



19TACD2017

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'). 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

2. The vehicle, the subject matter of this appeal, is a 2009 Honda Accord 1997cc VTEC ES petrol, four door, registration 09KE17309. The Appellant registered the vehicle on 7 May 2016 and mileage at the time of registration was 42,737km.
3. The OMSP was initially valued at €8,161 giving rise to a VRT charge of €1,877. The Appellant appealed the OMSP valuation to the Central VRT office and an OMSP was determined at €8,000 following receipt of valuation from a motor dealer. Applying an adjustment of 10%, a reduced OMSP of €7,200 was assigned. This reduction gave rise to a refund to the Appellant of €221 which was notified to the Appellant by letter in May 2016.
4. An additional sum of €80 was initially charged in respect of late registration of the vehicle and the Appellant appealed both the OMSP of €7,200 and the late registration

charge pursuant to section 146 of the Finance Act 2001. The penalty amount of €80 was subsequently repaid by the Respondent and no longer forms part of this appeal.

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. 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 Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State by retail.
6. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €8,161. This was appealed to the Central VRT office and a reduced OMSP of €7,200 was assigned resulting in a refund to the Appellant of €221. The Appellant's ground of appeal in relation to the OMSP of €7,200 is that it is excessive.
7. As regards the condition of the vehicle, the Appellant submitted that the vehicle was visibly damaged when it was purchased and that the OMSP did not adequately take account of this. The Appellant furnished a vehicle inspection report dated March 2016 which noted that '*vehicle bodywork was found in below average condition with evidence of panel damage and repairs, repair work to the front and rear bumpers, LH front and rear wings, LH front door of the vehicle has been carried out to a below average visible standard*'.
8. An OMSP valuation is concerned with the value the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State, at the time of



registration. For VRT registration purposes, a vehicle must be '*...capable of achieving vehicle propulsion at the time of registration..*' to fall within the definition of a '*mechanically propelled vehicle*' per section 130 of the Finance Act 1992, as amended. The vehicle the subject matter of this appeal is a mechanically propelled vehicle for the purposes of s.130 and was registered accordingly. In this case, the repairs had been carried out prior to registration and the vehicle was valued in the condition in which it was presented at the time of registration.

9. In support of his position that the OMSP was excessive, the Appellant submitted that prior to purchasing the vehicle, he checked the amount of VRT likely to be payable, using the VRT calculator on www.ros.ie. He stated that the amount of VRT payable in relation to Honda Accord vehicles on the website was between €506 and €940. The Appellant furnished website print outs in support of these figures. The Appellant stated that these figures informed his budget but that the VRT payable in relation to the vehicle the subject matter of this appeal was far greater than the website indicated.
10. The Respondent submitted that the valuations contained on the screenshots were not relevant to the valuation of the OMSP in this case. The screenshots showed VRT payable amounts in relation to a vehicle which, the Respondent submitted, related to the vehicle model available on the market from 1998 to 2001 with a CO2 rating of 204g/km. The Respondent submitted that this comparator was not an adequate guide to determining the OMSP in respect of a 2008 vehicle with 152g/km CO2 rating.
11. The Appellant stated that there was no disclaimer on www.ros.ie informing him that the figures generated were not to be relied upon as exact. I refer to the website print outs furnished by the Appellant and I note the following text at paragraph 1 on the right hand side of the page; '*The amount shown is that payable on the date of enquiry. A different amount may be payable if the Open Market Selling Price has changed and/or if a different rate of CO2 emissions is applicable.*' Paragraphs 3 and 4 provide; '*An additional charge may be raised if it is found that a vehicle has remained in the State, unregistered, for more than 30 days. The assessment relates only to a vehicle of the above description that is in good condition and is limited to Revenue mileage norms. Additional VRT may be payable if the vehicle is fitted with chargeable enhancements/accessories.*'



12. In addition, the Respondent furnished screenshots of the website in 2016 showing the VRT calculator. The screenshots provide statements in red bold font as follows: *'Please note: Selecting details not matching your vehicle will give an incorrect calculation of VRT'* and *'Modifying the CO2 value may indicate that you selected an earlier or later version and may produce an invalid estimate.'* I am satisfied that the website facility was suitably qualified.
13. The Appellant stated that his vehicle is a 2008 vehicle which was manufactured in 2007 and therefore is an older 7th generation model. However, as the Respondent correctly submitted, the operative date for the purposes of VRT is the registration date, not the date of manufacture. The Respondent submitted a valuation report in respect of the vehicle showing a valuation in the sum of €8,000. The Appellant did not submit valuation reports nor comparator vehicle valuations.

Conclusion

14. Based on a consideration of the evidence and submissions together with a review of the documentation I determine €7,200 to be a fair and reasonable OMSP in relation to the vehicle. The appeal hereby is determined in accordance with section 949AL TCA 1997.

APPEAL COMMISSIONER

September 2017

