



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

Between

205TACD2025

Liam Dunne

Appellant

and

The Revenue Commissioners

Respondent

Determination

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Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) brought by Liam Dunne (“the Appellant”) under section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) 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 appeal proceeded by way of a remote hearing on 10 February 2025. The Appellant represented himself and the Respondent was represented by the two of its officers, with an assessor from Assess Ireland Automotive Assessing and Engineering Inspection Services (“Assess Ireland”) who gave evidence at the hearing. The Appellant articulated his arguments clearly at the appeal and the Commissioner is satisfied that every opportunity was afforded to the parties to represent their arguments. The Appellant has requested that this determination be published without redactions.

Background

3. On 10 April 2024, the Appellant purchased a 2009 registered Mercedes-Benz SL 350 (“the Vehicle”) in the United Kingdom and imported the Vehicle into the State for his own use. The purchase price for the Vehicle was £11,500.
4. On 13 May 2024, the Vehicle was registered in the State, when the Appellant presented the Vehicle for registration at the National Car Testing Service (“NCTS”). The Respondent initially assessed the open market selling price (“OMSP”) for the Vehicle as €23,500, which gave rise to a VRT liability of €9,635.
5. The Appellant lodged a first stage appeal. On 31 May 2024, the Respondent issued a first stage appeal determination and determined that the OMSP of the Vehicle at the time of registration was €18,762 and the amount of VRT chargeable was €7,692.
6. On 24 June 2024, Assess Ireland conducted a physical inspection of the Vehicle and assessed the OMSP as, at a minimum, €21,850.
7. On 31 May 2024, the Appellant submitted a Notice of Appeal to the Commission, with enclosures. On 15 July 2024, the Appellant submitted a Statement of Case. On 6 August 2024, the Respondent submitted a Statement of Case with enclosures. On 23 October 2024, the Respondent submitted pre-hearing documentation. On 20 November 2024, the Appellant submitted additional documentation. The Commissioner has considered all of the documentation submitted by the parties in this appeal.

8. A hearing in this appeal was initially scheduled for 11 December 2024. However, the hearing of the appeal was postponed until 10 February 2025, in order to facilitate a freedom of information (“FOI”) request by the Appellant in preparation for this appeal. The Appellant was entitled to exercise all rights to information and it was therefore appropriate for the Commission to adjourn the initial hearing date in order to facilitate the FOI request.
9. At the hearing on 10 February 2025, the Commissioner explained the procedure for the hearing to the parties. The Appellant queried whether the Commissioner had received hard copies of his correspondence dated 29 May 2024 and 20 November 2024, as the Respondent had not included those documents in its pre-hearing documentation. The Commissioner confirmed that she had those documents. For completeness, the Commissioner notes that the Commission had acknowledged receipt of both documents to the Appellant, on 31 May 2024 and 27 November 2024 respectively. The Commissioner is satisfied that all parties had received copies of the correspondence dated 29 May 2024 and 20 November 2024.
10. On 23 February 2025, following the closure of the hearing of the appeal, the Appellant made additional submissions to the Commission, which the Commissioner will now summarise:
 - 10.1. The Appellant requested a copy of the transcript of the hearing. The Commission asked the Appellant to direct this request to the Respondent. The Commission does not own the copyright to any transcript. The Respondent had engaged the stenographer and therefore any request for a transcript rests with the Respondent.
 - 10.2. The Appellant asked under what authority the Respondent offered a settlement if the Respondent believed that its assessment was correct and whether the Commission accepted that the settlement offer was an admission that the original VRT calculation was flawed. The Commissioner addresses this point below.
 - 10.3. The Appellant submitted that the Respondent’s VRT calculation method breached EU law, specifically Article 110 of the Treaty on the Functioning of the European Union. The Commissioner observes that this was a new ground of appeal. Section 949I(6) of the TCA 1997 provides that the Appellant may not rely on any grounds of appeal not stated in a Notice of Appeal unless the Commissioner is satisfied that there was a good reason for not stating those grounds in the Notice of Appeal. In this case, the Appellant proffered no reason for not stating that ground previously. Therefore the Commissioner is not satisfied that the Appellant may rely on that ground. Furthermore, as the matter was not

ventilated at the hearing, the Commissioner did not have the opportunity to hear legal arguments from both parties in relation to the new ground of appeal. A cornerstone of the principles of fair procedure is that parties have an adequate opportunity to present their materials and arguments, including an adequate opportunity to reply. Accordingly, the Commissioner does not consider that it would be appropriate or fair to consider that ground of appeal.

