



Between

11TACD2024

[REDACTED]

**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 and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of [REDACTED] (“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 VRT is incorrectly calculated, leading to an overpayment of VRT in respect of the vehicle. The Appellant lodged a first stage appeal with the VRT Appeals Unit of the Respondent on the grounds that the VRT was unfairly calculated, such that the Respondent’s VRT calculator indicated an estimated VRT sum payable of €1,931, yet the amount of VRT calculated by the Respondent was in the sum of €3,041.
3. Following the first stage appeal, the Respondent did not revise the Open Market Selling Price (“OMSP”) in respect of the vehicle and consequently, the VRT payable remained as calculated initially, in the sum of €3,041.
4. On 19 July 2023, the Appellant duly appealed to the Commission. In accordance with the provisions of section 949U TCA 1997, and by agreement with the parties, this appeal is determined without a hearing.

## **Background**

5. The assessment to VRT concerns a [REDACTED] (“the vehicle”). On 23 May 2023, the Appellant purchased the vehicle in the United Kingdom (“UK”). On 6 July 2023, the vehicle was registered in the State, when 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 the vehicle was calculated as a percentage of the OMSP of the vehicle.
6. The vehicle was assessed and an OMSP of €11,628 was attributed to the vehicle, resulting in a VRT payment of €3,041 being paid by the Appellant. The vehicle was assigned the registration number [REDACTED].
7. Thereafter, the Appellant lodged a first stage appeal with the VRT Appeals Unit, on the basis that the VRT payable on the vehicle, in the sum of €3,041, did not reflect the

estimated VRT in the sum of €1,110, which the Appellant calculated using the Respondent's publically available VRT calculator<sup>1</sup>.

8. On 13 July 2023, the Respondent wrote to the Appellant in relation to its appeal to state that the OMSP placed on the vehicle, is a reasonable assessment of the minimum OMSP at the time of registration, and that no refund of VRT is due.
9. The Appellant maintains that the VRT is unfairly calculated. The Respondent states that it examined the matter in some detail, with reference to the tax and duty inclusive retail price that a vehicle of the same description might fetch in the State at the time of registration and concluded that the OMSP used was a reasonable assessment. Therefore, no revision was necessary.

### **Legislation and Guidelines**

10. The legislation relevant to this appeal is as follows:-

11. 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.*

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<sup>1</sup> <https://www.ros.ie/evrt-enquiry/vrtenquiry.html?execution=e1s1>

(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).*

12. Section 130 of the Finance Act 1992 (as amended), Interpretation, *inter alia* 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.....*

13. Section 131 of the Finance Act, 1992 (as amended), Registration of vehicles by Revenue Commissioners, *inter alia* 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) *complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii).*

14. Section 132 of the Finance Act, 1992 (as amended), Charge of excise duty, *inter alia* 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.....*

15. 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.*

## **Submissions**

### *Appellant's submissions*

16. The Commissioner sets out hereunder a summary of the submissions made by the Appellant, as set out in its Notice of Appeal and Statement of Case:-

*"We feel the figure of 3,041 euro VRT charged was very unfairly calculated. We have enclosed copies of adverts – [REDACTED] 2016 for sale 12,500 to 13,750 the OMSP on [REDACTED] has remained the same since our calculations in March.*

*We enclose VRT calculation from revenue showing VRT @ 1931 euro.*

*Please advise if we cannot rely on the revenue VRT calculator then how are we to calculate the VRT. We understand it is only a guide but to have a difference of 1110.00 euro which we are now at a loss.*

*All the vehicle details that we entered to the revenue calculator were 100% matching.*

*I don't understand how such a difference occurred as the OMSP is the same as when our calculation was processed. Copies of adverts enclosed.*

*The above car was sold to our customer for 15,500.00(euro). Copies of the recent adverts enclosed as showing values of 13,500 to 15,995. Please review this appeal and consider refund."*

### *Respondent's submissions*

17. The Commissioner sets out hereunder a summary of the submissions made by the Respondent as set out in its Statement of Case:-

*"The appellant imported a [REDACTED] 1.6 and registered it on 6 July 2023*

*Revenue valued the vehicle at €11,628. The Stats code used for registering the vehicle was [REDACTED] (each individual Make/Model/Variant has a separate stats code)*

*This amount was appealed under Section 145 FA 2001.*

*Revenue examined the matter in some detail, with reference to tax and duty inclusive retail price a vehicle of the same description might fetch in the State at the time of*

registration and concluded that the OMSP used was a reasonable assessment. Therefore, no revision was necessary.

