



39TACD2022

Between

**The Appellant**

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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**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 Mitsubishi Shogun 3.2 Jeep in the United Kingdom (UK) and imported the vehicle into the State in August 2020. The Mitsubishi Shogun Jeep is a five door, automatic, long wheel based commercial van with 2 seats at the front.
4. The year of manufacture of the vehicle is 2017.

5. The Appellant brought the vehicle to be registered at the National Car Testing Service (“NCTS”) in Waterford on 12<sup>th</sup> October 2020.
6. The NCTS referred the vehicle details to the Central Vehicle Office for the correct statistical code and subsequently registered the vehicle as a category N1 vehicle. The vehicle was assigned the registration number [REDACTED].
7. The Appellant was charged €3,563 VRT calculated at 13.3% of the open market selling price (“OMSP”), which he duly paid.
8. The Appellant, having carried out his own research prior to importation of the vehicle had expected that he would be required to pay a VRT amount of €250 on registration of the vehicle.
9. The Appellant appealed the VRT charge to the Respondent on the grounds that the Respondent had used the incorrect weight of the vehicle in the formula which determines if the vehicle qualifies for the lower flat rate of VRT. The formula calculates how much, as a percentage, the technically permissible maximum laden mass of the vehicle exceeds the mass of the vehicle with bodywork in running order.
10. The Respondent notified the Appellant by letter dated 11<sup>th</sup> November 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 26<sup>th</sup> November 2020.
11. A remote hearing took place on the 5<sup>th</sup> October 2021. All parties joined remotely. The Appellant attended and was accompanied by Ms [REDACTED]. One official attended on behalf of the Respondent.
12. The matter for determination in this appeal is the correct amount of VRT payable on the registration of the Appellant’s Mitsubishi Shogun Jeep. A lower flat rate of €200 VRT applies to certain vehicles, which 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* (“the formula”). Certain vehicles which have a technically permissible maximum laden mass that is *less than* 130 per cent of the mass of the vehicle with bodywork in running order are charged VRT at a rate of 13.3% of the open market selling price of the vehicle. The dispute between the parties and the matter to be determined is the correct figure for the ‘*mass of the vehicle with bodywork in running order*’ to be used in the formula.
13. 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**

14. 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;*

15. 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;*

16. 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 NOx 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 NOx 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.*

## 17. 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;*

18. 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*

19. The Appellant submitted that he brought the vehicle into the country on the understanding that he would pay a VRT amount of €250 on registration of the vehicle.

20. The Appellant contended that the Respondent used the incorrect weight of the vehicle in the formula for ascertaining the correct rate of VRT on the vehicle.

21. The Appellant contended that he was incorrectly charged a significantly higher amount of €3,563 VRT due to the fact that the Respondent determined that the maximum laden weight of the vehicle was less than 130% of the mass in service of the vehicle.

22. The Appellant submitted that he brought the vehicle to the [REDACTED] weighbridge in [REDACTED] Co. Kilkenny to be officially weighed and that the actual weight

of the vehicle is 2,200 kg. The Appellant furnished a copy of the weighbridge document, which shows the vehicle weighing in at 2,200 kg. The Appellant contended that this is the weight which should be used in the formula.

