3 vehicle'** have the same meanings as in Annex II of Directive 2007/46/EC;

15. Section 132 of the Finance Act 1992 – Charge of excise duty

(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—

(i) in respect of the CO<sub>2</sub> emissions of the vehicle—

(I) by reference to Table 1 to this subsection, or

(II) where—

(A) the level of CO<sub>2</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate, EC certificate of conformity or vehicle registration certificate issued in another Member State, and

(B) 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 €720, whichever is the greater,

and

(ii) in respect of the NO<sub>x</sub> emissions of the vehicle—

(I) by reference to—

(A) Table 2 to this subsection, and

(B) the unit of measurement used in the relevant EC type-approval certificate, EC certificate of conformity, vehicle registration certificate issued in another Member State or other document produced in support of the declaration for registration, as the case may be,

subject to a maximum of €4,850 in respect of vehicles designed to use heavy oil as a propellant and €600 in respect of all other vehicles, or

(II) where—

(A) the level of NO<sub>x</sub> emissions cannot be confirmed by reference to the relevant EC type-approval certificate, EC certificate of conformity or vehicle registration certificate issued in another Member State, and

(B) the Commissioners are not satisfied of the level of NO<sub>x</sub> emissions by reference to any other document produced in support of the declaration for registration,

at the rate €4,850 in respect of vehicles designed to use heavy oil as a propellant and €600 in respect of all other vehicles.

(c) in case it is a **category B** vehicle, at the rate of an amount equal to **13.3 per cent of the value of the vehicle** or €125, whichever is the greater,

(d) in case it is—

(i) a **category C** vehicle, or

(ii) a vehicle that, at all stages of manufacture, is classified as a **category N1** vehicle with less than 4 seats and has, at any stage of manufacture, a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order,

at the rate of €50, or in case such vehicle is registered on or after 1 May 2011, at the rate of €200,

(e) in case it is a category D vehicle, at the rate of nil per cent of the value of the vehicle.

*(4) 'mass in running order' means*

*(a) in the case of a motor vehicle: the mass of the vehicle, with its fuel tank(s) filled to at least 90 % of its or their capacity/ies, including the mass of the driver, of the fuel and liquids, fitted with the standard equipment in accordance with the manufacturer's specifications and, when they are fitted, the mass of the bodywork, the cabin, the coupling and the spare wheel(s) as well as the tools*

*(7) 'technically permissible maximum laden mass' (M) means the maximum mass allocated to a vehicle on the basis of its construction features and its design performances; the technically permissible laden mass of a trailer or of a semitrailer includes the static mass transferred to the towing vehicle when coupled;*

17. EU Regulation No. 1230/12 – Article 4, Provisions for EC type-approval of a type of vehicle with regard to its masses and dimensions

*1. The manufacturer or his representative shall submit to the type-approval authority the application for EC type-approval of a type of vehicle as regard its masses and dimensions.*

*2. The application shall be drawn up in accordance with the model information document set out in Part A of Annex V.*

*3. For the purposes of mass distribution calculations, the manufacturer shall provide the type-approval authority, for each technical configuration within the vehicle type as determined by the set of values of the relevant points in Annex V, with the information necessary to identify the following masses:*

*(a) the technically permissible maximum laden mass;*

*(b) the technically permissible maximum mass on the axles or group of axles;*

*(c) the technically permissible maximum towable mass;*

*(d) the technically permissible maximum mass at the coupling point(s);*

18. Article 4 of EU Regulation 167/2013.

*For the purposes of this Regulation the following vehicle categories shall apply:*

*(1) 'category T' comprises all wheeled tractors; each wheeled tractor category described in points 2 to 8 is supplemented at the end by an 'a' or 'b' index according to its design speed:*

*(a) 'a' for wheeled tractors with a maximum design speed below or equal to 40 km/h;*

