



AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

45TACD2024

Between

[REDACTED]

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.
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 in or around €1,350 to €2,500, yet the amount of VRT calculated by the Respondent was in the sum of €7,251, having regard to an Open Market Selling Price ("OMSP") of €17,500 assigned to the vehicle by the Respondent.
3. Following the first stage appeal, the Respondent revised the OMSP in respect of the vehicle down to the amount of €14,500. The correspondence dated 25 August 2023, states that the rate of VRT1 applicable to the vehicle is 41% and the amount of VRT now assessed on the vehicle is in the sum of €5,945, which realised a refund to the Appellant in the sum of €1,230.
4. The appeal proceeded by way of a remote hearing on 1 December 2023. The Appellant was present at the remote hearing of the appeal and represented himself. The Commissioner heard evidence from the Appellant's witness, [REDACTED] [REDACTED]. The Respondent was represented by the Respondent's Case Officers, Mr Larkin and Mr Hayes. The Commissioner heard evidence from the Respondent's witness [REDACTED] [REDACTED].

Background

5. The assessment to VRT concerns a [REDACTED] ("the vehicle"). In September 2002, the Appellant purchased the vehicle in Japan and in May 2023, the Appellant imported the vehicle into the State for his own use.
6. On 27 June 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. 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 €17,500 was attributed to the vehicle, resulting in a VRT payment of €7,251 being paid by the Appellant. The vehicle was assigned the registration number [REDACTED].
8. Thereafter, the Appellant lodged a first stage appeal with the VRT Appeals Unit on the basis that the VRT was excessive and did not reflect the estimate received by the Appellant via the Respondent's VRT calculator on its website¹.
9. On 25 August 2023, the Respondent wrote to the Appellant in relation to his appeal to state that the VRT Appeals unit had revised the OMSP downwards to €14,500, with the lower amount of VRT in the sum of €5,945 now being due. This reduction in the OMSP originally determined in respect of the vehicle, realised a refund to the Appellant of VRT in the sum of €1,230.
10. The Appellant maintains that whilst the OMSP assigned to the vehicle is correct, the VRT should be in or around the sum of €3,000. The Respondent states that the revised OMSP of €14,500 is fair and the VRT for the vehicle was calculated as a percentage of the OMSP of the vehicle.

Legislation and Guidelines

11. The legislation relevant to this appeal is as follows:-
12. 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;*

¹ <https://www.ros.ie/evrt-enquiry/vrtenquiry.html?execution=e1s2>

- (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).

13. 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.....

14. 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).

15. 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.....*

16. 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.

Evidence and Submissions

Appellant's evidence and submissions

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

- 17.1. The Appellant testified that in September 2022, he purchased the vehicle in Japan with the assistance of the Appellant's witness, but that the vehicle did not arrive in the State until May 2023, due to shipping arrangements.
- 17.2. The Appellant said that prior to purchasing the vehicle he used the Respondent's VRT calculator on its website to understand the amount of VRT that may be payable on the vehicle. The witness stated that he could not find the vehicle he was intending to purchase on the Respondent's VRT calculator, but that he entered a very similar vehicle and added an additional amount to the OMSP to take account of it being a different vehicle. The witness said that the Respondent's VRT calculator informed him that the VRT payable would be in or around the sum of €3,000. The witness made reference to VRT calculations he included in his bundle of documentation submitted in support of his appeal. The witness said that when the VRT actually became payable on his vehicle following purchase, it was over 100% more than what the calculator had told him.
- 17.3. The witness testified that he brought the vehicle to the NCTS. The witness said that the cost of the vehicle and all importation costs was in or around €11,000 and it was a 9 year old vehicle. The witness said that the vehicle was not in the system in the NCTS and they ascribed a value of €17,500 to the vehicle with VRT being payable in the sum of €7,251, which was 100% higher than the Respondent's VRT calculator. The witness gave evidence that he paid the amount of VRT due, as he did not want to pay any penalties and wanted to comply with the law.

17.4. The witness gave evidence that he then entered into correspondence with the Respondent in relation to the amount of VRT payable on the vehicle. The witness said that he engaged [REDACTED] to provide a valuation report in relation to the vehicle and that it is submitted in support of his appeal. The witness said that this resulted in a first stage appeal and the OSMP being revised down to €14,500, with VRT being payable in the sum of €5,945, which realised a refund to him of the amount of €1,230.

17.5. The witness stated that the main part of his appeal is the issue he takes with the Respondent's VRT calculator which does not provide a realistic view of the VRT payable on a vehicle and had he known the amount payable he would not have purchased the vehicle. The witness stated that he did not want this to happen to any other purchaser and that the Respondent's VRT calculator should not be so inaccurate or incorrect.

