



**AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH**  
**TAX APPEALS COMMISSION**

Between

47TACD2025

██████████

**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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## Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought by [REDACTED] (“the Appellant”). The Appellant is appealing the decision by the Revenue Commissioners (“the Respondent”) to raise a charge to tax in the amount of €600.00 regarding Nitrous Oxide (“NOx”) emissions in respect of the Appellant’s motor vehicle, registration number [REDACTED] (“the Appellant’s vehicle”).
2. The appeal proceeded by way of a hearing on 19 November 2024. The Appellant gave oral evidence and represented himself. The Respondent was represented by two employees of the Respondent.

## Background

3. The Appellant made a first stage appeal to the Respondent in respect of the Respondent’s charge to tax in respect of NOx regarding the Appellant’s Vehicle.
4. The Respondent by letter dated 16 July 2024 refused the Appellant’s appeal. The Respondent stated that *“VRT is charged at the rate of a percentage, according to the CO2 emissions, of the price, inclusive of all taxes and duties, which, in the opinion of the Revenue Commissioners, the vehicle might reasonably have been expected to fetch on a first arm’s length retail sale in the State at the time of registration. This price is described in the relevant legislation as the Open Market Selling Price (OMSP). The matter has been examined in some detail, with reference to the tax and duty inclusive retail price a vehicle of the same description might fetch, and the Commissioners are satisfied that the valuation of €8,320 placed on your vehicle was a reasonable assessment of its minimum open market selling price at the time of registration. No evidence to the contrary was.[sic] As per the appeals procedure, examples from the market or dealer valuations were requested and not provided. On examination of the market there are similar vehicles with asking prices circa €23,000 showing your vehicle was in fact undervalued. CO2 was charged as per legislation and the required evidence of NOx was not provided. Therefore, I regret to inform you that no refund is due in these circumstances. In relation to your query on depreciation, in the printouts provided, the vehicle depreciated further with the turn of the year. If you wish to appeal against this determination, you must do so within a period of 30 days from the date of this determination (as above) by completing and submitting a ‘Notice of Appeal’ form to the Tax Appeals Commission (TAC). The ‘Notice of Appeal’ form, which is available on the TAC’s website [www.taxappeals.ie](http://www.taxappeals.ie), contains the address to which an appeal is to be sent. You will be required to submit a copy of this*

determination letter with your 'Notice of Appeal'. The TAC can be contacted by email at [info@taxappealsireland.ie](mailto:info@taxappealsireland.ie) ("the Respondent's Decision").

5. The Appellant submitted a Notice of Appeal to the Commission on 16 July 2024. The Appellant wishes to appeal the Respondent's Decision that the amount of €600.00 is due in respect of NOx regarding the Appellant's Vehicle. The Appellant submitted that he

*".....I am only appealing the NOx charge. I have been charged the maximum petrol fee (€600) as I did not provide suitable NOx emissions evidence for the exact Japanese model upon presenting the car for VRT assessment. For a Japanese imported car, I have been informed by [Revenue] that only official documentation from the manufacturer or documentation from Ministry of Land, Infrastructure, Transport and Tourism (MLIT) in Japan would suffice: 1. BMW will not provide a CoC: A: This is a European only requirement/document. B: BMW Japan do not issue documents (see attachment).*

*2. The exact car is not listed on MLIT NOx documentation.*

*I have provided an equivalent car (BMW [REDACTED]), which is on the MLIT list (NOx value of 13mg/km), which has an identical engine code ([REDACTED]), transmission, drivetrain layout (rear wheel drive), number of doors and even the same coefficient of drag. The only difference being the equivalent car on the list is 320-390kg heavier.*

*3. The UK/European variant of the car, BMW [REDACTED], has NOx emissions of 17mg/km, which is only fractionally higher than the 13mg/km on the Japanese variant. Accounting for the higher quality petrol available in Japan and various alternate sources of NOx for [REDACTED] further prove the validity of the 13mg/km value."*