*(b) 'b' for wheeled tractors with a maximum design speed above 40 km/h;*

*(2) 'category T1' comprises wheeled tractors, with the closest axle to the driver having a minimum track width of not less than 1 150 mm, with an unladen mass, in running order, of more than 600 kg, and with a ground clearance of not more than 1 000 mm;*

*(3) 'category T2' comprises wheeled tractors with a minimum track width of less than 1 150 mm, with an unladen mass, in running order, of more than 600 kg, with a ground clearance of not more than 600 mm; if the height of the centre of gravity of the tractor (measured in relation to the ground) divided by the average minimum track for each axle exceeds 0,90, the maximum design speed shall be restricted to 30 km/h;*

*(4) 'category T3' comprises wheeled tractors with an unladen mass, in running order, of not more than 600 kg;*

*(5) 'category T4' comprises special purpose wheeled tractors;*

## **Submissions**

### *Appellant*

19. The Appellant helpfully furnished a comprehensive bundle of supporting documentation, which included photographs of the vehicle, a copy of the UK registration (V5C) document, printouts from the Revenue website, emails from industry experts, receipts, and a weighbridge certificate. The Appellant's representatives were exceptionally well prepared, as referred to above, and a credit to their organisation. The Commissioner has the utmost understanding of the Appellant's position.
20. The Appellant submitted that having carried out research prior to the importation of the vehicle that the vehicle would be registered as a category N1 vehicle for which he would be required to pay a VRT amount of €200. The Appellant further submitted that the Respondent's website indicated that commercial vehicles are charged VRT of €200.
21. The Appellant referred in his submissions to the 'MIRO' rule, which is the calculation used to determine if a vehicle qualifies for the €200 VRT rate. In the calculation, the maximum permissible mass of the vehicle is divided by the mass in service of the vehicle and multiplied by 100 to arrive at the percentage. If the percentage is under 130 then the VRT rate of 13.3% of the value of the vehicle is applied. If the percentage is over 130 then the category C flat rate of €200 applies.
22. The Appellant submitted that the legislation does not state that the certificate of conformity is the document to be used to obtain the relevant weights for the purposes of the

calculation of the MIRO rule. The Appellant further submitted that the MIRO rule has nothing to do with taxation, only environmental factors and safety.

23. The Appellant submitted that the certificate of conformity is a safety document used in the EU and is equivalent only to a CE Mark. The figures therein it submitted are not relevant or accurate for the purposes of establishing the weight of the vehicle. The Appellant submitted that the figures in the certificate of conformity should not be relied upon for the purposes of the MIRO rule as these figures are only valid at a point in time when the measurements are initially taken. Beyond that date, the figures are 'null and void', as changes and alterations can be made to the vehicle which impact on its weight.

24. The Appellant contacted Senator Shane Cassells in respect of the matter, who subsequently made representations to the Respondent on behalf of the Appellant. The Appellant furnished a copy of the response received by Senator Cassells from the Respondent, which explained how the laden mass figure is taken from the certificate of conformity. The Appellant submitted the following in respect of the use of the certificate of conformity in ascertaining the correct weights to be used in the MIRO rule calculation;

*'The legislation Section 132(3)(c) does not call for this document to be used, it calls for the mass of the vehicle with body in running order (See Attachment) I take this to mean the actual physical weight of the vehicle which I have provided. I was also not aware they used the Certificate of Conformity until informed by Senator Cassells. Taking the true weight gives a Laden Mass of 131.12% well within the MIRO rule'*

25. The Appellant submitted that they brought the vehicle to the [REDACTED] weighbridge to be officially weighed. The Appellant furnished a copy of the weighbridge document which shows the vehicle weighing in at 2,400 kg. The Appellant submitted that this is the figure which should be used for the purposes of the calculation of the MIRO rule and to determine if the vehicle qualifies for the €200 VRT rate.

26. The Appellant furnished the following alternative calculation, using the weighbridge figure in the calculation and which the Appellant contended would bring the vehicle within the legislative criteria (above the 130% threshold) for the lower VRT rate to apply.

