



Between

86TACD2022

██████████

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a determination made by the Revenue Commissioners (“the Respondent”), in relation to a charge to Vehicle Registration Tax (“VRT”) on the importation of a vehicle into the State.
2. The Appellant maintains that the “open market selling price” (“OMSP”) is incorrectly calculated leading to an overpayment of VRT, on the basis that the Appellant has remanufactured the vehicle and carried out a list of repairs to the vehicle. In addition, the Appellant maintains that VRT is in effect a customs duty and is in breach of EU Law, in particular Articles 28 and 110 Treaty on the Functioning of the European Union (“TFEU”).
3. By letter dated 28 May 2018, the Appellant lodged a first stage appeal with the VRT Appeals Unit of the Respondent on the grounds that, as the vehicle had been substantially remanufactured, the VRT was incorrect. Moreover, the appeal stated that

no VRT was due on the vehicle as “VRT is a customs duty and acts as such and therefore is contrary to Articles 28 and 110”. The VRT Appeals Unit revised the OMSP downwards to €18,618. This realised a refund of €838, which has not been claimed. On 18 July 2018, the Appellant duly appealed to the Commission. The appeal proceeded by way of a hearing that took place on 11 May 2022.

Background

4. The assessment to VRT concerns a BMW [REDACTED] Sport model car (“the vehicle”), which was first registered in the United Kingdom (“UK”) on 01 September 2014. On 8 March 2017, the Appellant purchased the vehicle in the UK, which was damaged at the time of purchase. Subsequently, the Appellant carried out a number of repairs to the vehicle. The vehicle was declared as having first entered this jurisdiction on 09 March 2018, and was registered in Ireland on 30 April 2018.
5. On 30 April 2018, the Appellant presented the vehicle for registration at the National Car Testing Service (“NCTS”) where an unregistered vehicle inspection was carried out. The VRT for this vehicle was calculated as a percentage of the OMSP of the vehicle.
6. The vehicle was assessed as being in good condition and an OMSP of €23,272 was attributed to the vehicle, resulting in a VRT payment of €4,189 being due and owing by the Appellant. On 30 April 2018, the Appellant paid the total amount of €4,406 being the VRT liability of €4,189 and an additional amount of tax in the sum of €217 due as a result of a delay in presenting the vehicle for registration. The vehicle was assigned the registration number [REDACTED].
7. By letter dated 28 May 2018, the Appellant lodged a first stage appeal with the VRT Appeals Unit. In his letter of appeal, the Appellant stated “.....I hereby appeal my VRT assessment. Because this vehicle was substantially remanufactured and there is no VRT due. Please refer to the Commission v France for precedence. You might note that my appeal is based on Law and as such jurisdiction for this appeal should be the Circuit Court and appealed to the High Court. I enclose the requested documentation”.
8. On 11 June 2018, the Respondent wrote to the Appellant in relation to his appeal. The VRT Appeals unit revised the OMSP downwards to €18,618 with the lower VRT amount of €3,351 being due and owing. This was a 20% reduction in the OMSP originally determined in respect of the vehicle. This realised a repayment of €838 to the Appellant, which to date has not been claimed by the Appellant.

9. By letter dated 18 July 2018, the Appellant duly appealed to the Commission. The Appellant's grounds of appeal are two fold namely:-
- i. the OMSP attributed to the vehicle is incorrect and as such, the VRT calculations are incorrect;
 - ii. VRT is "*clearly in breach of the bar on customs duties within the EU*".
10. In relation to the second point, the Appellant references Article 28 and 110 of the TFEU and the decisions of the Court of Justice of the European Union ("CJEU") in C-112/84 Humblot, Case C-265/99 *Commission v France* ("*France*"), Case C-47/88 *Commission v Denmark* ("*Denmark*"), Case C-132/88 *Commission v Greece* ("*Greece*") and Case C-383/01 *De Danske Bilimportører*.
11. In addition, the Appellant is requesting that the Commissioner make a preliminary reference to the Court of Justice of the European Union ("CJEU") under Article 267 of the TFEU.

