



46TACD2022

Between

[REDACTED]

Appellant

-and-

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This determination is given in respect of three appeals brought by the Appellant under s.146 of the Finance Act 2001 of decisions of the Revenue Commissioners ("the Respondent") dated 23 June 2021, 5 July 2021, 6 July 2021 ("the appealed decisions"). They concern the amount of Vehicle Registration Tax ("VRT") chargeable on vehicles in respect of their CO₂ emissions, which the Respondent assessed at €13,299.00, €5,429.00 and €10,984.00 respectively. The Appellant submitted its Notices of Appeal to the Tax Appeals Commission ("the Commission") on 21 July 2021 and 28 July 2021.
2. These appeals are adjudicated without a hearing in accordance with s.949U of the Taxes Consolidation Act 1997 ("TCA 1997"), as agreed by the parties.

Background

3. The vehicles in question are a [REDACTED], [REDACTED] and a [REDACTED], each manufactured in 2017 ("the vehicles" unless referred to individually), which were registered on 12 April 2021, 23 June 2021 and 14 May 2021 respectively. The Respondent's

assessments of the amount of VRT chargeable in respect of their CO₂ emissions were €14,491.00 for the [REDACTED], €5,781.00 for the [REDACTED] and €10,984.00 for the [REDACTED]. These sums based on estimated Open Market Selling Prices ("OMSP") of €46,746.00, €29,649.00 and €35,433.00 and the application VRT rates of 31%, 19.5% and 31% respectively. These rates were arrived at by reference to the vehicles' New European Driving Cycle ("NEDC") CO₂ emissions figures of specified on their individual Certificates of Conformity, which was adjusted to equate to the figure under the newer World Harmonised Light Vehicle Test Procedure ("WLTP") using a formula prescribed in s.132(3)(a)(i)(III)(A) of the Finance Act 1992, as amended. 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 the same. The emissions figures for each vehicle are as follows:

Vehicle	NEDC figure	NEDC figure adjusted by Revenue
[REDACTED]	155g/km	189g/km
[REDACTED]	116g/km	145g/km
[REDACTED]	139g/km	171g/km

4. The Appellant appealed the assessments to the Respondent under s.145 of the Finance Act 2001. The outcome of this was a reassessment of the sum chargeable in relation to the [REDACTED] and the [REDACTED], based reduced OMSP estimates of €27,845.00 and €42,900.00 that accorded with their sales invoices provided to the Respondent by the Appellant. The Appellant was found as a result to be entitled to a repayment of €1,192.00 and €352.00 in each case. No repayment was found to be due in relation to the VRT originally assessed for the [REDACTED].
5. The Appellant now appeals under s.146 of the Finance Act 2001 on the grounds that Respondent erred in adjusting the NEDC emissions figures specified on its Certificates of Conformity upwards using the formula set out in s.132(3)(a)(i)(III)(A) of the Finance Act

1992. The Appellant's case is that, as the vehicles predate and have never been emissions tested under the WLTP system, the NEDC figures should be used to assess VRT. This, it says, would result in the application of lower rates to the OMSP's of 23.5%, 15% and 18% and the entitlement to additional refunds of €4,409.50, €1,252.25 and €4,558.00.

Domestic Legislation and European Regulations

6. The legislation governing the registration and taxation of vehicles is set out at s.130 – 144A of the Finance Act 1992, as amended.
7. Section 132 of the Finance Act 1992, as amended, is headed "*Charge of excise duty*". Under s.132(1) the Finance Act 1992 therein VRT shall be charged on the registration of a vehicle and the making of a declaration under s.131(3) of the same legislation.
8. Section 132(3) of the Finance Act 1992 provides for the calculation of VRT based on CO₂ emissions. When the decision under appeal issued the relevant part of this provision was as inserted by s.33 of the Finance Act 2020. This provides:-

"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—

(I) in case it is a vehicle in respect of which the level of CO₂ emissions measured in the manner referred to in subparagraph (ii) of paragraph (a) of the definition of CO₂ emissions in section 130 is confirmed by reference to any document produced in support of the declaration for registration, by reference to Table 1 to this subsection,

