



71TACD2019

BETWEEN/

Appellant

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the calculation of Vehicle Registration Tax ('VRT') in respect of a vehicle brought into the State from the UK.
2. The vehicle, the subject matter of this appeal, is an Audi Q3 Sport 1.4 TFSI, registration 171xxxxx which was assigned an OMSP of €35,575 on registration of the vehicle at the National Car Testing Service ("NCTS"), resulting in VRT payable of €6,759. The Appellant appealed the amount of VRT payable on the vehicle to the VRT appeals office in the Revenue Commissioners. The Respondent notified the Appellant by letter dated 12 March 2018 that the OMSP assigned to the vehicle was correct and that no refund was due. The Appellant duly appealed to the Tax Appeals Commission by notice of appeal received on 15 March 2018.
3. The Appellant contends that the VRT charged on the vehicle by the NCTS is overstated and seeks a refund of approximately €2,289.
4. This appeal is determined without a hearing in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

5. The Appellant purchased the vehicle from a seller in the UK and imported the vehicle into the State on 27 January 2018. The Appellant paid £21,700 for the vehicle. The vehicle was registered with the NCTS on 09 February 2018. The NCTS assigned an OMSP of €35,575 which resulted in a VRT charge of €6,759, which the Appellant duly paid. The rate of VRT on this vehicle is 19% based on the CO2 emissions of the vehicle and there is no dispute between the parties in this regard.
6. During correspondence between the parties, the Respondent made two offers to the Appellant, of a revised OMSP, subject to settlement of the appeal. The settlement offers issued on 10 April 2018 and 23 April 2018 respectively. The later offer revised the OMSP downwards to €25,645. The Appellant duly rejected both offers. The Respondent seeks a determination in favour of the original OMSP assigned to the vehicle of €35,575.

Legislation

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 all taxes and duties,] 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.

(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.

[(c) Notwithstanding the provisions of paragraph (b), where a price stands 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 that model and specification or a vehicle of a similar type and character is being offered for sale in the State while such price stands declared, the open market selling price may be determined from time to time by the Commissioners for the purposes of this section.]

[(d) Where a manufacturer or sole wholesale distributor fails to make a declaration under paragraph (a) or to make it in the prescribed manner, the open market selling price of the vehicle concerned may be determined [from time to time] 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.]

Submissions and Analysis

7. In support of her appeal the Appellant has furnished printouts from Revenue's online VRT calculator as follows:
 - a. The VRT calculator for an Audi Q3 1.4 TFSI S-LINE with statistical code 41687427 which shows a VRT amount payable of €4,470. The Appellant submits that this is the same vehicle as the Appellants vehicle but with a higher specification.
 - b. The VRT calculator for an Audi Q3 1.4 TFSI Sport with statistical code 42587427 which shows a VRT amount payable of €6,759. This appears to be the same vehicle as the Appellant's vehicle, carrying the same statistical code.
 - c. The VRT calculator for an Audi A3 1.4 TFSI Sport with statistical code 41686715 which shows a VRT amount payable of €4,534.