#### **MSS Land Rover Discovery 4 2993cc Calculation**

##### **See Specification**

**Mass in Service** includes 75kg for the driver which kerb weight **does** not. (Mass running Order)

Maximum Permissible Mass

3240.00



Actual Kerb Weight (See Weighbridge Docket)		2400.00
Including Driver		75.00
Divided by Mass In Service (Mass running Order)		2475.00
	Equals =	1.309
Multiplied By		100.00
	Laden Mass Equals =	130.9%

27. The Appellant also furnished emails from a Vehicle Conversion Specialist company and from the company Jaguar Land Rover which confirm that the vehicle is a commercial N1 category vehicle rather than an M1 car.
28. The Appellant also furnished a copy of the V5C document, which shows that the vehicle is categorised as an 'N1' vehicle.
29. The Appellant furnished a printout from [www.gov.uk](http://www.gov.uk) which provides some information in relation to 'car derived vans'. The Appellant submitted that if he converted the vehicle to a van that the vehicle would then qualify for the lower €200 rate of VRT. The Appellant submitted that it was not economical to undertake this action as the engineers costs would be in the region of €800.
30. The Appellant submitted that the Respondent had valued the vehicle at €14,121. The Respondent valued the vehicle on the basis that it was to be used as a private vehicle rather than a commercial vehicle. The Appellant further submitted that if the vehicle had been valued as a commercial vehicle it would have been valued at circa €12,000 to €12,500.

*Respondent*

31. The Respondent submitted that the Appellant was charged the category B rate of VRT but that the Appellant is seeking the lower category C rate to apply.
32. The Respondent submitted that Finance Act 1992 section 132 sets out how VRT shall be charged, levied and paid. The Respondent further submitted that in order for an N1 vehicle to qualify for category C rate the vehicle must, among other conditions, have "*a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order*". Section 132(3)(d)(ii) clearly states it is the "*mass of the vehicle with bodywork in running order*" that is to be used in the equation. The definition of "*mass of the vehicle with bodywork in running order*" is defined in section 130 of Finance Act 1992 and taken from Directive 97/27/EC.

33. The Respondent submitted that the Appellant has advanced the argument that they are using the incorrect “mass of the vehicle” for the purposes of determining the 130 per cent rule. The Respondent further submitted that for the purposes of calculating VRT the figure for the “mass of the vehicle with bodywork in running order” is taken from the certificate of conformity at field 13.
34. The Respondent also submitted that the figure represents a “mid-point” within total possible range the mass of the vehicle can come within. The Respondent however later retracted this submission. This was not helpful to the Commissioner nor the Appellant. The Respondent who administers this tax should ensure that it understands the workings of the tax. But the Commissioner appreciates that this area is complex and hopes that this determination assists all other individuals and indeed the Respondent in their understanding going forward.
35. The Respondent stated that the terms “actual mass of the vehicle” and “mass in running order” are separate and distinct technical characteristics of the vehicle. The distinctions include the reference to “*with the standard equipment*” in the former and “*plus the mass of the optional equipment*” in the latter.
36. The Respondent submitted also that the Appellant has referred to the kerb weight of the vehicle in their calculation of the weight of the vehicle. The Respondent further submitted that the legislation is silent on the matter of “kerb weight”.

### **Material Facts**

37. The Commissioner finds the following material facts :-

- The vehicle is a 2013 year of manufacture Land Rover Discovery;
- The vehicle is not used as a private vehicle but as a two seater commercial vehicle.

### **Analysis**

38. The Appellant imported the vehicle into the State in December 2019 and accepts that a charge to VRT arises on the importation of the vehicle.
39. The central issue arising in this appeal concerns the correct rate of VRT payable by the Appellant on the importation of the Land Rover Discovery vehicle.
40. The Appellant contested the categorisation of the vehicle as one subject to the rate of VRT which is 13.3% of the OMSP of the vehicle, in accordance with section 132(3)(c) Finance Act 1992. The Appellant contended that the vehicle should qualify for the lower flat rate of

VRT of €200, the vehicle being an N1 vehicle with a technically permissible laden mass which is greater than 130% of the mass of the vehicle with bodywork in running order.