(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, and

(B) the Commissioners are not satisfied of the level of CO₂ emissions by reference to any other document produced in support of the declaration for registration,

at the rate of an amount equal to the highest percentage specified in Table 1 to this subsection of the value of the vehicle or €740, whichever is the greater, or

(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, and where, in respect of a vehicle, more than one level of carbon dioxide emissions is measured in the manner referred to in a subparagraph or paragraph of the definition of CO₂ emissions in section 130, the highest level of carbon dioxide emissions measured in that manner shall be the CO₂ emissions for the vehicle for the purpose of clause (I) or (III), as the case may be,

and where, in respect of a vehicle, more than one level of carbon dioxide emissions is measured in the manner referred to in a subparagraph or paragraph of the definition of CO₂ emissions in section 130, the highest level of carbon dioxide emissions measured in that manner shall be the

CO2 emissions for the vehicle for the purpose of clause (I) or (III), as the case may be...

9. Table 1 of section 132 of the Finance Act 1992, as inserted by s.33 of the Finance Act 2020 sets out the appropriate rates of VRT based on CO₂ emissions in this case. This Table 1 is annexed to this determination and as can be seen therefrom, it provides that vehicles with CO₂ emissions measured at 170g/km – 190g/km are charged 31% of the OMSP and those measured 140g/km - 145g/km 19.5% of the OMSP. Vehicles with CO₂ emissions measured at 155g/km are to be charged 23.5% of the OMSP, 116g/km at 15% and 139g/km at 18%.
10. Section 130 of the Finance Act 1992, as amended, defines a “Category A” vehicle as, “a *Category M1 vehicle*”. A category M1 vehicle is defined in accordance with Directive 2007/46/EC, i.e. vehicles designed for the carriage of no more than eight passengers in addition to the driver.
11. Section 130 of the Finance Act 2001 defines “CO₂” emissions as:

“(a) in the case of a passenger or a light duty vehicle-

 - (i) unless the matter falls within subparagraph (ii) or (iii), the level of carbon dioxide (CO₂) emissions for a vehicle measured in accordance with the provisions of Commission Regulation (EC) 715/2007 of 20 June 2007 and listed in Annex VIII to Council Directive 2007/46/EC of 5 September 2007, or*
 - (ii) for a vehicle whose certificate of conformity issued on or after 1 September 2018, the level of carbon dioxide (CO₂) emissions measured in accordance with Commission Regulation (EU) 1151/2017 of 1 June 2017, or*
 - (iii) the level of carbon dioxide (CO₂) emissions for a vehicle measured in accordance with the Regulation referred to in subparagraph (ii) and determined using the correlation tool provided for in Commission Regulation (EU) 1153/2017 of 2 June 2017...”*
12. Regulation (EC) No 715/2007 of the European Parliament and Council provided for light-duty vehicles to be CO₂ emissions tested under the NEDC. Commission Regulation (EU) 1151/2017 of 1st June 2017 supplemented Regulation 715/2007 by replacing the NEDC with the WLTP. Recital 2 of the Commission Regulation 1151/2017 states that the need for this change arose from the scientific finding that the NEDC testing was not reflective of the CO₂ emissions of vehicles in real world driving conditions. Lastly, as part of a phased introduction of the new system, Commission Implementing Regulation (EU) 2017/1153 prescribed a detailed methodology, referred to as the “correlation tool”, for estimating

NEDC test results based on the emissions outputs assessed in new vehicles undergoing WLTP testing.

Submissions

Appellant's Submissions

13. The Appellant submits that the VRT due should be determined by reference to the NEDC figures of 116g/km, 139g/km and 155g/km specified on the vehicles' Certificates of Conformity because none have a WLTP figure specified on this document. In support of its contention, the Appellant points to paragraph 7.3 of the Respondent's "*Manual 1A Vehicle Classification and Tax Categories*", last updated in December 2021, which states:-

"From a VRT point of view [the Certificate of Conformity] states that the vehicle at the date of manufacture has a specific level of both CO₂ and NO_x emissions. These are the levels that will be used for taxation purposes and will not change regardless of post-production modifications that might be made, modifications that might either marginally increase or decrease the levels of emissions of the vehicle."

