



15TACD2022

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.

Background

3. The Appellant purchased a Mitsubishi Shogun 3.2 Jeep in the United Kingdom (UK) in March 2020. The Appellant brought the vehicle into the State shortly thereafter and registered it with the National Car Testing Service (“NCTS”) in [REDACTED] on 26th March 2020.
4. The Mitsubishi Shogun Jeep is a five door, long wheel based commercial van with 2 seats at the front and a cargo/storage area at the back.

5. The Appellant, having carried out his own research prior to importation of the vehicle expected that he would be required to pay a VRT amount of €200 on registration of the vehicle.
6. The Appellant was advised at the NCTS that the VRT for his vehicle 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 €2,545 VRT which he duly paid. The vehicle was assigned the registration number [REDACTED].
7. The Appellant appealed the VRT charge to the Respondent on the grounds that the vehicle is a category N1 vehicle weighing 2,300 kilograms (“kg”) and accordingly qualifies for the lower €200 rate of VRT.
8. The Respondent notified the Appellant by letter dated 2nd June 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 15th July 2020.
9. The appeal was accepted as a late appeal in accordance with section 949O(1) of the Taxes Consolidation Act 1997 (“TCA 1997”).
10. The Commission notified the parties by email dated 29th December 2020 that the appeal would be determined in accordance with section 949U of the TCA 1997 without the need for an oral hearing. The Commission sought further information from the Respondent by email dated 1st April 2021 and 21st April 2021 in order to gain a full understanding of the matters in dispute and the facts of the appeal.
11. Having received the responses from the Respondent, it became apparent that the appeal required an oral hearing for the fullness of the considerations of the appeal.
12. A remote hearing took place on the 12th October 2021. All parties joined remotely. The Appellant attended and was unrepresented. Two officials from the Revenue Commissioners attended on behalf of the Respondent.
13. The matter for determination in this appeal is the correct rate of VRT applicable to the Appellant’s Mitsubishi Shogun Jeep. Essentially the determination hinges on the correct figure for the ‘*mass of the vehicle with bodywork in running order*’ as explained below.
14. The legislation in relation to the charge to VRT for these vehicles is complex, opaque and challenging to the longest serving lawyers. Hence, the Commissioner has the utmost sympathy for the Appellant. It has taken the Commission a considerable time to essentially work out the domestic and European framework and that is set out below.

Legislation and Guidelines

15. 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 M₁ : 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 M₂ : 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 M₃ : 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 N₁ : motor vehicles with a maximum mass not exceeding 3,5 tonnes;

(ii) Category N₂ : motor vehicles with a maximum mass exceeding 3,5 tonnes but not exceeding 12 tonnes; and

(iii) Category N₃ : motor vehicles with a maximum mass exceeding 12 tonnes;

16. 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;

17. 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 CO₂ emissions of the vehicle—

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

(II) where—

(A) the level of CO₂ 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 CO₂ 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_x 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_x 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_x 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.

18. EU Regulation No. 1230/12 – Article 2, Definitions

(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;

19. 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);

Submissions

Appellant

20. The Appellant submitted that he brought the vehicle into the country on the understanding that he would pay a VRT amount of €200 on registration of the vehicle. The Appellant contended for this rate of VRT on the basis that the vehicle meets the required legislative conditions in respect of the weight of the vehicle.

21. The Appellant submitted that the weight of the vehicle, according to the manufacturer, is 2,300 kg. In support of this submission, the Appellant furnished a photocopy from what appears to be a manufacturer's handbook, which details the specifications of an unnamed vehicle type. The photocopy states that the kerb weight of a model with front seats only is 2,300 kg.

22. The Appellant also submitted that the actual weight of the vehicle is 2,240 kg. The Appellant submitted that he brought the vehicle to [REDACTED] weighbridge in [REDACTED] [REDACTED] to be officially weighed. The Appellant furnished a copy of the weighbridge document, which shows the vehicle weighing in at 2,240 kg.