Legislation and Guidelines

12. The legislation relevant to this appeal is as follows:
13. Section 146(1A) of the Finance Act 2001 (as amended), Appeals to Appeals Commissioners, provides:-
- (1A) Any person aggrieved by any of the following matters may appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act, 1997 within the period specified in subsection (2)*
- (a) a determination of the Commissioners under section 145;*
 - (b) a refusal to authorise a person as an authorised warehousekeeper, or to approve a premises as a tax warehouse, under section 109, or a revocation under that section of any such authorisation or approval;*
 - (c) a refusal to authorise a person as a registered consignee under section 109IA or a revocation under that section of any such authorisation.*
 - (d) a refusal to authorise a person as a registered consignor under section 109A or a revocation under that section of any such authorisation;*
 - (e) a refusal to approve a person as a tax representative under section 109U(2) or a revocation under that section of any such approval;*

(f) a refusal to grant a licence under section 101 of the Finance Act 1999 or a revocation under that section of any such licence that has been granted.

(2) The period specified for the purpose of making an appeal under this section is the period of 30 days after the date of –

(a) the payment of excise duty in the case of an appeal under subsection (1)(a),

(b) the notice of assessment or other notice calling for payment of the amount concerned in the case of an appeal under subsection (1)(b),

(c) the repayment or the notice of the refusal to repay in the case of an appeal under subsection (1)(c), or

(d) the notice of the determination, refusal or revocation concerned in the case of an appeal under subsection (1A).

14. Section 130 of the Finance Act 1992 (as amended), Interpretation, provides:-

“mechanically propelled vehicle” means a vehicle that –

(d) is capable of achieving vehicle propulsion at the time of registration or at the time of examination by a competent person under section 135D(1)(d), to the satisfaction of the Commissioners.....

“Vehicle” – means a mechanically propelled vehicle

“Unregistered Vehicle” includes a vehicle –

(a) Built up from a chassis, or.....

15. Section 131 of the Finance Act, 1992 (as amended), Registration of vehicles by Revenue Commissioners, provides:-

(1) (a) The Commissioners shall establish and maintain a register of all vehicles in the State (in this Chapter referred to subsequently as “the register”).

(ba) In respect of a vehicle which is within any particular category of vehicle that is specified by the Commissioners for the purposes of this paragraph or is within any other class of vehicle that is specified by the Commissioners, the Commissioners may, as a condition of registration, require confirmation that such vehicle- (i) is a mechanically propelled vehicle, and..

(bb) Where in respect of a vehicle the Commissioners require confirmation for the purposes of paragraph (ba), they shall register the vehicle only on receipt by them of a declaration made by a competent person in such form as may be specified by the Commissioners that the vehicle –

- (i) is a mechanically propelled vehicle, and
- (ii) (ii) complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii).

16. Section 132 of the Finance Act, 1992 (as amended), Charge of excise duty, provides:-

(1) Subject to the provisions of this Chapter 19 and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid at whichever of the rates specified in subsection (3) is appropriate on -

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

17. Section 133 of the Finance Act, 1992 (as amended), Chargeable value, provides:-

(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 vehicle registration tax, 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 is 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 a similar type and character is being offered for sale in the State at the time of such declaration, the open market selling price may be determined 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.

18. Article 28(1) of the TFEU establishes the Customs Union and provides:

“... shall comprise a customs union which shall cover all trade in goods and which shall involve the prohibition between Member States of customs duties on imports and exports and of all charges having equivalent effect, and the adoption of a common customs tariff in their relations with third countries.”

19. Article 30 of the TFEU provides:-

“Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.”

20. Article 110 of the TFEU provides:-

“No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products.

Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products”.

21. Article 267 of the TFEU provides:_

“The Court of Justice of the European Union shall have jurisdiction to give preliminary rulings concerning:

(a) the interpretation of the Treaties;

(b) the validity and interpretation of acts of the institutions, bodies, offices or agencies of the Union;

Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.

Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court.