14. The Appellant also points to a passage from the VRT page on the Respondent's website, which states:-

"The VRT charge on cars is calculated using CO₂ emissions. The higher your car's CO₂ emissions, the more VRT payable."

Since 1 April 2020 V5C's have only shown World Light Vehicle Test Procedure (WLTP) CO₂ emissions. WLTP emissions are usually a little higher than the New European Drive Cycle (NEDC) emissions. Prior to 1 April 2020, the V5C declared the older NEDC tested emissions."

When presenting your vehicle for registration, the WLTP figure on the V5C will be used to calculate the tax. NEDC emissions will only be used if evidence in the form of a Certificate of Conformity is presented."^{1 2}

¹ <https://www.revenue.ie/en/importing-vehicles-duty-free-allowances/guide-to-vrt/vehicle-registration-tax/general-information-on-registration.aspx>

² A V5C is the log book issued by the United Kingdom containing specific vehicle details, including CO₂ emissions levels.

Respondent's Submissions

15. The Respondent's position is that the NEDC figures specified on the Certificates of Conformity may be used as the documents contain no WLTP emissions figure in respect of each vehicle. However, the figure must be adjusted to correspond to real world WLTP results, using the formula $X(1.1405) + 12.858$. In this regard it points to para 7.1 of its own *Manual 1A Vehicle Classification and Tax Categories*, which refers to the NEDC having been replaced by the WLTP on a "phased basis" as the method under European law for the calculation of CO₂ emissions.

Material Findings of Fact

16. The Commissioner makes the following material findings of fact:-

- The vehicles in question in the appeals are a [REDACTED], a [REDACTED] and a [REDACTED], each from 2017, that were registered on 12 April, 23 June 2021 and 14 May and fall within Category A/Category M1.
- It is not in dispute that the vehicles' Certificates of Conformity contain NEDC CO₂ emissions figures of 155g/km for the [REDACTED], 116g/km for the [REDACTED] and 139g/km for the [REDACTED] and do not contain the newer WLTP CO₂ emissions figures.
- It is not in dispute the formula prescribed in s.132(a)(i)(I)(A) of the Finance Act 1992, as amended, is applied to these figures they are adjusted to 189g/km, 145g/km and 171g/km.
- The vehicles' OMSP has been assessed at €42,900.00 for the [REDACTED], €27,845.00 for the [REDACTED] and €35,433.00 for the [REDACTED], which estimates are not in dispute.

Analysis

17. In establishing how much VRT is owed by the Appellant, the Commissioner is required to examine the relevant legislation and apply it to the facts of the case. The Respondent's manuals and guidelines cited by both sides in this appeal, while valuable explanatory devices, are just that. They are not the grounding domestic and European legislation. The Commission is a body set up under statute whose role is to consider and apply the domestic and European legislation and determine whether there is a tax to charge and if so, the amount.

18. The VRT payable in respect of the vehicles must be assessed by reference to the level of their CO₂ emissions in the manner set out in the legislation above. The issue between the

parties in this appeal is the method required by the legislation for the measurement of the CO₂ emissions. In this regard the Appellant states that the figures to be applied to the appropriate version of Table 1 should be the NEDC numbers given on the Certificates of Conformity, i.e. 155g/km, 116g/km and 139g/km. The Respondent states, on the other hand, that these must be adjusted using the statutory formula before it is applied to Table 1.