41. EU Regulation 2018/858 (“the Regulation”) establishes a harmonised framework containing the administrative provisions and general technical requirements for approval of all new vehicles within its scope and of the systems, components and separate technical units intended for those vehicles, with a view to facilitating their registration, sale and entry into service within the Community.
42. Various categories of vehicles are listed in the Regulation. In accordance with the Regulation, motor vehicles designed and constructed for the carriage of goods are designated as ‘category N’ vehicles. The Regulation also provides for sub categorisations i.e. categories N1, N2 and N3.
43. Category N1 vehicles are vehicles designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes. The V5C document furnished by the Appellant confirms that the vehicle is a category N1 vehicle. There is no dispute between the parties that the vehicle the subject of the within appeal is a category N1 vehicle. It is noted that the Appellant in its submissions at the hearing advised that the vehicle was registered at the VRT office as a category M vehicle. The Appellant appears to be mistaken in this regard.
44. The Finance Act 1992, as amended, contains the relevant domestic VRT legislation. Section 130 of the Finance Act 1992 is the interpretation section, which provides definitions for the various different categories of vehicles including categories A, B and C. In addition, the interpretation section provides definitions for many other technical attributes and characteristics relevant to vehicles. Section 132 of the Finance Act 1992 imposes various different rates of VRT which depend on the categorisation of the vehicle and/or in relation to other technical attributes of the vehicle, as defined in the interpretation section.
45. The Respondent has stated in their submissions that in order for a category N1 vehicle to qualify for category C rate of VRT the vehicle must, among other conditions, have “*a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order*”. It is worth noting that the Respondent is slightly incorrect in this assertion. There is no *category C rate of VRT*. There is a lower rate of VRT which applies to category C vehicles, but which also applies to category B vehicles where certain other conditions are met.
46. The Commissioner sets out below the matter in dispute and the determination.

47. In order for the Appellant's vehicle to qualify for the lower €200 flat rate of VRT the vehicle must meet the specific criteria set out in section 132(3)(d) of the Finance Act 1992 as follows;

*(d) in case it is—*

*(i) a category C vehicle, or*

*(ii) a vehicle that, at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats and has, at any stage of manufacture, a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order,*

*at the rate of €50, or in case such vehicle is registered on or after 1 May 2011, at the rate of €200,*

48. The first matter for consideration is whether the vehicle can be categorised as a category C vehicle. A category C vehicle is defined in section 130 of the Finance Act 1992 as follows;

*“category C vehicle’ means a category M2 vehicle, a category M3 vehicle, a category N2 vehicle, a category N3 vehicle, a category T1 vehicle, a category T2 vehicle, a category T3 vehicle, a category T4 vehicle, a category T5 vehicle or a listed vehicle’*

49. Section 130 of the Finance Act 1992 further defines each of the above categories of vehicles. Categories M2, M3, N2 and N3 have the same meanings as in ANNEX II of Directive 2007/46/EC. The Commissioner notes that the domestic legislation has not been updated, as Directive 2007/46/EC has been repealed by Regulation (EU) 2018/858. The definition of these vehicles in accordance with article 4 of Regulation 2018/858 is as follows;

*Category M<sub>2</sub> : motor vehicles with more than eight seating positions in addition to the driver's seating position and having a maximum mass not exceeding 5 tonnes, regardless of whether those motor vehicles have space for standing passengers; and*

*Category M<sub>3</sub> : motor vehicles with more than eight seating positions in addition to the driver's seating position and having a maximum mass exceeding 5 tonnes, regardless of whether those motor vehicles have space for standing passengers;*

*Category N<sub>2</sub> : motor vehicles with a maximum mass exceeding 3,5 tonnes but not exceeding 12 tonnes; and*

*Category N<sub>3</sub> : motor vehicles with a maximum mass exceeding 12 tonnes;*