### **Legislation and Guidelines**

6. The legislation and guidelines relevant to this appeal are set out hereunder:

Section 132 of the Finance Act 1992 (as amended) inter alia provides:

*(1) Subject to the provisions of this Chapter 19 and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid at whichever of the rates specified in subsection (3) is appropriate on -*

*(a) the registration of a vehicle, and*

*(b) a declaration under section 131(3).*

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

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

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

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

*(d) the person who is in possession of the vehicle that is a converted vehicle which has not been declared to the Commissioners in accordance with section 131(4), and where under paragraphs (a) to (d), more than one such person is, in any case, liable for the payment of a vehicle registration tax liability, then such persons shall be jointly and severally liable.*

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

*(a) in case the vehicle the subject of the registration or declaration concerned is a Category A vehicle -*

*(i) in respect of the CO<sub>2</sub> emissions of the vehicle—*

*(I) in case it is a vehicle in respect of which the level of CO<sub>2</sub> emissions measured in the manner referred to in subparagraph (ii) of paragraph (a) of the definition of CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> emissions measured in the manner referred to in subparagraph (i) or (iii) of paragraph (a), or paragraph (b), of the definition of CO<sub>2</sub> 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,*

*(ii) in respect of the NOx emissions of the vehicle –*

*(I) by reference to-*

*(A) Table 2 to this subsection, and*

*(B) the unit of measurement used in the relevant EC type-approval certificate, EC certificate of conformity, vehicle registration certificate issued in another Member State or other document produced in support of the declaration for registration, as the case may be, subject to a maximum of €4,850 in respect of vehicles designed to use heavy oil as a propellant and €600 in respect of all other vehicles, or.....*

VRT Manual – section 3.4.2.

*“Verification of CO2 Emissions*

*The level of CO2 emissions must be declared at the time of registration. If this value is not supplied the system will assign a CO2 level of 999, resulting in the highest VRT charge of 41%.*

*The level of CO2 emissions declared to Revenue must be supported by acceptable documentation.*

*For vehicles previously registered in EU Member States, there are several readily available documents acceptable to Revenue as proof of the level of CO2 emissions for the vehicle.*

*These documents include:*

*The Certificate of Conformity (if available),*

*Evidence supplied on a previous registration document e.g. the UK V5C,*

*The level of CO2 emissions stated on a previous National Car Test performed elsewhere within the EU, provided the CO2 stated is that at the time of manufacture,*

*A printout for the vehicle from the DVLA (UK Driver and Vehicle Licensing Agency) website,*

*A printout from the VCA website (the UK type approval authority),*

*A printout from the Sustainable Energy Ireland (SEI) website, and*

*A document from the manufacturer or main distributor stating the CO2 emissions for the vehicle.*

*If a vehicle originates in a non-EU country the following documentary evidence confirming the level of CO2 emissions is acceptable to Revenue:*

*Evidence supplied on previous registration documents,*

*Evidence from the relevant statutory authority in the country of origin.*

*A document from the manufacturer stating the level of CO2 emissions at the time of manufacture, or*

*A Certificate of Conformity.*

*In certain circumstances, the level of CO2 emissions may not be available for vehicles manufactured prior to 1997. Where this is the case, if the declarant provides details of the fuel consumption - the combined figure derived from an average of urban and extra-urban figures (obtained from any of the Revenue approved sources only) - the level of CO2 emissions declared may be verified in the following manner:*

*Metric Calculations:*

*Where fuel consumption is shown as litre per 100km fuel consumption X 23.20 = CO2 emissions e.g. if the consumption is shown as 5.8 l/100km then 5.8 X 23.20 = CO2 emissions of 134.56 or 135.*

*Where the fuel consumption is shown as litre per km fuel consumption X 2320 = CO2 emissions e.g. if the consumption is shown as 0.058 l/km then 0.058 X 2320 = CO2 emissions of 134.56 or 135*