11. On 20 May 2025, and again following the hearing, the Appellant made a further submission to the Commission, which the Commissioner will now summarise. The Appellant wished to put the following point on record. He made an FOI request regarding the refund of €1,943 which the Respondent offered at first stage appeal. He did not receive an explanation for how that figure was determined. This, he said, raised governance concerns and echoed his concern about the assignment and removal of permanent statistical codes without a documented process. The Appellant has appealed to the Information Commissioner. The Commissioner notes that the Appellant is conversant with the rights to appeal any matter with respect to an FOI request to the Information Commissioner. Such rights are outside the remit of the Commission.
12. On 24 June 2025, the Appellant made an additional submission to the Commission, stating that records had been released to the Appellant which had been withheld in the original FOI response by the Respondent. The Appellant contended that those records showed a system in which discretionary tax decisions were made and defended without transparency or documentation. As noted above, the Appellant's FOI rights fall outside the remit of the Commission. The Commissioner addresses the questions raised by the Appellant in this appeal about the Respondent's processes and actions in the context of considering the Commission's jurisdiction below.

Legislation and Guidelines

13. The legislation relevant to this appeal is as follows:
14. Section 132 of the Finance Act, 1992 (as amended), provides (among other things):

(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.....
15. Section 133 of the Finance Act, 1992 (as amended) provides (among other things):

- (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.*

...

- (3) *In this section—*

...

‘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 Submissions

16. The Commissioner sets out below a summary of the submissions made by the Appellant, in the documentation submitted in support of this appeal and at the hearing:

16.1. The core of the appeal is that the Respondent's approach is arbitrary. It treats vehicles differently based on whether the vehicle code is contained in the Respondent's register, which is unfair. The "valuation" based calculation gives rise to much higher charges.

16.2. Before purchasing the Vehicle, the Appellant used the Respondent's VRT calculator, which showed a potential liability of €2,955. Based on this information, the Appellant imported the Vehicle. The code for the Vehicle was not available on the Respondent's system. The VRT due was €9,635, over three times that indicated by the VRT calculator. This conflicts with the principle of certainty. The liability only becomes clear following payment of VAT and excise duties.

16.3. The Appellant ran the VRT calculator for other vehicles: for example a 2013 AMG 350SL, which gave a VRT figure of €6,402; and a 2014 AMG 350SL, which yielded a VRT figure of €9,358. The Appellant accepted that the Vehicle's emissions attract a 41% rate of VRT but submitted that the main source of difference is that the lower figures were not based on a "market valuation".

16.4. The Vehicle is neither unique nor unusual, with two being sold from new in 2009. According to the Respondent, on average 17 such vehicles were registered each year over the past ten years. The Appellant discovered through an FOI request that there was a code for the Appellant's exact vehicle which was removed in 2015. The Appellant requested documents about the addition or removal of codes but received none. He therefore concludes that they do not exist.

16.5. The Respondent's valuation method lacks transparency. The Respondent seeks a valuation from an "expert" but there is no transparency on the expert's qualifications or methodology. The Appellant sought an independent valuation from a qualified Mercedes main dealer, who gave a valuation of €15,000. Applying a 41% VRT rate yields a liability of €6,150 and this is still excessive.

