



10TACD2018

BETWEEN/

[NAME REDACTED]

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price ('OMSP') in respect of the calculation of Vehicle Registration Tax ('VRT'). This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

2. The vehicle, the subject matter of this appeal, is a 2005 Land Rover Defender 90, TD5XS, 2.5 Station Wagon, registration **[REDACTED]**. The Appellant purchased the vehicle in the UK for Stg£25,995. The Appellant registered the vehicle on 14 September 2017 and mileage at the time of registration was approximately 95,000 miles. An OMSP of €22,080 was assigned resulting in a VRT charge of €7,948. On appeal to the Central VRT office, the OMSP of €22,080 was determined to be reasonable and was not adjusted. The Appellant appealed to the Tax Appeals Commission on 6 October 2017.

Legislation

Section 146 of the Finance Act 2001:

“A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.”

Section 133 Finance Act, 1992, as amended:

(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 vehicle registration tax, 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.

(2)(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.

(2)(c) Notwithstanding the provisions of paragraph (b), where a price is 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 a similar type and character is being offered for sale in the State at the time of such declaration, the open market selling price may be determined by the Commissioners for the purposes of this section.

(3) In this section— ‘new vehicle’ means a vehicle that has not previously been registered or recorded on a permanent basis—



(a) in the State under this Chapter or, before 1 January 1993, under any enactment repealed or revoked by section 144A or under any other provision to like effect as this Chapter or any such enactment, or

(b) under a corresponding system for maintaining a record for vehicles and their ownership in another state,

and where the vehicle has been acquired under general conditions of taxation in force in the domestic market

‘open market selling price’ means—

(a) in the case of a new vehicle referred to in subsection (2), the price as determined by that subsection,

(b) in the case of any other new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, would be determined under subsection (2) in relation to that vehicle if it were on sale in the State following supply by a manufacturer or sole wholesale distributor in the State,

(c) in the case of a vehicle other than a new vehicle, the price, inclusive of all taxes and duties, which, in the opinion of the Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail and, in arriving at such price—

(i) there shall be included in the price, having regard to the model and specification of the vehicle concerned, the value of any enhancements or accessories which at the time of registration are not fitted or attached to the vehicle or sold therewith but which would normally be expected to be fitted or attached thereto or sold therewith unless it is shown to the satisfaction of the Commissioners that, at that time, such enhancements or accessories have not been removed from the vehicle or not sold therewith for the purposes of reducing its open market selling price, and

(ii) the value of those enhancements or accessories which would not be taken into account in determining the open market selling price of the vehicle under the provisions of subsection (2) if the vehicle were a new vehicle to which that subsection applied shall be excluded from the price.

Section 132 Finance Act, 1992, as amended:



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

$$A \times P \times N$$

Where –

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

P is 0.1 per cent, and

N is the number of days from the date the vehicle should have been registered in accordance with Regulation 8 of the vehicle Registration and Taxation Regulations 1992 and the date of registration of the vehicle.

Submissions and analysis

3. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO2 emissions. The OMSP of a vehicle is determined in accordance with section 133 Finance Act 1992, as amended *i.e.* on 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.
4. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €22,080. The Appellant's ground of appeal in relation to the OMSP assigned was that it was excessive.
5. The Appellant submitted that the online VRT calculator produced a much lower OMSP estimate. The Appellant furnished a screenshot of this online calculation. The Respondent submitted that the valuation contained on the screenshot was not relevant to the valuation of the OMSP in this appeal because the screenshot showed VRT payable in relation to a different model of the vehicle, namely a 2.4 TDI County



HT 3-door model. The Respondent submitted that the Appellant obtained an inaccurate estimate of VRT as a result of the input of different vehicle specifications. The Respondent stated that the website contained a number of disclaimers addressing this risk. The Respondent submitted that where details submitted online did not match the specifications of the vehicle purchased, an accurate estimation of VRT was unlikely to result. I accept the Respondent's submission in this regard.

6. The Appellant submitted that depreciation should be taken into account however, section 133 of the Finance Act, 1992, as amended, provides that in ascertaining OMSP, the OMSP will be 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. Section 133 requires that the vehicle be individually valued at the time of registration thus, I do not accept the Appellant's submission on this point.
7. Prior to registration, the Appellant incurred a further Stg£2,800 in respect of new seating, suspension, tyres, disc brakes and paint in respect of the vehicle. The Appellant submitted that these modifications were minor in nature or were deemed necessary for the vehicle's MOT certificate. Section 133 requires that the vehicle be individually valued at the time of registration and the Respondent submitted that as the model of the vehicle purchased by the Appellant was not previously registered in the State, an independent automotive consultant was requested by the Respondent to provide a valuation in respect of the vehicle.

Conclusion

8. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable.
9. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 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.'*





10. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal and I determine €22,080 to be a fair and reasonable OMSP in relation to the vehicle. This appeal is determined in accordance with section 949AL TCA 1997.

APPEAL COMMISSIONER

May 2018