*Where the fuel consumption is shown as km per litre 2320/fuel consumption = CO2 emissions e.g. if the fuel consumption is shown as 17.2 km per litre 2320 / 17.2 = 134.88 or 135*

#### *Imperial Calculations*

*where the fuel consumption is shown as miles per gallon mpg/2.82485 = km per litre e.g. 48.7/2.82485 = 17.2 km per litre and then 2320/17.2 = 134.88 or 135*

*Note: For diesel engines the multiplier changes from 2320 (or 23.20) to 2630 or (26.30) whichever is appropriate.*

*All the above documentary evidence must have English translations. It is important to note that a printout of a test on the vehicle purporting to show the current levels of CO2emissions is not acceptable as the basis for VRT. The original CO2 emissions figure at manufacture determines the CO2 band and not the CO2 emissions of the vehicle at the date of registration.”*

#### **Evidence**

██████████ - *The Appellant:*

7. The Appeal Commissioner (“the Commissioner”) sets out below an extract of the Appellant’s oral evidence during the hearing:

*“I have imported a ████████ vehicle from Japan. As per the, [sic] I guess the tax statutes, there is a fee to be paid for nitrogen oxide emissions. Revenue states that you have to provide data directly from the Ministry of Land, Infrastructure, Transport and Tourism, which is referred to as MLIT, this requirement came in after the car was produced. And then the alternative source of information that Revenue require is an EU certificate of conformance, which again only applies to European vehicles. And my argument is, if we’re classing it as an EU vehicle Revenue already have -- sorry, the Japanese and the Irish are European versions of the car, they make the exact same emissions just depending on what test they do. So either it’s a European car with European specifications, which Revenue already have, or it is a Japanese car. If it is a Japanese*



car it's referred to as, instead of a BMW [REDACTED] it's classified as a DBA [REDACTED]. This DBA classification at the start is the, [sic] it's the emissions classification and it can be something like ABA, CBA or DBA and those relate directly to the 2005 emissions standards, whereas ABA meets the requirements; CBA is a 50 percent reduction in those requirements and in my case a DBA is a 75 percent reduction in those requirements. So, yeah, in my case the 75 reduction in those 2005 standards brings you to a 12.5 milligram per kilometre NOx emission. So, while it doesn't explicitly state what the NOx emissions are for my vehicle, it does say what the maximum can be, which I would also argue, when an emissions figure is given for any car in Ireland by the manufacturer, that's also the maximum, it's not the amount it typically provides or, you know, it's not a continuous number. Yeah, fundamentally my argument is it's classified as a DBA vehicle, which the Ministry of Land, Transport and Tourism in Japan categorise as a DBA vehicle, which has a maximum NOx value and that's all I'm looking to request, I just want it to be the higher number of what's in that category."

"..... Regarding the certificate of conformance, BMW Japan do not provide this and that's also a European vehicle requirement. It's not a Japanese requirement. I would also ask have you received, has anyone else been able to provide the required -- sorry, the documentation you require for cars as old as 2013? The second part, if this car was just by chance imported into New Zealand, the classification alone is enough to prove the NOx emissions, it doesn't need additional requirements. Sorry, you said there was the certificate of conformance, which is from the manufacturer, again being a Japanese car that originally came from Germany, it doesn't have that. And BMW have stated, which I have provided to you as well, they do not provide that as they say the emissions can differ depending on the petrol being used and there's other variables.