23. The Appellant submitted that the Respondent made an error with regard to the weight of the vehicle used in the computation for the purposes of assigning the correct VRT rate to the vehicle. The Appellant contended that if either the manufacturer's weight of the vehicle (2,300 kg) or the actual weight of the vehicle (2,240 kg) were used in the calculation then the vehicle would qualify for the lower €200 rate of VRT.
24. In addition, the Appellant submitted that he was advised by his car dealer that the particular vehicle he had purchased is a commercial vehicle which carries a VRT rate of €200. The Appellant also submitted that '*short wheel based jeeps*' pay a €200 rate of VRT, whereas '*long wheel jeeps*' pay VRT at a rate of 13.3% of the OMSP of the vehicle. The Commissioner notes that the vehicle is in fact a long wheel jeep, as confirmed on the NCTS registration certificate.
25. The Appellant also submitted that if he had bought the vehicle as a new vehicle in the State that the VRT charge would have been €200.
26. The Appellant did not produce evidence of this submission at the hearing. The Appellant was directed by the Commissioner at the hearing to provide (within 21 days of the hearing) documentary evidence from recognised dealerships that the vehicle carries a VRT rate of €200.
27. The Appellant subsequently furnished a printout of a Mitsubishi Motors price list with an effective date of 30th August 2017. The Appellant highlighted on the printout a Pajero 3.2L 4WD vehicle. The price list states that a VRT rate of €200 applies to this vehicle. The Mitsubishi Shogun does not appear on this list.
28. The Appellant submitted that the only other comparable jeep that can be purchased in Ireland is a long wheel base Toyota Landcruiser, which carries the €200 VRT flat rate.
29. In support of his appeal the Appellant also furnished a copy of an email from a person named [REDACTED] [REDACTED] which states the following;
- 'I have received confirmation from the Mitsubishi dealer that the above jeep was when sold new originally registered as a commercial vehicle. This can be confirmed by contacting the dealer on attached letter. The V5 that's in your possession also confirms this, being the original V5 and registered as a commercial work vehicle from new. This being the case even if registered new in Ireland it would qualify for €200 VRT'.*
30. The Appellant submitted that he paid the equivalent of €16,000 for the vehicle and that the Respondent valued the vehicle at €19,140.

Respondent

31. The Respondent submitted that for VRT purposes there are two different categories of commercial vehicles. VRT is charged at 13.3% of the OMSP for '*category B*' vehicles and VRT is charged at a flat rate of €200 for '*category C*' vehicles.
32. The Respondent further submitted that commercial vehicles, which fall into the EU classification N1, are in either category B or category C.
33. The Respondent stated that vehicles that have (at any stage of manufacture) a technically permissible maximum laden weight that is greater than 130% of the mass in service of the vehicle and are designed and constructed for the carriage of goods with a maximum mass not exceeding 3,500 tonnes are eligible for category C rate of VRT.
34. The Respondent submitted that the Appellant's Mitsubishi vehicle has a maximum permissible weight of 3,030 kg and a mass in service of 2,340 kg. As 3,030 kg is 129.49% of 2,340 the vehicle falls into category B for the purposes of calculating the VRT charge.
35. The Respondent furnished a copy of the UK registration certificate (referred to by the Respondent as the V5) for the vehicle, which substantiates the above figures.
36. The Respondent stated that they rely on the V5 document to obtain the relevant weight figures to be used in the calculation. The Respondent further stated that the figures contained in the V5 are taken from the Certificate of Conformity for the vehicle, which is supplied by the manufacturer.
37. The Respondent further submitted that it is custom and practice to recognise foreign registration documents and the data therein. The Respondent also submitted that they did not have sight of the Certificate of Conformity for the Appellant's vehicle.
38. The Respondent also noted that the Appellant relied in his submissions on the figure for the kerb weight of the vehicle taken from the extract from the manufacturer's handbook. The Respondent stated that there are 12 different values given for the kerb weight in the extract provided and the Appellant does not specify why he has selected the 2,300 kg figure. The Respondent further submitted that the legislation does not make any reference to the kerb weight of the vehicle.
39. The Respondent submitted that for the purposes of calculating VRT the definition of '*mass of the vehicle with bodywork in running order*' was taken from EU Directive 97/27 EC and defined in section 130 of the Finance Act 1992.

40. The Respondent also submitted that this figure is recorded at field 13 in the Certificate of Conformity and represents a “mid-point” within total possible range the mass of the vehicle can come within. The Respondent could not expand on this submission at the hearing and was directed by the Commissioner to set out (within 21 days of the hearing) in clear terms the statutory underpinning and evidence of their reliance on the mass in service figure taken from the Certificate of Conformity and their reference to a “mid-point”.

41. The Respondent later retracted their submission with regard to the “mid-point”. 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.