If such a question is raised in a case pending before a court or tribunal of a Member State with regard to a person in custody, the Court of Justice of the European Union shall act with the minimum of delay.”

Submissions

Appellant

22. The Appellant gave the following evidence at hearing:-

- (i) Photographic evidence has been presented to show the condition of the vehicle. The same vehicles in Ireland are not subject to VRT. VRT is applied in an arbitrary manner, on market value and not on the condition of the vehicle.
- (ii) When the vehicle was presented for registration, repairs had been carried out at that stage. There was no questions asked as to the road worthiness of the vehicle and the inspector did not open the hood of the vehicle.
- (iii) Only when he appealed the charge to VRT was the OMSP of the vehicle reduced. The reduction is always based on 20% and it does not matter what work is done to the vehicle. He has been told this by many dealers. It is not possible that the vehicle is worth €18,000 on the open market when considering the work done to the vehicle. Most vehicles are broken when they cross the border, however if you repair the vehicles, they become subject to VRT. The Appellant claims that he has effectively been taxed on his own work.
- (iv) Insurers do not value a vehicle on the basis of the OMSP but on the value of the broken vehicle. An insurance company does not value vehicles any differently on either side of the border. The Appellant claimed that the Respondent did not take into consideration the purchase price paid for the vehicle, despite that information being provided.
- (v) Reference was made to the *Humblot* case. The Appellant claimed it is the same situation as this appeal, as it is restricting the type of car that he has access to. It is making it more expensive for the Appellant to import. It is clearly a Customs Duty and it is arbitrary.
- (vi) Reference was made to the *Denmark* case, that this is effectively re-manufacturing and it is affecting a lot of small businesses around the country that want to import cars to put them back on the road. Small businesses have been closed down as a result of this.

23. Under cross examination the Appellant agreed that he was charged VRT at the point of registration and not at the point of entry into the jurisdiction. He stated that this vehicle is not capable of being assessed in comparison to other vehicles, given it is a damaged vehicle. He claimed that it is not acceptable to simply apply a discount of

20% on appeal. The Appellant agreed that a vehicle must be capable of being driven in order for it to be eligible for VRT. The Appellant argued that he would have had no liability for VRT on a damaged vehicle in Ireland and thus the charge to VRT is arbitrary with respect to vehicles being imported into Ireland. The Appellant accepted that VRT was already paid on such a vehicle in Ireland, but pointed out that the VRT was not payable on a damaged Irish vehicle. Therefore, the value of the OMSP of the imported vehicle should be the value of the vehicle prior to the repairs being carried out. The Appellant argued that there are environmental consequences of VRT and that it discourages the reuse and resale of vehicles that have been repaired and encourages the purchase of new vehicles.

Respondent

24. ■■■■■ gave evidence on behalf of the Respondent as follows:-.

- (i) His professional background namely that he currently works within the National VRT Service. His role relates to exemptions, appeals and parliamentary questions. Prior to that, he worked in the area of enforcement within the Customs Division. He stated he was familiar with the Appellant's file and that on appeal, this was the first time that the matter of repairs had been raised and it was not raised at the NCTS stage.
- (ii) He explained the valuation process, that every vehicle has an OMSP, which takes into account the make, the model, mileage, the version and the variant. It also establishes a rate of depreciation for the particular make, model, version and variant. The Respondent's Tax and Duty Manual contains a table which outlines the valuation system of new and used vehicles. According to the Manual, there are normally three different states that a vehicle can be in, either fair, good or poor.
- (iii) Part of the function of the National VRT Service is to maintain the Car Register and establish valuations for cars. A large number of cars come in, they are valued, because they are normal vehicles and there is a Statistical Code for them. The model and Code would be on the system and there would be an OMSP put on it. For other vehicles that are not, the cars are assessed to the nearest type of car and then we would assess a value for that. In areas where there might be a dispute, or a doubt, the services of an independent valuer is used to establish the vehicle and to compare it against other markets where that vehicle might be sold.
- (iv) The Statistical Code that was used for the vehicle was the correct one and it ties into the Statistical Codes that are used by the Society of the Irish Motor Industry

("SIMI"), who distribute cars. There is another code that they use as well and it matches the code for a BMW. So the code was cross-checked between BMW, SIMI and the statistical codes in order to ascertain the OMSP for the vehicle.

