



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

79TACD2025

**[REDACTED] LIMITED**

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against the imposition of Vehicle Registration Tax (hereinafter “VRT”) and late registration charges relating to the importation and registration by [REDACTED] Limited (hereinafter the “Appellant”) of 26 [REDACTED] vehicles (hereinafter the “Vehicles”) into the State in 2023.
2. The total amount of tax in dispute is €94,690.21.

## Background

3. The Appellant is a limited company having its registered offices at [REDACTED]. The Appellant operates a commercial [REDACTED] rental business in Ireland.
4. Between the period of June 2023 and October 2023, the Appellant imported the Vehicles into the State. The Vehicles were imported in three separate batches as follows:
  - 4.1. 14 Vehicles identified as [REDACTED]; and
  - 4.2. 11 Vehicles identified as [REDACTED]; and
  - 4.3. 1 Vehicle identified as [REDACTED].
5. It is agreed between the parties that the Vehicles are Category B vehicles as defined in section 130 of the Finance Act 1992.
6. It is not in dispute between the parties that the Appellant was not authorised by the Respondent to manufacture, distribute, deal in, deliver, store, repair or modify unregistered vehicles and to convert registered vehicles pursuant to section 136 of the Finance Act 1992.
7. The Vehicles were not registered on importation with the following being the details of the individual Vehicles, their date of importation and their date of registration:

Registration Number	Vehicle Identification Number	Year	Model Type	Date of Entry	Date of Registration	Diff
[REDACTED]	[REDACTED]	2023	[REDACTED]	21/07/2023	11/09/2023	52
[REDACTED]	[REDACTED]	2023	[REDACTED]	21/07/2023	14/09/2023	55
[REDACTED]	[REDACTED]	2023	[REDACTED]	27/07/2023	21/09/2023	56



██████	██████████████	2023	██████	21/07/2023	13/10/2023	84
██████	██████████████	2023	██████	21/07/2023	20/09/2023	61
██████	██████████████	2023	██████	10/08/2023	09/10/2023	60

8. The Vehicles were purchased directly from the ██████ manufacturer by the Appellant at the following invoice prices exclusive of Value Added Tax (hereinafter “VAT”):

Registration Number	Vehicle Identification Number	Invoice Price ex VAT
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€40,491.33
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€45,255.00

██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00

9. Upon the Appellant presenting the Vehicles for registration, the Respondent assessed the total liability to VRT on the Vehicles at €230,217.00 and assessed the total late registration penalties on the Vehicles at €15,821.00, being a total liability of €246,038.00 as follows:

Registration Number	Vehicle Identification Number	VRT Amount	Late registration	Total VRT paid
██████	██████████	€8,269.00	€430.00	€8,699.00
██████	██████████	€8,269.00	€777.00	€9,046.00

██████	██████████	€8,566.00	€479.00	€9,045.00
██████	██████████	€8,566.00	€471.00	€9,037.00
██████	██████████	€8,269.00	€430.00	€8,699.00
██████	██████████	€8,269.00	€777.00	€9,046.00
██████	██████████	€8,269.00	€777.00	€9,046.00
██████	██████████	€9,130.00	€730.00	€9,860.00
██████	██████████	€8,957.00	€689.00	€9,646.00
██████	██████████	€9,330.00	€298.00	€9,628.00
██████	██████████	€8,566.00	€488.00	€9,054.00
██████	██████████	€8,566.00	€351.00	€8,917.00
██████	██████████	€8,976.00	€736.00	€9,712.00
██████	██████████	€8,976.00	€736.00	€9,712.00
██████	██████████	€9,092.00	€854.00	€9,946.00
██████	██████████	€9,330.00	€615.00	€9,945.00
██████	██████████	€9,165.00	€659.00	€9,824.00
██████	██████████	€9,165.00	€659.00	€9,824.00
██████	██████████	€9,330.00	€522.00	€9,852.00
██████	██████████	€9,330.00	€615.00	€9,945.00
██████	██████████	€9,254.00	€518.00	€9,772.00
██████	██████████	€9,392.00	€882.00	€10,274.00





Registration Number	Vehicle Identification Number	Invoice Price	OMSP at Registration	OMSP at First Stage Appeal	Refund Offered
██████	██████████████	€45,255	€71,070	€70,621	€ 61.00
██████	██████████████	€42,172	€70,153	€65,810	€578.00
██████	██████████████	€42,172	€68,550	€65,810	€378.00
██████	██████████████	€40,491	€67,350	€63,188	€553.00

15. The Appellant, being dissatisfied with the outcome of the first stage appeal, submitted a Notice of Appeal to the Commission pursuant to the provisions of section 146 of the Finance Act 2001.

### **Legislation and Guidelines**

The following are the relevant EU Treaty Articles and domestic Irish legislation to this appeal:

#### EU Law

##### Article 28 of the Treaty on the Functioning of the European Union (hereinafter the “TFEU”):

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

*2. The provisions of Article 30 and of Chapter 3 of this Title shall apply to products originating in Member States and to products coming from third countries which are in free circulation in Member States.”*

##### Article 30 of the TFEU:

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

Article 34 of the TFEU:

*“Quantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States.”*

Article 35 of the TFEU:

*“Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.”*

Article 36 of the TFEU:

*“The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”*

Article 110 of the TFEU:

*“No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.”*

Irish Law

Section 130 of the Finance Act 1992 – “Interpretation” (as in force from 22 December 2019 to 19 May 2024):

*“In this Chapter, save where the context otherwise requires –*

*...*

*“category B vehicle” means –*

*...*



*...*

...

Section 131 of the Finance Act 1992 – “Registration of Vehicle by Revenue Commissioners” (as in force from 27 March 2013 onwards):

*“(1)(a) The Commissioners shall establish and maintain a register of all vehicles in the State ...*

...

