AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

79TACD2026

Between

Edward Walsh

Appellant

and

The Revenue Commissioners

Respondent

Determination

Contents

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") brought by the Appellant pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 ("the TCA 1997") against a determination of the Revenue Commissioners ("the Respondent") in relation to Vehicle Registration Tax ("VRT") incurred on the registration of an imported motorhome vehicle in Ireland ("the State").

2. The appeal concerns the calculation of VRT on the first registration of the motorhome in the State, in particular, the calculation of the Open Market Selling Price ("OMSP") used to compute the VRT.

3. On 6 March 2025, the Respondent issued a determination in the first stage VRT appeal. The Appellant did not accept the Respondent's determination. On 2 April 2025, the Appellant appealed to the Commission by lodging his Notice of Appeal. On 5 June 2025 the Appellant submitted his Statement of Case ("SoC"). On 12 June 2025, the Commission received the Respondent's SoC. A pre-hearing book of documents and authorities was submitted and the appeal proceeded by way of a hearing on 4 March 2026. The Appellant represented himself at the hearing, and he was accompanied by two family members. The Respondent was represented by two appeals officers from its VRT Unit.

4. The Appellant has not opted for the appeal to be held in private. Immediately prior to the commencement of the hearing, the Commissioner outlined to the Appellant the consequences of the appeal hearing being held in public, including that the determination in the appeal would be published on the Commission's website without redaction. The Appellant confirmed to the Commissioner that he understood the implications of a public appeal hearing and confirmed he wished for the hearing to be in public. Therefore, the appeal hearing was held in public, and this determination will be published, pursuant to section 949AO of the TCA 1997, without redaction.

5. At the commencement of the hearing, the Commissioner confirmed her independence to both parties and stated her role is to hear and determine tax appeals in accordance with the legislation providing for such appeals (Part 40A of the TCA 1997).

6. The Commissioner has considered the evidence and the submissions from both parties in making her determination in this appeal.

Background

7. On 13 February 2025, the Appellant presented a used motorhome vehicle to the National Car Testing Service ("NCTS") for first registration in the State which he had purchased and imported from Germany. The details provided on the Vehicle Import Receipt include that the motorhome is a white Dethleffs Motorcaravan, version Just 90 T7052, with Vehicle Identification Number ("VIN") VF7YGBPAU12W67521 ("the Vehicle"). The following amounts were assessed:

VRT (VRT1)	€10,626.00
vEMC Fee	€11.20
Total Amount	€10,637.20

8. The Appellant paid the total amount assessed (€10,637.20) and the Vehicle was registered in Ireland, on 13 February 2025, with the registration number 231W2429.

9. On 18 February 2025, the Appellant lodged a first stage VRT appeal with the Respondent whereby he appealed the amount of the VRT1 (€10,626) that had been assessed. The first stage appeal was filed via email on the Respondent's MyEnquiries service ("MyEnquiries") wherein the Appellant stated:

"[…] I wish to appeal the amount of VRT (€10,626) on the motorcaravan I imported, as it is in my opinion, excessive. Please let me know how this figure was calculated. […]"

10. On 18 February 2025, a VRT Appeals Officer of the Respondent replied to the Appellant's correspondence via MyEnquiries, as follows:

"[…]

The Valuation Unit assessed your vehicles Open Market Selling Price (OMSP) as €79,902 following its presentation to [the NCTS]. This was based on your purchase invoice averaged with 2 other UK advertised similar vehicles and grossed to an OMSP. Grossing is the process of removing VAT from another jurisdiciton (if applicable), converting to Euro (if applicable), adding Irl VAT and including an element of VRT. Section 08 of the VRT Manual outlines varoius methods of valuation.

In line with the VRT appeals procedure, set out fully on www.revenue.ie [...], if you disagree with your vehicle's Open Market Selling Price (OMSP) at the time of registration, please submit documentary evidence showing three examples of a vehicle similar to yours for sale by dealers in the Republic of Ireland at an OMSP that you consider to be more appropriate.

Alternatively, if none are available, you may provide two signed OMSP valuations from separate dealers/valuers in the Republic of Ireland valuing the OMSP (not trade-in value) of your vehicle at the time of registration.

We will assess your VRT appeal upon receipt of the above.

[...]" (sic)

11. On 19 February 2025, the Appellant replied to the Respondent via MyEnquiries querying the inclusion of VRT in the calculation of the OMSP. On 21 February 2025, a VRT Appeals Officer of the Respondent replied to the Appellant via MyEnquiries, providing the online link to the Respondent's Vehicle Registration Tax Manual, Section 08, entitled "Valuation System for New and Used Vehicles", and stating:

"[…]

The Valuation Unit assessed a VAT inclusive Euro price of €69,275 for your vehicle. Per legislation, the OMSP is inclusive of all taxes and duties which includes VRT. The bring the price to 100% of an OMSP including 13.3% VRT the calculation is €69,275/86.7x100=€79,902.

