



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

110TACD2025

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) in respect of the amount of vehicle registration tax (“VRT”) imposed by the Revenue Commissioners (“the Respondent”) on the importation and registration of a Volkswagen Tiguan diesel-engine motor vehicle, registration number ██████████ (“the vehicle”) in the State.
2. The appeal, as stated in the Notice of Appeal dated 17 September 2024, concerns the conversion by the Respondent of the vehicle’s New European Driving Cycle test (“NEDC”) emissions value to the World Harmonised Light Duty Vehicles Test Procedure (“WLTP”) emissions value, which the Appellant contended resulted in the rate of VRT being increased from 23% to 35%, which led to an additional VRT in the amount of €2,500 being imposed.

Background

3. On 3 September 2024, the Appellant registered the vehicle in the State. At registration, the vehicle’s NEDC CO₂ emissions were stated to be 149 g/km, and the total amount of VRT was €8,513.20, which included VRT1 of €8,323.

4. The Appellant challenged the amount of VRT charged by way of first stage appeal to the Respondent. On 9 September 2024, the Respondent stated that

"I have checked the CO₂ used at the time of registration and the figure is correct. From 1st January 2021 VRT is based on the WLTP CO₂ value. This replaced the [NEDC] measuring system. The NEDC is converted to WLTP (which will be higher) for VRT purposes. All vehicles registered in the State after this date are based on WLTP. The NEDC for your vehicle is 149 g/km. This converted to WLTP is 182 g/km. VRT is charged on WLTP for all vehicles and 182 g/km attracts a rate of 35% VRT."

5. On 17 September 2024, the Appellant appealed against the Respondent's decision to the Commission. Under Grounds of Appeal, the Notice of Appeal stated that

"All cars imported to Ireland are liable to a VRT based on the Co2 Emissions as set out by the NEDC test prior to January 2021 and the WLTP test after this date, as per EU directive. The NEDC figure is a combined figure based on the urban and extra urban driving tests. This test is compulsory for all cars manufactured in the EU and the Co2 emissions are listed on website and the COC data sheet unique to each car. When [the Appellant] imports a car manufactured in Europe from Japan we purchase a COC /CDS cert from the relevant manufacturer in this case Volkswagen Germany. The VW cert we submitted clearly states the Co2 emissions is 149. [The Respondent] has accepted the 149 as Co2 emissions but has decided to change the VRT charge to a figure based on the WLTP which raised the rate of VRT from 23% to 35% of OMSP, this has resulted in a €2500.00 increase in the VRT charge. When we appealed this decision we were told [the Respondent] now charge all cars from September 2018 on the WLTP rate , as I pointed out the WLTP test did not exist until 2021. We are still receiving VRT charges based on the NEDC emissions so that statement is incorrect. [The Respondent has] issued the following copy to justify the charges " (II) where -

(A) the level of CO₂ emissions cannot be confirmed by reference to the relevant EC type-approval certificate, EC certificate of conformity or vehicle registration certificate issued in another Member State,"

The COC data sheet we receive from the manufacture states the Co2 emissions of the car and is clearly in keeping with the wording from the relevant act. Since the WLTP test did not exist when this car was manufactured [the Respondent] has decided to use a mathematical formula to decide the WLTP rating, this figure according to manufacturer's official sites is incorrect."

6. In December 2024, the parties submitted Statements of Case. The Appellant's Statement of Case reiterated that its appeal concerned the Respondent's calculation of WLTP emissions for the vehicle. In February 2025, the parties submitted their Outlines of Argument, prior to the hearing of the appeal. In its Outline of Arguments (which it described as a Statement of Facts), the Appellant raised new arguments that had not previously been raised in its Notice of Appeal.
7. The matter proceeded by way of a hearing in private on 7 March 2025. The Appellant was represented by its employees. The Respondent was represented by counsel.

Legislation

8. Section 132(3) of the Finance Act 1992 as amended ("the 1992 Act") states *inter alia* that

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

(a) in case the vehicle the subject of the registration or declaration concerned is a category A vehicle –

(i) in respect of the CO₂ emissions of the vehicle...