*(4) A person shall not have in his possession or charge after the 1st day of January, 1993, an unregistered vehicle ... unless the person is an authorised person or the vehicle is the subject of an exemption under section 135 in force for the time being ...”*

Section 132 of the Finance Act 1992 – “Charge of Excise Duty” (as in force from 1 January 2022 to 31 December 2024):

*“(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 ...*

*(2) Vehicle registration tax shall become due and be paid at the time of the registration of a vehicle or the making of the declaration under section 131(3), as may be appropriate, by -*

*(a) an authorised person in accordance with section 136(5)(b),*

*(b) the person who registers the vehicle,*

*(c) the person who has converted the vehicle where the prescribed particulars in relation to the conversion have not been declared to the Commissioners in accordance with section 131(3),*

*(d) the person who is in possession of the vehicle that is a converted vehicle which has not been declared to the Commissioners in accordance with section 131(4),*

*and where under paragraphs (a) to (d), more than one such person is, in any case, liable for the payment of a vehicle registration tax liability, then such persons shall be jointly and severally liable.*

*(3) The duty of excise imposed by subsection (1) shall be charged, levied and paid*

*...*

*(c) in case it is a category B vehicle, at the rate of an amount equal to 13.3 per cent of the value of the vehicle or €125, whichever is the greater,*

*...*

*(3A) Notwithstanding subsection (3), where the Commissioners are of the opinion that a vehicle has not been registered at the time specified in Regulation 8 of the Vehicle Registration and Taxation Regulations 1992 (S.I. No. 318 of 1992), the amount of vehicle registration tax due and payable in accordance with subsection (3) shall be increased by an amount calculated in accordance with the following formula:*

$$A \times P \times N$$

*where –*

*A is the amount of vehicle registration tax calculated in accordance with subsection (3),*

*P is 0.1 per cent, and*

*N is the number of days from the date the vehicle entered the State to the date of registration of the vehicle.”*

Section 133 of the Finance Act 1992 – “Chargeable value” (as in force from 31 March 2012 onwards):

*“(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 stands 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 that model and specification or a vehicle of a similar type and character is being offered for sale in the State while such price stands declared, the open market selling price may be determined from time to time by the Commissioners for the purposes of this section.*

*(d)Where a manufacturer or sole wholesale distributor fails to make a declaration under paragraph (a) or to make it in the prescribed manner, the open market selling price of the vehicle concerned may be determined from time to time 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."*

Section 136 of the Finance Act 1992 – "Authorisation of manufacturers, distributors and dealers and periodic payment of duty" (as in force from 27 March 2013 onwards):

*"(1) Notwithstanding the provisions of section 131, a person may be authorised by the Commissioners to manufacture, distribute, deal in, deliver, store, repair or modify unregistered vehicles and to convert registered vehicles."*

Section 145 of the Finance Act 2001 – "Appeals to Commissioners" (as in force from 2 March 2016 onwards):

*"(3) Any person who is the subject of a decision of the Commissioners in relation to any of the following matters and who is aggrieved by the decision may appeal to the Commissioners against that decision:*

*(a) the registration of a vehicle, or the amendment of an entry in the register referred to in section 131 of the Finance Act 1992;*

*(b) the determination of the open market selling price of a vehicle under section 133 of the Finance Act 1992;*

*(c) the granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under that section;*

*(d) the liability to vehicle registration tax or the repayment of vehicle registration tax.*

*(4) An appeal under this section shall be made in writing and shall set out in detail the grounds of the appeal.*

*(5) An appeal under this section shall be lodged by the person concerned with the Commissioners within 2 months from the date of the notification by the Commissioners of the decision concerned, or within such longer period as they may, in exceptional cases, allow.*

*(6) An appeal shall, subject to subsection (12), be determined by the Commissioners within a period of 30 days from its lodgement with the Commissioners.*

*(7) The Commissioners may appoint one or more of their officers for the purposes of carrying out their functions under this section but no such officer shall determine an appeal under this section in respect of a decision he or she has made.*

*(8) The Commissioners shall notify in writing an appellant concerned of their determination of an appeal and the reasons for their determination.*

*(9) Where the Commissioners determine on appeal that the amount due is less than the amount paid, they shall repay the amount overpaid to the appellant concerned.*

*(10) Where the Commissioners determine on appeal that the amount due is greater than the amount paid, the appellant concerned shall pay the amount underpaid.*

*(11) For the purpose of determination of an appeal any goods or vehicles to which the appeal relates are to be produced to the Commissioners for inspection, if so required.*

*(12) Where an appeal has been lodged but not determined in accordance with subsection (6) there shall be deemed to have been a determination by the Commissioners on the last day of the period of 30 days from the date the appeal was lodged that the appeal was not upheld but such deeming shall cease to have effect if*

*a determination is subsequently made by the Commissioners before a determination is made by the Appeal Commissioners under section 146 in respect of the matter concerned.*

*(12A)Where a person is required to furnish a return or to pay an amount of vehicle registration tax for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of vehicle registration tax.”*

Section 146 of the Finance Act 2001 – “Appeals to Appeals Commissioners” (as in force from 25 December 2016 to 12 February 2023):

*(1)Except where section 145(3) applies, any person who -*

*(a)has paid an amount of excise duty,*

*(b)has received a notice of assessment under section 99A, or is otherwise called upon by the Commissioners to pay an amount of excise duty that, in their opinion, that person is liable to pay, or*

*(c)has received a repayment of excise duty or has made a claim for such repayment that has been refused,*

*and is aggrieved by any of the matters referred to in paragraphs (a) to (c), may, subject to subsection (3), in respect of the liability to excise duty concerned or the amount of that liability, or the amount of the repayment or the refusal to repay, appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection (2).*

*(1A)Any person aggrieved by any of the following matters may appeal the matter to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection (2):*

*(a)a determination of the Commissioners under section 145;*

*(b)a refusal to authorise a person as an authorised warehousekeeper, or to approve a premises as a tax warehouse, under section 109, or a revocation under that section of any such authorisation or approval;*

*(c)a refusal to authorise a person as a registered consignee under section 109IA or a revocation under that section of any such authorisation;*

*(d)a refusal to authorise a person as a registered consignor under section 109A or a revocation under that section of any such authorisation;*



*(e) a refusal to approve a person as a tax representative under section 109U(2) or a revocation under that section of any such approval;*

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

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

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

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

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

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

*(3) Where a person is required to furnish a return or to pay an amount of excise duty for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of excise duty."*

### **Witness Evidence**

16. The following is a brief summary of the direct evidence adduced at the oral hearing. The Commissioner has had regard to all of the detailed evidence adduced when making this determination.