16.6. The Society of the Irish Motor Industry ("SIMI") publishes recommended price guides, which would allow a transparent and predictable solution. In the case of the Vehicle, the recommended price for its manufacture date of March 2009 is

€144,220. Applying the depreciation table from the VRT calculator of 94% gives a current OMSP of $€144,220 \times (1-94\%) = €8,653.20$. Applying the 41% rate of VRT to this number yields a figure of $€8,653.30 \times 41\% = €3,547.85$. This is the amount of VRT for which the Appellant is liable and he seeks the return of €6,058.

16.7. The market value used is a VRT inclusive price, which means that VRT is charged on a price that already includes VRT. This is inconsistent with VRT calculation for new vehicles and gives rise to an incorrect tax charge.

16.8. In the first stage appeal, the Respondent offered a refund of €1,943 but it appeared to be contingent on the termination of the appeal. The Appellant wishes to know why he was not refunded immediately.

Respondent's submissions

17. The Commissioner sets out below a summary of the submissions made by the Respondent in the documentation submitted and at the hearing:

17.1. The OMSP is the price, inclusive of all taxes and duties, which, in the opinion of the distributor, a new vehicle of the model and specification would fetch on a first arm's length retail sale on the open market in the State.

17.2. Section 133 of the Finance Act 1992 (as amended) clearly states: "*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.*"

17.3. The VRT calculator clearly states that it is an estimate. The true VRT value is not known until the vehicle and supporting documentation are presented at the NCTS.

17.4. A permanent statistical code is assigned to all new vehicles for sale on the Irish market, and second-hand vehicles where the number of imports for a particular make and model warrants a code. No permanent statistical code was assigned to the Vehicle. Statistical codes are reviewed, updated and amended regularly. Not every vehicle can be on the VRT calculator for reasons of practicality.

17.5. The Respondent does not use SIMI prices as the distributors declare the recommended retail price for models they introduce into the market. The Vehicle

was 15 years old at the time of registration and the price of the Vehicle as new would not be used to determine its second-hand value.

- 17.6. The Respondent assessed an OMSP of €23,500 after obtaining the services of an independent consultant, who did a desktop consultation.
- 17.7. The OMSP was appealed at first stage and subsequently reduced to €18,762. The price for the Vehicle used in the initial valuation had reduced to €19,700, which the Respondent reduced by 5% as it was a garage advertisement. This resulted in a refund amount of €1,943 ($€23,500 \text{ less } €18,762 = €4,738 @ 41\% \text{ VRT rate} = €1,943$), which the Appellant rejected.
- 17.8. During the second stage appeal process, the Respondent obtained the services of an independent consultant to carry out a physical inspection of the Vehicle, which was carried out on 24 June 2024. The consultant stated that the Vehicle would hold a current OMSP of, at a minimum, €21,850.
- 17.9. The reduction in OMSP to €18,762 at the first stage appeal was again offered to the Appellant but was refused. The OMSP cannot be reduced any further based on the consultant's research.

Respondent's evidence

18. The Commissioner will now summarise the evidence given by the consultant, Mr Maurice Ryan, from Assess Ireland ("the Consultant"). The Consultant stated that his responsibility was to conduct a physical inspection of the Vehicle for the purpose of placing a market value on it. They carried out a physical inspection of the Vehicle. Following a physical examination, they were satisfied that the Vehicle was what it was alleged to be and that its condition was "*extremely good, bordering on flawless in my professional opinion*". They assessed a current market value of €21,850. They identified four "like for like" vehicles i.e. Mercedes Benz 350 SL, between 2008 and 2010, with the Vehicle having been registered in 2009. All vehicles were for sale in main dealers in the Republic of Ireland. The examples were priced at €19,750, €19,950, €24,950 and €24,950. They adjusted those asking prices to account for small differences in years and mileage. They took an average of the four numbers, which produced €21,850.

