



13TACD2018

BETWEEN/

[NAME REDACTED]

Appellant

V

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').
2. On agreement of the parties this appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

3. The vehicle, the subject matter of the appeal, is a BMW X5 F15, registration **[REDACTED]**. The Appellant purchased the vehicle in the UK. At the time of purchase the vehicle was approximately 6 months old. The vehicle was registered with the National Car Testing Service (NCTS) on 26 September 2017.
4. An OMSP of €82,577 was assigned, resulting in a VRT charge of €22,295. On appeal to the Central VRT office, the OMSP of €82,577 was revised to €81,000. This revised OMSP gave rise to a refund in the sum of €425 which was notified to the Appellant by letter dated 15 December 2017. The Appellant did not accept the revised OMSP and appealed to the Tax Appeals Commission on 6 November 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

5. The Appellant contended that the OMSP assigned, of €81,000, was excessive and that the OMSP should be reduced to €73,782.
6. In correspondence dated 15 December 2017, the Respondent provided a detailed breakdown in relation to how the OMSP of €81,000 was reached. The calculation was based on five comparator vehicle valuations from car dealership websites advertising vehicles for sale. The average amount of the valuations furnished by the Respondent was €85,368, a figure €4,368 in excess of the OMSP assigned. The Respondent reduced the average valuation by 5% to account for differences in specification, arriving at a figure of €81,100.20. The Respondent rounded this figure down assigning to the vehicle, a reduced OMSP of €81,000.

Analysis

7. 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.
8. The OMSP assigned in relation to the vehicle the subject matter of this appeal was €81,000. The Appellant's ground of appeal in relation to the OMSP assigned, was that it was excessive.



9. In support of his appeal, the Appellant furnished five car dealership website valuations in relation to similar vehicles, for the purposes of valuation comparison. The average amount of the valuations furnished by the Appellant was €85,168, a figure in excess of the OMSP assigned. The Appellant submitted that the asking price of some of these vehicles had since reduced however, the Appellant did not provide evidence in support of this submission.
10. The Appellant also furnished an independent valuation of a similar vehicle which valued the vehicle at between €79,800 and €83,900. It is apposite to note that this valuation was not a valuation in relation to the actual vehicle, the subject of the appeal, but a valuation in relation to a similar vehicle. I note that the upper end of this valuation range (€83,900) is less than four of the advertisement valuations furnished by the Appellant. The mid-point of the valuation range is €81,850, a figure in excess of the OMSP assigned. As a result, this report does not significantly assist the Appellant in his submission for a reduction of the OMSP of €81,000.
11. The Appellant submitted that adjustments of €3,776 should be applied to account for the fact that his vehicle did not have a panoramic roof or an electric folding tow bar. Applying these reductions to the average of the Appellant's car dealership valuations reduces the figure (of €85,168) to €81,392, a sum in excess of the OMSP assigned, of €81,000.
12. The Respondent's calculation was based on five comparator vehicle valuations from car dealership websites advertising vehicles for sale. The Respondent reduced the average of those valuations by 5% to account for differences in specification, arriving at a figure of €81,100.20. The Respondent rounded this figure down to assign a reduced OMSP of €81,000. The Appellant contended that the figure of €81,000 failed to take account of differences in specification between comparator vehicles however, this is incorrect and thus I do not accept the Appellant's submission in this regard.
13. The Appellant submitted that depreciation should be applied to the mid-point of the valuation range contained in the valuation report furnished (i.e. to the figure of €81,850). However, the valuation report furnished by the Appellant did not relate to the vehicle, the subject matter of this appeal. In any event, while an estimate of depreciation may be relevant if measured from the period commencing when the vehicle is new and first offered for sale, the original selling price of the vehicle was not furnished by the Appellant. The Appellant's suggestion that depreciation could



be applied to an estimated value in relation to a different vehicle is not sustainable and does not assist in his submission for a reduction of the OMSP assigned, of €81,000.

Conclusion

14. 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.
15. 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.'*
16. 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 €81,000 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

