



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

184TACD2024

██████████

Appellant

and

The Revenue Commissioners

Respondent

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. The amount of VRT at issue is in the sum of **€11,949**.
2. On 7 September 2023, the Appellant duly appealed to the Commission the decision of the Respondent in relation to the amount of VRT payable. The Appellant is dissatisfied with the Open Market Selling Price (“OMSP”) assigned to the vehicle by the Respondent, which was in the sum of **€29,000**.
3. The Appellant submitted that the Respondent incorrectly calculated the VRT leading to an overpayment of VRT in respect of the vehicle. On 10 April 2024, the Appellant lodged a first stage appeal with the VRT Appeals Unit of the Respondent. However, on 12 April 2024, the Respondent rejected the appeal as the appeal was not made in accordance with section 145(5) of the Finance Act 2001, which provides that an appeal is to be lodged by the person concerned with the Respondent within the period of 2 months from the date of the notification by the Respondent of the decision concerned or within such longer period as the Respondent may, in exceptional cases, allow.
4. This second stage appeal before the Commission proceeded by way of a remote hearing on 30 August 2024. The Appellant was present at the remote hearing of the appeal and represented himself. The Respondent was represented by the Respondent’s Case Officers.

Background

5. The assessment to VRT concerns a [REDACTED] (“the vehicle”). On 31 July 2023, the Appellant purchased the vehicle in the United Kingdom and thereafter, the Appellant imported the vehicle into the State for his own use. The purchase price of the vehicle was in the amount of £15,750.
6. On 28 August 2023, the vehicle was registered in the State, when the Appellant presented the vehicle for registration at the National Car Testing Service (“NCTS”) and where an unregistered vehicle inspection was carried out. However, the NCTS could not assign an OMSP on the date of first presentation, as the vehicle was not on its systems. Therefore, the NCTS sought a valuation from [REDACTED] via the Respondent. The VRT for the vehicle was calculated as a percentage of the OMSP of the vehicle.

7. The vehicle was assessed as being in “good” condition and an OMSP of €29,000 was attributed to the vehicle, resulting in a VRT payment of €11,949 being paid by the Appellant. The vehicle was assigned the registration number [REDACTED]

Legislation and Guidelines

8. The legislation relevant to this appeal is as follows:-
9. Section 146(1A) of the Finance Act 2001 (as amended), Appeals to Appeals Commissioners, *inter alia* provides that:-

(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;

(da) a refusal to register a person as a certified consignor or a certified consignee under section 109RA(4) or a revocation under that section of any such registration;

(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).

10. 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.....

11. 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) (ii) complies with any matters specified by the Commissioners for the purposes of paragraph (ba)(ii).

12. Section 132 of the Finance Act, 1992 (as amended), Charge of excise duty, *inter alia* provides:-

(1) Subject to the provisions of this Chapter 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.....

13. 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 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 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.

Evidence and Submissions

Appellant's evidence and submissions

14. The Commissioner sets out hereunder a summary of the evidence given by the Appellant:-

- 14.1. The Appellant testified that on 31 July 2023, he purchased the vehicle in Northern Ireland and paid the sum of £15,750 for the vehicle.
- 14.2. The Appellant gave evidence that his main issue with the Respondent is that he could not establish an estimate of the VRT payable in relation to the vehicle prior to purchase and that when he presented the vehicle to the NCTS, it could not establish the VRT payable on the vehicle either. The Appellant stated that he contacted the VRT section of the Respondent and he was told that an estimate could not be provided to him. The Appellant submitted that the first time he understood his liabilities in respect of the VRT payable on the vehicle, was when it was registered with the NCTS and that he had no option but to pay the amount of VRT assessed.
- 14.3. The Appellant argued that the VRT system is not transparent and he was denied the right to understand the VRT payable on the vehicle prior to purchase. The Appellant stated that he tried many times to ascertain an estimate of VRT from the Respondent, but each time he was refused that information. The Appellant queried how an 18 year old car could have an amount of VRT payable in the sum of €11,949. The Appellant stated that it has not been explained to him how the Respondent calculated an OMSP of between €28,000 and €30,000. The Appellant submitted that he did not receive any report from the Respondent, in relation to the valuation placed on the vehicle by [REDACTED]
- 14.4. The Appellant testified that consequent to purchasing the vehicle he attended at [REDACTED] in [REDACTED] in relation to the vehicle's engine. The Appellant has submitted an invoice in relation to the works carried out in the sum of €520.48. The Appellant gave evidence that the vehicle required extensive repairs to the engine. The Appellant has submitted an invoice from a company called [REDACTED] in the sum of £11,106. The Appellant said that the company is a [REDACTED] specialist company.
- 14.5. The Appellant stated that what he purchased was an expensive chassis and the whole VRT system is flawed. The Appellant stated that he is seeking an entire refund of the VRT paid, in circumstances where he has paid nearly €40,000 for a vehicle that is 18 years old, which cannot be correct.