Material Facts

19. 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:

- 19.1. On 10 April 2024, the Appellant purchased the Vehicle in the United Kingdom and paid a purchase price of £11,500.
- 19.2. The Appellant imported the Vehicle into the State.
- 19.3. On 13 May 2024, the Vehicle was registered in the State.
- 19.4. At the time of registration, the Vehicle did not have a permanent statistical code on the Respondent's system.
- 19.5. The Respondent assigned an OMSP of €23,500 to the Vehicle, which gave rise to a VRT liability of €9,635.
- 19.6. On 31 May 2024, the Respondent issued a first stage appeal determination and determined that the OMSP of the Vehicle was €18,762.
- 19.7. On 24 June 2024, Assess Ireland conducted a physical inspection of the Vehicle and gave an OMSP of €21,850 to the Vehicle. Assess Ireland found the condition of the Vehicle to be "*exceptional*" and "*bordering on flawless*". The Appellant did not contest those descriptions of the Vehicle.

Analysis

20. In an appeal before the Commission, the burden of proof rests on the Appellant. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49, Charleton J. stated at paragraph 22 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".

21. The Court of Appeal recently confirmed this position in *JSS, JSJ, TS, DS and PS v A Tax Appeal Commissioner* [2025] IECA 96, in which McDonald J. stated at paragraph 34 that:

"the taxpayer bears the burden of demonstrating that a tax assessment is wrong."

Processes of the Respondent

22. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.

23. In this appeal, the Appellant made a number of submissions which relate to the processes and actions of the Respondent. It is therefore necessary to state at the outset that the Commissioner does not have jurisdiction to set aside a decision of the Respondent based on alleged unfairness, and has no supervisory jurisdiction over the processes of the Respondent. Any such allegations could only be addressed by way of judicial review proceedings in the High Court. Therefore, if the Appellant took issue with any procedural irregularity in relation to the Respondent, this was a matter for the High Court and not the Commission. The Commissioner's jurisdiction "*is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA*", see *Lee v Revenue Commissioners* [2021] IECA 18.

VRT Calculator

24. The Appellant submitted that he used the VRT calculator before purchasing the Vehicle and it showed a potential liability of €2,955, based on which he imported the Vehicle. However, it is important to note that the VRT calculator provides an estimate only. In this regard, the Commissioner observes that the Respondent's website states:

"The VRT calculator will usually give a good estimate of the VRT due if registering a particular vehicle on that same day. However, this is an estimate only. Revenue only calculate the exact VRT due when a vehicle is presented for registration..."

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.

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."

25. In addition, the Commissioner notes that the Respondent's VRT calculator is described on its webpage as follows: "*The VRT calculator is a service you can use to estimate the VRT due on a car*". This links to a webpage which states (among other things) 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, ...*

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.”

26. Given the above, the Commissioner considers that the Respondent’s VRT calculator is clearly marked as an estimation tool. 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”*.

VRT Calculation Methodology

27. The Appellant stated that the core of his appeal was that the VRT calculation process was arbitrary. He contended that the methodology of calculation for vehicles which do not have a permanent statistical code was unfair and uncertain. He criticised the Respondent for a lack of processes around the addition or removal of permanent statistical codes and referred to an absence of documentation following his FOI request on the matter.
28. The Appellant provided examples of calculations for other vehicles using the VRT calculator, submitting that the main difference in those valuations was that those models were on the Respondent’s register. The Appellant stated that the model of the Vehicle was previously on the Respondent’s register in 2015 but was removed. The Commissioner was presented with no documentary evidence of the previous inclusion of the model of the Vehicle on the Respondent’s register. In any event, it was undisputed that at the time the Vehicle was registered, the Vehicle did not have a permanent statistical code on the Respondent’s system.
29. In appeal submissions made after the hearing, the Appellant asked the Commission *“to explicitly rule on the legality of Revenue’s undocumented statistical code removals”*. However, the Commissioner has no supervisory jurisdiction over the processes of the Respondent. As noted above, the Commissioner’s jurisdiction *“is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA”*, see *Lee v Revenue Commissioners* [2021] IECA 18. Therefore, the Commissioner makes no finding on this matter.
30. Having considered the Appellant’s submissions and having listened to the Appellant, the Commissioner appreciates the Appellant’s frustrations regarding the VRT calculation process. The Commissioner has some sympathy with the Appellant in relation to the fact that it was not possible to know with certainty the liability to VRT before purchasing the Vehicle. However, that is the situation for many parties who purchase a vehicle outside the State and is not peculiar or particular to the Appellant. The Commissioner does not

have jurisdiction to set aside a decision of the Respondent based on alleged unfairness and has no supervisory jurisdiction over the processes of the Respondent. The Commissioner will now proceed to consider the OMSP valuation.