In his appeal the appellant submitted an estimate from Revenue's VRT calculator. While the estimate (under stats code [REDACTED]) is in respect of a [REDACTED] it is not the same model/version as the vehicle which was registered by the appellant. In this regard I would like to point out that the estimate document (submitted in support of the appeal) contains the following:

- The estimate from Revenue website (submitted by the appellant) is dated 23 March 2023. The vehicle was purchased on 23 May 2023, and the vehicle was registered on 6 July 2023.
- Revenue regularly reviews valuations (VRT Manual Section 8, paragraph 5 – extract attached for reference).  
The valuation for the stats codes [REDACTED] were reviewed on 11 May 2023 and 10 May 2023 (respectively), which was before the vehicle was purchased on 23 May 2023.
- The description of the vehicle under stats code [REDACTED] contains the letters TSS. These letters are not included under the description of code [REDACTED] (See V5 attached)
- The vehicle was sold by the appellant for €15,500 which is €3,872 above the OMSP used (See NOA to TAC).
- The three comparator vehicles cited by the appellant had selling prices of €13,500, €14,000 and €15,995, all above the OMSP of €11,628.
- Revenue made two offers to the appellant to settle the case (refunds of €400 and €500, without prejudice). Neither of the offers were accepted by the appellant. (See attached).

**As outlined above, estimates of OMSP and related VRT amount payable are vehicle specific as of the date of enquiry. A different amount may be payable if the OMSP has changed and/or a different rate of CO2 emissions is applicable**

To conclude I am satisfied that the OMSP used by Revenue is reasonable as stated above it is lower than the comparator vehicles submitted by appellant and the selling price to the appellant's customer".

## **Material Facts**

18. Having read the documentation submitted, the Commissioner makes the following findings of material fact:

- 18.1. On 6 July 2023, the vehicle was first registered in the State.
- 18.2. The OMSP assigned to the vehicle by the Respondent was in the sum of €11,628.
- 18.3. The Appellant paid VRT in the sum of €3,041 to the Respondent.
- 18.4. The Appellant sold the vehicle to a customer for the sum of €15,500.
- 18.5. On 23 March 2023, the Appellant received an estimate of VRT for the vehicle from the Respondent's publically available VRT calculator, in the sum of €1,931.
- 18.6. The estimate of VRT that the Appellant received from the Respondent's publically available VRT calculator is dated 23 March 2023.
- 18.7. The Appellant was unsuccessful in having the OMSP assigned to the vehicle reduced in its first stage appeal and thus, was unsuccessful in having the VRT initially calculated, reduced.
- 18.8. On 24 July 2016, the vehicle was first registered in the UK and the statistical code used by the Respondent, namely, [REDACTED] was available from 1 March 2016.
- 18.9. The Respondent valued the vehicle at €11,628 having regard to the statistical code used for registering the vehicle initially, namely [REDACTED].
- 18.10. The statistical code [REDACTED] refers to a version of the [REDACTED] 1.6 that was available from 1 January 2014 to 31 March 2016.
- 18.11. The description of the vehicle under statistical code [REDACTED] used by the Respondent contains the letters [REDACTED]. These letters are not included under the description of code [REDACTED] used by the Appellant.

## **Analysis**

19. 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 paragraph 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".*

20. The Commissioner also considers it useful herein, to set out paragraph 12 of the Judgement of Charleton J. in *Menolly Homes*, wherein he states that:

*"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are defined, and the rate measured, by statute..."*

21. The central issue to be determined is the correct VRT payable on this vehicle. 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.

22. The VRT calculation depends on what type of vehicle is being registered. VRT for vehicles is calculated based on the vehicle's OMSP multiplied by a rate that is based on Carbon Dioxide (CO<sub>2</sub>) emissions of the vehicle. In addition, a Nitrogen Oxide (NO<sub>x</sub>) levy is calculated and the result is added to the CO<sub>2</sub> component to yield the total VRT due, which herein is the sum of €3,041.

23. The Commissioner notes that in July 2023, the Appellant registered the vehicle in the State. The Appellant argues that the VRT payable should be the amount with reference to the Respondent's VRT calculator available on its website, namely the sum of €1,931, which the Appellant consulted in March 2023, to obtain an estimate of the VRT payable on the vehicle.

24. The Commissioner notes that the Respondent contends that as the vehicle was first registered on 24 July 2016, the correct statistical code is [REDACTED], as it was available from 1 March 2016 and not the statistical code used by the Appellant when it consulted the VRT calculator for an estimate of VRT payable namely, [REDACTED]. The Respondent submits that this statistical code refers to a version of the [REDACTED] 1.6 that was available from 1 January 2014 to 31 March 2016.