Mr [REDACTED]

17. The Commissioner heard evidence from Mr [REDACTED] (hereinafter "Witness 1") who is the Appellant's Associate Director [REDACTED] and who was responsible for the procurement of the Vehicles.

18. Witness 1 stated that the Appellant bought the Vehicles directly from the manufacturer in [REDACTED] at prices ranging from €40,491 to €45,255, exclusive of VAT, dependent on the model and the particular specifications of the individual vehicle. All of the Vehicles, he stated, were new.

19. He stated that for the purposes of this appeal, the Vehicles can be divided into two different main models, those being the [REDACTED] and the [REDACTED], the main

difference between the two models being the existence of [REDACTED]

20. He stated that the Appellant is one of the manufacturer's largest customers and, as such, the specifications for the vehicles which it purchases from the manufacturer are particular to the Appellant. [REDACTED]

[REDACTED] As such, he stated, it is difficult to find comparable retail vehicles on sale in the open market.

21. Witness 1 stated that the Appellant had expected the following VRT amounts to apply upon registration of the Vehicles which said calculation was based on the application of VRT at 13.3% on top of the VAT exclusive manufacturer's invoice price plus an amount for the late registration of the Vehicles:

Registration Number	Vehicle Identification Number	Invoice Price ex VAT	Expected VRT	Expected late registration penalty	Total Expected VRT
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€291.66	€5,900.54
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€308.49	€5,917.36
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€314.10	€5,922.97
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€308.49	€5,917.36
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€291.66	€5,900.54
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€308.49	€5,917.36
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€308.49	€5,917.36
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€448.71	€6,057.59
[REDACTED]	[REDACTED]	€40,491.33	€5,385.35	€414.67	€5,800.02
[REDACTED]	[REDACTED]	€42,172.00	€5,608.88	€179.48	€5,788.36

██████	██████████████	€42,172.00	€5,608.88	€319.71	€5,928.58
██████	██████████████	€42,172.00	€5,608.88	€229.96	€5,838.84
██████	██████████████	€45,255.00	€6,018.92	€493.55	€6,512.47
██████	██████████████	€45,255.00	€6,018.92	€493.55	€6,512.47
██████	██████████████	€45,255.00	€6,018.92	€415.31	€6,434.22
██████	██████████████	€45,255.00	€6,018.92	€397.25	€6,416.16
██████	██████████████	€45,255.00	€6,018.92	€433.36	€6,452.28
██████	██████████████	€45,255.00	€6,018.92	€433.36	€6,452.28
██████	██████████████	€45,255.00	€6,018.92	€337.06	€6,355.97
██████	██████████████	€45,255.00	€6,018.92	€397.25	€6,416.16
██████	██████████████	€45,255.00	€6,018.92	€337.06	€6,355.97
██████	██████████████	€45,255.00	€6,018.92	€355.12	€6,374.03
██████	██████████████	€45,255.00	€6,018.92	€355.12	€6,374.03
██████	██████████████	€45,255.00	€6,018.92	€505.59	€6,524.50
██████	██████████████	€45,255.00	€6,018.92	€367.15	€6,386.07
██████	██████████████	€45,255.00	€6,018.92	€361.13	€6,380.05

Mr ██████████

22. The Commissioner heard evidence from Mr ██████████ (Hereinafter “Witness 2”) who is an Assistant Principal working in the Respondent’s National VRT Service and in particular, for the purposes of this appeal, the vehicle valuation area and the teams which value vehicles for the purposes of establishing their OMSPs.

23. He stated that, ideally, when seeking to establish the OMSP for a vehicle, the Respondent would base it on previously declared OMSPs or publicly published comparable market prices in the State. He stated that in circumstances such as those relating to this appeal, where previously declared OMSPs or publicly published comparable market prices in the State are not available, the Respondent uses a “grossing-up” methodology. The grossing-up methodology, he stated, involves the Respondent taking the invoice price from another jurisdiction and applying a 10% Dealer Margin to the invoice price followed by the application of VAT and VRT at the appropriate rates to arrive at an OMSP.
24. He stated that when the Respondent is presented with, as in this appeal, a vehicle manufacturer’s invoice price which is free of all taxes and duties, this represents a trade price from which the Respondent needs to derive a likely retail price or OMSP.
25. Witness 2 stated that a retail price or OMSP for a vehicle takes account of all taxes and duties and also takes account of all of the costs and profit which are included in that price. As a result, the Respondent, he stated, applies a 10% Dealer Margin to cover the additional costs and profits which would be applied to a vehicle purchased at retail level.
26. He stated that, in circumstances such as those in this appeal, the Respondent is obliged to determine what the OMSP of the Vehicles would be declared at, as if the Vehicles had been sold in the State following supply by a manufacturer or sole distributor.
27. Witness 2 stated that, in establishing the OMSP of a vehicle, it would not be correct to apply VRT to the [REDACTED] manufacturer’s invoice price as that invoice price does not take account of VAT or of the retailer costs and profit margins incurred when a retail sale is made.

## **Submissions**

### *Appellant’s Submissions*

#### *Preliminary Matter*

28. The Appellant submitted, as a preliminary point, that no VRT should be applied to the importation of the Vehicles.
29. The Appellant submitted that it accepts that Member States of the EU hold the right to legislate in relation to motor vehicle registration tax, however, it submitted, the general principles of EU law, the freedoms of the single market and the freedom of movement of goods must also be respected.