- (v) The vehicle was in good condition, that there was nothing out of the ordinary with it and it would have been valued in the normal way. Later some documents were presented to show that there had been work done on the car. This was taken into account and allowed for, which resulted in a refund or a repayment due of €838, which was subsequently advised.
- (vi) A sliding scale is looked at in relation to what the appeal might actually return as the repayment. So there is a 5%, 10%, 15% and a 20% scale which is normally applied. 20% is normally the maximum. A Consultant is often used where vehicles come in that are not on the system.

25. Counsel for the Respondent made the following legal submissions:-

- (i) The OMSP is divorced from what was actually paid for the car. The OMSP is determined based on what the car might reasonably be expected to fetch and an objective test, on a first arm's length sale thereof in the State. On that analysis the main ground of appeal, which is that the car should be valued at what was paid for it, is completely beside the point. The legislation is framed so that is not the valuation for the purpose of the charge to tax. The charge to tax is based on an OMSP.
- (ii) Reference was made to *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49 and that the burden of proof is on the Appellant to demonstrate the OMSP of the vehicle was overstated and not that the value was greater than what he paid for it. Counsel said that the Commissioner would have to be satisfied that the vehicle was only worth €10,000 on a first retail sale on the open market on the date it was presented for registration, which can't make sense on the basis that this was what the Appellant had paid and then had brought the car in a drivable condition to the NCTS.
- (iii) There is a distinction in the case law of the Court of Justice between the ban on Customs Duties under Articles 28 and 30 of the Treaty and internal taxes, which come under Article 110 of the TFEU. Reference was made to Case C-343/90 *Dias*, Case C-402/09 *Tatu, Humblot, France, Denmark, Greece and De Danske Bilimportører*. The CJEU has considered whether a Motor Registration Tax imposed on first registration is a Customs Duty when it's imposed on first

registration as opposed to when crossing the border and it came to the conclusion that it is not. Counsel submitted that there is not a single authority in which a Motor Registration Tax imposed on first registration in the State was found to be a Customs Duty, rather VRT, and taxes like it, seem to be internal taxes under EU law that fall to be assessed under Article 110 of the TFEU.

- (iv) Reference was made to the decision of *Used Car Importers of Ireland Limited v The Minister for Finance* [2020] IECA 298 (Unreported, Court of Appeal, 6 November 2020) to Murray J where he stated

"Article 110 is infringed where the taxation on the imported product and that on the similar domestic product are calculated in a different manner on the basis of different criteria which lead, if only in certain cases, to higher taxation being imposed on the imported product.....The very nature of a first registration tax is that it is not imposed on the domestic vehicle at the same point in time as it is being imposed on the import.....The question of what the 'value' of the vehicle is for this purpose may be determined by reference to the value in the importing State. The importing State is not required to base the tax on the price paid for the car by the importer or on its value in the exporting State."

Material Facts

26. The Commissioner makes the following material findings of fact:-

- i. The vehicle was imported into the jurisdiction on 9 March 2018.
- ii. Following importation into the jurisdiction, the vehicle underwent substantial repairs prior to being presented for registration at the NCTS on 30 April 2018.
- iii. The vehicle was first registered in the jurisdiction on 30 April 2018 and was assessed as being in good condition.
- iv. At the time of registration, the vehicle was a “*vehicle*” within the meaning of section 130 of the Finance Act 1992, as amended.
- v. Following an appeal, the Appellant was successful at reducing the OMSP of the vehicle to €18,618, with the lower VRT amount of €3,351 being due and owing, on the basis of the vehicle having undergone substantial repairs.

Analysis

27. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated

“The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable”.