23. The Appellant submitted that the Respondent used the weight of 2,385 kg taken from the official UK registration document (the V5C) in the formula for calculating how much, as a percentage, the technically permissible maximum laden mass exceeds the mass of the vehicle with bodywork in running order. The Appellant contended that if the actual weight of the vehicle of 2,200 kg was used in the formula then the vehicle would qualify for the lower rate of VRT.
24. The Appellant submitted that for the purposes of calculating the road tax payable on the vehicle the Department of Transport required sight of a weight docket from a recognised weighbridge.
25. The Appellant further submitted that the Department of Transport accepted the 2,200 kg weight taken at the weighbridge. In support of this submission the Appellant furnished a copy of the Irish vehicle registration certificate which shows that the 2,200 kg weight of the vehicle was used as the basis for the calculation of the road tax.
26. The Appellant submitted that the discrepancy between the weight of the vehicle on the V5C and the weight per the weighbridge might be due to some additional load in the vehicle when the manufacturer originally weighed it.
27. The Appellant submitted that he paid £20,000 sterling for the vehicle.
28. The Appellant did not provide any submissions or evidence in respect of the correct valuation of the vehicle in the context of the Irish car dealership market. At the hearing the Commissioner requested that the Appellant provide (within 21 days of the hearing) submissions in respect of the correct valuation of the vehicle.
29. The Appellant subsequently furnished copies of three advertisements of similar vehicles for sale on well-known Irish online car buying sites. The vehicles were advertised for sale in October 2021.
30. All three vehicles were manufactured in 2015. The advertised sales price of the vehicles are €19,995, €27,250 and €23,950 respectively.
31. The Appellant submitted that Brexit has impacted on the price of vehicles to the extent that vehicles are more expensive than they were at the time he purchased his vehicle.

*Respondent*

32. The Respondent submitted that a number of EU Directives and Regulations have been introduced for the purposes of harmonisation of vehicle standards within the EU. The Respondent referred specifically to Directive 2006/42/EC and Directive 2007/46/EC.
33. The Respondent further submitted that all car manufacturers wishing to sell their vehicles in the EU submit their designs to the EU. They receive their classification and sub classifications based on the designs, body type, engine size, fuel etc. This classification, the Respondent contended is recorded on the first registration of the vehicle in the EU.
34. The Respondent submitted that vehicles with a maximum mass not exceeding 3.5 tonnes are classified as category 'N1' vehicles. The Respondent further submitted that in accordance with the manufacturer's specifications the vehicle was designed and constructed for the carriage of goods having a maximum mass not exceeding 3.5 tonnes. The Respondent submitted that the Appellant's vehicle is a category N1 vehicle.
35. The Respondent submitted that the figures for the mass in service and the maximum permissible mass of the vehicle were taken from the official UK registration document (the V5C). The Respondent further submitted that the mass in service of the vehicle is 2,385 kg and the maximum permissible mass of the vehicle is 3,030 kg.
36. The Respondent submitted that they are 'tied' to the figures as stated in the UK registration documents.
37. The Respondent submitted that the Appellant's vehicle is a 'category B' vehicle for the purposes of calculating the VRT payable on the vehicle and that category B vehicles pay a VRT rate of 13.3% of the OMSP of the vehicle. The Respondent submitted that the weighbridge weight sought to be used by the Appellant cannot be used in place of the weight submitted by the manufacturer to the EU.
38. The Respondent furnished a copy of the UK registration certificate (the V5C) for the vehicle, which substantiates the above figures.
39. The Respondent submitted at the hearing that an OMSP of €40,038 was assigned to the vehicle resulting in a VRT charge of €3,563.
40. The Respondent did not provide any evidence in respect of the valuation assigned to the vehicle. The Commissioner directed the Respondent to supply information in relation to the correct valuation of the vehicle within 21 days of the hearing.



41. The Respondent subsequently submitted that the valuation unit in the offices of the Respondent identified a statistical code for a comparable Irish vehicle which they indicated was the closest version of the make and model for which a statistical code was available.
42. The Respondent further contended that the valuation unit then referred to the Glass's Guide to establish the UK sales price and after factoring in depreciation arrived at an OMSP of €25,268. Applying the VRT rate of 13.3% to this OMSP gives a VRT amount of €3,360. The Respondent indicated that the Appellant paid a VRT amount of €3,563 and therefore is owed a refund of €203.
43. The Respondent also submitted that they referred to the manufacturer's 'Light Commercial Guide' and from this established an OMSP of €36,052. The relevance of this submission is not clear to the Commissioner. In addition the Respondent submitted an advertisement of a similar vehicle for sale on a well-known UK car dealership website. The vehicle is a 2017 Mitsubishi Shogun and is advertised for sale for £26,999 plus VAT.