42. The Respondent submitted that the “*mass of the vehicle with bodywork in running order*” is defined in section 130 of the Finance Act 1992 and is taken from EU Directive 97/27/EC as follows;

‘Mass of the vehicle in running order’ means the mass of the unladen vehicle with bodywork, and with coupling device in the case of a towing vehicle, in running order, or the mass of the chassis with cab if the manufacturer does not fit the bodywork and/or coupling device (including coolant, oils, 90% fuel, 100% other liquids except used waters, tools, spare wheel and driver (75 kg), and, for buses and coaches, the mass of the crew member (75kg) if there is a crew seat in the vehicle)

43. The Respondent submitted that an OMSP of €19,140 was assigned to the vehicle resulting in a VRT charge of €2,545 (i.e. €19,140 x 13.3%).

Material Facts

44. The Commissioner finds the following material fact :-

- The vehicle is a Mitsubishi Shogun 3.2 Jeep.

Analysis

45. The Appellant imported the vehicle into the State in March 2020 and accepts that a charge to VRT arises on the importation of the vehicle.

46. The central issue arising in this appeal concerns the correct rate of VRT payable by the Appellant on the importation of his Mitsubishi Shogun Jeep.

47. 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 and contended that the vehicle should qualify for the lower flat rate of VRT of €200.
48. EU Regulation 2018/858 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.
49. Various categories of vehicles are listed in Regulation 2018/858. In accordance with this Regulation, motor vehicles designed and constructed for the carriage of goods are designated as 'category N' vehicles. This Regulation also provides for sub categorisations i.e. categories N1, N2 and N3.
50. Category N1 vehicles are vehicles designed and constructed for the carriage of goods and having a maximum mass not exceeding 3.5 tonnes. The V5 (also known as a V5C) document furnished by the Respondent 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.
51. 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.
52. The Respondent has stated in their submissions that commercial vehicles, which fall into the EU classification N1, are in either category B or category C in accordance with domestic VRT legislation. It is worth noting that the Respondent is incorrect in this assertion. A vehicle with an EU classification N1 can either be in category A or category B, but not in category C. The definition of the categorisations can be found in section 130 of the Finance Act 1992 as follows;

'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;

The Commissioner notes that the domestic legislation has not been updated, as Directive 2007/46/EC has been repealed by Regulation (EU) 2018/858.

53. The Respondent correctly states that category B vehicles are charged VRT at 13.3% of the OMSP of the vehicle. However, there is a lower rate of VRT which applies to category C vehicles, but which also applies to EU classified N1 vehicles where certain other conditions are met.

54. 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,

55. It has already been established that the vehicle is an EU classified N1 vehicle. This particular vehicle for domestic legislation purposes is either a category A vehicle or a category B vehicle. It is not a category C vehicle. Therefore the condition that the vehicle is a category C vehicle, imposed by section 132(3)(d)(i) of the Finance Act 1992 has not been met.

56. 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)(ii) 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 in his submissions.

57. 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**.

58. EU Regulation No. 1230/12 defines the technically permissible maximum 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'

59. There is no dispute between the parties regarding the figure for the technically permissible mass of the vehicle i.e. 3,030 kg. Therefore, there is no need for the Commissioner to consider this definition further as no controversy arises in respect thereof.

60. EU Regulation No. 1230/12 defines the mass of the vehicle in running order as follows;

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

61. It is clear that the measurement of the mass of the vehicle in running order for the purposes of VRT is complex and precise.
62. EU Regulation 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 his 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.
63. 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.
64. 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.
65. The Appellant contended that the Respondent has used the incorrect figure for the mass of the vehicle with bodywork in running order in computing how much, as a percentage, the technically permissible maximum laden mass exceeds the mass of the vehicle with bodywork in running order.
66. The Appellant took his vehicle to be officially weighed at a weighbridge in [REDACTED] and furnished a copy of the weighbridge document. The document stated that the weight of the vehicle was 2,240 kg.
67. If this weight is inserted into the computation, it results in the technically permissible maximum laden mass being 135% of the mass of the vehicle with bodywork in running order (i.e. $3,030/2,240 \times 100$).

68. In addition, the Appellant submitted that the weight of the vehicle, according to the manufacturer, is 2,300 kg. In support of this submission, the Appellant furnished a photocopy from what appears to be a manufacturer's handbook, which details the specifications of an unnamed vehicle type. The photocopy states that the kerb weight of a model with front seats only is 2,300 kg. The Respondent pointed to the fact that the photocopy provided contains various different kerb weights of the vehicle and that the Appellant did not explain specifically why he chose the 2,300 kg weight. The Commissioner also notes that the photocopy from the manufacturer's handbook does not actually state for which vehicle the figures therein relate.