(iii) in case it is a vehicle in respect of which the level of CO₂ emissions measured in the manner referred to in subparagraph (i) or (iii) of paragraph (a), or paragraph (b), of the definition of CO₂ emissions in section 130 is confirmed by reference to any document produced in support of the declaration for registration and the level of CO₂ emissions measured in the manner referred to in subparagraph (ii) of paragraph (a) of that definition is not so confirmed, by reference to Table 1 to this subsection, subject to the modification that the CO₂ emissions for the vehicle shall be adjusted –

(A) in respect of such a vehicle designed to use heavy oil as a propellant, in accordance with the following formula:

X(1.1405) + 12.858, or

(B) in respect of any other such vehicle, in accordance with the following formula:

X(0.9227) + 34.554,

where X is the level of carbon dioxide emissions for the vehicle measured in the manner referred to in subparagraph (i) or (iii) of paragraph (a), or paragraph (b), as the case may be, of the definition of CO₂ emissions in section 130..."

9. Section 949I(6) of the Taxes Consolidation Act 1997 as amended ("TCA 1997") states that

“A party shall not be entitled to rely, during the proceedings, on any ground of appeal that is not specified in the notice of appeal unless the Appeal Commissioners are satisfied that the ground could not reasonably have been stated in the notice.”

Submissions

Appellant

10. In its written submissions contained in the document titled “Statement of Facts”, the Appellant stated that the VRT charged on the vehicle was different from that set out on the Respondent’s online VRT calculator for a similar vehicle imported from the UK, and that the difference had to arise from the Open Market Selling Price (“OMSP”) imposed by the Respondent. The Appellant asked for a refund of the difference between the VRT charged on the two vehicles.
11. The Appellant also stated that the Respondent used JC08 emissions values for motor vehicles imported from Japan, and contended that it should only use NEDC or WLTP methodologies. It claimed that this resulted in unfairly increased VRT charges. It submitted that the Respondent should integrate the car history tests provided by Cartell.ie and Car VX into its VRT inspection system.
12. At the hearing, the Appellant’s representative stated that the Appellant was unhappy with the amount of VRT assessed by the Respondent. He stated that the Respondent’s VRT calculator showed that a car that was identical to the vehicle under appeal but was imported from the UK had VRT of €7,634, whereas the VRT on the vehicle under appeal was €8,323. The Appellant wanted a refund of the difference, on the ground that the OMSP for both vehicles should be the same.
13. The Commissioner pointed out that the Appellant’s Notice of Appeal did not contain any criticisms of the OMSP applied to the vehicle by the Respondent, and that the Appellant was not entitled to rely on any new grounds that were not contained in the Notice of Appeal. The Appellant’s representative stated that the Appellant was disputing the amount of VRT charged.
14. [REDACTED], who is employed by the Appellant, gave sworn evidence on behalf of the Appellant. He stated that where a vehicle was imported from should not impact the OMSP, which was based on the mileage, year of make and condition of a vehicle.
15. The Appellant’s representative stated that the Respondent applied the JC08 methodology to assessing CO₂ emissions of cars imported from Japan, which was not recognised in the European Union. While the Respondent claimed it used the NEDC figure, in reality it

used JC08. The Appellant was not contesting the conversion formula applied by the Respondent to convert NEDC to WLTP, but it wanted the Respondent to stop using JC08. It accepted that there was no difference in the VRT amount for the vehicle under appeal, but it made a significant difference in other cases.

16. Regarding the third argument in the Appellant's written submissions, the Commissioner explained that he could not give general directions to the Respondent as to how it carried out its business. The Appellant's representative stated that the Appellant had not fully appreciated how proceedings before the Commission operated, and stated that he was not seeking to proceed with the third argument (i.e. recommending that the Respondent utilise Cartell.ie and Car VX). He stated that the Appellant's case was that the OMSP in this instance was incorrect.
17. In response to the submissions of counsel, the representative stated that the Respondent only agreed to utilise the emissions figure provided by the Appellant (149 g/km) after it queried whether the Respondent was seeking to impermissibly rely on the JC08 methodology.