28. All vehicles are subject to VRT on first registration in the State. The OMSP of a vehicle is determined in accordance with section 133 of the Finance Act 1992, as amended i.e. *“on the price, inclusive of all taxes and duties, which, in the opinion of the Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.”* In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.

29. The Appellant's appeal has 2 limbs; firstly, that the charge to VRT is incorrect due to the value of the vehicle being overstated in its calculations for VRT and secondly, that VRT is a customs duty prohibited by EU Law. The Appellant also requests that a preliminary reference is made to the Court of Justice of the European Union (“CJEU”) under Article 267 of the TFEU. Each of the appeal grounds is dealt with separately below.

VRT and EU Law

30. The Appellant has argued that VRT is a customs duty and infringes Article 28 and Article 110 of the TFEU. Before the Commissioner can consider and determine whether the correct rate of VRT has been applied by the Respondent, the Commissioner must consider the Appellant's arguments that VRT infringes Article 28 and Article 110 of the TFEU.

31. In addition, the Appellant has raised an argument in his notice of appeal that this appeal should be more appropriately dealt with within the jurisdiction of the Circuit Court, on the basis that the Circuit Court can make a preliminary reference to the CJEU. In relation to the question of a preliminary reference to the CJEU under Article 267 TFEU,

it is within the jurisdiction of an Appeal Commissioner to make such a reference and the Commissioners have requested a preliminary ruling in previous appeals before the Commission.

32. The statutory scheme under section 949 of the TCA 1997 provides for an appeal from a decision of the Respondent to the Commission. It was the intention of the Oireachtas that a body such as the Commission, which has specialist knowledge in the area of taxation, would deal with such appeals. The statutory scheme provides for an appeal to the High Court on a point of law only. Historically, the Circuit Court was the Appeal Court following a determination of the Commission however this was amended by the Finance (Tax Appeals) Act 2015. On 21 March 2016, the Tax Appeals Commission was established and the new regime for the processing of tax appeals entered into force. Section 10 of the Finance (Tax Appeals) Act 2015 specifically provides that the Commission and its members shall be independent in the performance of their functions.
33. Moreover, section 146(1A) of the Finance Act 2001, as amended, specifically provides for an appeal to an Appeals Commissioner by “*a person who is aggrieved by a determination of the Commissioners*”. Therefore, the Commissioner is satisfied that the correct body to deal with an appeal in relation to the imposition of VRT, is the Commission and not the Circuit Court.
34. The Commissioner must apply EU Law to ensure the effectiveness of EU Law and there is an obligation on all bodies, not just Courts and Tribunals, as defined by Article 267 TFEU, to consider and apply (or disapply) EU law. The Supreme Court confirmed in *An Taisce v An Bord Pleanála* [2020] IESC 39 (“*An Taisce*”) that a Tribunal or administrative body can set aside a statutory provision if the relevant provision is inconsistent with EU law. The Court noted that
- “it would therefore seem to be the case in accordance with this judgement that a body such as An Bord Pleanála would be required to disapply national measures of whatever type, if inconsistent with EU principles. This decision of the court evidently was contrary to the strong views expressed by the Court in its reference, and was also contrary to the opinion previously expressed by Advocate General Wahl.”*
35. The Supreme Court noted the widespread impact this decision had and explicitly noted at paragraph 163 of the decision that it applied to the Tax Appeals Commission. The Court stated:-

“If applied to literally, that judgment is capable of having widespread ramifications for the jurisdiction of national non-court bodies, or administrative entities, which are called upon to apply national legislation where an EU measure is relevant. Such bodies, under whose remit EU rights may arise, include the Environmental Protection Agency, the Tax Appeals Commission, the Valuation Tribunal, the Refugee Appeals Commission, the Information Commissioner as well as the District and Circuit Courts.”