- 14.6. The Appellant submitted that the Respondent was not valuing a “rocket ship” and that there was a [REDACTED] specialist in [REDACTED] which could have been contacted in relation to the vehicle and the OMSP. The Appellant stated that there are many vehicles in the State akin to the vehicle at issue herein.
- 14.7. The Appellant argued that the VRT calculator is a blunt instrument not fit for purpose and the NCTS check of the vehicle in relation to its condition was simply lifting the bonnet of the car. The valuation is irrelevant herein given the condition of the vehicle and the process of establishing the VRT payable on a vehicle is incorrect.
- 14.8. The Appellant submitted that he is appealing on two grounds, firstly that the process of valuation is flawed and secondly, the cost of the repairs required to be carried out on the vehicle equated to the cost of the vehicle and thus, the amount of VRT payable on the vehicle is incorrect and should be reduced to nil.

Respondent's evidence and submissions

15. The Commissioner sets out hereunder a summary of the evidence given and submissions made by the Respondent:-
 - 15.1. 90% of makes and models are on the Respondent's system and it is possible to ascertain an estimate of the OMSP of a vehicle on the VRT calculator.
 - 15.2. The Respondent's VRT calculator on its webpage is only an estimate of VRT and it is clearly marked as only producing an estimate. It is also important that the precise details of the vehicle are entered into the calculator to achieve an accurate result and this is also clearly signposted as a warning on the Respondent's webpage.
 - 15.3. If the make and model is not on the system, the Respondent engages a third party valuer to conduct a valuation of the vehicle and establish the OMSP of the vehicle and thereafter the Respondent will calculate the VRT as a percentage of that OMSP. This make and model will then be added to the system. The third party valuer consulted herein, was [REDACTED].
 - 15.4. In relation to the Appellant's vehicle, the Respondent consulted with [REDACTED] [REDACTED] to establish the OMSP of the vehicle which was in the sum of €29,000. There was no report from [REDACTED] submitted with the Respondent's documentation in this appeal and the Appellant was not furnished with the report that the Respondent stated establishes the OMSP of the vehicle.

- 15.5. The Respondent has over 25,000 vehicles available on its VRT calculator and it is not practicable to have every vehicle, ever in existence, in its records.
- 15.6. The Respondent stated that the OMSP is the open market selling price in the State and the price includes Irish VRT and VAT. The Respondent gave evidence that where a vehicle is purchased in the UK, the OMSP in the State is the amount of the value of the vehicle in addition to VRT and VAT.
- 15.7. The Respondent submitted that it valued the Appellant's vehicle in the sum of €17,110 or £15,000. However the sum of €17,110 is exclusive of VRT and VAT, which when included is the amount of the OMSP assigned to the vehicle in the sum of €29,000. The Respondent submitted that the rate of 41% was applied by the Respondent to the sum of €29,000 to calculate the percentage payable of the value of the Appellant's vehicle, which was in the sum of €11,890, exclusive of other charges applicable which brought the total sum of the amount of VRT payable to €11,949.