#### **Material Facts**

44. The Commissioner finds the following material facts :-

- The vehicle is a category N1 vehicle for VRT registration purposes

#### **Analysis**

45. The Commissioner notes that the submissions from the Respondent were confusing and unclear. The Respondent did not provide any satisfactory explanation to the Appellant or to the Commissioner as to how they arrived at the VRT figure of €3,563 charged to the Appellant on registration of the vehicle. The Respondent referred in their submissions to the EU legislation which is no longer in force and did not provide any detail into the mechanics of the legislation or how the legislation applied in the calculation of the VRT payable by the Appellant. The Respondent indicated at the hearing that an OMSP of €40,038 was assigned to the vehicle by the NCTS. This is at odds with the VRT amount actually charged of €3,563 as the VRT is calculated at 13.3% of the OMSP, which suggests that the OMSP assigned to the vehicle was actually €26,789. Subsequent to the hearing the Respondent provided further submissions outlining the method used by the Revenue Valuation Section in arriving at the OMSP to the vehicle. The Respondent in these submissions indicated an alternative OMSP of €25,268. This is not helpful to the Appellant or the Commissioner.
46. The Appellant imported the vehicle into the State in August 2020 and accepts that a charge to VRT arises on the importation of the vehicle.

47. 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.
48. 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 €250. The Commissioner notes that the lower flat rate of VRT is actually €200 and not €250.
49. 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.
50. Various categories of vehicles are listed in the Regulation. In accordance with this Regulation, motor vehicles designed and constructed for the carriage of goods are designated as ‘category N’ vehicles. This Directive also provides for sub categorisations i.e. categories N1, N2 and N3.
51. 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 Respondent confirms that the vehicle is a category N1 vehicle. In addition, the Irish registration certificate also 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.
52. 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.
53. 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;*

54. The Appellant’s vehicle is not a Category A vehicle as it is not an N1 vehicle with 4 or more seats. The Appellant’s vehicle is not a Category C or D vehicle as it has already been established that the vehicle is an N1 EU classified vehicle and not any of the classifications stated above.

55. The Appellant’s vehicle is a Category B vehicle as it is an N1 vehicle that has 3 seats or less. Category B vehicles are charged VRT at 13.3% of the OMSP of the vehicle. However, there is a lower €200 rate of VRT which applies to EU classified N1 vehicles where certain other conditions are met.

56. 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..".*

57. The Appellant's vehicle will qualify for the lower flat rate of VRT if the vehicle meets the criteria in section 132(3)(d)(ii) of the Finance Act 1992 set out above 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 or formula, which the Appellant refers to in his submissions.

58. 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**.

59. 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.

60. 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.

61. 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.
62. Commission Regulation (EU) No. 1230/2012 places an obligation on manufacturers to determine, for each version within a vehicle type the 'technically permissible maximum laden mass'. The Regulation 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;*
63. 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.
64. 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)'.*
65. It is clear that the measurement of the mass of the vehicle in running order for the purposes of VRT is complex and precise. 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.
66. 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.
67. 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 Appellant did not provide a copy of the certificate of conformity as he does not possess it. The V5C document is issued by the Driver and Vehicle Licensing Agency ("the DVLA") in the UK and serves as a vehicle registration certificate. The V5C contains the details of a vehicles registered owner along with other specific information such as the vehicle make, mode, identification number etc. The Commissioner is aware that the weight figures contained in the V5C document are taken by the DVLA directly from the manufacturer's Certificate of Conformity.

70. 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.

71. 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.

72. 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 2,200 kg.

73. If this weight is inserted into the computation, it results in the technically permissible maximum laden mass being 137% of the mass of the vehicle with bodywork in running

order (i.e.  $3,030/2,200 \times 100$ ). That being the case the Appellant's vehicle would qualify for the lower rate of VRT.