50. Categories T1, T2, T3 and T4 have the same meanings as in Article 4 of Regulation 167/2013. All four categories are in respect of wheeled tractors as follows;

*“category T1’ comprises wheeled tractors, with the closest axle to the driver having a minimum track width of not less than 1 150 mm, with an unladen mass, in running order, of more than 600 kg, and with a ground clearance of not more than 1 000 mm*

*‘category T2’ comprises wheeled tractors with a minimum track width of less than 1 150 mm, with an unladen mass, in running order, of more than 600 kg, with a ground clearance of not more than 600 mm; if the height of the centre of gravity of the tractor (measured in relation to the ground) divided by the average minimum track for each axle exceeds 0,90, the maximum design speed shall be restricted to 30 km/h*

*‘category T3’ comprises wheeled tractors with an unladen mass, in running order, of not more than 600 kg*

*‘category T4’ comprises special purpose wheeled tractors’*

51. In accordance with section 130 of the Finance Act 1992, a “listed vehicle” means *‘one of the following vehicles, namely, a hearse, a bus, a special purpose vehicle, an agricultural tractor, a two-wheeled tractor, an armoured fighting vehicle, or a vehicle (not including a motor-cycle) which is shown to the satisfaction of the Commissioners to be more than 30 years old at the time of registration’.*

52. It is evident that the Appellant’s vehicle, being a commercial vehicle, designed for the carriage of goods, with 2 seats, with a maximum mass not exceeding 3.5 tonnes and assigned a category of N1 per the V5C does not fall within any of the categories listed above and therefore is not a category C vehicle for the purposes of section 132(3)(d) of the Finance Act 1992.

53. Alternatively the Appellant’s vehicle will qualify for the lower flat rate of VRT if the vehicle meets the criteria set out in section 132(3)(d) of the Finance Act 1992, namely;

*a vehicle that, at all stages of manufacture, is classified as a category N1 vehicle with less than 4 seats and has, at any stage of manufacture, a technically permissible maximum laden mass that is greater than 130 per cent of the mass of the vehicle with bodywork in running order,*

This is the calculation which the Appellant refers to as the ‘MIRO’ rule.

54. It has already been established that the vehicle is a category N1 vehicle with less than 4 seats. The question arises, whether the vehicle has a **technically permissible maximum**

***laden mass*** that is greater than 130 per cent of the ***mass of the vehicle with bodywork in running order***.

55. Regulation (EU) 2018/858 establishes a harmonised framework containing the administrative provisions and general technical requirements for all new vehicles. In particular, it includes the obligation for the vehicle manufacturer in its capacity as the holder of a Community type-approval to deliver a certificate of conformity to accompany each vehicle that is manufactured in conformity with the Community legislation on type-approval. The “certificate of conformity”, constitutes an official statement delivered to the buyer of the vehicle that a particular vehicle has been built in conformity with the requirements set out by Community type-approval legislation. The certificate of conformity also serves the purpose to enable the competent authorities of the Member States to register vehicles without having to require the applicant to supply additional technical documentation. The certificate of conformity is part of the overall framework for the approval of motor vehicles in the EU. The certificate of conformity could be described as the ‘*birth certificate*’ for the vehicle.

56. The manufacturer is required to include in the certificate of conformity the figures for the ‘*mass of the vehicle with bodywork in running order*’ and the ‘*technically permissible maximum laden mass*’, measured in kilograms.

57. These are the key figures which are used for the purposes of establishing if the vehicle qualifies for the lower rate of VRT in accordance with section 132(3)(d)(ii) of the Finance Act 1992.

58. Commission Regulation (EU) No. 1230/2012 implements Regulation (EC) No 661/2009 of the European Parliament and of the Council with regard to type-approval requirements for masses and dimensions of motor vehicles and their trailers. The Regulation places an obligation on manufacturers to determine, for each version within a vehicle type the ‘*technically permissible maximum laden mass*’.

