



Ref: 101TACD2020

BETWEEN/

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 this appeal, is a Peugeot Allure Blue HDI S/S Auto first registered in the United Kingdom on 26 April 2018, now bearing the registration number REDACTED. The Appellant registered the vehicle and paid VRT of €4,515 based on an open market selling price (OMSP) determined by the Revenue Commissioners. The car was registered with the NCT on 30 July 2019.
4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was not revised by the Revenue Commissioners. This was notified to the Appellant by letter dated 10 September 2019. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the

determination. A notice of appeal was received by the Tax Appeals Commission on 13 September 2019.

Legislation

5. Section 145 of the Finance Act 2001:

(3) Any person who is the subject of a decision of the Commissioners in relation to any of the following matters [and who is aggrieved by the decision] may appeal to the Commissioners against that decision:

(a) the registration of a vehicle, or the amendment of an entry in the register referred to in section 131 of the Finance Act 1992;

(b) the determination of the open market selling price of a vehicle under [section 133] of the Finance Act 1992;

(c) the granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under [that section;]

(d) the liability to vehicle registration tax or the repayment of vehicle registration tax.]

(4) An appeal under this section shall be made in writing and shall set out in detail the grounds of the appeal.

(5) An appeal under this section shall be lodged by the person concerned with the Commissioners within 2 months from the date of the notification by the Commissioners of the decision concerned, or within such longer period as they may, in exceptional cases, allow.]

(6) An appeal shall, subject to subsection (12), be determined by the Commissioners within a period of 30 days from its lodgement with the Commissioners.

(7) The Commissioners may appoint one or more of their officers for the purposes of carrying out their functions under this section but no such officer shall determine an appeal under this section in respect of a decision he or she has made.

(8) The Commissioners shall notify in writing an appellant concerned of their determination of an appeal and the reasons for their determination.



(9) Where the Commissioners determine on appeal that the amount due is less than the amount paid, they shall repay the amount overpaid to the appellant concerned.

(10) Where the Commissioners determine on appeal that the amount due is greater than the amount paid, the appellant concerned shall pay the amount underpaid.

(11) For the purpose of determination of an appeal any goods or vehicles to which the appeal relates are to be produced to the Commissioners for inspection, if so required.

(12) Where an appeal has been lodged but not determined in accordance with subsection (6) there shall be deemed to have been a determination by the Commissioners on the last day of the period of 30 days from the date the appeal was lodged that the appeal was not upheld but such deeming shall cease to have effect if a determination is subsequently made by the Commissioners before a determination is made by the Appeal Commissioners under section 146 in respect of the matter concerned.

(12A) Where a person is required to furnish a return or to pay an amount of vehicle registration tax for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of vehicle registration tax.]

6. Section 146 of the Finance Act 2001:

(1) Except where section 145(3) applies, any person who—

(a) has paid an amount of excise duty,

(b) has received a notice of assessment under section 99A, or is otherwise called upon by the Commissioners to pay an amount of excise duty that, in their opinion, that person is liable to pay, or

(c) has received a repayment of excise duty or has made a claim for such repayment that has been refused,

[and is aggrieved by any of the matters referred to in paragraphs (a) to (c), may, subject to subsection (3), in respect of the liability to excise duty concerned or the amount of that liability, or the amount of the repayment or the refusal to repay, appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection (2)]



(1A) Any person aggrieved by any of the following matters may appeal the matter to the Appeal Commissioners [in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection (2)]:

(a) a determination of the Commissioners under section 145;

(b) a refusal to authorise a person as an authorised warehousekeeper, or to approve a premises as a tax warehouse, under section 109, or a revocation under that section of any such authorisation or approval;

[(c) a refusal to authorise a person as a registered consignee under section 109IA or a revocation under that section of any such authorisation;]

(d) a refusal to authorise a person as a registered consignor under section 109A or a revocation under that section of any such authorisation;

(e) a refusal to approve a person as a tax representative under section 109U(2) or a revocation under that section of any such approval;

(f) a refusal to grant a licence under section 101 of the Finance Act 1999 or a revocation under that section of any such licence that has been granted.

(2) The period specified for the purpose of making an appeal under this section is the period of 30 days after the date of—

(a) the payment of excise duty in the case of an appeal under subsection (1)(a),

(b) the notice of assessment or other notice calling for payment of the amount concerned in the case of an appeal under subsection (1)(b),

(c) the repayment or the notice of the refusal to repay in the case of an appeal under subsection (1)(c), or

(d) the notice of the determination, refusal or revocation concerned in the case of an appeal under subsection (1A).

7. 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]⁴⁷ 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

Appellant

8. The Appellant submitted:

- a) He purchased the vehicle in a Peugeot garage in Enniskillen. In order to determine the amount of VRT both the garage staff and himself input the specific car on the Revenue online calculator and inputted the specification of the car. The Revenue calculator suggested a VRT amount of €3,503 would accrue on the vehicle when presented for inspection.
- b) After purchasing the car, he presented the car for registration and was surprised to discover that the online calculator used by him prior to purchasing the vehicle and the calculator used by Revenue, differed substantially, resulting in a VRT charge of €4,515.
- c) That the Revenue used a code for a different Peugeot Blue Allure on the Revenue website which produced the higher charge for VRT as charged by Revenue.
- d) That the Revenue refused a refund as they said the vehicle model presented for inspection differed from the vehicle on which he and the garage staff had assumed to attract a lower VRT value.
- e) That according to the VRT calculator on the Revenue website, they have selected the wrong car and overcharged him VRT.

Respondent

9. The Respondent submitted:

- a) That the Appellant's ground for appeal is that the Appellant got an OMSP from the revenue website before he registered the vehicle which differed from the OMSP used at registration.
- b) That each individual make/model/version of a vehicle is allocated a unique statistical code by Revenue considering the characteristics of the particular vehicle.
- c) That the Appellant used an incorrect statistical code 45587050 when pre-determining what amount of VRT he would be to likely to pay when importing the vehicle. This code relates to a Peugeot 3008 Blue Allure (s/s) 120. This version of the was available between 1 March 2015 and 1 April 2017 with CO2 emissions of 108.



- d) That the correct statistical which Revenue deemed proper to the vehicle the subject of this appeal is 46487050. This version of a Peugeot 3008 Blue Allure (s/s) 120 was available as new between 1 December 2016 and 30 April 2018 with CO2 emissions of 104.

Analysis

10. 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 Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.
11. There is important caveat on the Revenue website when using the online calculator reminding users that a different amount may be payable if a different rate of CO2 emissions is applicable.
12. The VRT due in relation to the OMSP assigned in relation to the vehicle the subject matter of this appeal was €4,515. The Appellant's ground of appeal in relation to the OMSP assigned, was that the Revenue used an incorrect code in deciding the OMSP. The Appellant sought to have a more favorable OMSP assigned to the vehicle purchased.
13. The Respondent pointed out that the vehicle presented for OMSP valuation was in fact a 2018 version of the Peugeot with a statistical code of 46487050. The version on which the Appellant sought to rely on has a statistical code of 45587050 which the Respondent pointed out was not available in 2018.

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 assessment to tax, raised by the Respondent is incorrect.
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. The question to be answered in this appeal is whether, the Appellant can rely on his interpretation of Revenue's online calculator in assessing the OMSP of a vehicle prior to importation. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Appellant's interpretation of the OMSP of the vehicle in question is correct. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that he qualifies for a refund of the VRT paid.

Determination

17. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the OMSP determined by Revenue on inspection of the vehicle at registration is correct in relation to the vehicle.
18. The appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
3 April 2020