74. The Commissioner does not accept that the weighbridge weight of the mass of the vehicle can be used in place of the measurement officially recorded in the V5C.

75. The Respondent, in establishing the correct VRT rate applicable to the vehicle used the figures contained in the V5C document (in the absence of the availability of the Certificate of Conformity) as follows;

Max permissible mass = 3,030 kg

Mass in service = 2,385 kg

76. Inserting these figures into the calculation results in the technically permissible mass of the vehicle being 127% of the mass of the vehicle with bodywork in running order (i.e.  $3,030/2,385 \times 100$ ). This unfortunately for the Appellant falls short of the 130% requirement.

77. 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* (1995) ITR 19, at page 548 of the judgment 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.'*

78. 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 V5C document, absent the availability of the Certificate of Conformity.

79. The Commissioner determines that the Respondent was correct to use the figure 2,385 kg as the mass of the vehicle with bodywork in running order for the purposes of the calculation above. The Commissioner determines that the Appellant's vehicle falls short of the required 130%. The Commissioner determines that Respondent was correct to charge VRT of 13.3% of the OMSP on the importation of the vehicle into the State.
80. 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.
81. The Appellant's submissions were focused on the weight of the vehicle rather than the correct OMSP. At the hearing the Commissioner requested both parties to furnish submissions in respect of the valuation of the vehicle.
82. The Appellant subsequently furnished copies of three advertisements of similar vehicles for sale on well-known Irish online car buying sites. The vehicles were advertised for sale in October 2021 (over a year after the Appellant purchased his vehicle). All three vehicles were manufactured in 2015, and therefore two years older than the Appellant's vehicle. The advertised sales prices of the vehicles are €19,995, €27,250 and €23,950 respectively. The average of the three advertised vehicles is €23,731.
83. The Appellant submitted that Brexit has impacted on the price of vehicles to the extent that vehicles are more expensive than they were at the time he purchased his vehicle. The advertised vehicles are for a different year of manufacture than the Appellant's vehicle. These advertisements do not assist the Appellant in his appeal.
84. An OMSP of €26,789 was assigned to the vehicle by the Respondent at registration and the 13.3% Category B rate was applied to arrive at the VRT charge of €3,562. Subsequent to the hearing and having reviewed the method used in assessing the OMSP of the vehicle, the Respondent revised this OMSP downwards to €25,268. The Respondent indicated that they used the Glass's Guide to establish the UK sales price and after factoring in depreciation arrived at the OMSP of €25,268.
85. The Respondent also furnished a copy of an advertisement of a similar vehicle for sale on a well-known UK car dealership website. The vehicle is a 2017 Mitsubishi Shogun and is advertised for sale for £26,999 plus VAT. The Commissioner is unclear as to how this assists the Respondent in their position that the correct OMSP of the vehicle is €25,268.



86. The Appellant paid £20,000 sterling for the vehicle. On the 12<sup>th</sup> October 2020 (the date he registered the vehicle at the NCTS) the exchange rate from sterling to euro was 1 GBP = 1.1059 EUR. Therefore the Appellant paid the equivalent of €22,118 for the vehicle.

87. Based on a consideration of the evidence and submissions together with a review of the documentation, the Commissioner determines that the Respondent initially overstated the valuation of the vehicle but accepts the revised OMSP of €25,268 to be a fair and reasonable OMSP in relation to the vehicle.

### **Determination**

88. 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 as an N1 vehicle at a VRT rate of €200. As such, the Appellant is unsuccessful in that aspect of his 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 €25,268. Hence that leaves a refund of €203 due to the Appellant. The Commissioner appreciates this decision will be disappointing for the Appellant. The Appellant has lost the appeal on a technical aspect but that does not negate the fact he was correct to appeal.

89. 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> February 2022**