



AC Ref: 23TACD2016

[NAME REDACTED]

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal concerns the valuation of a vehicle in respect of the calculation of Vehicle Registration Tax ('VRT') in accordance with the provisions of the Finance Act 1992, as amended ('the Finance Act 1992').
2. The parties agreed that the appeal would be determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

3. The vehicle, the subject matter of this appeal, is a [YEAR REDACTED] Nissan Sunny 1.3, LX 3 door, registration [REDACTED]. While the vehicle was purchased for Stg£450, the VRT charge applied pursuant to the provisions of section 132(3) of the Finance Act 1992, was €720. The Appellant paid the VRT at the date of registration, [DATE REDACTED].
4. On [DATE REDACTED] the Appellant appealed to the Central Vehicle office and on [DATE REDACTED] the Appellant was notified in writing that the appeal was unsuccessful. On [DATE REDACTED] the Appellant appealed the decision pursuant to section 146 of the Finance Act 2001, on grounds that the VRT was



disproportionately high as it exceeded the value of the vehicle, which cost Stg£450.

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 130 Finance Act 1992 as amended:

‘listed vehicle’ means one of the following vehicles, namely, a hearse, a bus, a special purpose vehicle, an agricultural tractor, a two-wheeled tractor, an armoured fighting vehicle, or a vehicle (not including a motor-cycle) which is shown to the satisfaction of the Commissioners to be more than 30 years old at the time of registration.

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.....

‘mechanically propelled vehicle’ means a vehicle that –

(a) has been designed and constructed for road use,

(b) is, at the time of declaration for registration, in compliance with any measures taken to give effect in the State to any act of the European Communities relating to the approximation of the laws of Member States in respect of type-approval for the type of vehicle concerned,

(c) is intended or adapted for propulsion by a mechanical means, or by an electrical means or by a partly mechanical and a partly electrical means, and

(d) is capable of achieving vehicle propulsion at the time of registration or at the time of examination by a competent person under section 135D(1)(d), to the satisfaction of the Commissioners



Including a motor-cycle but not including a tramcar or other vehicle running on permanent rails [or a vehicle (including a cycle with an attachment for propelling it by mechanical power) not exceeding 400 kilogrammes in weight unladen adapted and used for invalids]

Section 132 Finance Act,1992, as amended:

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

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(a) In case the vehicle the subject of the registration or declaration concerned is a category A vehicle –

(i) By reference to the Table in this subsection, or

(ii) Where –

- (I) The level of CO2 emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and*
- (II) 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 the Table to this subsection of the value of the vehicle or €720, whichever is the greater,*

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.

Submissions

5. The Appellant submits that the VRT charge of €720 was excessive on the grounds that it exceeded the value of the vehicle, which cost Stg£450. The Respondent submitted that in the absence of satisfactory documentation in support of the level of CO2 emissions, the Respondent was obliged to apply VRT in accordance with the provisions of section 132(3) of the Finance Act 1992, which resulted in a VRT charge of €720.
6. In addition, having registered the vehicle on [DATE REDACTED], the Appellant submitted that the vehicle was in such poor condition that it was scrapped in [DATE REDACTED]. The Appellant furnished a certificate of destruction in proof of same. The Respondent's position was that subsequent write off of the vehicle was not relevant to the appeal.
7. Separately, the Respondent noted, that as the car was not more than 30 years old at the time of registration, it did not qualify as a '*listed vehicle*' per section 130 of the Finance Act 1992, and thus was not entitled to registration on this basis.

Analysis

8. VRT is a duty of excise, charged at a percentage rate, according to the CO2 emissions, of the price, inclusive of all taxes and duties which, in the opinion of the Respondent, the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State at the time of registration, subject to specified minimum charges.



9. Having registered the vehicle on [DATE REDACTED], the vehicle was scrapped in [DATE REDACTED] and a certificate of destruction was furnished in proof of same. The Respondent submitted that subsequent write off of the vehicle was not relevant because, once the vehicle is regarded as roadworthy at the time of registration, VRT is due and payable. I accept this submission on behalf of the Respondent.
10. On the issue of the vintage of the vehicle, the Respondent submitted that as the Appellant's vehicle was 29 years old at the time of registration, it would not fall to be treated as a '*listed vehicle*' in accordance with section 130 of the Finance Act 1992, which requires that a vehicle be '*more than 30 years old at the time of registration*'. I accept this submission on behalf of the Respondent.
11. As regards the issue of the amount of the VRT imposed i.e. €720 as compared with the value of the vehicle (which was purchased for Stg£450) the position is governed by section 132(3) of the Finance Act 1992. Section 132(3) provides that where the level of CO2 emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity and 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, VRT shall be charged '*at the rate of an amount equal to the highest percentage specified in the Table to this subsection of the value of the vehicle or €720, whichever is the greater.*' [emphasis added].
12. In this case the CO2 emission level of the vehicle was not shown on the UK registration certificate and could not be determined by other standard means. This is not unusual for vehicles manufactured prior to 1997. It is possible for the percentage rate to be reduced on appeal where the Appellant produces alternative evidence as to the rate of emissions in respect of the vehicle however evidence of this nature was not adduced in this appeal. In conclusion therefore, I determine that the Respondent was obliged to apply VRT in accordance with the provisions of section 132(3) of the Finance Act 1992 as amended, which resulted in a VRT charge of €720.



Conclusion

13. Based on a consideration of the evidence and submissions and applicable legislation in this case, I determine that the Respondent was obliged to apply VRT in accordance with the provisions of section 132(3) of the Finance Act 1992, which resulted in a VRT charge of €720.
14. Accordingly the appeal is determined in accordance with section 949AL TCA 1997.

APPEAL COMMISSIONER

December 2016

