



23TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Appeal Commissioners pursuant to section 146 of the Finance Act, 2001 (as amended) against a determination made by the Revenue Commissioners. The appeal concerns the value of a vehicle for the purposes of a charge to vehicle registration tax (VRT), the value being measured as the open market selling price (OMSP) of the vehicle at the time of the charging of the tax.
2. This appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts

3. The vehicle, the subject matter of this appeal, is an Audi A6 2.0 TDI Black Edition Quat 190PS 4DR (2017), bearing registration number [REDACTED]. The



- Appellant registered the vehicle on 20 July 2018. A Declaration was signed by the Appellant at the National Car Testing Service centre on 20 July 2018 which described the date of first registration of the vehicle as [REDACTED] 2017 and mileage at the date of registration of 20,661.
4. An OMSP of €43,623 was originally determined for the vehicle resulting in a VRT charge of €8,288 (a calculation of €43,623 @ 19%). The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal an OMSP of €36,661 was determined for the vehicle resulting in a VRT charge of €6,965 (a calculation of €36,661 @ 19%). This was notified to the Appellant by letter dated 1 October 2018. The revised OMSP gave rise to a refund to the Appellant of €1,323. 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 10 October 2018.

Legislation

5. Section 146 of the Finance Act, 2001 (as amended) provides:
- “(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 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).”*

6. Section 133 of the Finance Act, 1992 (as amended) provides:

“(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 enhancement or accessories have not been removed from the vehicle or not sold therewith for the purpose 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. All vehicles are subject to VRT on first registration in the State. The rate of VRT is calculated according to the CO₂ emissions. Section 133 of the Finance Act, 1992 (as amended) provides that the value of the vehicle for the purposes of calculating



VRT is the OMSP (as defined) of the vehicle at the time of charging the VRT. The OMSP of a vehicle other than a new vehicle is the price, inclusive of all taxes and duties, which the vehicle might reasonably be expected to fetch on a first arm's length sale in the State by retail.

8. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €36,661. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners of €36,661 was excessive. In the notice of appeal, the Appellant submits that the VRT charge for the vehicle the subject matter of the appeal should be €4,000, which would calculate as an OMSP of €21,053 based on the VRT rate of 19%. In a subsequent e-mail from the Appellant dated 25 March 2019, the Appellant submits that the OMSP should be €34,850. In support of the appeal, the Appellant presented the following documentary evidence:

- (a) Printout from an Irish website advertising vehicles for sale of an Audi A6 S-Line 190BHP S Tronic (2017) with 39,000 kilometres for €31,950.
- (b) Printout from an Irish website advertising vehicles for sale of an Audi A6 2.0 TDI SE Executive Quattro 190PS 4DR (2017) with 26,000 kilometres for €34,750.
- (c) Printout from an Irish website advertising vehicles for sale of an Audi A6 2.0 TDI S-Line Ultra Black Edition (2017) with 19,000 miles for €37,850.

The average of the three valuations is €34,850. An OMSP of €34,850 would give rise to a VRT charge of €6,621 (a calculation of €34,850 @ 19%).

9. At the date of registration of the vehicle in the State the OMSP was determined at €43,623. On appeal to the Revenue Commissioners the OMSP was determined at €36,661. The Revenue Commissioners have stated that the revised OMSP was arrived at by reference to three Irish comparator vehicle valuations (€38,685,



€37,139 and €39,950) with the average of the three valuations being €38,591. The Revenue Commissioners reduced the average of the valuations by 5% to calculate an OMSP of €36,661. The Revenue Commissioners presented the following documentary evidence:

- (a) The average of three valuations of €43,999, €43,500 and €41,450 reduced by a percentage adjustment to calculate a value of €38,685. The three valuations were:
 - (i) Printout from an Irish website advertising vehicles for sale of an Audi A6 2.0 TDI S-Line Black Edition (2017) with 13,999 kilometres for €43,999.
 - (ii) Printout from an Irish website advertising vehicles for sale of an Audi A6 2.0 TDI Ultra Black Edition 190PS (2017) with 12,252 kilometres for €43,500.
 - (iii) Printout from an Irish website advertising vehicles for sale of an Audi A6 2.0 TDI Ultra Black Edition 190PS (2017) with 19,313 kilometres for €41,450.
 - (b) Printout from a car guide for an Audi A6 2.0 S-Line 190 (2017) for €37,139.
 - (c) Printout from an Irish website advertising vehicles for sale of an Audi A6 2.0 S-Line Auto TDI Ultra Black Edition 190BHP (2017) with 11,265 kilometres for €39,950.
10. In accordance with section 133 of the Finance Act, 1992 (as amended) the OMSP of a vehicle other than a new vehicle is the price which the vehicle might reasonably be expected to fetch on a first arm's length sale in the State by retail at the time of registration. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, and having regard to variations in model, specification and mileage, I am satisfied that €36,661 is a fair and reasonable OMSP in relation to the vehicle.



Determination

11. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €36,661 as the OMSP of the vehicle the subject matter of the appeal. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

28th NOVEMBER 2019

A notice in writing requiring the Appeal Commissioners to state and sign a case for the opinion of the High Court was received by the Tax Appeals Commission in respect of this determination.