Respondent

18. In written submissions, the Respondent stated that it was statutorily obliged by section 132(3) of the 1992 Act to convert the NEDC emissions figure to WLTP. This resulted in a conversion of the Appellant's NEDC value of 149 g/km to 182 g/km, and a VRT rate of 35%. The provisions of section 132(3) were unambiguous.
19. The "data sheet" provided by the Appellant, which showed CO₂ emissions of 149 g/km, did not constitute acceptable evidence of emissions under the legislation and guidance. There was acceptable evidence available from the Japanese Ministry of Land, Infrastructure, Transport and Tourism (MLIT), which broadly aligned with the Appellant's value of 149 g/km, as the MLIT value was 150 g/km. As the two values were virtually identical and both gave rise to the same VRT rate, the Respondent was not seeking to revisit the value of 149 g/km (NEDC) recorded at registration.
20. At the hearing, counsel stated that the Appellant had raised a wide range of issues in its "Statements of Facts" that were not relevant to the particular VRT assessment for the vehicle in question. The question of the OMSP attributed to the vehicle had not been raised in the Appellant's Notice of Appeal or Statement of Case.
21. The Respondent had utilised the emissions figure provided by the Appellant, so it was not necessary to consider broader questions regarding JC08 or the correct NEDC figure.

It seemed that the Appellant was now accepting the conversion applied by the Respondent, which had been the whole premise of the appeal. The conversion carried out by the Respondent was mandated by statute. Counsel referred to the earlier Commission determination in 46TACD2022, which he stated was very similar to this appeal.

22. The Commissioner asked counsel to address the Appellant's argument that the Respondent was wrongly applying the JC08 methodology to cars imported from Japan. Counsel stated that it was for the person registering a vehicle to prove its emissions, and that the legislation set out documentation that could be used for that purpose. Strictly speaking, if the person could not prove the emissions, the 41% VRT rate applied. However, in this instance, even though the Appellant had not provided the Respondent with approved documentation, the Respondent's case worker checked the correct emissions figure, and the Appellant got the benefit of the emissions figure it provided.

Material Facts

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

- 23.1. The vehicle under appeal is a [REDACTED] diesel-engine Volkswagen Tiguan, registration number [REDACTED].

- 23.2. The Appellant imported the vehicle into the State from Japan. It was registered in the State on 3 September 2024.

- 23.3. On registration, the vehicle's CO₂ emissions were stated to be 149 g/km, using the NEDC methodology. The Respondent converted this figure to WLTP using the formula of $X(1.1405) + 12.858$, which resulted in an adjusted emissions figure of 182 g/km. As a result, VRT at the 35% rate was applied, and the Appellant was charged total VRT of €8,513.20.

- 23.4. The Appellant appealed against the amount of VRT charged to the Commission. The ground of appeal was that the Respondent should not have converted the NEDC figure to WLTP.

Analysis

24. The burden of proof in this appeal rests on the Appellant, which must show that the VRT charged by the Respondent in respect of the vehicle was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at

paragraph 22 that “*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable.*”

25. All vehicles are subject to VRT on first registration in the State. The VRT rate is calculated based on the carbon dioxide emissions plus the nitrogen oxide emissions. The CO₂ component is calculated by multiplying the applicable rate by the OMSP. In this appeal, the applicable rate was calculated by the Respondent to be 35%. This rate was arrived at by reference to the vehicle’s NEDC emissions figure of 149 g/km, which was adjusted to equate to the figure under the newer WLTP using a formula prescribed in section 132(3)(a)(i)(III) of the 1992 Act. WLTP is a laboratory test designed to measure a vehicle’s fuel consumption and CO₂ emissions in real driving conditions and has replaced NEDC, which is based on theoretical estimates of performance and is therefore less accurate, as the chosen methodology under EU law for calculating emissions.
26. The Appellant appealed against the rate of VRT charged by the Respondent, on the basis that it should not have converted the NEDC value to WLTP. This sole ground is clear from the Grounds of Appeal section of the Notice of Appeal, which is replicated at paragraph 5 above. However, at the hearing of the appeal, the Appellant’s representative stated that the Appellant was not querying the conversion carried out by the Respondent. Rather, it believed that the OMSP applied by the Respondent was incorrect, and that the Respondent had incorrectly used the JC08 emissions figure, rather than NEDC or WLTP as required under EU law.
27. As explained by the Commissioner at the hearing, section 949I(6) of the TCA 1997 provides that a party shall not be entitled to rely on a ground of appeal that is not specified in the notice of appeal, unless the Commissioner is satisfied that it could not reasonably have been stated in the notice. In this appeal, the Commissioner is satisfied that the Appellant did not challenge the OMSP applied by the Respondent to the vehicle in its Notice of Appeal, and he is further satisfied that the Appellant could reasonably have done so if it wished. Consequently, he finds that it was not entitled to subsequently raise the OMSP as a ground of appeal.
28. In any event, even if it was entitled to rely on the OMSP as a ground of appeal, the Commissioner considers that there is no evidence before him that would have entitled him to find that the OMSP applied to the vehicle was incorrect or should be reduced. The OMSP of a vehicle is determined in accordance with section 133 of the 1992 Act, namely on 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. The mere fact that the Respondent's VRT calculator indicates that a different OMSP would be applied in respect of a different vehicle that was similar to that under appeal could not by itself demonstrate that the OMSP applied in this instance was incorrect. As stated on the Respondent's website¹:

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

29. The other ground relied upon by the Appellant at the hearing was that it alleged that the Respondent had impermissibly utilised the JC08 methodology in assessing the vehicle's CO₂ emissions. However, the Commissioner considers that the Appellant's complaint was in respect of the Respondent's method of assessment of cars imported from Japan generally, rather than the specific assessment applied to the vehicle in this appeal.
30. As explained at the hearing, the Commission does not have a general supervisory or regulatory jurisdiction over the Respondent. Its jurisdiction was considered by the Court of Appeal in *Lee v Revenue Commissioners* [2021] IECA 18, wherein Murray J stated (at paragraph 76) that its *"essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes."*
31. The Commissioner in this appeal is only concerned with the amount of VRT assessed by the Respondent in respect of the vehicle under appeal. In assessing the VRT chargeable, the Respondent has accepted the NEDC emissions value provided by the Appellant, i.e. 149 g/km. While in its Notice of Appeal, the Appellant disputed the conversion utilised by the Respondent to convert the NEDC figure to WLTP, at the hearing it accepted that the conversion formula applied was correct.
32. Therefore, the Commissioner is satisfied that there is no longer any meaningful dispute between the parties as to the amount of VRT charged by the Respondent in this instance. While the Appellant's representative contended that the emissions methodology utilised by the Respondent in respect of Japanese imports had a significant impact on the VRT charged in other instances, the Commissioner cannot consider arguments in respect of vehicles that are not the subject of this appeal.
33. While it is no longer in dispute, the Commissioner considers that, for completeness, it is appropriate to determine whether the conversion applied to the vehicle's emissions by

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

the Respondent in this instance was correct, and if it therefore applied the correct rate of VRT. Section 132(3)(a)(i)(III) of the 1992 Act provides that the conversion formula from NEDC to WLTP for diesel vehicles is $(\text{NEDC CO}_2 \text{ figure} \times 1.1405) + 12.858$. Applying this formula to the NEDC figure provided by the Appellant results in a WLTP emission figure of 182 g/km. Table 1 to section 132 provides that CO₂ emissions of more than 170 g/km up to and including 190 g/km shall have a VRT of 35% of the value of the vehicle (or €700 if that is greater). This was the rate of VRT applied by the Respondent to the vehicle in this instance.

34. Therefore, in conclusion, the Commissioner is satisfied that the VRT rate applied by the Respondent to the vehicle was correct. The OMSP applied by the Respondent was not properly under appeal, but even if it was, there was no evidence to show that the OMSP in this instance was incorrect. The question of the general methodology applied by the Respondent for assessing CO₂ emissions in respect of cars imported from Japan does not arise for consideration herein, in circumstances where the emissions value applied by the Respondent was that provided by the Appellant (and which did not differ materially from the value originally applied by the Respondent). Consequently, the Commissioner determines that the appeal is unsuccessful.

Determination

35. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner determines that the amount of VRT charged by the Respondent on the registration of motor vehicle registration number [REDACTED] was correct.
36. 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

37. 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

38. 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.



Simon Noone
Appeal Commissioner
13 March 2025