So MLIT don't have this car as, the requirement to provide this data is from before they recorded it. So I appreciate there is a document that does give you NOx emissions for certain BMWs, but all of them are from after my car was produced. And also, I have provided a car that has the same gearbox, engine, transmission, that the layout of the car is the exact same and it's 400 kilos heavier with the same emissions that I've stated mine is. So an equivalent car 400 kilos heavier and I have provided you with that data. Now it's a newer car so it had the NOx emissions, but it's the same engine and same transmission, same everything, just 400 kilos heavier and you said that was not applicable. And again, I was working off the maximum NOx values, not just, you know, specific to each car. So those 13 milligrams per kilometre should still be the maximum, which is, I believe it's €65 and not the €600. But, yeah, finally, like the classification is

*the MLIT rating so, you know, it's the, whether it's ABA, CBA or DBA, those are the emissions classifications from the source you're requesting, from MLIT and three of those state what the NOx emissions are. Now whether it says it's specific to one car, or that this classification applies to all these cars, it's the same thing, you know. Your own tax bands do the same thing. They don't have to be specific to a car. If they fall within a tax band you pay this amount; my car falls with [sic] an emissions band, it should be this amount. It's not just maximum because it doesn't have the specific value. It's under 13 milligrams per kilometre and that's rounded up from 12.5, so that should be the maximum charge."*

## **Submissions**

*The Appellant's submissions:*

8. The Commissioner sets out below an extract of the Appellant's Statement of Case:

*█████ BMW █████ presented for VRT assessment on 21 June 2024.*

*VRT inspector stated that I must present proof of Nitrogen Oxide emissions (NOx) from Ministry of Land, Infrastructure, Transport and Tourism (MLIT). Without this, it would be €600.*

*Firstly, the car was assigned the code DBA-1B30 by MLIT as seen on export certificate, in keeping with the Japanese/MLIT convention. The VRT inspector maintained that the car is a "BMW DBA-█████" and not a "BMW █████". I provided evidence from MLIT that the assigned "DBA-█████" code referred to a "BMW █████" with a N55B30A engine, 8-speed automatic transmission, weighing 1540kg.*

*I have provided twelve sources below for reference, directly from MLIT.*

*This was [was] rejected as acceptable proof that the car is a █████ and that the provided manufacturer NOx specifications were applicable.*

*Secondly, as per "Motor Vehicle Exhaust Emission Standards" - Ministry of the Environment of the Government of Japan - 900450110.pdf:*

*For "Gasoline motor vehicles", that are "Passenger cars" after "2005" and before "2018", the maximum allowable average NOx is 50mg/km.*

*A 75% reduction would allow a max NOx value of 12.5mg/km, which rounded up is 13mg/km.*

*I highlighted to VRT inspector the MLIT emissions classification decal on the car. This certifies it as a 4 star low emissions vehicle with a 75% reduction in exhaust gas emissions based on the 2005 standards.*

*Although this proves the 13mg/km figure from the official MLIT source, this was also rejected as acceptable proof.*

*Additionally, from 2005 onwards, the first three letters of the MLIT model code represent the vehicles emissions classification (as per 00037089.pdf):*

*In the case of a DBA-1 [REDACTED]:*

*D - 75% reduction in emissions*

*B - Petrol - Non-hybrid*

*A - Passenger car*

*For reference, other petrol passenger cars could be:*

*"ABA" would meet 2005 standards, but no further reduction.*

*"CBA" would be a 50% reduction in emissions.*

*Notably, New Zealand allow Japanese imports solely based on the first three letters of the model code.*

*From 1 January 2012, only cars with three digit emissions codes e.g. "ABA", "CBA", "DBA", "DAA", "LDA", "ZAA".*

*I have provided the New Zealand Government website source listed in supplementary information.*

*It is incredulous that the initial VRT inspector, two VRT assessors and two subsequent VRT appeals assessors are not privy to this.*

*No car meeting the 2005 Japanese Motor Vehicle Exhaust Emissions Standards should be charged more than €350 (50mg/km).*

*Finally, document 000057726.pdf from MLIT lists the NOx values of various BMW cars.*

*I believe these were the cars still in production at the time the document was written, as the M140i is listed, while the M135i is not.*

*All of the cars listed are DBA, or CBA (with a few petrol +electric models being DLA or CLA).*

*ALL DBA & DLA cars have NOx values of 13mg/km, 75% reduction of 50mg/km=12.5mg/km ~ 13mg/km.*