59. Regulation No. 1230/12 defines technically permissible laden mass as follows;

*‘technically permissible maximum laden mass’ (M) means the maximum mass allocated to a vehicle on the basis of its construction features and its design performances; the technically permissible laden mass of a trailer or of a semi-trailer includes the static mass transferred to the towing vehicle when coupled;*

60. There is no dispute between the parties regarding the figure for the technically permissible mass of the vehicle i.e. 3,240 kg. Therefore, there is no need for the Commissioner to consider this definition further as no controversy arises in respect of this definition.

61. Regulation No.1230/2012 also defines, in article 2, the 'mass in running order' as *'the mass of the vehicle, with its fuel tank(s) filled to at least 90 % of its or their capacity/ies, including the mass of the driver, of the fuel and liquids, fitted with the standard equipment in accordance with the manufacturer's specifications and, when they are fitted, the mass of the bodywork, the cabin, the coupling and the spare wheel(s) as well as the tools*

....

*The mass in running order shall be checked from the actual mass by weighing the vehicle and deducting the mass of the optional equipment fitted. For such purposes the weighing instrument shall comply with the requirements of Directive 2009/23/EC of the European Parliament and of the Council (1)'.*

62. The Appellant did not provide a copy of the certificate of conformity as it does not possess one.

63. The Respondent, in establishing the correct VRT rate applicable to the vehicle used the figures contained in the V5C document rather than the certificate of conformity as follows;

*Max permissible mass = 3,240 kg*

*Mass in service = 2,500 kg*

64. The V5C document is issued by the DVLA and contains information about the vehicle and its registered owner. The Respondent submitted that the figures contained in the V5C document are taken by the DVLA directly from the manufacturer's certificate of conformity. The Commissioner accepts this submission by the Respondent.

65. The Appellant submitted that the figures in the certificate of conformity should not be relied on for the purposes of the calculation above as these figures are only valid at a point in time when those specific measurements were taken. Beyond that date, the figures are 'null and void', as changes and alterations are made to the vehicle.

66. The Appellant took his vehicle to be officially weighed at a weighbridge in [REDACTED] and furnished a copy of the weighmasters certificate in support of this appeal. The certificate stated that the unladen weight of the vehicle was 2,400 kg.

67. The Commissioner accepts the Appellant's point that the weight of a vehicle can fluctuate over its lifetime. However, the certificate of conformity is the official record that the vehicle has been manufactured in accordance with the relevant EU type-approval regulations and contains the relevant technical particulars which enable the competent authorities of the Member States to register the vehicle.

68. In addition section 132(3)(g) of the Finance Act 1992 states the following in respect of vehicles whose category cannot be confirmed;

*(g) in case it is a vehicle whose category cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, or any other documentation specified by the Commissioners for the purposes of confirming the categorisation of vehicles for the purposes of this Chapter which is produced in support of the declaration for registration, the vehicle shall be deemed to be a category M1 vehicle for vehicle registration tax purposes.*

This puts it beyond doubt that the certificate of conformity is the document to be relied upon for the purposes of ascertaining the relevant technical details and specifications for the purposes of calculating the correct VRT to be paid on the importation of a vehicle.

69. The Commissioner whilst sympathetic to the Appellant is not able to accept that the weighmasters measurement of the unladen mass of the vehicle can be used in place of the measurement officially recorded in the V5C.

70. The Commissioner also is not in a position to accept the Appellant's submission that the MIRO rule has nothing to do with taxation, only environmental factors and safety. The criteria that the technically permissible maximum laden mass of the vehicle is greater than 130% of the mass of the vehicle with bodywork in running order is clearly set out in the VRT legislation and is inextricably connected to the calculation of the amount VRT to be paid.

71. The Commissioner notes that the terms used in the V5C are slightly different to those used in the legislation. The Commissioner however accepts that the figure for '*max permissible mass*' per the V5C is equivalent to '*technically permissible maximum laden mass*'. The Commissioner also accepts that the figure for the '*mass in service*' per the V5C is equivalent to the '*mass of the vehicle with bodywork in running order*'. The Commissioner accepts this on the basis that there are no other figures contained in the V5C which relate to the mass of the vehicle, and no evidence was put forward by either party to the contrary.