[…]" (sic)

12. There was further correspondence between the parties via MyEnquiries on a number of dates between 21 February 2025 and 4 March 2025. This correspondence referred to the calculation of the OMSP in the situation where there are no comparable vehicles for sale or sold within the State. The Appellant provided details of the purchase price paid for the Vehicle in Germany and the details of the advertised selling prices for two similar vehicles for sale in the United Kingdom ("the UK"). During this correspondence the parties agreed to exclude one of the two UK examples provided by the Appellant, on the basis that it was not a comparable vehicle due to it being an automatic transmission model. The Vehicle in question in this appeal has manual transmission.

13. On 6 March 2025, the Respondent's VRT Appeals Officer issued a determination in the first stage appeal, stating:

"[...] VRT1 is charged at the rate of 13.3% of the price, inclusive of all taxes and duties, which, in the opinion of the Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length ***retail sale in this State at the time of registration****, subject to specified minimum charges. This price is described in the relevant legislation as the Open Market Selling Price (OMSP).*

*I have determined that the OMSP of the vehicle at the time of registration was **€68,964 (see over)**. The rate of VRT1 appropriate to your vehicle is **13.3%** therefore the amount of VRT1 chargeable is **€9,172. If you are satisfied to accept this determination [...] I can arrange the repayment of €1,454 to your bank account and the appeals process will terminate here.***

[…]

Revised OMSP:

Average 1 ad submitted by customer for exact model £49,995 and purchase invoice €57,000 incl. 19% German VAT grossed per Section 08 of the VRT Manual

*1. £49995/120x100=£41662/.84466=€49324/100x123=€60669/86.7x100=**€69976***

*2. €57000/119x123(subtract German Vat and add Irl VAT)=€58915/86.7x100=**€67953***

Average 2 results = €68964 = Revised OMSP x 13.3% = €9172 = Revised VRT1 due

*VRT1 paid €10626 - €9172 = **€1454 VRT1 refund due**”* (emphasis in the original)

14. On 13 March 2025, the Appellant submitted correspondence to the Respondent via MyEnquiries stating he disagreed with the calculation of the OMSP, as follows:

*“[…] Thank you for your letter dated 6th March showing a refund due of €1,454. I very much appreciate that. However I still disagree with your method of calculating the OMSP of the Vehicle. Using the Grossing up Methodology outlined in the Vehicle Registration Tax Manual Section 8 [...] I have calculated an OMSP of €59,793 (attached). I cannot find anywhere your method of calculating the OMSP. Based on the OMSP I have calculated VRT of €7,018.90 i.e. included in €59,793 / 1.133 * 13%. [...]”*

15. In this correspondence of 13 March 2025, from the Appellant to the Respondent, the Appellant attached his calculation of the OMSP and VRT. The calculation provided by the Appellant is summarised by the Commissioner as follows:

	Comparable vehicle (UK)	The Vehicle (Germany)	Total
Selling price	STG£49,995	€57,000	

STG£/€ exchange rate	0.84466		
€ selling price (converted from STG£ to €)	€59,189		
Exclude UK VAT (20%) [x100/120]	€49, 325		
Exclude German VAT (19%) [x100/119]		€47,899	
Include Irish VAT (23%) [x 123/100]	€60,669	€58,916	
Total (both vehicles)			€119,585
Average [Total/2]			€59,793
VRT@13.3% [Average x 13.3/(100+13.3)]			€7,019
VRT assessed			€10,626
VRT repayable			€3,607

16. On 13 March 2025, the VRT Appeals Officer issued correspondence to the Appellant advising the first stage appeal had concluded and could not be progressed any further by the Respondent and referring the Appellant to the tax appeals procedure with the Commission.

17. On 2 April 2025, the Appellant lodged his tax appeal with the Commission, by filing a Notice of Appeal. The grounds of appeal stated in the Notice of Appeal are as follows:

"I wish to appeal the VRT charge of €9,172. I have determined that the VRT should be €7,019.

I have calculated the Open Market Selling Price of €59,793 of the vehicle using the "Grossing Up Methodology" in the Vehicle Registration Tax Manual Section 8 (Copy attached). Under Section 133(3)(c) of the Finance Act the OMSP means 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 Respondent], the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail. I am attaching a schedule outlining my calculations of the OMSP and the VRT and then adding [the Respondent's] calculations of same. You will note that we agree with each other on the stage of reaching the amount of €59,793 by using the Grossing Up Methodology. They then divide the €59,793 by 86.7 and multiply by 100 to give them a revised OMSP of €68,964 which includes their calculation of €9,172 revised VRT. This means that they are saying that not only is the VRT not included in the original OMSP but is arrived at by multiplying the OMSP by 13.3% but also multiplying and adding again a further 13.3% on their calculation of the VRT. If they are saying that the VRT is not included in the OMSP as calculated by the Grossing up Methodology, then they are saying that the VRT Manual is incorrect and are also going against the section of the Act referred to above. I have consulted with Taxworld who agree with my figures. The idea of adding the VRT to the value of the vehicle to arrive at an OMSP of the vehicle, which are basically the same thing, is not legal or rational."