OMSP Valuation

31. All vehicles are subject to VRT on first registration in the State. The VRT due is calculated based on the vehicle's OMSP multiplied by a rate that is based on the 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. The OMSP of a vehicle is determined in accordance with section 133 of the Finance Act 1992 (as amended) namely 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 in the State.
32. In this case, the Appellant purchased the Vehicle for the sum of £11,500, as shown in an invoice dated 10 April 2024 which was presented to the Commissioner. The Respondent initially assigned an OMSP of €23,500 to the Vehicle, which gave rise to a VRT liability of €9,635 (€23,500 x 41%). At first stage appeal, the Respondent assigned an OMSP of €18,762 to the Vehicle and offered a repayment to the Appellant in the amount of €1,943. In appeal submissions made after the hearing, the Appellant stated that he had not received an explanation for how the amount of €1,943 was reached, in response to an FOI request. The Commissioner notes that at the hearing, the Respondent stated that the price for the Vehicle used in the initial valuation had reduced to €19,750, which the Respondent reduced by 5% as it was a garage advertisement. This resulted in a refund amount of €1,943 (€23,500 less €18,762 = €4,738 @ 41% VRT rate = €1,943).
33. The Appellant queried the Respondent's authority to make a settlement offer and questioned why the Respondent did not make a repayment of €1,943 to the Appellant immediately on foot of the first stage appeal. However, the Commissioner has no supervisory jurisdiction over the Respondent's processes, or over its actions in relation to settlement or repayment offers, and therefore makes no finding on this matter.
34. After its first stage appeal determination, the Respondent engaged the services of the Consultant, who physically assessed the Vehicle on 24 June 2024. In his report dated 3 July 2024, the Consultant stated that the Vehicle was found to be in "*exceptional*" condition and at the hearing, the Consultant stated that its condition was "*bordering on flawless*". The Appellant did not contest those descriptions of the Vehicle. At the hearing, the Consultant stated that he based his valuation of the Vehicle on four "like for like" vehicles which were for sale in main dealers in the State and priced at €19,750, €19,950,

€24,950, and €24,950. The Commissioner was presented with two of the advertisements concerned: an advertisement for €23,750, which the Consultant stated had dropped in price to €19,750, and an advertisement for €24,950. Both advertisements related to a Mercedes-Benz SL 350 with similar mileage to that of the Vehicle, one from 2009 and the other from 2010.

35. The Appellant obtained his own valuation of the Vehicle from a Mercedes dealer and provided the Commission with a letter from that dealer dated 29 May 2024, which stated: *“having assessed the above vehicle we estimate that the current market value of the Vehicle is in the region of €15,000. This takes into account mileage, condition, age and vehicle history”*. However, the Appellant, with the burden of proof on him, did not adduce any further evidence in relation to that letter. The author of the letter did not attend the hearing to provide information as to how the estimated valuation of €15,000 was reached. Furthermore, the Appellant provided no advertisements of an equivalent vehicle demonstrating such a valuation of €15,000.
36. The report by Assess Ireland is clearly stated to be a report produced on foot of a physical inspection of the Vehicle and the Commissioner heard directly from the author of that report at the hearing, who attested to the physical inspection of the Vehicle and the means by which the Vehicle was valued. Consequently, the Commissioner finds that it is reasonable and appropriate to attach more weight to the report from Assess Ireland than to the letter presented by the Appellant dated 29 May 2024. The Commissioner has no reason to doubt the report by Assess Ireland on foot of their inspection, which is further supported by advertisements produced for other similar vehicles, as noted above.
37. Additionally, the Commissioner notes that the letter from the Mercedes dealer referenced above and produced by the Appellant was not in fact the basis of the VRT repayment sought by the Appellant in this appeal. The Appellant contended that the VRT liability resulting from the Mercedes dealer’s valuation was excessive. He proposed an alternative method of assessing the OMSP for the Vehicle and sought a refund of VRT in the amount of €6,058 on the following ground. The Appellant proposed that the appropriate method of assessing the OMSP for the Vehicle was to use SIMI’s recommended price for the Vehicle by reference to its manufacture date and apply the depreciation table from the VRT calculator. He stated that this would result in an OMSP of €8,653.20 for the Vehicle. In response to the Appellant’s proposition, the Respondent submitted that the price of a new vehicle would not be used to determine the current second hand value of the Vehicle, while the Consultant contended that the most accurate way to put an open market value on the Vehicle was to refer to the current open market.

