



**62TACD2019**

**BETWEEN/**

**NAME REDACTED**

**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 in accordance with section 949U of the Taxes Consolidation Act, 1997.

**Facts**

3. The vehicle, the subject matter of this appeal, is a Land Rover Range Rover 2.0 Evoque TD4 HSE Dynamic 5DR (2016), bearing registration number



[REDACTED]. The Appellant registered the vehicle on 8 December 2016. A Declaration signed by the Appellant at the National Car Testing Service centre on 8 December 2016 describes the date of first registration of the vehicle as [REDACTED] 2016 and mileage at the date of registration of 12,075.

4. An OMSP of €57,257 was originally determined for the vehicle resulting in a VRT charge of €11,237. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal an OMSP of €50,825 was determined for the vehicle resulting in a VRT charge of €10,015. This was notified to the Appellant by letter dated 16 January 2017. The revised OMSP gave rise to a refund to the Appellant of €1,222. 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 February 2017.

### **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 CO<sub>2</sub> 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 €50,825. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners of €50,825 was excessive. In support of the appeal, the Appellant provided printouts from websites advertising vehicles for sale – from Irish websites and a UK website. The Appellant relies on the printouts from the UK website as providing details of vehicles which the Appellant considers should be used as comparator vehicle valuations. The Appellant calculates an OMSP of €45,076 based on an average price for ten vehicles of Stg£38,313 and converting to a euro equivalent price of €45,076. A previous determination (07TACD2018) states that as a general rule a comparative vehicle analysis should be based on Irish valuations. The Irish websites provided by the Appellant describe values of €49,950, €49,995, €49,950 and €52,000.
  9. At the date of registration of the vehicle in the State the OMSP was determined at €57,257. On appeal to the Revenue Commissioners the OMSP was determined at €50,825. The Revenue Commissioners have stated that the revised OMSP was arrived at by reference to two Irish comparator vehicle valuations of €55,000 (obtained from a car dealer) and €52,000 (obtained from a website advertising vehicles for sale). The Revenue Commissioners reduced the average of those valuations by 5% to determine a revised OMSP of €50,825.
  10. The same comparator vehicle valued at €52,000 was provided by both parties.
  11. 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, 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. The OMSP is ascertained as the price in the State, and not elsewhere. 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 the variations in the comparator vehicle valuations in terms of model, specification and mileage, I am satisfied that €49,400 is a fair and reasonable OMSP in relation to the vehicle.

### **Determination**

12. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €49,400 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.

**COMMISSIONER FIONA McLAFFERTY**

**5<sup>th</sup> NOVEMBER 2019**