19. The Commissioner is satisfied that the Respondent did not err in determining that the NEDC figures on the Certificates of Conformity needed to be adjusted in the manner specified in s.132(a)(i)(III)(A) of the Finance Act 1992, as amended, such that they became 189g/km, 145g/km and 171g/km.
20. Under this provision it is mandatory for the Respondent to perform the adjustment on any CO₂ emission figure that is calculated in the manner referred to in s.130(a)(i) or (iii) of the Finance Act 1992, as amended. This means an NEDC emissions figure derived directly from the NEDC testing process or, alternatively, one produced from a WLTP figure using the correlation tool enumerated in Commission Implementing Regulation (EU) 2017/1153. As regards the appealed decisions, it is the former that is specified on the vehicles' Certificates of Conformity. Under s.132(a)(i) of the Finance Act 1992, as amended, the only type of CO₂ emissions figure set out on a Certificate of Conformity or other valid supporting document that does not need to be adjusted by the Respondent using the mandatory formula is that referred to in s.130(a)(ii) of the same legislation – i.e. a WLTP figure. As noted already, none of the vehicles have this figure as they have not been assessed using this method.
21. The Respondent applied the required statutory formula exactly, namely $155(1.1405) + 12.858$, $116(1.1405) + 12.858$ and $139(1.1405) + 12.858$ to reach the adjusted figures that would closer equate to the real world figure that would have been arrived at under the WLTP. These were then applied to Table 1, specifying rates of 31% and 19.5% rate on the OMSP's, which resulted in amounts assessed in the decisions under appeal. The Commissioner finds that the Respondent was correct in deciding that these sums, plus additional sums in respect of nitrogen oxide emissions that are not in dispute, constituted the Appellant's liability for VRT in respect of each vehicle.

Determination

22. The Commissioner finds that the Appellant was correctly assessed by the Respondent as having a VRT liability in respect of CO₂ emissions of €13,299.00, €5,429.00 and €10,984.00. The Commissioner finds as a result that the Appellant is not entitled to

repayment of €4,409.50, €1,252.25 and €4,558.00 as claimed in the Notices of Appeal. The Commissioner appreciates that the Appellant may be disappointed with this determination. The Commissioner recognises that the domestic and European legislation is complicated and complex, even for those familiar with the area. As such, the Appellant was correct to appeal the Respondent's decision in order to ensure he was informed of his legal position.

23. This appeal is determined in accordance with section 949AL TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

A handwritten signature in black ink, appearing to read 'COHiggins', written in a cursive style.

Conor O'Higgins
Appeal Commissioner
Date 10th February 2022

ANNEX TO DETERMINATION

TABLE 1 of FINANCE ACT 1992, as inserted by FINANCE ACT 2020

CO2 Emissions (CO2 g/km)	Percentage payable of the value of the vehicle
More than 50g/km up to and including 80g/km	7% or €140 whichever is the greater
More than 80g/km up to and including 85g/km	9.75% or €195 whichever is the greater
More than 85g/km up to and including 90g/km	10.5% or €210 whichever is the greater
More than 90g/km up to and including 95g/km	11.25% or €225 whichever is the greater
More than 95g/km up to and including 100g/km	12% or €240 whichever is the greater
More than 100g/km up to and including 105g/km	12.75% or €255 whichever is the greater
More than 105g/km up to and including 110g/km	13.5% or €270 whichever is the greater
More than 110g/km up to and including 115g/km	14.25% or €285 whichever is the greater
More than 115g/km up to and including 120g/km	15% or €300 whichever is the greater
More than 120g/km up to and including 125g/km	15.75% or €315 whichever is the greater
More than 125g/km up to and including 130g/km	16.5% or €330 whichever is the greater
More than 130g/km up to and including 135g/km	17.25% or €345 whichever is the greater
More than 135g/km up to and including 140g/km	18% or €360 whichever is the greater

More than 140g/km up to and including 145g/km	19.5% or €390 whichever is the greater
More than 145g/km up to and including 150g/km	21% or €420 whichever is the greater
More than 150g/km up to and including 155g/km	23.5% or €470 whichever is the greater
More than 155g/km up to and including 170g/km	26% or €520 whichever is the greater
More than 170g/km up to and including 190g	31% or €620 whichever is the greater
More than 190g/km	37% or €740 whichever is the greater