30. The Appellant submitted that VRT should not have been applied to the Vehicles by the Respondent. The Appellant submitted that the VRT system as provided for by the Finance Act 1992, including the operation of the VRT system by the Respondent, is in contravention of EU Directives and falls foul of the provisions of the TFEU.
31. The Appellant submitted that Articles 28 and 30 of the TFEU prohibit the imposition of customs duties on imports and exports between Member States of the European Union and prohibits all charges having the equivalent effect of customs duties.
32. The Appellant further submitted that Article 110 of the TFEU prohibits taxation which directly and / or indirectly discriminates against products of other Member States, in comparison to similar domestic products.
33. The Appellant submitted that the VRT applied by the Respondent and, by extension, the VRT system contributes to the direct and / or indirect hindrance of intra-Community trade.
34. The Appellant submitted that the grossing-up method applied by the Respondent is an attempt by the Respondent to compare the Vehicles with domestic products, that is to compare the [REDACTED] manufactured Vehicles with similar products manufactured in Ireland. This, it was submitted, is prejudicially unfair to the Appellant and is a discriminatory action on the part of the Respondent.
35. In addition, the Appellant submitted that the application of the grossing-up method has the effect of a quantitative restriction. It was submitted that the application of the grossing up method is, in effect, the application of a customs duty.

#### *Substantive Appeal*

36. In relation to the substantive appeal, the Appellant submitted that the OMSP utilised by the Respondent is incorrect.
37. The Appellant submitted that the correct OMSP which should be utilised when calculating VRT due on the Vehicles is the invoice purchase price which the Appellant paid directly to the manufacturer.
38. It is the Appellant's position that the correct VRT amount should be calculated as 13.3% of the manufacturer's invoice price paid by the Appellant.
39. It is further the Appellant's position that late registration penalties should not be imposed, or should at least be reduced, due to delays caused by the Respondent. The delays referenced by the Appellant were delays in securing appointments at the National Car

Test Service where the Appellant stated that it called the National Car Test Service on 31 August 2023 when the earliest available appointment date was 11 September 2023.

### *Respondent's Submissions*

#### *Preliminary Matter*

40. The Respondent submitted there is a lawful basis for the imposition of VRT.
41. The Respondent submitted that Article 110 of the TFEU is designed to assist the free movement of goods between Member States and to eliminate all forms of protection which may result in the application of internal taxation which discriminates against products from other Member States.
42. The Respondent submitted that it is established law that the imposition of VRT by a Member State is a matter internal to that Member State. The only restriction which arises in relation to the imposition of VRT by a Member State, it was submitted, is that it must be consistent with EU law and that it cannot unfairly discriminate against products from other jurisdictions.
43. The Respondent submitted that sections 132 and 133 of the Finance Act 1992 are the applicable pieces of national legislation and which apply to every motor vehicle, whether that is a car, a campervan or a motorcycle, which is presented for registration in the State.

#### *Substantive Appeal*

44. The Respondent submitted that it has correctly calculated the OMSP of the Vehicles pursuant to the provisions of the Finance Act 1992.
45. The Respondent submitted that the OMSP of a vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.
46. The Respondent submitted that an OMSP valuation is concerned with the value the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State, at the time of the charging of the tax thereon, that is to say at the time of registration. The Respondent submitted that the OMSP of a vehicle for the purposes of calculating the VRT amount must be taken as the value of the vehicle on the day it was registered.
47. The Respondent submitted that, in the normal course of events, when determining the OMSP of a vehicle presented for registration, it has regard to retail prices declared by a manufacturer or sole wholesale distributor or published market price data for comparable models in motor industry publications or other such sources.

48. The Respondent submitted that, as such data was not available in 2023, it assessed the OMSP of the Vehicles by reference to the purchase price provided by the Appellant and advertised market prices for similar or identical vehicles in other jurisdictions. It submitted that, because the [REDACTED] manufacturer's invoice only reflects the base cost of the Vehicles, in the calculation of the OMSP it was necessary to add other relevant input costs, that is to say to gross-up the invoiced manufacturer's price.
49. As an example the Respondent referenced the purchase invoice price for the vehicle VIN no. [REDACTED] / Reg. No. [REDACTED] which was €40,491 exclusive of VAT. The Respondent submitted that it had applied a 10% grossing-up figure to reflect transportation and profit margin costs of €4,049 which grossed-up the price to €44,540. The Respondent then applied Irish VAT at 23% in the amount of €10,244 to the price increasing the price to €54,784. Finally, the Respondent submitted that VRT at the rate of 13.3% was added to the price, thereby establishing an OMSP is established as being €63,188.
50. The Respondent submitted that the three batches of Vehicles had different invoice prices and the OMSP was calculated in accordance with the foregoing formula, as follows: -

	Batch 1	Batch 2	Batch 3
Invoice Price	€45,255	€42,172	€40,491
Dealer Mark-up/ Margin (10%)	€49,780	€46,389	€44,540
Add Irish VAT (23%)	€61,229	€57,058	€54,784
Include VRT (13.3%) for OMSP of:	€70,621	€65,810	€63,188

51. The Respondent submitted that, where following the application of this formula, the Appellant had been undercharged VRT at registration stage, it was not seeking to recover the balance of VRT from the Appellant. In addition, the Respondent submitted that where the Appellant had been overcharged VRT at registration stage, it had written to the Appellant indicating the overcharges and had sought the Appellant's bank details to process the repayment. As at the date of the oral hearing, the repayment had not been processed.
52. In relation to the imposition of late registration penalties, the Respondent submitted that, despite the Appellant not being a trader authorised to hold an unregistered vehicle pursuant to the provisions of section 136 of the Finance Act 1992, it had held the Vehicles without registering them for periods between 32 and 84 days after they had entered the

State. As a result, the Respondent submitted, the late registration penalties were correctly imposed pursuant to the provisions of section 132(3A) of the Finance Act 1992.

### Material Facts

53. The material facts are not in dispute in this appeal and the Commissioner accepts the following as material facts:

53.1. The Appellant is a limited company having its registered offices at [REDACTED].

53.2. The Appellant operates a commercial [REDACTED] rental business in Ireland.

53.3. Between the period of June 2023 and October 2023, the Appellant imported the Vehicles into the State. The Vehicles were imported in three separate batches as follows:

53.3.1. 14 Vehicles identified as [REDACTED]; and

53.3.2. 11 Vehicles identified as [REDACTED]; and

53.3.3. 1 Vehicle identified as [REDACTED].