17.6. The witness stated that he found the codes for the vehicles, that he used as samples on the Respondent's VRT calculator, on the internet and the vehicles are nearly identical to his vehicle and importantly the sample vehicles are the same year of registration as his vehicle, [REDACTED]. The witness stated that he used the [REDACTED] as an example, which in fact has a bigger engine, which he said would suggest a higher VRT based on emissions, but that the VRT calculated was in the sum of €2,506. The witness stated that he also used the [REDACTED], which resulted in VRT being calculated in the sum of €885. In addition, the witness stated that he attended at a NCTS and gave them certain details identical to his vehicle and that he was provided with an estimated VRT of €2,670. The witness confirmed that it was his view that the VRT payable on the vehicle should be in the sum of €3,000, having regard to similar vehicles.

18. [REDACTED], gave evidence on behalf of the Appellant ("the Appellant's witness"). The Commissioner sets out hereunder a summary of the evidence given by the Appellant's witness:-

18.1. The witness confirmed that he has been the owner of [REDACTED] since 2021, and that he prepared the valuation report included in the Appellant's documents submitted in support of his appeal. The witness stated that he exclusively sells vehicles from Japan and would consider himself very knowledgeable in that area of motor vehicle sales.

18.2. The witness stated that the VRT rate depends on CO2 emissions and that he would rely on the Respondent's VRT calculator in his decisions as to whether to

import certain vehicles and the sale price to be ascribed to an imported vehicle. The witness stated that the Appellant's vehicle had a rate of CO2 emissions of 179g/km. The witness stated that this is what should dictate the VRT payable and that this rate or a higher rate was used to calculate the anticipated VRT payable on the Appellant's vehicle using the Respondent's VRT calculator.

- 18.3. The witness stated that it is not good for business, not being in a position to rely on the Respondent's VRT calculator, when very similar details such as the OMSP and the CO2 emissions are used to calculate a cost.

Respondent's evidence and submissions

19. The Commissioner sets out hereunder a summary of the evidence given and submissions made by the Respondent:-
 - 19.1. If the vehicle is on the Respondent's system then usually there is not an issue with the calculation of VRT and that 90% of makes and models are on the Respondent's system.
 - 19.2. If the make and model is not on the system, the Respondent engages a third party valuer to value 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.
 - 19.3. 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 get an accurate result and this is also clearly signposted on the website as a warning. The codes for the vehicles used by the Appellant were for considerably older vehicles.
 - 19.4. There is agreement as to the OMSP now of in or around €14,500 which the Respondent considers very fair, in circumstances where the Appellant advertised the vehicle for sale for the sum of €18,499. Nevertheless, the Respondent maintained the OMSP of €14,500 for the Appellant.
 - 19.5. The Respondent's VRT calculator on its website does not prevent a member of the public putting in incorrect information, such that it will provide a result even if the vehicle details are not in existence. It relies on the details input to produce a result. That is why the statistical codes entered are very important in achieving a correct calculation of VRT.

- 19.6. The Respondent has over 25,000 vehicles available on the calculator and it is not practicable to have every vehicle ever in existence in its records. Reference was made to the Respondent's VRT manual paragraph 3.1.2, in that regard.
- 19.7. In response to a question from the Commissioner, it was submitted that the rate of 41% was applied, as opposed to 35%, as stated by the Respondent's witness, due to an EU Directive that dictates that the correct percentage payable on the Appellant's vehicle is 41% not 35% of the OMSP. This is applying the worldwide harmonized light vehicles test procedure ("WLTP") which is used to measure fuel consumption and CO2 emissions from passenger cars.

20. [REDACTED], gave evidence on behalf of the Respondent ("the Respondent's witness"). The Commissioner sets out hereunder a summary of the evidence given by the Respondent's witness:-

- 20.1. The witness confirmed that he is a motor engineer, has worked in the motor industry for 21 years and has been in his current role for 10/11 years. The witness stated that he is a member of the Institute of Automotive Engineers and is responsible for valuing vehicles, with a team of individuals supporting him.
- 20.2. The witness gave evidence that for the purposes of a valuation, he receives a document from the Respondent with the details of the vehicle, such as the make, model, year and specifications. The witness stated that when valuing a vehicle for the first time, he must assess the market for that vehicle. The witness said that for this vehicle firstly the Irish market was reviewed, then the market in the UK and then he looked at similar vehicles and then the Japanese market.
- 20.3. The witness gave evidence that he would then assess the CO2 emissions and the rate for the Appellant's vehicle is 176g/km which is a 35% rate to be applied to calculate the VRT. Thereafter, he took the price in Japan, removed the VAT, converted the price from dollars to euro and added Irish VAT, to give him a price of €15,000. The witness stated that the cost of shipping of €2,500 was added to that price, to arrive at an OMSP of €17,500, which was then used to calculate the VRT.
- 20.4. The witness stated that he is responsible for calculating the OMSP of a vehicle, but he is not responsible for calculating the VRT rate applicable or the amount payable, which is the Respondent's role.