*ALL CBA & CLA cars have NOx values of 25mg/km, 50% reduction of 50mg/km=25mg/km.*

*ALL the DBA & DLA cars have four star (75% reduction) emissions ratings.*

*ALL the CBA & CLA cars have three star (50% reduction) emissions ratings.*

*DBA-BA-6A30 (BMW 640i) with a four star emissions rating mentioned in the initial appeal, with the exact same engine, gearbox and drive-train layout while being over 300kg heavier has slightly higher official CO2 emissions, but the same maximum NOx emissions.*

*As per Revenue.ie, the Mission Statement of Revenue is: "To serve the community by fairly and efficiently collecting taxes and duties and implementing Customs controls.":*

*1. Revenue have stated they are capable of verifying emissions data supplied to them, but will not provide the source to help the process.*

*2. Revenue have also stated they are not able to determine the emissions and have "obtained the services of an independent consultant in an attempt to ascertain this to no avail."*

*MLIT documentation states the NOx emissions for this car, along with any car with the prefix "DBA", are 13mg/km.*

*The VRT NOx charge should be €65.*

*Now over three months debating a €600 charge, this is not fair or efficient."*

*"Summary:*

*While not an official MLIT source, the following is an excellent summary and does align with the official MLIT standard.*

*Link: [https://www.toyota-club.net/files/faq/10-10-15\\_faq\\_eco-class\\_eng.htm](https://www.toyota-club.net/files/faq/10-10-15_faq_eco-class_eng.htm)*

*Sources:*

*1.*

*Document: 900450110 - Motor Vehicle Exhaust Emission Standards*

*Source: Ministry of the Environment - Government of Japan*

*Link: <https://www.env.go.jp/content/900450110.pdf>*

2.

*Document: 000057726.pdf - Translated as "List of certified low-emission vehicles"*

*Source: Ministry of Land, Infrastructure, Transport and Tourism (MLIT)*

*Link: <https://www.mlit.go.jp/common/000057726.pdf>*

3.

*Source: NZ Transport Agency*

*Link: <https://www.nzta.govt.nz/vehicles/importing-a-vehicle/2-complying-with-vehicle-standards-and-providing-evidence/used-vehicles-from-japan/#emission>*

*Sources referring to "DBA-1B30" as "TYPE" and "BMW M135i" as "COMMERCIAL NAME":*

*000989173.xlsx*

*001084242.xlsx*

*001125031.xlsx*

*001225527.xlsx*

*001091729.pdf*

*001096978.pdf*

*001265972.pdf*

*001375170.pdf*

*001368135.pdf*

*001383781.pdf*

*001362939.pdf*

*001356214.pdf"*

*The Respondent's submissions:*

9. The Commissioner sets out below an extract of the Respondent's Statement of Case:

*"1. Statutory provisions being relied on.*

*Section 132 (3) FA 1992, as amended.*

2. Outline of relevant facts.

This is an appeal against the NOx Charge on vehicle reg [REDACTED]. The vehicle is a BMW [REDACTED] DBA [REDACTED], which was imported from Japan.

The NOx Charge is based on the Nitrous Oxide emissions of the vehicle. It is calculated in accordance with Section 132(3)(a)(ii) of the Finance Act 1992 (as amended). That section provides for a flat rate NOx Charge, where satisfactory evidence of the NOx emissions of the vehicle is not provided:

“where-

(A) the level of NOx 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 NOx emissions by reference to any other document produced in support of the declaration for registration,

at the rate €4,850 in respect of vehicles designed to use heavy oil as a propellant and €600 in respect of all other vehicles”

As stated in the VRT Manual Section 1, Part 3.4.2. the following sources are acceptable as proof of emissions for a vehicle:

- Evidence supplied on previous registration documents.
- Evidence from the relevant statutory authority in the country of origin.
- A document from the manufacturer stating the level of emissions at the time of manufacture, or
- A Certificate of Conformity.