53.4. The Vehicles are Category B vehicles as defined in section 130 of the Finance Act 1992.

53.5. The Appellant was not authorised by the Respondent to manufacture, distribute, deal in, deliver, store, repair or modify unregistered vehicles and to convert registered vehicles pursuant to section 136 of the Finance Act 1992.

53.6. The Vehicles were not registered on importation with the following being the details of the individual Vehicles, their date of importation and their date of registration:

Registration Number	Vehicle Identification Number	Year	Model Type	Date of Entry	Date of Registration	Diff
[REDACTED]	[REDACTED]	2023	[REDACTED]	21/07/2023	11/09/2023	52
[REDACTED]	[REDACTED]	2023	[REDACTED]	21/07/2023	14/09/2023	55
[REDACTED]	[REDACTED]	2023	[REDACTED]	27/07/2023	21/09/2023	56



		2023		27/07/2023	20/09/2023	55
		2023		21/07/2023	11/09/2023	52
		2023		21/07/2023	14/09/2023	55
		2023		21/07/2023	14/09/2023	55
		2023		21/07/2023	09/10/2023	80
		2023		21/07/2023	06/10/2023	77
		2023		10/08/2023	11/09/2023	32
		2023		10/08/2023	06/10/2023	57
		2023		10/08/2023	20/09/2023	41
		2023		21/06/2023	11/09/2023	82
		2023		21/06/2023	11/09/2023	82
		2023		07/07/2023	14/09/2023	69
232		2023		07/07/2023	11/09/2023	66
		2023		01/07/2023	11/09/2023	72
		2023		01/07/2023	11/09/2023	72
		2023		17/07/2023	11/09/2023	56
		2023		07/07/2023	11/09/2023	66
		2023		17/07/2023	11/09/2023	56
2		2023		17/07/2023	14/09/2023	59
		2023		23/07/2023	20/09/2023	59

██████	██████████████	2023	██████	21/07/2023	13/10/2023	84
██████	██████████████	2023	██████	21/07/2023	20/09/2023	61
██████	██████████████	2023	██████	10/08/2023	09/10/2023	60

53.7. The Vehicles were purchased directly from the ██████ manufacturer by the Appellant at the following invoice prices exclusive of VAT:

Registration Number	Vehicle Identification Number	Invoice Price ex VAT
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€40,491.33
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€42,172.00
██████	██████████████	€45,255.00

██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00
██████	██████████	€45,255.00

53.8. Upon presenting the Vehicles for registration, the Respondent assessed the total liability to VRT on the Vehicles at €230,217.00 and assessed the total late registration penalties on the Vehicles at €15,821.00, being a total liability of €246,038.00 as follows:

Registration Number	Vehicle Identification Number	VRT Amount	Late registration	Total VRT paid
██████	██████████	€8,269.00	€430.00	€8,699.00
██████	██████████	€8,269.00	€777.00	€9,046.00

██████	██████████	€8,566.00	€479.00	€9,045.00
██████	██████████	€8,566.00	€471.00	€9,037.00
██████	██████████	€8,269.00	€430.00	€8,699.00
██████	██████████	€8,269.00	€777.00	€9,046.00
██████	██████████	€8,269.00	€777.00	€9,046.00
██████	██████████	€9,130.00	€730.00	€9,860.00
██████	██████████	€8,957.00	€689.00	€9,646.00
██████	██████████	€9,330.00	€298.00	€9,628.00
██████	██████████	€8,566.00	€488.00	€9,054.00
██████	██████████	€8,566.00	€351.00	€8,917.00
██████	██████████	€8,976.00	€736.00	€9,712.00
██████	██████████	€8,976.00	€736.00	€9,712.00
██████	██████████	€9,092.00	€854.00	€9,946.00
██████	██████████	€9,330.00	€615.00	€9,945.00
██████	██████████	€9,165.00	€659.00	€9,824.00
██████	██████████	€9,165.00	€659.00	€9,824.00
██████	██████████	€9,330.00	€522.00	€9,852.00
██████	██████████	€9,330.00	€615.00	€9,945.00
██████	██████████	€9,254.00	€518.00	€9,772.00
██████	██████████	€9,392.00	€882.00	€10,274.00



Respondent determined that the following repayments totalling €1,570.00 were due to the Appellant:

Registration Number	Vehicle Identification Number	Invoice Price	OMSP at Registration	OMSP at First Stage Appeal	Refund Offered
██████	██████████	€45,255	€71,070	€70,621	€ 61.00
██████	██████████	€42,172	€70,153	€65,810	€578.00
██████	██████████	€42,172	€68,550	€65,810	€378.00
██████	██████████	€40,491	€67,350	€63,188	€553.00

### Analysis

54. As with all appeals before the Commission the burden of proof lies with the Appellant to establish that the relevant tax was not payable. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”*

### Preliminary Matter

55. For the purposes of reviewing the EU case law in relation to VRT, it is appropriate to set out that the TFEU came into force on 1 December 2009 following the signing of the Lisbon Treaty on 13 December 2007. One of the effects of the Lisbon Treaty was to rename the Treaty Establishing the European Community (hereinafter the “TEC”) as the TFEU.
56. For the purposes of this determination, it is also appropriate to set out that the Articles of the TFEU which are relevant to this appeal replicate Articles contained in the TEC as follows:
- 56.1. Article 28 of the TFEU replicates Article 23 of the TEC;
  - 56.2. Article 30 of the TFEU replicates Article 25 of the TEC;
  - 56.3. Article 34 of the TFEU replicates Article 28 of the TEC;
  - 56.4. Article 35 of the TFEU replicates Article 29 of the TEC;