- d. The VRT calculator for an Audi A3 1.4 TFSI SLINE with statistical code 43386715 which shows a VRT amount payable of €4,758.
 - e. The VRT calculator for a SKODA Superb 1.4 with statistical code 40388118 which shows a VRT amount payable of €3,646.
- 8. The VRT calculator submitted for the Audi Q3 1.4 TFSI S-LINE (see (a) above) is for a vehicle with CO2 emissions of 121g/km. The vehicle the subject of the within appeal has higher CO2 emissions of 135g/km, which commands a higher rate of VRT.
 - 9. The Appellant submits that the only model similar to the Appellant's vehicle showing on the VRT calculator was the Audi Q3 S-LINE 1.4 TFSI, which the Appellant claims is the same vehicle but with a higher specification. The Appellant has not furnished any evidence which supports her contention that the Audi Q3 S-LINE 1.4 TFSI is the same vehicle but with a higher spec.
 - 10. The Appellant claims that prior to purchasing the vehicle she carried out research into the VRT which would be payable. The Appellant further submits that the only model similar to the Appellant's vehicle showing on the VRT calculator was the Audi Q3 S-LINE 1.4 TFSI. This however is at odds with the documentation furnished by the Appellant, as included in the Appellant's submissions is a printout from Revenue's online VRT calculator for the Audi Q3 1.4 TFSI Sport with statistical code 42587427 (see (b) above) i.e. the same statistical code as the Appellant's vehicle.
 - 11. The Appellant states that she also looked at the online VRT calculator for the Audi A3 TFSI Sport (see (c) above), the Audi A3 S-LINE (see (d) above) and the Skoda Superb 1.4 (see (e) above) as part of her research. The Appellant contends that these vehicles are all 1.4 petrol vehicles with automatic transmission, similar to the Appellants vehicle. The Appellant has not furnished any evidence which supports this contention.
 - 12. In addition, the Appellant has furnished a copy of a general advertisement listing the sales price of various different models of the Audi Q3 SE, the source of which is unknown. The sales prices are quoted in Pound Sterling and range from £23,690 up to £29,265. The Appellant has not identified which vehicle on this list is most similar to her own vehicle but has 'highlighted' the second vehicle on the list which is advertised at £25,170.



13. Included in the Respondents submissions was a copy of the Revenue worksheet which showed the Respondent arriving at the OMSP of €35,575. The worksheet contained the following passage; *“valuations provided by claimant, when adjusted for sterling and VRT within 10% of OMSP. Checked Audi Ireland and the OMSP for 2017 favours well with their 18 price. No refund”*. The Respondent was asked by the TAC to explain this statement further but did not do so.
14. The Respondent submits that two offers of settlement were made to the Appellant in April 2018. The later settlement offer dated 23 April 2018 revised the OMSP downwards to €25,645. In arriving at this valuation, the Respondent used the average of the purchase price paid by the Appellant of £21,700 and the sales price of £23,690 Pound Sterling taken from the same advertisement included in the Appellants submissions. The OMSP of €25,645 was arrived at by taking the average of these two figures and converting to Euro. This offer, had it been accepted, would have allowed the Appellant a refund of €1,886.
15. In light of the refusal of the Appellant to accept the revised OMSP of €25,645 to settle the appeal the Respondent now seeks for a determination in favour of the original OMSP of €35,575.
16. The OMSP is *“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”*. In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.
17. Neither party furnished any advertisements of similar vehicles for sale in the State. In the absence of comparator vehicles, I believe the approach taken by the Respondent in seeking to settle the dispute with the Appellant, of taking the average of the purchase price of the vehicle and the sales price of a similarly advertised vehicle (albeit in the UK market) is a reasonable one.
18. The Appellant did not accept the OMSP of €25,645 which the Respondent proposed to assign to the vehicle. While the Appellant contended that the OMSP of €25,645 was overstated, the Appellant failed to adduce sufficient evidence in support of this contention and failed to discharge the burden of proof in this regard.



19. In light of the advocacy made by the Appellant to the Respondent and having carefully considered all of the submissions, materials and evidence provided by both parties, I am satisfied that on the balance of probabilities the Appellant has demonstrated that the original OMSP assigned of €35,575 was overstated. In the circumstances I am satisfied that on the balance of probabilities €25,645 is a correct OMSP in relation to the vehicle.
20. 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. In *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.*
21. The Appellant has not adduced evidence which would entitle her to an OMSP attributable to her vehicle which would attract a refund of €2,289 VRT.

Conclusion

22. For the reasons set out above I determine that the OMSP of the vehicle the subject of the within appeal should be reduced to €25,645 and a refund of €1,886 should be issued to the Appellant.
23. The appeal hereby is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS
APPEAL COMMISSIONER
29th NOVEMBER 2019