36. The Appellant argues that the VRT system imposed by the Irish Government directly contravenes Article 28 and Article 110 of the TFEU. In support of the Appellant's position that VRT is in effect a customs duty and therefore falls foul of Article 28 and 110 of the TFEU, the Appellant has sought to rely on the decisions of the CJEU in Case C-112/84 *Humblot*, Case C265/99, *Commission of the European Communities v French Republic*, Case C47/88, *Commission of the European Communities v Kingdom of Denmark*, Case C-132/88 *Commission v Greece* and Case C-383/01 *De Danske Bilimportører*. Whilst the Appellant submitted these decisions in support of his argument, he provided no detailed submissions why the dicta of each of these decisions can be relied on in determining that the VRT system directly contravenes the aforementioned articles of the TFEU.
37. The Respondent argues that the jurisprudence of the CJEU distinguishes between “customs duties” and “internal taxes” under Article 28 of the TFEU and that VRT is an internal tax rather than a customs duty. The Respondent relies on the decisions of the CJEU in Case C-343/90 *Dias*, Case C-402/09 *Tatu* and the recent decision of the Court of Appeal in this jurisdiction in *Used Car Importers of Ireland Limited*. Moreover, the Respondent argues that the cases cited by the Appellant actually support the position that VRT is not a customs duty or a charge having equivalent effect to a customs duty.
38. Registration taxes on motor vehicles are not harmonised in EU law. Member States have the right to legislate motor vehicle registration tax as they see fit. However, they cannot do so in a manner contrary to the general principles of EU law, including, in particular, the freedoms of the single market. This is established in the above referenced case law. In particular, the Court of Appeal in *Used Car Importers of Ireland Limited* considered the lawfulness of VRT under EU law on the basis that VRT was an internal tax rather than a customs duty or charge having equivalent effect to a customs duty. The Court of Appeal held that the charge to tax under section 133 of the Finance Act 1992 as amended was not invalid. Murray J at paragraph 399 of the decision stated

“It follows from the conclusions I have reached and explained above that there is no basis in law for the recovery by UCII of taxes paid consequent upon breaches of domestic law. Nor, insofar as such a claim was predicated upon the contention that s.133 was in some way in breach of EU law and thus invalid so that all taxes paid in reliance upon it are recoverable, can such a claim be sustained. The provision is not invalid”.

39. VRT is not imposed on vehicles by reason of the vehicles crossing the border into this jurisdiction. Rather, the tax is imposed at the point of first registration of the vehicle in this jurisdiction. It is non-discriminatory in that it applies to both new and second hand vehicles at the time of first registration, in line with the principles in which Member States can charge a VRT on imported second hand vehicles without infringing EU Law and in particular Article 110 of the TFEU.
40. The Commissioner agrees with the views expressed in the previous decisions of the Appeal Commissioners and with the submissions of the Respondent. In particular, the Commissioner concurs with the emphasis placed on the TFEU, ECJ case law and the recent Court of Appeal decision in *Used Car Importers of Ireland Limited*, where the Court of Appeal helpfully reviewed in detail, the principles emerging from EU case law and made a number of observations based on that case law, which the Commissioner has considered. Moreover, the Commissioner has considered the series of principles which the Court of Appeal set out in relation to the lawfulness of a domestic motor vehicle tax on second hand vehicles. Accordingly, having considered the submissions from both parties in this appeal and the applicable case law, the Commissioner can find no merit in the Appellant’s arguments in relation to this ground of appeal.
41. The Appellant invites the Commissioner to refer a question to the CJEU, but this appeal raises no question of interpretation or application of European Union Law that requires resolution for the determination of these proceedings. The validity of a motor vehicle tax such as VRT has been dealt with in detail and clarified by the Court of Appeal in *Used Car Importers of Ireland Limited*. Accordingly, in relation to the request that a preliminary reference to the CJEU is made under Article 267 of the TFEU, the Commissioner is satisfied that no reference is required in order for the Commissioner to determine this appeal.

VRT Calculations

42. The issue and the matter to be determined is the correct OMSP for this vehicle, namely how much would this vehicle likely sell for in the open market in the State.