- 56.5. Article 36 of the TFEU replicates Article 30 of the TEC; and
- 56.6. Article 110 of the TFEU replicates Article 90 of the TEC.
57. Articles 23 to 31 of the TEC (Articles 28 to 37 of the TFEU), formed Title I of Part Three of the TEC which was entitled “*Free movement of goods*” and introduced a customs union between Member States along with a prohibition on quantitative restrictions on trade between Member States.
58. In particular, Article 30 of the TFEU (Article 25 of the TEC) states:
- “Customs duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature.”*
59. In addition, Article 34 of the TFEU (Article 28 of the TEC) provides that “[q]uantitative restrictions on imports and all measures having equivalent effect shall be prohibited between Member States”
60. Article 35 of the TFEU (Article 29 of the TEC) contains an identical prohibition in respect of exports.
61. Under Article 36 of the TFEU (Article 30 of the TEC) it provides that:
- “The provisions of Articles 28 and 29 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants ... Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”*
62. The imposition of VRT has been the subject of consideration by the European Court of Justice (hereinafter the “ECJ”) and by the Court of Justice of the European Union (hereinafter the “CJEU”). The principle of VRT and its imposition by Member States has been accepted by the ECJ and by the CJEU.
63. In its judgment in Case C-383/01 *De Danske Bilimportører and Skatteministeriet, Told- og Skattestyrelsen* on the interpretation of Articles 28 EC and 30 of the TEC, the ECJ concluded:
- “1. A charge on the registration of new motor vehicles established by a Member State which does not have any domestic production of vehicles, such as that laid down by the lov om registreringsafgift af motorkøretøjer (Law on registration duty on motor vehicles), in the version resulting from Consolidating Law No 222 of 14 April 1999,*

*constitutes internal taxation whose compatibility with Community law must be examined in the light not of Article 28 EC, but of Article 90 EC.*

*2. Article 90 EC must be interpreted as not precluding such a charge.”*

64. In Case C-0134/07 *Piotr Kawala v Gmina Miasta Jaworzna*, the ECJ stated at paragraph 26:

*“Therefore, to the extent that a charge on the first registration of motor vehicles...is clearly fiscal in nature and is levied not on account of the crossing of the border of the Member State which imposed it, but upon the first registration of a motor vehicle on the territory of that Member State, it must be held that it comes within a general system of internal dues on goods and therefore falls to be assessed in light of Article 90 EC.”*

65. In Case C-552/15 *European Commission v Ireland*, the CJEU stated that:

*“71. It should be recalled that, apart from certain exceptions not relevant to the present case, taxation of motor vehicles has not been harmonised at EU level. The Member States are thus free to exercise their powers of taxation in that area provided that they do so in compliance with EU law (judgment of 21 November 2013, X, C-302/12, EU:C:2013:756, paragraph 23 and the case-law cited).*

*72. According to the Court’s settled case-law, a Member State may levy a registration tax on a vehicle made available to a person residing in that State by a company established in another Member State when that vehicle is intended to be used essentially in the first Member State on a permanent basis or is in fact used in that way (order of 27 June 2006, van de Coevering, C-242/05, EU:C:2006:430, paragraph 24 and the case-law cited).”*

66. In its recent judgment in Case C-694/22 *Commission v Malta*, the CJEU held that:

*“42. First, it is clear from the Court’s case-law that taxes on motor vehicles, such as, inter alia, road and registration taxes, constitute internal taxation of the Member States (see, to that effect, judgments of 15 March 2001, Commission v France, C-265/99, EU:C:2001:169, paragraph 51, and of 19 December 2013, X, C-437/12, EU:C:2013:857, paragraph 20 and the case-law cited).”*

67. As a result of the above EU case law, it is clear that the imposition of VRT by Member States is a matter of internal taxation of Member States which must be assessed in light of the provisions of Article 110 of the TFEU (Article 90 of the TEC).



68. Articles 110 to 113 of the TFEU (Articles 90 EC to 93 of the TEC) form Chapter 2, entitled “Tax Provisions”, of Title VII of Part Three, entitled “Common rules on competition, taxation and approximation of laws”, of the TFEU.

69. Article 110 of the TFEU (Article 90 of the TEC) states that:

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

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

70. It is the Appellant’s position that the imposition of VRT by the Respondent on the Vehicles is in contravention of Article 110 of the TFEU. The Appellant submitted that the grossing-up method applied by the Respondent is an attempt by the Respondent to compare the Vehicles with domestic products, that is to compare the [REDACTED] manufactured Vehicles with similar products manufactured in Ireland. This, it was submitted, is prejudicially unfair to the Appellant and is a discriminatory action on the part of the Respondent.

71. The Commissioner questioned the Appellant’s representative at the oral hearing as to whether she could point to similar vehicles which are manufactured in Ireland to establish that the Respondent’s imposition of VRT on the Vehicles, which are manufactured in [REDACTED], was in excess of that imposed on similar domestic vehicles. The representative was unable to do so.

72. In addition, the Commissioner asked the Appellant’s representative whether she could point to any [REDACTED] manufacturers in Ireland. In response, she stated that she was not aware of any Irish [REDACTED] manufacturers, but that her point was that the inclusion of shipping costs in the Dealer Margin amount utilised by the Respondent would not apply to an Irish manufacturer and was therefore discriminatory against non-Irish [REDACTED] manufacturers.

73. The Commissioner has considered the evidence and submission of the Respondent in relation to the calculation of VRT in the light of Article 110 of the TFEU. It was Witness 2’s evidence that, where it is not possible to find comparator vehicles within the State, it has long been the Respondent’s practice to apply a 10% Dealer Margin on top of a manufacturer’s invoice price to establish a base price on which to add VAT and VRT for the purposes of calculating an OMSP. Witness 2 stated that the purpose of the Dealer Margin of 10% is to account for transportation costs, dealer profits and other dealer costs which would be incurred by a car dealer in Ireland who imports vehicles into the State.