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

70. 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.

71. 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.

72. The Respondent, in establishing the correct VRT rate applicable to the vehicle used the figures contained in the V5 document (in the absence of the availability of the Certificate of Conformity) as follows;

Max permissible mass = 3,030 kg

Mass in service = 2,340 kg

73. The V5 document is issued by the Driver and Vehicle Licensing Agency ("the DVLA") and serves as a vehicle registration certificate. The V5 contains the details of a vehicle's

registered owner along with other specific information such as the vehicle make, model, identification number etc. The Respondent submitted that the weight figures contained in the V5 document are taken by the DVLA directly from the manufacturer's Certificate of Conformity. The Respondent also submitted that while the Certificate of Conformity is the official EU document containing particulars of the vehicle it is custom and practice of the Respondent to accept in good faith that the figures on the V5 have been correctly transcribed from the Certificate of Conformity. The Commissioner accepts this submission by the Respondent.

74. The Commissioner cannot accept that the weighbridge weight of the mass of the vehicle can be used in place of the measurement officially recorded in the V5 document. The Commissioner also cannot accept the figure provided in the photocopy from the manufacturer's handbook.
75. The Commissioner notes that the terms used in the V5 are slightly different to those used in the legislation. The Commissioner however accepts that the figure for '*max permissible mass*' per the V5 is equivalent to '*technically permissible maximum laden mass*'. The Commissioner also accepts that the figure for the '*mass in service*' per the V5 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 V5 which relate to the mass of the vehicle, and no evidence was put forward by either party to the contrary.
76. Inserting these figures into the calculation results in the technically permissible mass of the vehicle being 129.49% of the mass of the vehicle with bodywork in running order (i.e. $3,030/2,340 \times 100$). This unfortunately for the Appellant falls just short of the 130% requirement. The Commissioner notes that it only falls short by a very small percentage but in legislative terms, a small margin is the same as "missing it by a mile".
77. The Appellant also furnished a printout from a Mitsubishi Motors price list. A Pajero 3.2L 4WD vehicle has been highlighted on the printout, which states that a VRT rate of €200 applies to this vehicle. The Appellants vehicle does not appear on the price list. This submission unfortunately does not assist the Appellant in his appeal.
78. The Appellant, to succeed in his 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.'

79. The Commissioner determines that the correct figures to be used in computing how much, as a percentage, the technically permissible maximum laden mass exceeds the mass of the vehicle with bodywork in running order, are the figures contained in the V5 document, absent the availability of the Certificate of Conformity.
80. The Commissioner determines that the Respondent was correct to use the figure 2,340 kg as the mass of the vehicle with bodywork in running order for the purposes of the calculation above.
81. The Commissioner determines that the Appellant's vehicle falls short of the required 130%.
82. 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.
83. 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.
84. The Appellant's submissions were focused on the weight of the vehicle rather than the correct OMSP. The Appellant did however state that he paid €16,000 for the vehicle and the OMSP assigned by the Respondent was €19,140. The Appellant confirmed at the hearing that the valuation was not contested. The Commissioner has no grounds or information to overturn the valuation assigned by the Respondent. As such, the Commissioner confirms that the correct OMSP has been assigned by the Respondent and therefore the correct VRT has been paid.
85. The Commissioner appreciates that the Appellant will no doubt be disappointed by the decision. The Commissioner understands, having heard the evidence and reviewed the documentation furnished by the Appellant why he might have believed that the lower rate of VRT would apply to his vehicle. The Commissioner however must ensure that a charge

to tax arises and that the correct tax is charged in accordance with the legislation. The Commissioner commends the Appellant for his efforts in preparing his case.

Determination

86. The Commissioner finds that the Appellant is not successful in his appeal that the vehicle, the subject of this appeal is entitled to be registered at a VRT rate of €200. As such, the Appellant is unsuccessful in his appeal and the correct VRT rate has been applied and the correct VRT has been paid. The Appellant has lost on a highly technical point based on extremely complex domestic and EU legislation. The Appellant was correct to appeal for clarity for himself and others. But the Commissioner appreciates that this will be no comfort to the Appellant and he will be disappointed, having an expectation of a lower sum to be paid on VRT. The Commissioner has sympathy for the Appellant in the opaqueness of the rules and regulations in this area.

87. 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
23rd December 2021

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