18. A copy of the advice obtained by the Appellant from Taxworld has been provided by the Appellant to the Commission. The starting point of that advice is based on an OMSP for the Vehicle of €59,793.

19. On 3 April 2025, the Commission notified the appeal to the Respondent in accordance with section 949K of the TCA 1997.

20. On 2 May 2025, the Respondent issued correspondence to the Appellant offering to reduce the OMSP to €67,745 to settle the appeal which would result in a reduction of the VRT from €10,626 to €9,010, and a repayable VRT amount of €1,616. The Appellant did not accept this offer. A copy of the settlement offer was submitted to the Commission. That offer states as follows:

"[…]

"[The Respondent] used the average of the purchase price of your vehicle, and two similar (advertised) vehicles from the UK. This (average) value was grossed up to arrive at the OMSP.

Grossing is the process of removing VAT from another jurisdiction (if applicable), converting to Euro (if applicable), adding Irish VAT and including VRT.

The Average value […] is €79,902 which represents 100% of the OMSP. The value exclusive of VRT is €69,275 (€79,902 x 86.7%). The VRT figure is €10,627 (€79,102 x 13.3%). VRT is only payable once, that is at registration of the vehicle in the State. The calculations provided by you to Taxworld are based on your assertion of an OMSP of €59,793, however this figure does not include VRT. If the €59,793 was taken as the Net of VRT amount (86.7%), then the VRT would be €7,952 (13.3%) and the OMSP would be €67,745 (100%). This is in line with the offer made at first stage to reduce the OMSP to €68,964.

I can offer to reduce the OMSP to €67,745 in order to settle the appeal. This would result in a refund of €1,616. (ie €79,902 less €67,745 = €12,157 x 13.3%).

[…]"

21. On 21 October 2025, the Respondent offered to arrange a physical inspection of the Vehicle by an independent valuer to alleviate doubt and obtain an independent professional opinion of the OMSP of the Vehicle in this case. The Appellant has stated in correspondence to the Commission, received on 23 February 2026, that he did not agree to the offer of the inspection on the basis that this would have produced a third calculation. As there were already two calculations, being the Appellant's and the Respondent's respective calculations, it was the Appellant's view that a third calculation would have confused the matter.

22. The matter in dispute between the parties is the method used to calculate the OMSP of the Vehicle using the grossing-up calculation as selling prices for comparable vehicles for sale or sold in the State are not available.

23. The following matters are not in dispute between the parties:

    22.1 The VRT rate applicable to the Vehicle is 13.3%.

    22.2 The VRT rate (13.3%) is applied to the OMSP to compute the VRT due.

    22.3 The selling price of the Vehicle in Germany was €57,000.

22.4 A comparable vehicle listed for sale in the UK has a selling price of STG£49,995.

22.5 The UK VAT rate is 20%.

22.6 The German VAT rate is 19%.

22.7 The Irish VAT rate is 23%.

22.8 The Sterling/Euro exchange rate applicable for February 2025 is 0.84466.

22.9 The OMSP calculation is to be based on the selling price of the comparable vehicle for sale in the UK, as referred to above, and the selling price in Germany of the Vehicle itself.

Legislation and Guidelines

24. Section 132 of the FA 1992, entitled "Charge of excise duty", provides:

"(1) Subject to the provisions of this Chapter and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid at whichever of the rates specified in subsection (3) is appropriate on –

(a) the registration of a vehicle, […]

[…]

(2) Vehicle registration tax shall become due and be paid at the time of the registration of a vehicle […] by –

[…]

(b) the person who registers the vehicle,

[…]."

25. Section 133 of the FA 1992, entitled "Chargeable value", provides:

"(1) Where the rate of vehicle registration tax charged in relation to a category A vehicle or a category B vehicle is calculated by reference to the value of the vehicle, that value shall be taken to be the open market selling price of the vehicle at the time of the charging of the tax thereon.

(2)

(a) For a new vehicle on sale in the State which is supplied by a manufacturer or sole wholesale distributor, such manufacturer or distributor shall declare to the Commissioners in the prescribed manner the price, inclusive of all taxes and duties, which, in his opinion, a vehicle of that model and specification, including any enhancements or accessories fitted or attached thereto or supplied therewith by such manufacturer or distributor, might reasonably be expected to fetch on a first arm's length sale thereof in the open market in the State by retail.

(b) A price standing declared for the time being to the Commissioners in accordance with this subsection in relation to a new vehicle shall be deemed to be the open market selling price of each new vehicle of that model and specification.

(c) Notwithstanding the provisions of paragraph (b), where a price 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."

