



AC Ref: 25TACD2016

[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') together with the imposition of a late registration charge in accordance with section 132(3A) of the Finance Act, 1992, as amended.
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 this appeal, is a [YEAR REDACTED] Volvo S40 1.6d Drive SE Lux, four door, registration [REDACTED]. The Appellant registered the vehicle on [DATE REDACTED] and mileage at the time of registration was 30,504km. The OMSP was initially valued at €18,202 giving rise to a VRT charge of €2,730. The Appellant appealed the OMSP valuation to the Central VRT office and a reduced OMSP of €16,400 was assigned. This reduction gave rise to a refund to the Appellant of €270 which was notified to the Appellant by letter dated [DATE REDACTED].



4. An additional sum of €1,127 was charged in respect of late registration of the vehicle in accordance with section 132(3A) of the Finance Act, 1992, as amended. Pursuant to section 146 of the Finance Act 2001, the Appellant appealed both the OMSP of €16,400 and the late registration charge.

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

5. 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. Every car is subject to VRT on first registration in the State.
6. The OMSP ascertained in relation to the vehicle at the NCTS office was €18,202. This was appealed to the Central VRT office and a reduced OMSP of €16,400 was assigned, resulting in a refund to the Appellant of €270. The Appellant's ground of appeal in relation to the OMSP of €16,400 was that it was excessive.
7. Valuations from [REDACTED] and from [REDACTED] were submitted for consideration in this appeal. All valuation models were same year models. The



vehicles had similar specifications to the vehicle in this case but differed in terms of mileage. The stated sale prices and odometer values were as follows €17,995 (41,000km), €18,950 (64,950km) €17,900 (76,408km), €14,450 (121,663km), €14,750 (88,998km), €14,950 (122,307km). The Appellant's vehicle had an odometer reading of 30,504km at the time of registration. The valuations furnished do not support the Appellant's view that the OMSP of €16,400 is excessive. Thus I determine, based on the evidence and submissions together with a review of the comparator vehicle valuations furnished, that the sum of €16,400 is a fair and reasonable OMSP valuation.

8. As regards the late registration charge of €1,127, the Appellant accepted that he/she was late in registering the vehicle. The Appellant did not challenge the charge on the basis of error in calculation or error in the application of section 62 of the Finance (no. 2) Act 2008. The Appellant submitted that he/she was unaware the charge would apply and thus requested it be set aside or reduced on this basis. I do not consider that I have discretion or jurisdiction to set aside the late registration charge on this basis.

Conclusion

9. Based on a consideration of the evidence and submissions in this case together with a review of the comparator vehicle valuations furnished, I determine €16,400 to be a fair and reasonable OMSP in relation to the vehicle. As regards the late registration charge, I do not consider that I have discretion or jurisdiction to set it aside on grounds contended for by the Appellant and thus I determine that it shall stand.
10. Accordingly the appeal is determined in accordance with section 949AL TCA 1997.

APPEAL COMMISSIONER

December 2016