Material Facts

16. Having read the documentation submitted in this appeal and having listened to the oral evidence and submissions at the hearing of the appeal, the Commissioner makes the following findings of material fact:-
 - 16.1. The assessment to VRT concerns a [REDACTED].
 - 16.2. On 31 July 2023, the Appellant purchased the vehicle in the United Kingdom.
 - 16.3. The purchase price of the vehicle was £15,750/€18,364.
 - 16.4. Thereafter, the Appellant imported the vehicle into the State for his own use.
 - 16.5. On 28 August 2023, the vehicle was registered in the State, when the Appellant presented the vehicle for registration at the NCTS and where an unregistered vehicle inspection was carried out.
 - 16.6. The VRT for the vehicle was calculated as a percentage of the OMSP of the vehicle, namely 41%.
 - 16.7. The vehicle was assessed as being in "good" condition.
 - 16.8. An OMSP of €29,000 was attributed to the vehicle, resulting in the amount of VRT being payable on the vehicle in the sum of €11,949, which was paid by the Appellant.

- 16.9. The vehicle was assigned the registration number [REDACTED].
- 16.10. Consequent to the Appellant purchasing the vehicle, considerable repairs were carried out to the vehicle, including rebuilding the engine.
- 16.11. The Appellant lodged a first stage appeal with the VRT Appeals Unit of the Respondent on the basis that the OMSP and VRT was excessive. However, that appeal was rejected by the Respondent as the appeal was not made in accordance with section 145(5) of the Finance Act 2001.

Analysis

17. 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 that:

“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”.

18. The Commissioner also considers it useful herein, to set out paragraph 12 of the Judgment 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...”

19. The central issue to be determined is the OMSP for this vehicle and thus, the correct VRT payable. The Appellant submitted that the crux of the issue is that the Respondent could not provide an estimate of VRT to the Appellant prior to purchasing the vehicle. The Appellant submitted that the VRT payable on the vehicle was excessive, having regard to the age of the vehicle namely, that it was first registered in 2006 and that the engine was required to be *“built from the ground up”*. The Appellant submitted that what he purchased was an *“expensive chassis”*. It was on that basis that the Appellant disputed the OMSP of the vehicle and contended that the VRT payable should be reduced to nil.
20. It is the case that 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 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. In that regard, the Commissioner notes the Respondent’s submission in relation to the manner in which vehicles are valued, when the Respondent does not have an existing valuation of a vehicle on its system already.

21. 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 (CO₂) emissions of the vehicle. In addition, a Nitrogen Oxide (NO_x) levy is calculated and the result is added to the CO₂ component to yield the total VRT due, which in the instant appeal, was in the sum of **€11,949**.
22. The Commissioner notes that on 31 July 2023, the Appellant imported the vehicle into the State. Thereafter, he presented the vehicle to the NCTS. However the NCTS, could not determine the OMSP of the vehicle and the Appellant was requested to return shortly thereafter, once the NCTS had established an OMSP for the vehicle. The Commissioner understands from the Respondent’s submissions that this occurs in circumstances where the Respondent does not have certain vehicles on their system and it engages an independent consultant namely, ██████████ to conduct a valuation of the vehicle to ascertain an OMSP. The Respondent submitted that the Appellant’s vehicle was not on the system as it was not a “Ford” or a “Micra”. The Commissioner notes that the Appellant submitted that this was not a “rocket ship” and that there was a ██████████ dealership in Ireland, and the vehicle is not uncommon. Thus, the VRT system is flawed.

The VRT Calculator

23. The Commissioner notes the Appellant’s evidence that he never anticipated that the VRT payable on the vehicle would be 65% of the purchase price of the vehicle. The Appellant stated that had he been in a position to ascertain an estimation of the VRT prior to purchasing the vehicle, he would have reconsidered the purchase if he was aware of the potential amount of VRT payable on the vehicle. The Appellant argued that the system of VRT is flawed and it was unfair and unjust that he was not in a position to receive an estimate of the VRT payable on the vehicle from the Respondent, in advance of purchasing the vehicle.
24. 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 car¹. There then appears a link to the “VRT calculator”.