26. Section 145 of the Finance Act 2001, as amended ("the FA 2001"), entitled "Appeals of Commissioners", provides for a first stage appeal to the Respondent as follows:

"[…]

(3) Any person who is the subject of a decision of the [Respondent] in relation to any of the following matters and who is aggrieved by the decision may appeal to the [Respondent] 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 [Respondent] 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 [Respondent] within 2 months from the date of the notification by the [Respondent] of the decision concerned, or within such longer period as they may, in exceptional cases, allow.

[…]"

27. Section 146 of the FA 2001, entitled "Appeals to Appeal Commissioners", provides for a second stage appeal to the Commission as follows:

"[…]

(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 TCA 1997] within the period specified in subsection (2):

(a) a determination of the [Respondent] under section 145;

[…].

[…]"

28. The relevant extract of the Respondent's Vehicle Registration Tax Manual, Section 08, entitled "Valuation System for New and Used vehicles" ("the VRT Manual"), is reproduced in Appendix I of this determination.

Submissions

Appellant's evidence

29. The Appellant gave evidence at the hearing that he purchased the Vehicle in Germany, imported it into the State and presented it at the NCTS on 13 February 2025 for its first registration in the State. On that date, the Appellant paid the total amount assessed (including VRT of €10,626) as he was required to do so to register the Vehicle in the State. The Vehicle was registered in the State on 13 February 2025.

Appellant's submissions

30. The Appellant submitted that the OMSP of the Vehicle should be €59,793, and the VRT should be €7,019, in accordance with his computation submitted to the Respondent on 13 March 2025. Furthermore, the Appellant submitted that the grossing-up calculation method used by the Respondent was not in accordance with the VRT Manual, as that manual does not state that the grossing-up method that has been used by the Respondent is the correct method to be used to compute the OMSP. The Appellant contended that the calculation methodology used by the Respondent in its determination of 6 March 2025, amounted to double-counting VRT by calculating VRT on top of VRT.

Respondent's evidence

31. The first of the two VRT Appeals Officers in attendance at the hearing ("Witness 1") gave evidence. Witness 1 stated that the VRT was computed by applying the relevant VRT rate (13.3%) to the OMSP of the Vehicle. The witness testified that the OMSP was computed by the Respondent to be €79,902, at the time of registration of the Vehicle, and the VRT assessed was €10,626. Witness 1 further testified that, in the first stage appeal, the Respondent agreed with the Appellant that the OMSP should be derived from the advertised selling price of a comparable vehicle in the UK and the German selling price of the Vehicle itself. When deriving the OMSP from these two selling prices, Witness 1 stated that the Respondent started with the selling prices of the two vehicles and made a number of adjustments to derive the OMSP from those prices. The adjustments made by the Respondent to each of the two prices were to exclude foreign VAT at the relevant foreign VAT rate, include Irish VAT at 23%, convert from Sterling to Euro (for the UK vehicle only) and then gross-up the resulting amounts to include VRT at 13.3%. Once these adjusted prices were computed, a simple average was calculated to determine the OMSP. Witness 1 stated that, following this process, the first stage VRT appeal determined that the OMSP should be revised from €79,902 to €68,964, and consequently the VRT should be reduced from €10,626 to €9,172. Witness 1 stated that the gross-up

calculation, to include VRT in the two foreign selling prices, was done in accordance with the guidance in the VRT Manual.

32. On cross-examination by the Appellant, Witness 1 stated that VRT is paid once, at the point of first registration of the Vehicle in the State, the OMSP must be inclusive of all taxes and duties, including VRT, and this had been done in the Respondent's calculations.

33. The second of the two VRT Appeals Officers in attendance at the hearing ("Witness 2") testified that he had a telephone call with the Appellant as the appeal progressed. In that telephone call, the Appellant raised the point that he considered VRT was double-counted in the calculation. Witness 2 stated that he had responded to the Appellant that VRT is charged once on the Vehicle, at the time of registration in the State, and that the grossing-up methodology used by the Respondent to compute the OMSP of the Vehicle is in accordance with the VRT Manual.

Respondent's submissions

34. At the hearing, the Respondent submitted that it was correct to compute the OMSP of the Vehicle as inclusive of VRT, in line with the definition of OMSP set down in section 133(3) of the FA 1992, and it follows that the grossing-up methodology used by the Respondent to calculate the OMSP is correct. Furthermore, the Respondent submitted that the alternative OMSP and VRT calculations submitted by the Appellant during the course of the appeal are not correct as the price calculated does not include VRT and is therefore not in compliance with the definition of OMSP included in section 133(3) of the FA 1992.