74. Witness 2 was cross examined and asked why 10% is the amount used for Dealer Margin when calculating VRT and not, for instance 7% or 8%. In response, Witness 2 stated that 10% has been the percentage used by the Respondent for many years.
75. The Appellant is seeking to establish that the Respondent's imposition of a 10% Dealer Margin figure on top of a manufacturer's invoice price as part of the calculation of VRT is discriminatory because it seeks to impose transportation costs that would not apply to an Irish manufacturer and is therefore discriminatory against non-Irish [REDACTED] manufacturers and in contravention of Article 110 of the TFEU.
76. The Appellant has failed to establish that there are any domestic Irish [REDACTED] manufacturers. It is a widely known fact that, in Ireland, no domestic automotive manufacturing is carried out and that the last automotive manufacturer in Ireland ceased production in the 1980s. Therefore all vehicles sold in the Irish market are imported.
77. The Commissioner accepts the Respondent's evidence that the calculation of VRT in relation to vehicles where previously declared OMSPs or publicly published comparable market prices in the State are not available is carried out using a standard calculation methodology of applying a Dealer Margin of 10% to a manufacturer's invoice price. The Commissioner further accepts that the Dealer Margin amount of 10% is applied to all such vehicles where previously declared OMSPs or publicly published comparable market prices in the State are not available.
78. As a result of the above, the Commissioner must determine that no discrimination in contravention of Article 110 of the TFEU exists in relation to the Respondent's decision to impose VRT on the Vehicles.
79. The Commissioner notes that, in its submissions, the Appellant has made reference to *Case C-552/15 European Commission v Ireland* and has asserted that the circumstances in that case apply to the Appellant's Vehicles. The Commissioner does not agree. The circumstances of *Case C-552/15 European Commission v Ireland* relate to the repayment of VRT on the removal of vehicles from the State. The Appellant's appeal relates to the importation by the Appellant of the Vehicles into the State and at no stage has the Commissioner been alerted to the Appellant making an application for the refund of VRT paid on the vehicles on the basis that the Appellant is removing the Vehicles from the State.

### *Substantive Appeal*

80. Section 132(1) of the Finance Act 1992 established VRT as a tax payable on the registration of a vehicle in the State.
81. Section 132(3) of the Finance Act 1992 sets out that, in relation to Category B vehicles – to which category the Vehicles belong - VRT shall be charged, levied and paid at a rate of 13.3% of the value of the vehicle or €125, whichever is the greater.
82. Section 132(3A) of the Finance Act 1992 sets out that the amount of VRT charged on a vehicle not registered within 30 days of entry into the State shall be increased by an amount calculated by increasing the VRT amount charged by 0.1% for each day the vehicle has been in the State prior to being registered.
83. Section 133 of the Finance Act 1992 is entitled “*Chargeable value*” and sets out as follows:

*“(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 stands 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 that model and specification or a vehicle of a similar type and character is being offered for sale in the State while such price stands declared, the open market selling price may be determined from time to time by the Commissioners for the purposes of this section.*

*(d)Where a manufacturer or sole wholesale distributor fails to make a declaration under paragraph (a) or to make it in the prescribed manner, the open market selling price of the vehicle concerned may be determined from time to time by the Commissioners for the purposes of this section.”*

84. Section 133 of the Finance Act 1992 contains the following definition of OMSP:

*““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.”*

85. It is the Appellant's position that the correct VRT in relation to the Vehicles is calculated at a rate of 13.3% of the manufacturer's invoice price. This is on the basis that there are no previously declared OMSPs for similar vehicles and that no comparator vehicles could be found for sale within the State at the time of the registration of the Vehicles.

86. On the other hand, it is the Respondent's position that it was obliged to establish an OMSP for the Vehicles in compliance with the definition of an OMSP contained in section 133 of the Finance Act 1992. As a result, the Respondent took the manufacturer's invoice price and applied a Dealer Margin of 10% to it to account for transportation costs along with dealer profit in the price on top of which it applied VAT at 23% and finally it applied VRT at 13.3%. This was done in order to determine the OMSP of the Vehicles pursuant to the provisions of section 133(2)(d) of the Finance Act 1992.
87. In his evidence to the Commissioner on behalf of the Appellant, Witness 1 stated that the Appellant has a direct business relationship with the manufacturer of the Vehicles, with the Appellant being one of the manufacturer's largest customers. In addition, Witness 1 stated that invoice price paid for the Vehicle was exclusive of VAT, that is to say that no VAT was levied on the Vehicles by the manufacturer. Further, Witness 1 stated that the basis of delivery of the Vehicles was *ex works* the manufacturer's factory, that is to say that the Appellant arranged for the collection and transportation of the Vehicles from the manufacturer's plant to Ireland.
88. Although evidence was not adduced, the Commissioner has had regard to invoices which were submitted by the Appellant in relation to the transportation of the Vehicles from [REDACTED] to Ireland which set out that the Appellant was charged between GBP£2,495.00 and GBP£2,595.00 exclusive of VAT for the transportation of each of the Vehicles.
89. The Commissioner has also had regard to the evidence of Witness 2 on behalf of the Respondent who stated that the use of a Dealer Margin of 10% when grossing-up the price of a vehicle based on the manufacturer's invoice price is a standard practice which is widely applied by the Respondent in circumstances such as those which pertain in this appeal.
90. Having considered all of the evidence, both oral and documentary, along with the submissions made on behalf of the parties, the Commissioner favours the method of calculation of the OMSP used by the Respondent as being correct.
91. The Appellant seeks to exclude transportation costs and any other costs or profit which a vehicle dealer selling on the open market in the State would incur when calculating an OMSP, and ultimately the calculation of VRT, for the Vehicles. In addition, the Appellant has purchased the Vehicles exclusive of VAT from the manufacturer and seeks to exclude VAT when calculating an OMSP, and ultimately the calculation of VRT, for the Vehicles.