20.5. The witness stated that he became aware of the Appellant's vehicle advertised for sale for the sum of €18,499 and considers that the OSMP ascribed to the vehicle of €14,500 by the Respondent is very fair.

Material Facts

21. Having read the documentation submitted, and having listened to the oral evidence and submissions at the hearing, the Commissioner makes the following findings of material fact:-

- 21.1. The assessment to VRT concerns a [REDACTED].
- 21.2. In September 2022, the Appellant purchased the vehicle in Japan.
- 21.3. In May 2023, the Appellant imported the vehicle into the State for his own use.
- 21.4. On 27 June 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.
- 21.5. The VRT for the vehicle was calculated as a percentage of the OMSP of the vehicle namely 41%.
- 21.6. The vehicle was assessed as being in good condition.
- 21.7. An OMSP of €17,500 was attributed to the vehicle, resulting in a VRT payment of €7,175 being paid by the Appellant.
- 21.8. The vehicle was assigned the registration number [REDACTED].
- 21.9. The Appellant lodged a first stage appeal with the VRT Appeals Unit on the basis that the OSMP and VRT is excessive.
- 21.10. On 25 August 2023, the Respondent wrote to the Appellant in relation to his appeal to state that the VRT Appeals unit had revised the OMSP downwards to €14,500, with the lower VRT amount of €5,945 being due.
- 21.11. This reduction in the OMSP originally determined in respect of the vehicle, realised a refund of €1,230 for VRT to the Appellant.
- 21.12. The parties are in agreement that the OMSP of the vehicle is €14,500.

Analysis

22. 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".

23. 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..."

24. The central issue to be determined is the OMSP for this vehicle and thus, the correct VRT payable. The Commissioner observes that the parties are in agreement that the correct OMSP for the vehicle is €14,500, but the issue is the calculation of the VRT payable on the vehicle. Therefore, the issue to be determined in this appeal is the correct VRT payable on the vehicle.

25. 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. In that regard, the Commissioner notes the evidence of the Respondent's witness and the manner in which vehicles are valued, when the Respondent does not have an existing valuation of a vehicle on its system already.

26. 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 (NOx) levy is calculated and the result is added to the CO2 component to yield the total VRT due, which herein is the sum of €5,945. The evidence of the Respondent's witness was that when contacted by the Respondent, his role is to ascertain the OSMP, but that the amount of VRT payable is calculated by the Respondent, having regard to *inter alia* the CO2 emissions of a vehicle.

27. The Commissioner notes that in May 2023, the Appellant imported the vehicle into the State. The Appellant submits that the VRT payable should be the amount with reference to the Respondent's VRT calculator on its website, which the Appellant consulted prior to him purchasing the vehicle in September 2022, to obtain an estimate of the VRT payable on the vehicle. The estimate he received was in or around €2,500.

28. The Appellant's evidence was that he used statistical codes and details very similar to the vehicle he was intending to purchase, in order for him to ascertain what he might expect to pay in VRT. The Appellant made reference to a [REDACTED] [REDACTED] as comparable vehicles. Further, the Appellant's evidence was that he used vehicles that had higher CO2 emissions, of the same year of registration namely, [REDACTED] and a higher OMSP, in order to understand the maximum potential VRT payable on the vehicle. The Commissioner notes the Appellant's evidence that he never anticipated that the VRT payable on the vehicle would be 100% more than what was indicated to him by the Respondent's VRT calculator.

29. The Commissioner notes that the Respondent contends that the correct statistical codes or the identical vehicle should have been used to calculate the estimated VRT amount payable by the Appellant. The Respondent argues that the VRT calculator on its website is an estimate only of the VRT payable on a vehicle and is dependent on when it is used and the descriptors being accurate. The Respondent points out that the estimates supplied by the Appellant used different vehicles and different statistical codes to the Appellant's vehicle, thus there is no doubt that the result would be different in terms of the amount of VRT payable.

30. 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*"². There then appears a link to the "VRT calculator".

31. 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:

•

² <https://www.revenue.ie/en/vrt/calculating-vrt/index.aspx>

- 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”.