Material Facts

35. Having reviewed the evidence and submissions in this appeal the Commissioner makes the following findings of material fact:

35.1 On 30 June 2023, the Vehicle was first registered in Germany.

35.2 The Appellant purchased the Vehicle in Germany and imported it into the State.

35.3 On 13 February 2025, the Vehicle was presented to the NCTS for first registration in the State, and the following amounts were assessed and paid by the Appellant on that date:

VRT (VRT1)	€10,626.00
vEMC Fee	€11.20

Total Amount €10,637.20

35.4 The Vehicle was allocated the Irish registration number 231W2429.

35.5 The Appellant is appealing the VRT amount (€10,626) assessed by the Respondent.

35.6 The Appellant contends that the correct VRT amount is €7,019.

35.7 There were no comparable vehicles for sale in the State at the time the Vehicle was registered in Ireland.

35.8 The advertised selling price of the Vehicle in Germany was €57,000

35.9 A comparable vehicle was listed for sale in the UK with a selling price of STG49,995.

35.10 The parties are in agreement that the starting point of the OMSP calculation in this case is to compute an adjusted average selling price by adjusting the foreign selling prices of the comparable vehicle in the UK and the Vehicle itself to exclude foreign VAT, include Irish VAT, convert from Sterling to Euro as relevant, add the two resulting figures together and divide by the number of comparable vehicles (which is two in this case).

35.11 The matter in dispute in this appeal is the grossing-up calculation that is applied to the adjusted average selling price to compute the OMSP.

35.12 The following additional matters, relevant to the computation of the OMSP, are not in dispute in this appeal:

35.12.1 The VRT rate applicable to the Vehicle is 13.3%.

35.12.2 The VRT rate (13.3%) is applied to the OMSP to compute VRT.

35.12.3 The selling price of the Vehicle in Germany was €57,000.

35.12.4 A comparable vehicle listed for sale in the UK has a selling price of STG£49,995.

35.12.5 The UK VAT rate is 20%.

35.12.6 The German VAT rate is 19%.

35.12.7 The Irish VAT rate is 23%.

35.12.8 The Sterling/Euro exchange rate applicable in February 2025 is 0.84466.

35.12.9 The OMSP calculation is to be derived from the advertised selling price of the comparable vehicle for sale in the UK and the selling price of the Vehicle itself.

Analysis

The burden of proof

36. The appropriate starting point for the analysis is to confirm that, in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law. For example, in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another* [2010] IEHC 49 *("Menolly Homes")*, at paragraph 22, Charleton J. stated:

> *"The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable"*.

37. The Commissioner considers it useful to set out paragraph 12 of the judgment of Charleton J. in *Menolly Homes,* wherein he stated:

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

38. The Court of Appeal affirmed this position recently in the case of *JSS & Others v Tax Appeals Commissioner* [2025] IECA 96. In that case McDonald J. stated at paragraph 34:

> *"[…] the taxpayer bears the burden of demonstrating that a tax assessment is wrong."*

39. The Commissioner has considered the evidence and submissions made by both parties in the appeal. The Appellant contends that the correct amount of VRT is €7,019, in accordance with his calculations as submitted to the Respondent on 13 March 2025 and summarised above. The Respondent contends in its determination of the first stage VRT appeal (dated 6 March 2025) that the OMSP is €68,964 and the correct amount of VRT is €9,172. The matter in dispute is the method of grossing-up the selling prices for the

comparable UK vehicle and the Vehicle itself to derive an OMSP and therefore to compute the VRT at the rate of 13.3% of the OMSP figure.

Statutory interpretation

40. Section 133(3)(c) of the FA 1992 defines OMSP as follows:

> *"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)

41. The principles to be applied to statutory interpretation, which the Commissioner adopts in this appeal, are set out by McDonald J. in the High Court case of *Perrigo Pharma International Designated Activity Company v McNamara, the Revenue Commissioners, the Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 *("Perrigo"*). In that case, McDonald J. considered the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation, at paragraph 74 of his judgment, 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. [in Dunnes Stores v. The Revenue Commissioners [2019 IESC 50], 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";*
>
> *[…]"*

42. The principles of statutory interpretation, as stated in the judgment of McDonald J. in *Perrigo* have been confirmed in the more recent decisions in *Heather Hill Management Company CLG & McGoldrick v An Bord Pleanála, Burkeway Homes Limited and the Attorney General* [2022] IESC 43 and *Hanrahan v The Revenue Commissioners* [2024]

IECA 113. The approach to statutory interpretation set down in *Perrigo* is authoritative. The judgment provides a framework for the Commissioner to interpret the relevant tax legislation at issue in this appeal (the definition of OMSP in section 133(3)(c) of the FA 1992).

43. The Commissioner is satisfied that the words in the definition of OMSP in section 133(3)(c) of the FA 1992 are plain and their meaning is self-evident Therefore, the ordinary, basic and natural meaning of the words should prevail when interpreting this provision. In addition, the Commissioner notes that the meaning of the words must be seen in context.

44. The Commissioner finds that, adopting the ordinary, basic and natural meaning of the words in section 133(3)(c) of the FA 1992 means that the OMSP of a used vehicle is the expected retail price of that vehicle, inclusive of all taxes and duties, if the vehicle was sold on the open market on the date of its first registration in the State.