25. 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:

-
- estimate the VRT charge on a car or small commercial vehicle,

The calculator does not cover:

- models that have not been presented previously for valuation,
-

It is important to select details that exactly match your vehicle in every way. For example, an estimate that shows CO₂ 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”.

26. The Commissioner notes that the VRT calculator permits a search by “statistical code” or “vehicle type”. The Commissioner is satisfied that the Respondent’s VRT calculator is clearly marked as an estimation tool. Moreover, the Commissioner is satisfied that the Respondent’s VRT calculator clearly states in bold writing that “**It is important to select details that exactly match your vehicle in every way.**” Moreover, the Commissioner notes that the Respondent’s guidance states that:

“If a vehicle is not on the calculator, Revenue will determine its OMSP, but only after it is presented for registration. Revenue uses market indicators such as UK and Irish trade guides, advertisements, and experts.

Revenue staff do not provide estimates of value or tax due for vehicles that have not been presented for registration.

¹ <https://www.revenue.ie/en/vrt/calculating-vrt/index.aspx>

If a vehicle is not listed, and you need an OMSP estimate before buying, then you must conduct your own research. The VRT Estimate Form may be used for makes that are not commonly distributed in Ireland.”

27. The above paragraphs accord with the Respondent’s position in this appeal. The Appellant submitted that the vehicle was not on the system and therefore, he could not avail of the estimation tool to assist him with the VRT payable in advance of him purchasing the vehicle. The Commissioner is 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, even when an estimate bears no reality to the actual VRT to be charged. Moreover, its guidance is clear that *“If a vehicle is not listed, and you need an OMSP estimate before buying, then you must conduct your own research”*.
28. It is apparent to the Commissioner that the VRT calculator is a limited system of estimation and the results are dependent on a vehicle being in the system and accurate information being inputted. The Appellant argued that it was unfair that he would proceed to purchase a vehicle and only understand the VRT payable once it is presented at the NCTS. Moreover, he argued that the VRT must be paid in order to obtain the registration for the vehicle. The Commissioner has listened to the Appellant’s frustrations in this regard and his inability to understand his liabilities to VRT prior to purchasing the vehicle.
29. However, the Commissioner does not have jurisdiction to set aside a decision of the Respondent based on alleged unfairness, breach of legitimate expectation or disproportionality, as such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and thus, do not fall to be determined as part of this appeal. This comes within the jurisdiction and remit of the Courts. The scope of the jurisdiction of an Appeal Commissioner, has been discussed in a number of cases, and more recently in *Lee v Revenue Commissioners* [2021] IECA 18 where Mr Justice Murray held that *“their jurisdiction is focussed on the assessment and the charge”*.

The OMSP and the amount of VRT payable

30. The Appellant purchased the vehicle for the sum of £15,750/€18,364. The Appellant has submitted an invoice to support the payment in this amount for the vehicle. The Commissioner notes that the Respondent’s evidence was that [REDACTED] valued the vehicle in the sum of £15,000/€17,110. However, the Respondent submitted that in order to calculate the OMSP in the State, Irish VRT and VAT must be added to the valuation in order to achieve the OMSP for the vehicle. The Respondent stated that the OMSP in the amount of €29,000 is the sum of these amounts.