92. The Commissioner accepts the evidence on behalf of the Respondent that a retail price or OMSP for a vehicle takes account of all taxes and duties and also takes account of all of the costs and profit which are included in that price.
93. The Commissioner accepts that the addition of a Dealer Margin to the manufacturer's invoice price is appropriate as part of the calculation to determine the OMSP of the Vehicles in order to reflect the transportation and other costs and profit margin which a dealer would incur when importing vehicles in to the State.
94. The Commissioner notes that the Appellant paid between GBP£2,495.00 and GBP£2,595.00 exclusive of VAT for the transportation of each of the Vehicles from [REDACTED] to Ireland. Taking the Euro-GBP exchange rate at 31 July 2023 set by the European Commission<sup>1</sup> of 0.85765, this means that the minimum Euro amount paid by the Appellant for the transportation on one vehicle was €2,909.11.
95. The 10% Dealer Margin amounts applied by the Respondent were €4,049.10, €4,217.20 and €4,525.50 dependent on the invoice price charged. This means that the transportation costs incurred by the Appellant comprise 71.84%, 68.98% and 64.28% of the total Dealer Margin imposed by the Respondent leaving a balance of €1,139.99, €1,308.09 and €1,616.39 to account for other costs and profit margin which a dealer would charge were the Vehicles being sold on the open market in Ireland.
96. In addition, the Commissioner accepts VRT will have been imposed and paid on all previously registered vehicles on sale on the open market in Ireland.
97. Taking into account all of the above, the Commissioner finds that the Respondent, when determining the OMSP of the Vehicles pursuant to the provisions of section 133 of the Finance Act 1992, was correct in:
- 97.1. the imposition of a 10% Dealer Margin figure as part of the calculation of the OMSP;
- 97.2. the imposition of VAT as part of the calculation of the OMSP; and
- 97.3. the imposition of VRT at 13.3% as part of the calculation of the OMSP.
98. Finally, the Appellant disputed the validity of the imposition of late registration penalties by the Respondent in circumstances where all of the Vehicles were registered outside of the required 30 day period following their importation into the State.

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<sup>1</sup> Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:C2023/272/02>

99. Section 132(3A) of the Finance Act 1992 provides the following:

*“(3A) Notwithstanding subsection (3), where the Commissioners are of the opinion that a vehicle has not been registered at the time specified in Regulation 8 of the Vehicle Registration and Taxation Regulations 1992 (S.I. No. 318 of 1992), the amount of vehicle registration tax due and payable in accordance with subsection (3) shall be increased by an amount calculated in accordance with the following formula:*

$$A \times P \times N$$

*where –*

*A is the amount of vehicle registration tax calculated in accordance with subsection (3),*

*P is 0.1 per cent, and*

*N is the number of days from the date the vehicle entered the State to the date of registration of the vehicle.”*

100. The Appellant asserted at the oral hearing that it had called the National Car Testing Service on 31 August 2023 seeking to register the Vehicles and was informed that the earliest available appointment date was 11 September 2023.

101. The Commissioner asked the Appellant to provide documentary proof of the making of the call. The Appellant was unable to do so and did not call any oral evidence in relation to same.

102. In his decision in *Revenue Commissioners v. Doorley* [1933] I.R. 750 Kennedy CJ stated the following in relation to the interpretation of taxation statutes where they relate to exemptions from tax at page 766:

*“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of,*



*so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.*

103. In addition, in the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter “*Perrigo*”), McDonald J, reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

*“The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:*

*(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;*

*(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: “... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that”;*

*(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;*

*(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.*

*(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;*

*(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.*



*(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:*

*“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.*

These principles have been confirmed in the more recent decision of the Supreme Court in its decision in *Heather Hill Management Company CLG v An Bord Pleanála* [2022] IESC 43.

104. The Commissioner has considered the provisions of section 133(3A) of the Finance Act 1992 and finds that the use of the word “*shall*” indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the imposition of additional VRT on foot of the late registration of an imported vehicle might be mitigated.

105. As a result, the Commissioner finds that the decision of the Respondent to impose late registration penalties pursuant to the provisions of section 133(3A) of the Finance Act 1992 was correct.

## **Conclusion**

### *Preliminary Matter*

106. In relation to the preliminary matter the Commissioner finds that:

106.1. The imposition of VRT by Member States is a matter of internal taxation of Member States which must be assessed in light of the provisions of Article 110 of the TFEU.

106.2. No discrimination in contravention of Article 110 of the TFEU exists in relation to the Respondent's decision to impose VRT on the Vehicles.

### *Substantive Matter*

107. In relation to the preliminary matter the Commissioner finds that the Respondent, when determining the OMSP of the Vehicles pursuant to the provisions of section 133 of the Finance Act 1992, was correct in:

107.1. the imposition of a 10% Dealer Margin figure as part of the calculation of the OMSP;

107.2. the imposition of VAT as part of the calculation of the OMSP; and

107.3. the imposition of VRT at 13.3% as part of the calculation of the OMSP.

108. In addition, the Commissioner finds that the Respondent was correct in determining the following OMSPs in relation to the Vehicles as follows:

	Batch 1	Batch 2	Batch 3
Invoice Price	€45,255	€42,172	€40,491
Dealer Mark-up/ Margin (10%)	€49,780	€46,389	€44,540
Add Irish VAT (23%)	€61,229	€57,058	€54,784
Include VRT (13.3%) for OMSP of:	€70,621	€65,810	€63,188

109. The Commissioner also finds that the Respondent was correct in imposing late registration penalties pursuant to the provisions of section 133(3A) of the Finance Act 1992.

### **Determination**

110. As a result of the above, the Commissioner determines that the Appellant has been partially successful in this appeal and finds that the decisions of the Respondent imposing VRT in relation to the following Vehicles shall be varied and that the following refunds totalling €1,570.00 of VRT are to be paid to the Appellant by the Respondent:

Registration Number	Vehicle Identification Number	OMSP as determined by the Commissioner	Refund Amount
██████	██████████	€70,621	€ 61.00
██████	██████████	€65,810	€578.00
██████	██████████	€65,810	€378.00
██████	██████████	€63,188	€553.00

111. The Commissioner determines that the decisions of the Respondent imposing VRT in relation to the following Vehicles shall stand:

Registration Number	Vehicle Identification Number
██████	██████████
██████	██████████
██████	██████████
██████	██████████
██████	██████████
██████	██████████
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██████	██████████
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██████	██████████
██████	██████████

112. Finally, the Commissioner determines that the Respondent's decisions to impose late registration penalties pursuant to the provisions of section 133(3A) of the Finance Act 1992 on all of the Vehicles shall stand.

113. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the Taxes Consolidation Act 1997.

#### **Notification**

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

Act 1997. This notification under section 949AJ of the Taxes Consolidation Act 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**

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



Clare O'Driscoll  
Appeal Commissioner  
4 March 2025