38. Turning then to the legislation, section 133(3)(c) of the Finance Act 1992 (as amended) defines the OMSP as: *“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”* (emphasis added). The Commissioner observes that this provision does not refer to SIMI or to a depreciation table and therefore does not afford a statutory basis for the particular methodology proposed by the Appellant. The Commissioner considers that in order to assess the price which the Vehicle *“might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail”*, it was reasonable to use open market prices for similar models. Furthermore, the Commissioner notes that the resulting OMSP of €8,653.20 under the Appellant's proposed methodology is substantially less than the open market prices contained in the advertisements presented to the Commissioner and those relied on by the Consultant. However, the Appellant provided no supporting documentation to indicate that €8,653.20 would be the price which the Vehicle *“might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail”*.
39. Given the above, the Commissioner does not accept that the Appellant has established that the charge to VRT in this case was wrong by reason of not using the Appellant's proposed methodology of valuation. It follows that the Commissioner is not satisfied that there is a basis on which to reduce the VRT payable by €6,058, as sought by the Appellant.
40. Finally, the Appellant submitted that as VRT is charged on a price which already includes VRT, this gives rise to an incorrect tax charge. However, section 133(3)(c) of the Finance Act 1992 (as amended) provides that the OMSP is *“the price, inclusive of all taxes and duties”*. The Commissioner considers that the plain meaning of this statutory provision is that the OMSP includes *“all taxes and duties”*, which would include VRT. Consequently, the Commissioner cannot accept the Appellant's submission on this point.
41. In this case, the OMSP of €18,762 assigned to the Vehicle in the first stage appeal determination by the Respondent on 31 May 2024 was lower than the OMSP of, at a minimum, €21,850 assessed by Assess Ireland on 3 July 2024. It seems to the Commissioner that this can be explained by the fact that Assess Ireland used four advertisements in order to calculate an average OMSP, whereas the Respondent used one advertisement, the price in which was stated to have fallen in the period between the initial assessment and the first stage appeal determination. It would be open to the Commissioner to determine that the amount assessed in the first stage appeal determination ought to be varied upwards to the Appellant's disadvantage, on the basis

of the valuation by Assess Ireland. That is within the Commissioner's statutory role. Nonetheless, in this case, the Commissioner has determined that this is not required and the determination at first stage appeal shall stand.

Determination


42. Based on a consideration of the evidence and submissions together with a review of the documentation, the Commissioner determines that the Appellant has not succeeded in showing that the charge to VRT was wrong. The OMSP of the Vehicle of €18,762 assessed on first stage appeal stands and VRT in the amount of €1,943 (€9,635 - €7,692 (€18,762 x 41%)) is repayable to the Appellant.
43. The Commissioner appreciates that this decision will be disappointing for the Appellant. The Appellant was entitled to check to see whether his legal rights were correctly applied.
44. This Appeal is determined in accordance with Part 40A TCA 1997 and in particular section 949AL of the TCA 1997. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ (6) TCA 1997.

Notification

45. 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

46. 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.

A handwritten signature in dark ink, appearing to read 'Jo Kenny', with a long horizontal flourish extending to the right.

Jo Kenny
Appeal Commissioner
4 July 2025