32. The Commissioner notes that the VRT calculator permits a search by “statistical code” or “vehicle type”. The Appellant argues that he understands that the Respondent’s VRT Calculator is just a guide, but to have a difference of 100% more payable is unacceptable. The Commissioner observes the evidence of the Appellant’s witness that it is “bad for business”, not being in a position to accurately estimate VRT costs using the Respondent’s VRT calculator and questions its purpose.
33. 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.***” The evidence of the Appellant was that he used near identical details to the vehicle he intended to purchase, but the Commissioner is satisfied that the details selected did not “***exactly match your vehicle in every way***”, as the vehicles used were not the same vehicles that the Appellant purchased. 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.
34. Separately, the Commissioner heard evidence from the Respondent’s witness that, having regard to the CO₂ emissions of the Appellant’s vehicle, the applicable percentage to be applied to calculate the VRT as a percentage of the OSMP of the Appellant’s vehicle is 35%. The Commissioner queried why the Respondent’s correspondence referred to 41% being applied. The evidence of the Respondent’s witness was that he was not responsible for calculating the VRT and that he was merely referring to the Respondent’s information

in the form of a chart that was publically available and which refers him to 35% for CO2 emissions of 176g/km. The Respondent submitted that whilst it states 35% on the chart, an EU Directive applies which means that it is 41% that should be applied. The Respondent indicated that it would furnish a copy of the EU Directive it was referring to after the conclusion of the hearing of the appeal. The Commissioner considered that this was not ideal, but in the absence of an objection from the Appellant, the Commissioner permitted the Respondent to furnish further information. The Commissioner has considered the information furnished in the Respondent's email dated 1 December 2023, namely three attachments entitled "Reference to EU Directive", "WLTP EU Directive" and "Revenue Info".

35. As aforementioned, the Commissioner has considered each of these documents and considers that none of the information in the documents support the case that the Respondent is making, such that 41% applies herein rather than 35%. It is not the role of the Commissioner to make a parties case, and the Commissioner was provided with limited submissions in respect of this matter by the Respondent, such that reference was merely made to "an EU Directive" by the Respondent and therefore 41% should be applied herein. The Commissioner was not directed to any particular section or wording which supports the Respondent's position. In fact, having considered the documents submitted by the Respondent, the Commissioner considers that the document entitled "revenue info" does not support the Respondent's position that 41% should be applied. At page 2 of the document, it states that "*the table below shows the VRT rates which will apply from 1 January 2022 to vehicles based on the WLTP CO2 or the calculated CO2.*" Further, at page 5 it states that:

CO2 Emissions (CO2g/km)	Percentage payable of the value of the vehicle
More than 170g/km up to and including 190g/km	35% or €700 whichever is the greater
More than 190g/km	41% or €820 whichever is the greater

36. Having regard to the documentation submitted by the Respondent, the Commissioner is satisfied that the Respondent applied the incorrect percentage rate payable of the value of the Appellant's vehicle to calculate the VRT payable.

37. 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 in this appeal. 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 having regard to the OMSP ascribed to the vehicle. 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 accurate details to produce an accurate result. The Commissioner is satisfied the variance between the VRT payable and the estimates received, is attributed to the Appellant's use of different vehicles with the VRT Calculator.

38. However, having regard to the evidence and submissions herein, the Commissioner is satisfied that the Respondent should not have applied the rate of 41% in its calculation of the VRT payable on the Appellant's vehicle which was assessed as having CO2 emissions of 176g/km. The Commissioner is satisfied that the **correct rate** applicable to the Appellant's vehicle is **35%**, as set out in the Respondent's guidance documents which are publically available and which were submitted to the Commissioner after the conclusion of the appeal hearing.

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 from the amount of **€5,945** to the amount of **€5,075** ($€14,500 \times 35\%$). The Commissioner is satisfied that this reflects the amount of VRT payable having regard to the rate of 35% for the CO2 emissions of the Appellant's vehicle, namely 176g/km, as reflected in the Respondent's documentation. The Commissioner is satisfied that the rate of 41% was incorrectly applied by the Respondent.

Determination

40. 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. However, the Commissioner is satisfied that the incorrect rate of 41% was applied by the Respondent to calculate the percentage payable of the value of the Appellant's vehicle. Thus, applying the correct rate of **35%** to the value of the Appellant's vehicle, the Commissioner determines that the VRT payable shall be reduced to the amount of **€5,075**.

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. The Commissioner has every sympathy for the circumstances the Appellant finds himself in, having purchased a vehicle he understood to have a liability to VRT that was significantly less than he anticipated. 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
13 December 2023