Calculation of OMSP / VRT

45. Sections 132 and 133 of the FA 1992 set down the method for calculating VRT on the first registration in the State of imported used motor vehicles. The legislation provides for two steps in the computation of VRT. The first step is to determine the OMSP, as defined in section 133(3) of the FA 1992. Once the OMSP is determined, the second step is to apply the relevant VRT percentage rate to that OMSP.

46. The definition of OMSP, laid down in section 133(3) of the FA 1992, requires that all taxes and duties are included in the OMSP. VRT is an excise duty and therefore the term *"inclusive of all taxes and duties"* includes VRT. The Commissioner notes that the definition of OMSP does not allow for any variation in what taxes and duties are to be included in the OMSP in any circumstances. Section 133(3)(c) of the FA 1992 requires that the OMSP is inclusive of <u>all</u> taxes and duties. Furthermore, the Commissioner notes there is no provision in the legislation which allows for exclusion of VRT from the OMSP.

47. Once the OMSP is established, the relevant VRT percentage rate is applied to the OMSP to compute the VRT on registration of the Vehicle in the State. Both parties agree that the VRT percentage rate to be applied to the OMSP of the Vehicle in this case is 13.3%.

48. The parties agree that the OMSP should be based on the adjusted selling prices of the UK comparable vehicle and the Vehicle itself. Furthermore, the parties agree the adjustments required to exclude foreign VAT, include Irish VAT, and convert the adjusted VAT-inclusive price for the UK comparable vehicle from Sterling to Euro. The parties are also in agreement that a simple average should then be taken by adding the adjusted

prices of both vehicles and dividing the resultant amount by two. This results in an adjusted average selling price figure of €59,793. The parties are in agreement up to this point in the calculation.

49. The Commissioner notes that the adjusted average selling price (€59,793) does not include VRT as there has been no adjustment made, in the calculations done up to this point, to include VRT in this amount. Therefore, the Commissioner is satisfied that the adjusted average selling price is not the OMSP, as the OMSP is defined as the price inclusive of all taxes and duties, including VRT.

50. The issue in dispute between the parties is how the adjusted average selling price (€59,793) should be grossed-up, in line with the grossing-up methodology referred to in the VRT Manual, to determine the OMSP.

51. The Appellant contends that the adjusted average selling price referred to above (€59,793) should be multiplied by a factor of 13.3/(100+13.3) to compute the VRT due. Using that calculation, the Appellant computes VRT of €7,019. The Appellant contends the VRT amount that should have been assessed in this case is €7,019. If the Appellant is correct then the VRT would be reduced by €3,607, from €10,626 to €7,019.

52. The Respondent contends that the adjusted average selling price referred to above (€59,793) does not include VRT and therefore that figure must be adjusted to include VRT. The calculation used by the Respondent, in its determination of the first stage appeal on 6 March 2025, took the adjusted average selling price (€59,793) and multiplied that by a factor of 100/(100-13.3) to compute a grossed-up price, inclusive of VRT. This calculation computed a grossed-up price of €68,965. In the determination of the first stage appeal, the Respondent stated that this grossed-up price is equal to the OMSP and, when that OMSP is multiplied by the VRT percentage rate of 13.3%, the result is VRT due in the amount of €9,172. This would result in a reduction in the VRT of €1,454, from €10,626 to €9,172.

53. The Commissioner notes the Respondent's settlement offer of 2 May 2025 where the Respondent offered to the Appellant that the OMSP be reduced from €68,965 to €67,745, thereby reducing the VRT by €1,616, from €10,626 to €9,010.

54. The Commissioner has considered the evidence and submissions from both parties. The Commissioner does not accept the Appellant's submission that the adjusted average selling price (€59,973) should be multiplied by a factor of 13.3/(100+13.3) to compute the VRT. As stated above, the Commissioner is satisfied that the adjusted average selling price (€59,793) does not include VRT. The Commissioner concludes that dividing that

amount (€59,793) by 113.3 (being 100+13.3) is not correct as using a denominator of 113.3 assumes that the amount which is being divided (€59,793) already includes VRT at 13.3%. The Commissioner is satisfied that the adjusted average selling price (€59,793) does not include VRT. It follows that it is not correct to use a denominator of 113.3. It follows that it is not correct to then multiply the result by a numerator of 13.3 to derive an amount for VRT, as the Appellant has contended here. The Commissioner finds that dividing the adjusted average selling price (€59,793) by 113.3 and multiplying the resultant amount by 13.3 gives a figure that does not comply with the VRT legislation and therefore is not a correct calculation of the VRT in this case. The VRT must be computed by multiplying the OMSP by the VRT percentage rate (13.3%), and the OMSP must be the price *"inclusive of all taxes and duties"*, as set down in the legislative definition of the T*duties"* means VRT must be included in the OMSP.