31. The Commissioner is of the view that it would have been helpful had the Respondent shared the report from [REDACTED] with the Appellant and/or had included it in the documentation submitted in this appeal so that the Appellant could understand the process of valuation and the amounts relied on by the Respondent to calculate the OMSP. At the hearing of the appeal, the Respondent relied on the calculations in the report. Nevertheless, the Commissioner is satisfied that the valuation placed on the vehicle by the Respondent and the purchase price were not dissimilar amounts.
32. The Commissioner notes that the Appellant argued that he had in effect bought an “*expensive chassis*”. The Commissioner notes that the NCTS described the vehicle as being in “good” condition. Though, the Appellant submitted that the NCTS simply “*looked under the bonnet*” of the vehicle and the assessment was rudimentary. The Respondent did not disagree with the Appellant’s assessment of the process.
33. The Commissioner notes the repairs that were carried out to the vehicle consequent to the purchase of the vehicle and the invoices submitted by the Appellant from [REDACTED] and [REDACTED], which support works being carried out to the engine of the vehicle. The Commissioner is satisfied that there were considerable repairs required to be carried out to the vehicle, such that the Commissioner is satisfied that the Respondent was incorrect to describe the vehicle as in “good” condition. The Commissioner considers that the vehicle was in “poor” condition only. In this regard, the Commissioner has consulted the Respondent’s Tax and Duty Manual entitled “Vehicle Registration Tax Manual Section 8 Valuation System for New and Used Vehicles” wherein at page 8 under the heading “3.5 Establish the Condition of the Vehicle as ‘Good’, ‘Fair’ or ‘Poor’” it states that:
- “Vehicles assigned “Poor” condition will show significant evidence of wear and tear, e.g. body/panel damage, major mechanical failure/damage, severe/extensive rust. However, where assignment of a vehicle condition of “Poor” is being considered the vehicle must still be capable of being mechanically propelled to fall within the definition of a “mechanically propelled vehicle” for VRT purposes”.*
34. Having regard to the evidence adduced and submissions, including documentary submissions in this appeal, the Commissioner is satisfied that the Appellant has shown on balance that the Respondent was incorrect to classify the vehicle as being in “good” condition. As such, the Commissioner concludes that the Appellant has demonstrated sufficiently that the OMSP ascribed to the vehicle did not adequately take into consideration the condition of the vehicle.

35. Whilst it is not relevant at this remove, had the Appellant conducted his first stage appeals process with the Respondent, within the time limits prescribed by legislation, it would have been open to the Appellant to provide the invoices to the Respondent, which in turn would have provided the Respondent with an opportunity to reconsider the OMSP of the vehicle in light of *inter alia*, the invoices and the valuation report of [REDACTED]
36. Nevertheless, in light of the classification of the condition of the vehicle as being “poor”, the Commissioner is satisfied that it is in order to reduce the OMSP of the vehicle by 20%. The reduction of 20% is applied in circumstances where the Commissioner considers that it would be appropriate to apply a 20% reduction to the OMSP for the vehicle now classified as “poor”, in light of the evidence of the substantial repairs carried out to the vehicle’s engine. However, the Commissioner cannot give recompense for the full cost of the repairs to the engine.
37. In circumstances where a reduction of 20% of the OMSP of €29,000 amounts to a revised OMSP in the sum of **€23,200**, the Commissioner is satisfied that the correct amount of VRT payable on the vehicle is in the sum of **€9,512**. This realises a refund in the amount of **€2,437** in favour of the Appellant.
38. The Commissioner notes that the Appellant sought a full refund of the VRT payable on the vehicle. However, the Commissioner is satisfied that there exists no basis upon which the Commissioner can reduce the VRT payable on the vehicle to nil. As stated, it is the case that all vehicles are subject to VRT on first registration in the State.
39. Accordingly for the reasons set out above, the Commissioner finds that the Appellant has shown that the relevant tax is not payable. Consequently, the Commissioner considers it appropriate to reduce the amount of VRT payable on the vehicle to the amount of **€9,512**. The Commissioner is satisfied that this reflects the OMSP for the vehicle of **€23,200**.

Determination

40. Based on a consideration of the evidence and submissions together with a review of the documentation, the Commissioner determines that the incorrect OMSP has been assigned to the vehicle by the Respondent and the OMSP of the vehicle is **€23,200**, with the amount of VRT payable in the sum of **€9,512**.
41. The Commissioner appreciates this decision may be disappointing for the Appellant in terms of the amount of VRT payable, having regard to the sum that the Appellant considered correct. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax. The Appellant was correct to check to see whether his legal rights were correctly applied.

42. 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

43. This determination complies with the notification requirements set out in section 949AJ TCA 1997, in particular section 949AJ (5) and section 949AJ (6) TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ TCA 1997 and in particular the matters as required in section 949AJ (6) TCA 1997. This notification under section 949AJ 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

44. 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 TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Claire Millrine
Appeal Commissioner
17 September 2024