72. Inserting these figures into the calculation results in the technically permissible mass of the vehicle being 129.6% of the mass of the vehicle with bodywork in running order. This unfortunately for the Appellant falls just short of the 130% requirement. The Commissioner appreciates that the Land Rover is only just under the 130% requirement but it is a requirement and "just under" is in legislative terms the same as missing it by "a mile".

73. The Appellant, to succeed in its appeal, is obliged to bring himself squarely within the provisions of the relief in order to be entitled to avail of same. This principle is set out



clearly in the well quoted dicta of Kennedy C.J. in the Supreme Court case of *Revenue Commissioners v Doorley* (1933) IR 750, as follows;

*'I have been discussing taxing legislation from the point of view 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 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, 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.'*

74. The Commissioner determines that the Respondent was correct to charge VRT of 13.3% of the OMSP on the importation of the vehicle into the State.
75. Having established that the Respondent was correct to charge VRT at 13.3% of the OMSP, the next matter to be determined is the correct OMSP of the vehicle.
76. The Appellant submitted that if he converted the vehicle to a van that the vehicle would then qualify for the lower €200 rate of VRT. The Appellant further submitted that he did not do the conversion as it was not economical to do so owing to the engineer's costs which would be in the region of €800.
77. The Appellant is incorrect in its assertion that the lower €200 VRT rate would apply if he converted the vehicle to a van. The legislation does not make reference to 'commercial' vehicles. Commercial vehicles do not automatically qualify for the €200 flat rate of VRT. The €200 flat rate applies only to certain categories of vehicles as outlined in the paragraphs above.
78. The Appellant paid a VRT amount of €2,041 on registration of the vehicle. This means that the Respondent allocated an OMSP of €15,345 to the vehicle. The 13.3% VRT rate was applied to this OMSP to arrive at the VRT charge of €2,041. At the hearing the Appellant submitted that the Respondent valued the vehicle on the basis that it was to be used as a private vehicle rather than a commercial vehicle. The Appellant further submitted that if the vehicle had been valued as a commercial vehicle it would have been valued at circa

€12,000 to €12,500. The Commissioner is satisfied that the OMSP can be on the lower range. The Appellant's witness has worked in the motor trade for his career and presented as credible and honest. The Commissioner is satisfied that the OMSP has been overvalued on this particular vehicle.

79. Commercial vehicles are vehicles primarily designed to carry cargo, objects and work tools, rather than people. The Appellant provided photographs of the vehicle which shows clearly that the vehicle is configured for the carriage of tools and cargo. There are two seats in the front for the driver and a passenger and no seating at the back.

80. The Commissioner determines that the vehicle should be valued on the basis that it is a commercial 2 seater vehicle and the OMSP allocated by the Respondent should be reduced to €12000. Hence, the VRT is reduced by €445 and the Appellant is due a refund of that amount from the Respondent.

### **Determination**

81. The Commissioner finds that the Appellant is not successful in their appeal that the vehicle, the subject of this appeal is entitled to be registered as an N1 vehicle at a VRT rate of €200. As such, the Appellant is unsuccessful in that aspect of their appeal. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and VRT. As such, the Commissioner finds that the valuation of the vehicle should be reduced to €12,000. Hence that leaves a refund of €445 due to the Appellant. The Commissioner appreciates this decision will be disappointing for the Appellant and its representatives. The Appellant has lost the appeal on a technical aspect but that does not negate the fact they were correct to appeal. The Commissioner thanks the Appellant for the appeal and for the time and effort expended in their preparation. The Commissioner hopes the recommendation for the Respondent to provide more information on their website about such vehicles is taken up in order to assist others.

82. This appeal is determined in accordance with section 949 TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.



**Marie-Claire Maney**

**Appeal Commissioner  
Chairperson  
22<sup>nd</sup> December 2021**