55. The Commissioner is satisfied that the grossing-up calculation methodology used by the Respondent in its determination in the first stage appeal, whereby the adjusted average selling price (€59,793) is multiplied by a factor of 100/(100-13.3), is the correct grossing-up calculation methodology to be used to derive the OMSP from that adjusted average selling price figure. The legislation defines the OMSP as inclusive of all taxes and duties, and the Commissioner has found above that the term *"inclusive of all taxes and duties"* means VRT must be included in the price. The multiplication factor of 100/(100-13.3), applied to the adjusted average selling price has the effect of including an amount for VRT (at the rate of 13.3%) into the price which, up to this point in the calculation, has not been adjusted to include VRT. When the multiplication factor is applied to the adjusted average selling price (€59,793), this results in a grossed-up amount of €68,965 according to the Commissioner's own calculation. As stated above, the Commissioner is satisfied that the adjusted average selling price of €59,793 is an adjusted selling price before VRT is included. The Commissioner is satisfied that the grossed-up price of €68,965 is the adjusted price after VRT is included. Therefore, the Commissioner concludes that €68,965 is the OMSP of the Vehicle. The Commissioner is satisfied that the grossing-up methodology used by the Respondent in its determination in the first stage VRT appeal (dated 6 March 2025) computes the OMSP in accordance with the legislation which requires the OMSP to be *"inclusive of all taxes and duties"*. The Commissioner notes the calculation of the OMSP by the Respondent and the calculation of the OMSP by the Commissioner differs by €1. The Commissioner is satisfied that this €1 difference is due to rounding in the respective calculations.

56. Furthermore, the Commissioner is satisfied that the grossing-up methodology used by the Respondent to compute the OMSP accords with the VRT Manual (see the relevant extract reproduced in Appendix I of this determination). The VRT Manual states:

"[…]

Grossing Up Methodology

For vehicles from other countries for which sufficient market price data is not available in the State, Revenue may use market prices from other jurisdictions to determine the OMSP. To determine what the vehicle might reasonably be expected to fetch on a first arm's length sale, a method of "grossing up" may be used. Advertised market prices from other jurisdictions, the purchase price for the individual vehicle in question, or an average of both may be used as a starting point. This is then grossed up to determine the OMSP. The "grossing up" calculation takes into account the exchange rate between the other jurisdiction and the State, differences in tax rates between the two jurisdictions, and may also allow for a dealer's profit margin.

[…]" (emphasis in the original)

57. The second part of the Respondent's calculation, in its determination in the first stage VRT appeal, is that the OMSP (being the grossed-up amount computed by the Respondent (€68,964)) must be multiplied by the relevant VRT percentage (13.3%) to compute the VRT. The Respondent computes VRT of €9,172. The Commissioner is satisfied that this second part of the Respondent's computation of VRT complies with the legislation, whereby the relevant VRT percentage rate (13.3%) is to be applied to the OMSP to compute the VRT. The Commission notes the rounding difference of €1 between the Respondent's calculation of the OMSP and the Commissioner's calculation of the OMSP, referred to above. However, the Commissioner notes that when the VRT rate (13.3%) is applied to the OMSP calculated by the Commissioner, the resulting VRT amount is €9,172 and this equates to the VRT amount computed by the Respondent in the first stage VRT appeal.

58. The Commissioner is satisfied that the calculation methodology put forward by the Appellant does not produce an OMSP which is representative of the price *"inclusive of all taxes and duties"* which, in the opinion of the Respondent, the Vehicle might reasonably be expected to fetch on a first arm's length sale in the State by retail, as is required under section 133(3)(c) of the FA 1992.

59. The Commissioner notes the Respondent's settlement offer to the Appellant of 2 May 2025, whereby the Respondent offered to apply an OMSP of €67,745 to compute the

VRT. However, the Commissioner is satisfied that she can find no legislative basis for the calculation of the OMSP as €67,745 on the basis of the evidence and submissions provided by both parties in this appeal. The Commissioner has been appointed pursuant to Part 40A of the TCA 1997, entitled "Appeals to Appeal Commissioners", and her role under that legislation, and, as affirmed by caselaw (*Lee v Revenue Commissioners* [2021] IECA 18 (*"Lee"*), see below), is to interpret the tax legislation relevant to the appeal before her and apply that legislation to the material facts of the appeal.

Appellant's contention that VRT is double-counted

60. The Commissioner notes the Appellant's submission that the Respondent's calculation of the OMSP as €68,964 and VRT as €9,172, double-counts VRT because the VRT amount is being calculated at 13.3% of a figure that already includes VRT. It is the Appellant's view that this method of computing the OMSP is not correct or rational.