The Revenue website (<https://www.revenue.ie/en/vrt/calculating-vrt/nitrogen-oxide-emissions.aspx>) also provides the following advice in relation to proof of NOx emissions:

“Revenue will also accept official written confirmation from the manufacturer, or an appropriate statutory authority, of the NOx emissions. These will be considered on a case by case basis, depending on the documentation presented.

A NOx figure for Japanese imports can be obtained from the Japanese Ministry of Land, Infrastructure, Transport and Tourism.

If a NOx figure cannot be provided for a vehicle, then a flat charge will apply.”

*In this instance, the appellant was unable provide satisfactory, verifiable evidence of the NOx emissions of this specific vehicle. The appropriate flat charge of €600 was applied, in accordance with Section 132(3)(a)(ii) above.*

*Revenue's position is that the NOx Charge was calculated in accordance with the legislation and cannot be reduced."*

### **Material Facts**

10. Having considered and assessed the documentation submitted by the parties in this appeal, the Commissioner makes the following findings of material fact:
  - 10.1. The Appellant's Vehicle was manufactured in Japan in [REDACTED].
  - 10.2. The Appellant's Vehicle is registered in the State under motor vehicle registration number 1 [REDACTED].
  - 10.3. The Respondent assessed the charge to tax payable in respect of the Appellant's Vehicle regarding NOx in amount of €600.00.
  - 10.4. The Appellant appealed the Respondent's charge to NOx to the Commission on 16 July 2024.

### **Analysis**

11. The Commission is a statutory body created by the Finance (Tax Appeals) Act 2015. As a statutory body, the Commission only has the powers that have been granted to it by the Oireachtas. The powers of the Commission to hear and determine tax appeals are set out in Part 40A of the TCA 1997.
12. In this regard, the jurisdiction of an Appeal Commissioner is well established and was considered by the Court of Appeal in *Lee v the Revenue Commissioners* [2021] IECA 18 ("*Lee*") wherein Murray J. stated at paragraph 20:

*"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".*
13. The Commissioner is bound by the prevailing legislation and guiding case law from the Superior Courts which has found, that in any appeal before the Commission, the burden of proof rests on the Appellant and that it is the Appellant who must satisfy the

Commission at the threshold of the balance of probabilities, that an assessment to tax made against them is incorrect. [Emphasis added] This binding legal principle was stated in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and Anor.* [2010] IEHC 49, wherein 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”.*

14. As the Appellant seeks to claim a reduction in the amount of tax assessed against him, the Commissioner also has had regard to the Supreme Court judgment of *Revenue Commissioners v Doorley* [1933] IR 750, in which Kennedy CJ stated:

*“The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason, from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as applicable.”*

15. The Commission is a statutory entity and it can only lawfully operate within the confines of empowering and enabling legislation. The Commissioner refers to *Lee*, wherein Murray, J. stated at paragraph 76:

*“The jurisdiction of the Appeal Commissioners ..... is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that 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. They may make findings of fact and law that are incidental to that inquiry. Noting the possibility that other provisions of the TCA may confer a broader jurisdiction and the requirements that may arise under European Law in a particular case, they do not in an appeal of the kind in issue in this case enjoy the jurisdiction to make findings in relation to matters that are not directly relevant to that remit, and do not accordingly have the power to adjudicate upon whether a liability the subject of an assessment has been compromised, or whether Revenue are precluded by legitimate expectation or estoppel from enforcing such a liability by assessment, or whether Revenue have acted in connection with the issuing or formulation of the assessment in a manner that*



*would, if adjudicated upon by the High Court in proceedings seeking Judicial Review of that assessment, render it invalid.”*

16. All material submitted to the Commission has been assessed by the Commissioner before making this determination.
17. The Respondent is empowered to raise a charge to tax for NOx emissions of a vehicle further to the provisions of section 132(3)(a)(ii) of the Finance Act 1992 (as amended). This provision provides for a “flat rate” NOx Charge, where satisfactory evidence of the NOx emissions of the vehicle is not [Emphasis added] provided:

“where-

*(A) the level of NOx emissions cannot be confirmed by reference to [Emphasis added] 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 NOx emissions by reference to any other document produced in support of the declaration for registration, at the rate €4,850 in respect of vehicles designed to use heavy oil as a propellant and €600 in respect of all other vehicles” [Emphasis added]*

18. The Respondent published a manual which provides guidance and cites legislative authority and provisions “*VRT Manual*” - Section 1, Part 3.4.2. which states that the following sources are acceptable as proof of emissions for a vehicle:

- evidence supplied on previous registration documents;
- evidence from the relevant statutory authority in the country of origin;
- a document from the manufacturer stating the level of emissions at the time of manufacture, or
- a Certificate of Conformity.

19. The Respondent’s website ( <https://www.revenue.ie/en/vrt/calculating-vrt/nitrogen-oxide-emissions.aspx> ) also provides the following advice in relation to proof of NOx emissions:

*“Revenue will also accept official written confirmation from the manufacturer, or an appropriate statutory authority, of the NOx emissions. These will be considered on a case by case basis, depending on the documentation presented.*

*A NOx figure for Japanese imports can be obtained from the Japanese Ministry of Land, Infrastructure, Transport and Tourism.*

*If a NOx figure cannot be provided for a vehicle, then a flat charge will apply.”*

20. The Appellant in oral and written submissions submitted that he was unable to submit the documents specified by the Respondent as being satisfactory, verifiable evidence of the NOx emissions of the Appellant's Vehicle. The Appellant submitted that there were factors beyond his control which delimited and denied him access to the materials deemed and considered as satisfactory by the Respondent. The Appellant submitted that in the alternative the Appellant had submitted other verifiable sources which certified the maximum NOx emissions value of the Appellant's Vehicle and that the Respondent's refusal to accept this material as satisfactory proof of his vehicle's NOx emissions and impose the higher flat rate charge was incorrect.
21. The Respondent's position is that in the absence of any of the specified material as per the provisions of section 132(3)(a)(ii) of the Finance Act 1992 (as amended) that the NOx Charge was calculated as a flat rate charge in accordance with the legislation and cannot be reduced.
22. The Commissioner notes the Appellant has submitted that he did not submit any of the documents specified by the legislation and/or the VRT Manual in support of his application to the Respondent.
23. The Commissioner notes the legislation is clear as to what can be considered and accepted as satisfactory and verifiable proof of NOx emissions for the Appellant's Vehicle. The Commissioner notes there is no discretion provided for in the legislation to allow and empower the Respondent and/or the Commissioner to accept other material in lieu thereof. As stated already, the Commission and by extension the Commissioner is a statutory construct and can only do such acts and/or things as are specified under statute. There is no legal facility and/or capability for the Commissioner to interpose another document into the rubric of consideration.

### **Determination**

24. As stated earlier, it is the Appellant who must satisfy the Commission at the threshold of the balance of probabilities, that the charge to tax made against him is incorrect. For the reasons set out already the Commissioner finds that the Appellant has not discharged the burden of proof that the charge to tax made by the Respondent in respect of NOx charges assessed against the Appellant's Vehicle was not done in compliance with statutory provisions and was incorrect. Accordingly, the Commissioner finds that the Appellant's appeal in this matter is unsuccessful.


25. Further to the provisions of section 949AK of the TCA 1997 the Commissioner determines that the Respondent's Decision shall stand.
26. The Commissioner acknowledges that the Appellant was within his rights to appeal the Respondent's Decision and to have clarity of his legal rights. The Commissioner understands that the Appellant may be disappointed with the outcome of his appeal.
27. This Appeal is determined in accordance with Part 40A of the TCA 1997 and in particular sections 949L thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

28. 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**

29. 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.



Leonora B. Doyle  
Appeal Commissioner  
22 January 2025