



Between:

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a determination made by the Revenue Commissioners (hereinafter the “Respondent”). The appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price (the “OMSP”) in respect of the calculation of Vehicle Registration Tax (hereinafter “VRT”).
2. The total amount of tax at issue is €8,205.00

**Background**

3. The Appellant is a limited company involved in the importation and sale of motor vehicles. In May 2021 the Appellant imported a 2010 3.8 litre petrol Mitsubishi Pajero with 148,000 kms on its odometer (hereinafter the “vehicle”) in to the State from Japan.
4. On application by the Appellant to import and register the vehicle an OMSP of €22,000 was applied to the vehicle by the Respondent which resulted in a VRT liability of €8,205

which the Appellant paid to the National Car Testing Service and the vehicle was registered with the registration number [REDACTED] on 29<sup>th</sup> July 2021. The figure of VRT due was comprised of €8,140 of VRT due at the time of registration and €65 VRT due from NOx emissions. The amount of VRT due from NOx emissions is not in dispute.

5. The Appellant has appealed the OMSP valuation which the Respondent applied to the vehicle.
6. The oral hearing took place remotely before the Commissioner on 27<sup>th</sup> April 2022. Mr [REDACTED] (hereinafter the "Representative") appeared on behalf of [REDACTED] [REDACTED] Ltd (hereinafter the "Appellant") at the oral hearing and was not represented. The Respondent was represented by appeals officers. The Commissioner heard evidence and submissions on behalf of the Appellant and on behalf of the Respondent.

### **Legislation and Guidelines**

7. The legislation relevant to the within appeal is as follows:

Section 133 Finance Act, 1992, as amended:

*"(1) Where the rate of vehicle registration tax charged in relation to a category A vehicle or a category B vehicle is calculated by reference to the value of the vehicle, that value shall be taken to be the open market selling price of the vehicle at the time of the charging of the tax thereon.*

*(2) (a) For a new vehicle on sale in the State which is supplied by a manufacturer or sole wholesale distributor, such manufacturer or distributor shall declare to the Commissioners in the prescribed manner [the price, inclusive of all taxes and duties,] which, in his opinion, a vehicle of that model and specification, including any enhancements or accessories fitted or attached thereto or supplied therewith by such manufacturer or distributor, might reasonably be expected to fetch on a first arm's length sale thereof in the open market in the State by retail.*

*(b) A price standing declared for the time being to the Commissioners in accordance with this subsection in relation to a new vehicle shall be deemed to be the open market selling price of each new vehicle of that model and specification.*

*[(c) Notwithstanding the provisions of paragraph (b), where a price stands declared for a vehicle in accordance with this subsection which, in the opinion of the Commissioners, is higher or lower than the open market selling price at which a vehicle*

*of that model and specification or a vehicle of a similar type and character is being offered for sale in the State while such price stands declared, the open market selling price may be determined from time to time by the Commissioners for the purposes of this section.]*

*[(d) Where a manufacturer or sole wholesale distributor fails to make a declaration under paragraph (a) or to make it in the prescribed manner, the open market selling price of the vehicle concerned may be determined [from time to time] by the Commissioners for the purposes of this section.]*

*(3) In this section -*

*['new vehicle' means a vehicle that has not previously been registered or recorded on a permanent basis—*

*(a) in the State under this Chapter or, before 1 January 1993, under any enactment repealed or revoked by section 144A or under any other provision to like effect as this Chapter or any such enactment, or*

*(b) under a corresponding system for maintaining a record for vehicles and their ownership in another state, and where the vehicle has been acquired under general conditions of taxation in force in the domestic market;]*

*["open market selling price" means -*

*(a) in the case of a new vehicle referred to in subsection (2), the price as determined by that subsection,*

*(b) in the case of any other new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, would be determined under subsection (2) in relation to that vehicle if it were on sale in the State following supply by a manufacturer or sole wholesale distributor in the State,*

*(c) in the case of a vehicle other than a new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail and, in arriving at such price -*

*(i) there shall be included in the price, having regard to the model and specification of the vehicle concerned, the value of any enhancements or accessories which at the time of registration are not fitted or attached to the vehicle or sold therewith but which would normally be expected to be fitted or attached thereto or sold therewith unless it is shown to the satisfaction of the Commissioners that, at that time, such enhancements or accessories have not*

*been removed from the vehicle or not sold therewith for the purposes of reducing its open market selling price, and  
(ii) the value of those enhancements or accessories which would not be taken into account in determining the open market selling price of the vehicle under the provisions of subsection (2) if the vehicle were a new vehicle to which that subsection applied shall be excluded from the price.]”*

## **Submissions**

### Appellant’s Submissions

8. The Representative stated at the oral hearing that he has been involved in the motor industry for almost all of his life as he grew up being involved in his father’s motor business. He stated that he is the sales manager for the Appellant business. He stated that he has a qualification in the automotive industry. He stated that he and the Appellant business were involved in the importation of vehicles from Japan in the past, in particular the importation of Mitsubishi Pajero vehicles. It was submitted that the Appellant business wished to reinvigorate the Mitsubishi Pajero side of its business and this was the reason for importing the motor vehicle the subject matter of the within appeal.
9. It was submitted that Mitsubishi Pajeros which are manufactured in Japan have three different variations namely Fieldmaster, Exceed and Super Exceed with Super Exceed having the highest level of specification. The vehicle the subject matter of the within appeal is a Super Exceed.
10. It was further submitted that Mitsubishi Shogun vehicles which are manufactured in the UK are in essence the same vehicles with slight variation in specifications and that they were renamed in the UK due to negative associations with the name Pajero.
11. The Representative submitted that prior to the Appellant importing the vehicle the subject matter of the within appeal he attempted to enter the vehicle’s details into the Respondent’s VRT calculator tool on its website but that the precise vehicle details were not available on the calculator. He stated that in order to gauge what the VRT might be he had input details for a 2010 3.5 litre Mitsubishi Shogun of the highest specification available and that the VRT calculator stated that the VRT liability on such a vehicle would be €2,000.
12. He submitted that when he went to register the vehicle he was informed that the vehicle would have to go for manual assessment and that when the manual assessment was carried out by the Respondent the VRT liability returned at €8,205.