61. As set out above, the Commissioner is satisfied that the legislative framework for calculating VRT is clear and requires the VRT percentage to be applied to the OMSP as defined. Furthermore, as defined in the legislation, the OMSP is the price *"inclusive of all taxes and duties"*. As VRT is a form of excise duty, the Commissioner is satisfied that the OMSP must include VRT. The legislation in question does not allow for any variation in respect of which taxes and duties are to be included in the OMSP. Section 133(3)(c) of the FA 1992 requires the OMSP to be inclusive of <u>all</u> taxes and duties. Furthermore, the Commissioner notes there is no provision in the legislation which allows for the exclusion of VRT from the OMSP. Therefore, the Commissioner concludes that the words *"inclusive of all taxes and duties",* in the definition of OMSP in section 133(3)(c) of the FA 1992, mean that VRT must be computed and included in the OMSP when the OMSP is being calculated using the grossing-up methodology outlined in the VRT Manual, as is the case here.

62. In the case of *Lee*, as referred to above, at paragraph 20, Murray J. stated:

> *"The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind, nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation."*

63. In *Lee*, Murray J. continued at paragraph 76:

"[…] the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes."

64. The judgment in *Lee* confirms that the Commissioner's role is to interpret the tax legislation and apply the legislation to the facts of the appeal before her.

65. The Commissioner notes the Appellant's submission in relation to the double-counting of VRT. However, the Commissioner is satisfied that she does not have discretion to set aside a decision of the Respondent, which has been made pursuant to the correct interpretation and application of the relevant tax legislation. Such grounds of appeal do not fall within the jurisdiction of an Appeal Commissioner and therefore do not fall to be determined as part of this appeal. The Appellant was correct to seek independent clarification from the Commission in this matter. The Commissioner acknowledges the Appellant will undoubtedly be disappointed with this determination. However, the Commissioner is satisfied that this appeal has been determined in accordance with the tax legislation applicable in this case.

Conclusion

66. In an appeal before the Commission, the burden of proof rests on the Appellant. The Appellant must prove, on the balance of probabilities, that the decision of the Respondent is not correct. The Commissioner notes that it is the decision of the Respondent in the first stage VRT appeal which is under appeal. The Commissioner has found that the Appellant's contention that the VRT is €7,019 is not correct as the calculation methodology used to derive that amount is not in accordance with the legislative framework. There is no basis within the legislation for adopting the grossing-up calculation method put forward by the Appellant in this case.

67. The Commissioner agrees with the determination of the Respondent, dated 6 March 2025, and finds that the grossing-up calculation methodology used therein is in accordance with the legislative framework. Based on the evidence and submissions before her, the Commissioner finds that the OMSP of the Vehicle is €68,965 and therefore the amount of VRT due on the first registration of the Vehicle in the State is €9,172. It follows that the VRT assessed on 13 February 2025, in the amount of €10,626, is not correct. The correct VRT amount is €9,172. Therefore, a repayment of VRT is due to the Appellant in the amount of €1,454.

68. While the Commissioner notes the settlement offer made by the Respondent to the Appellant on 2 May 2025, she is satisfied that, based on the evidence and submissions before her, there is no legislative basis for finding an OMSP of €67,745, as referred to in that offer, and consequently the revised VRT amount of €9,010 included in the offer is not correct. As stated, the Commissioner must interpret and apply the law as it stands.

69. The Commissioner notes the Appellant's contention that the computation method for VRT results in double-counting VRT. However, the Commissioner is satisfied that the OMSP of €68,965 is computed in accordance with the legislative framework.

Determination

70. As such and for the reasons set out above, the Commissioner determines that the decision of the Respondent in the first stage VRT appeal, dated 6 March 2025, which determined that the VRT due on the Vehicle is €9,172, shall stand. The result of this determination is that the Appellant is due a repayment of VRT from the Respondent in the amount of €1,454.

71. This Appeal is determined in accordance with Part 40A of the TCA 1997 and, in particular, section 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

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

Appeal

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

Suzanne Carter
Appeal Commissioner
28 May 2026

The Tax Appeals Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of Chapter 6 of Part 40A of the Taxes Consolidation Act 1997.

Appendix I – Extracts from Vehicle Registration Tax Manual Section 08 (Valuation System for New and Used Vehicles)

"[…]

3. Valuation of Used Vehicles

3.1 Determination of the OMSP

In order to calculate the amount of VRT to be applied to a used vehicle imported into the State, [the Respondent] is required to determine 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 (the OMSP).

[...]

Grossing Up Methodology

For vehicles from other countries for which sufficient market price data is not available in the State, [the Respondent] may use market prices from other jurisdictions to determine the OMSP. To determine what the vehicle might reasonably be expected to fetch on a first arm's length sale, a method of "grossing up" may be used. Advertised market prices from other jurisdictions, the purchase price for the individual vehicle in question, or an average of both may be used as a starting point. This is then grossed up to determine the OMSP. The "grossing up" calculation takes into account the exchange rate between the other jurisdiction and the State, differences in tax rates between the two jurisdictions, and may also allow for a dealer's profit margin.

[…]" (emphasis in the original)