25. The Commissioner notes that the Respondent contends that it used the correct code to calculate the VRT amount payable by the Appellant. Moreover, it argues that the VRT calculator on its website is an estimate only of the VRT payable and is dependent on when it is used and the descriptors being accurate. The Respondent points out that the estimate of the Appellant is dated 23 March 2023 and that the wrong statistical code was used.

26. The Commissioner has considered the arguments proffered by the Appellant in relation to the correct amount of VRT payable. The Commissioner will deal with the argument in relation to the Respondent's VRT calculator first. The Commissioner notes that the Appellant argues that there is a difference in amount between the VRT estimate and the VRT payable of the sum of €1,110. The Respondent contends that valuations on its website are an estimate only and applicable on the date of registration, which it states is made clear on the notes attached to the estimate. The Commissioner notes that the Respondent states that this is a facility for estimating amounts of VRT only. The Commissioner has consulted the Respondent's webpage which contains the VRT calculator. The Commissioner notes that it is described on the initial page as "*VRT calculator The VRT calculator is a service you can use to estimate the VRT due on a car*".

27. The Commissioner observes that when you click the link "VRT calculator" on that page, the next webpage *inter alia* states that:

".....

*The calculator covers a wide range of models. You can use it to:*

1. *estimate the VRT charge on a car or small commercial vehicle,*

.....

*It is important to select details that exactly match your vehicle in every way. For example, an estimate that shows CO<sub>2</sub> emissions that do not match your vehicle may mean that you selected an older or newer version.*

*A VRT export repayment estimate is approximate. This is because the VRT on your car may already have been reduced or repaid under another scheme".*

28. The Appellant argues that it understood that "*the Revenue VRT Calculator is just a guide but to have a difference of 1110.00 euro of which I am now at a loss. Going forward I have no guarantee that a difference in VRT calculations will occur again to which I will not be able to sustain*". The Commissioner is satisfied that the Respondent's VRT calculator is clearly marked as an estimation tool. The Commissioner is further satisfied that the result of placing the word "estimate" on its webpages, the Respondent has clearly identified that no reliance can be placed on the VRT calculation, other than that any calculation is an estimate of VRT only.

29. The Commissioner will now consider the argument in relation to the statistical codes applicable. The Appellant argues that the *“the VRT Website...it does not state in any shape or form the changes to the statistical codes [REDACTED] and/or dates relating to registration of said vehicle therefore I had absolutely no indication of these updates as advised by you in your email”*. Again, the Commissioner has considered the Respondent’s VRT calculator and as set out above, it clearly states that *“It is important to select details that exactly match your vehicle in every way”*. There is no evidence to suggest that the statistical code applied by the Respondent is incorrect. The Commissioner notes that the Appellant is in the motor trade and therefore the Commissioner assumes that the Appellant is aware of the many different makes of a vehicle and versions or type of the same make of vehicle.
30. Moreover, the Commissioner observes that the estimated sum on the VRT calculator is dated 23 March 2023, but that the vehicle was not registered in the State until 6 July 2023, when the VRT was calculated on the date of registration. 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.
31. The Commissioner has considered the advertisements submitted in support of the Appellant’s appeal, but does not consider that they are helpful to the Appellant’s appeal. The Appellant sold the vehicle for €15,500, wherein the Respondent determined the OMSP to be €11,628. Hence, it was with reference to that lesser amount that the VRT was calculated in the sum of €3,041.
32. As aforementioned, the Respondent’s VRT calculator is clearly labelled an estimate and its webpage stresses the importance of entering the information correctly and specifically in relation to the vehicle. The Respondent has explained the rationale for the differing amounts and the use of statistical codes. The Commissioner notes that there has been no evidence submitted to contradict the use of the statistical codes by the Respondent or that the Respondent was incorrect to use a particular statistical code.
33. As set out above, the burden of proof that a charge to tax is not payable rests on the taxpayer. The Commissioner has considered the submissions and documents furnished by the Appellant. The Commissioner is satisfied that the Appellant has not furnished sufficient evidence to support his contention that the VRT payable on the vehicle is incorrect.
34. 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.

### **Determination**

35. 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 and therefore the correct VRT has been paid.
36. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether its legal rights were correctly applied.
37. This Appeal is determined in accordance with Part 40A TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

### **Notification**

38. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

39. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine  
Appeal Commissioner  
27 October 2023