43. The Appellant imported the vehicle into the State in March 2018 and a charge to VRT arises on the importation of the vehicle. On 8 March 2017, the Appellant purchased the vehicle in the UK and following importation, the vehicle underwent substantial repairs prior to registration. A list of repairs that were carried out is submitted by the Appellant. Aside from the above arguments as to the *vires* of VRT, the Appellant argues that the OMSP attributed to the vehicle, should have been valued having regard to the fact that it was a “*crashed car*”. He gave evidence that the correct value of the vehicle was €10,000, in circumstances where this was the purchase price he paid and the value of the vehicle. He argues that if the purchase price is not used to calculate the VRT when assessing a damaged or crashed vehicle, then the result is that if he purchased the vehicle in Ireland, and it had been damaged and/or crashed, then that vehicle would not have been liable for VRT. He argued that the OMSP of a crashed vehicle is substantially less.
44. In accordance with section 133(1) of the Finance Act, 1992, as amended, an OMSP valuation is concerned with the value the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State, *at the time of the charging of the tax thereon* i.e. at the time of registration. The evidence suggests that the repairs to the vehicle were carried out prior to registering the vehicle, as the vehicle was considered to be in good condition by the NCTS. The OMSP of the vehicle for the purposes of calculating the VRT amount must be taken as the value of the vehicle on the day it was registered, which in this appeal was a date which post-dated the repairs carried out. The Commissioner does not accept that the OMSP should be based on the purchase price of the vehicle, as this is not what the Oireachtas intended and the legislative provisions are clear and unambiguous in that regard. Moreover, the Commissioner has had regard to the decision of Murray J in the case of *Used Car Importers Ireland*, where he set out a number of principles in relation to the imposition of VRT or a tax on vehicles and at paragraphs 324 and 327 of that decision stated

"It is obviously open to the national authorities to operate a straightforward system of inspection of vehicles and consequent process of individualised valuation for this purpose, provided of course that it operates within these constraints. However, it is not necessary to do this. They are entitled to apply fixed scales provided they take account of the vehicle's age, kilometrage, general condition, method of propulsion, and make or model and provided that the value thereby produced would 'as a general rule...be very close to their actual value'."

"The CJEU recognises throughout the decided cases the obvious reality that no system of valuation of assets of this kind can be perfect. Necessarily, it can at best be based upon 'the reasonable approximations in any system of that type'."

45. As set out above, the burden of proof that a charge to tax is not payable rests on the taxpayer and the Appellant has not furnished any evidence to support his contention that the OMSP of the vehicle should have been €10,000.
46. Accordingly for the reasons set out above, the Commissioner finds that the Appellant has not shown that the relevant tax is not payable. Consequently, the Commissioner has no grounds 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.
47. The Respondent submitted that the refund of €838 remains available to the Appellant to claim, which to date has not been done. Further the Respondent confirmed that there is an additional sum of €43.40, which the Appellant is entitled to by way of refund. A miscalculation arose when the valuation was reduced on foot of the appeal and the Respondent reduced the VRT figure itself by reference to the new figure, but neglected to reduce the increase by the 20% as well. Therefore, the total sum due and owing to the Appellant is now €881.40, which is available to him from the Respondent on presentation of his bank account details for payment.
48. For completeness, the Appellant raised an argument in correspondence dated 05 May 2022, that VRT has negative environmental consequences as it discourages the reuse of older vehicles or vehicles that have been broken up and repaired. In the Commissioner's view this was a tangential issue and no evidence was submitted by the Appellant to support such an argument, other than mere statements at hearing. Accordingly, the Commissioner makes no finding in this regard.

Determination

49. Based on a consideration of the evidence and submissions together with a review of the documentation, the Commissioner determines that the correct OMSP has been assigned by the Respondent.
50. The Commissioner appreciates that the Appellant will no doubt be disappointed by the decision. However, the Commissioner must ensure that a charge to tax arises and that the correct tax is charged in accordance with the legislation.

51. This appeal is hereby determined in accordance with Part 40A of 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 TCA 1997.

A handwritten signature in black ink, appearing to read 'Claire Millrine', with a stylized, cursive script.

Claire Millrine
Appeal Commissioner
23 May 2022