13. No independent expert witness evidence was adduced on behalf of the Appellant however the following documentation was submitted in support of a valuation of the vehicle:

- i. An email from [REDACTED] [REDACTED] dated 12<sup>th</sup> October 2021 which valued the vehicle at €10,000.
- ii. An email from [REDACTED] [REDACTED], dated 12<sup>th</sup> October 2021 which valued the vehicle at €13,000;
- iii. A valuation report from [REDACTED], Independent Motor Engineer and Assessor dated 14<sup>th</sup> April 2022 which valued the vehicle at €11,210.

14. The Representative submitted that the vehicle on which the Respondent's assessor had based his valuation was a V98W model which is a diesel vehicle and that the vehicle the subject matter of the appeal is a V97W model which is a petrol vehicle. He submitted, following enquiry from the Commissioner, that in his opinion, petrol vehicles command a lower price in the market for two reasons: the first being that the VAT rebate available to diesel drivers makes diesel vehicles more appealing and therefore diesel vehicles command higher prices and the second being that petrol vehicles tend to be less fuel efficient than diesel vehicles.

#### Respondent's Submissions

15. The Respondent submitted that at the time of registering the vehicle there were no comparator vehicles. The Respondent also submitted that during the appeal process it had been suggested to the Appellant that a physical check could be carried out on the vehicle but that this was declined and that the Appellant had decided to engage its own assessor.

16. Mr [REDACTED] gave evidence on behalf of the Respondent. Mr [REDACTED] is a Certified Motor Engineer with the Institute of the Motor Industry and is a Motor Engineer Assessor with Assess Ireland. Mr [REDACTED] does not have previous experience with importing vehicles but does have previous main dealer experience.

17. He stated that he had assessed the vehicle as having an OMSP of €22,000 by looking at Japanese and UK websites. The comparator vehicles which were appended to Mr [REDACTED] written valuation report were all from [www.beforward.jp](http://www.beforward.jp) and were the following models with the following values:

- i. 2010 Mitsubishi Pajero 3.0 litre petrol 127,500 kms      \$24,740 delivered
- ii. 2010 Mitsubishi Pajero 3.8 litre petrol 54,400 kms      \$24,682 delivered

iii. 2010 Mitsubishi Pajero 3.2 litre petrol 63,002 kms \$13,993 delivered

18. ██████ stated that in coming to an OMSP of €22,000 for the vehicle he first assessed that the value of the vehicle was \$22,000 and having converted the price from \$ to € he then applied a reduction for mileage of €50 per 1,000 kms and came to an OMSP of €22,000.

### **Material Facts**

19. The material facts in the within appeal are not at issue and the Commissioner accepts the following material facts:

- i. The Appellant imported a Mitsubishi Pajero 3.8 litre petrol vehicle which had an OMSP of €22,000 applied by the Respondent which resulted in a VRT liability of €8,205.

### **Analysis**

20. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*

21. The Commissioner has considered the submissions made on behalf of both Parties along with the evidence adduced on behalf of both Parties. On the one hand the Appellant has submitted documentary evidence from three sources which suggests the vehicle has an OMSP of somewhere between €10,000 and €13,000. On the other hand Mr ██████ has given evidence of how he came to an OMSP of €22,000.

22. Having considered all of the evidence the Commissioner finds that the OMSP of the vehicle applied by the Respondent is overstated. The vehicle the subject matter of the within appeal is a highly unusual vehicle in the Irish market and no comparator vehicles were available to either Party to directly support a valuation. The Commissioner finds neither Party has adduced evidence which fully supports their position. On the one hand the assessor on behalf of the Respondent has only referred to one Japanese website in coming to his valuation and no other reference material was used by the assessor in coming to his valuation of 24<sup>th</sup> May 2021. The Commissioner makes no criticism of Mr ██████ and accepts that he carried out his valuation professionally and competently. On the other hand the Appellant has submitted documentary evidence of three different

valuations without adducing direct evidence from the people who provided the valuations. Whilst the Commissioner accepts the *bonae fides* of the documentation which the Appellant has submitted, some caution must be applied in the absence of direct evidence being adduced by the people who produced the documents.

23. Having considered all of the above the Commissioner finds that the OMSP of the vehicle the subject matter of the within appeal is €14,052.50. In the absence of evidence of the sale price of any direct comparator vehicle, the Commissioner has reached this OMSP value by taking an average of all of the valuations received from both Parties as follows:

	Valuation €	Average €
██████████	10,000	
██████████ -	11,210	
██████ ██████████ ██████	13,000	
██████████	22,000	
	56,210	14,052.50

### Determination

24. For the reasons set out above, the Commissioner determines that the Appellant has succeeded in his appeal and that the correct amount of VRT payable on the vehicle ██████████ was €5,199. The Appellant is therefore entitled to a refund of VRT paid in the amount of €2,941. The VRT due from NOx emissions is not in dispute and remains payable at €65.
25. The Commissioner commends the Appellant and the Respondent for the manner in which this appeal was conducted.
26. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and in particular, section 949 thereof. 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 TCA1997.



Clare O'Driscoll  
Appeal Commissioner  
29<sup>th</sup> April 2022