



58TACD2019

BETWEEN/

Appellant

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

Background

3. The Appellant purchased a Nissan Qashqai +2 360DCI vehicle in the UK and imported it into the State. The vehicle was first registered in the UK in 2013.
4. The vehicle was registered at the National Car Testing Service ("NCTS") on 10 January 2019 and given the registration number 131xxxx. An OMSP of €11,861 was assigned to the vehicle, resulting in VRT payable of €2,372.
5. 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 30 January 2019 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 01 March 2019.

6. The Appellant contends that the OMSP assigned to the vehicle, on registration, by the NCTS is overstated and contends for a reduced OMSP to be applied to the vehicle.
7. In addition, the Appellant disputes the late registration fee applied to the vehicle of €85.

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.]

(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 entered the State to the date of registration of the vehicle.]

Submissions and Analysis

8. The Appellant states in her submissions that in the course of her research prior to purchasing the vehicle she was unable to obtain a VRT figure from the Revenue online VRT calculator as the database only contained details of the Multi-Purpose Vehicle (MPV) body type of this particular vehicle and did not contain details of the hatchback version, the body type of the Appellant's vehicle.
9. The Appellant further states that there were three model variants for the Nissan Qashqai +2 hatchback listed on the VRT calculator. The Appellant submits that the variant with the highest specification and the most expensive to purchase indicated a VRT amount payable of €1,900. The Appellant further contends that the vehicle imported by the Appellant is a mid-spec model commanding a lower open market selling price.
10. In support of the above submission the Appellant has furnished the following documentation:



- a. A copy of a general advertisement for the Nissan Qashqai +2 360 (2008 - 2013) quoting a sales price of between £7,390 and £9,990. This advertisement was taken from a UK website and the sales price is quoted in Pound Sterling.
 - b. A copy of a general advertisement for the Nissan Qashqai +2 Tekna (2008 - 2013) quoting a sales price of between £6,730 and £11,350. This advertisement was taken from a UK website and the sales price is quoted in Pound Sterling
 - c. A copy of a general advertisement listing the sales price of various different models of the Qashqai, taken from a UK website. The Appellant has highlighted on the list the Qashqai N-Tec which the Appellant submits is an equivalent vehicle to the Qashqai 360. The Qashqai N-Tec is advertised on this list at a sales price of £22,175. The Qashqai Tekna is advertised at a sales price of £24,365
11. The Appellant has also furnished printouts from the Revenue online VRT calculator as follows:
- a. The VRT calculator for a Qashqai +2 360 containing a different statistical code from the Appellant's vehicle. The VRT calculator indicates an OMSP of €11,186 and a VRT amount payable of €2,684. The Appellant submits that this is an MPV model of the vehicle. The Appellant submits this is overvalued and not a true reflection of the OMSP
 - b. The VRT calculator for a Qashqai +2 360 containing the same statistical code as the Appellant's vehicle. The VRT calculator indicates an OMSP of €11,749 and a VRT amount payable of €2,349. The Appellant submits this is overvalued
 - c. The VRT calculator for a Qashqai +2 Acenta containing a different statistical code from the Appellant's vehicle. This vehicle has higher CO2 emissions than the Appellant's vehicle. The VRT calculator indicates an OMSP of €9,102



- d. The VRT calculator for a Qashqai +2 N-Tec containing a different statistical code from the Appellant's vehicle. This vehicle has higher CO2 emissions than the Appellant's vehicle. The VRT calculator indicates an OMSP of €11,513
 - e. The VRT calculator for a Qashqai +2 Tekna 108 containing a different statistical code from the Appellant's vehicle. This vehicle has similar CO2 emissions to the Appellant's vehicle. The VRT calculator indicates an OMSP of €9,413
 - f. The VRT calculator for a Qashqai +2 Tekna 106 containing a different statistical code from the Appellant's vehicle. This vehicle has higher CO2 emissions than the Appellant's vehicle. The VRT calculator indicates an OMSP of €10,709
12. In relation to the late registration fee of €85 applied to the vehicle, the Appellant submits that the vehicle was registered after the 30-day time frame as she was awaiting the statistical code for her vehicle which she had requested from the Revenue Commissioners.
13. The Respondent submits that the OMSP was arrived at by reviewing a number of vehicles of the same model that were advertised for sale around the time of registration of the vehicle.
14. In support of this the Respondent has furnished a printout of similar 2013 Nissan Qashqai vehicles advertised for sale on a well-known Irish car dealership website. There are a number of Nissan Qashqai +2 360's on the list and the lowest asking price is €11,995. The highest asking price is €16,995.
15. The Respondent contends that the allocation of body type MPV to this vehicle had no impact on the OMSP assigned. The Respondent further submits that "*Revenue's classification of Nissan Qashqai +2 Body Type MPV is used for vehicles with 5 seats and with 7 seats*".
16. The Respondent has not made any submissions in relation to the late registration fee.
17. 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. I don't believe the advertisements of similar vehicles for sale in the UK furnished by the Appellant significantly assists the Appellant in her appeal. The Appellant did not furnish any advertisements of similar vehicles for sale in the Irish market.

18. The Appellant has submitted printouts from the VRT calculator for various different vehicles. The printout for the vehicle with the same statistical code as the Appellant's vehicle indicates an OMSP of €11,749. This is in line with the OMSP assigned by the NCTS on registration of the vehicle.
19. The Appellant states that the VRT calculator has overstated the OMSP for the Qashqai +2 360 compared to other higher spec vehicles in the range. The Appellant has not presented sufficient evidence which supports this view.
20. In relation to the late registration fee, the legislation states "*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...*". The Appellant does not dispute that the vehicle was registered late. The Appellant submits however that the late registration occurred owing to the fact that the Appellant was awaiting information to be provided by the Revenue Commissioners in relation to the calculation by the Appellant of VRT payable on the vehicle. The Appellant seeks a review of the application of the late registration fee.
21. It is unclear to me how the awaited information could impact on the timing of the registration of the vehicle.
22. In my view, the use of the word '*shall*' per section 132 (3A) Finance Act 1992, indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the 30-day time frame for registration might be mitigated. In short, I do not consider that I have the authority or jurisdiction to direct that the late registration fee be waived or reduced.



23. 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.*

Conclusion

24. While the Appellant contended that the OMSP of €11,861 was overstated, the Appellant failed to adduce sufficient evidence in support of this contention and thus failed to discharge the burden of proof.

25. On a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine that the OMSP assigned to the vehicle of €11,861 to be an accurate OMSP.

Pursuant to the wording of section 132 Finance Act 1992, and in particular the use of the word “*shall*” per subsection 132 (3A) Finance Act 1992, I determine that I do not have discretion as regards the application of the late registration fee.

26. The appeal hereby is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS
APPEAL COMMISSIONER

15 NOVEMBER 2019

