



Ref: 102TACD2020

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 Lexus Model RX 450 H SE-I CVT first registered in the United Kingdom on 23 December 2010, now bearing the registration number REDACTED. The Appellant registered the vehicle and paid VRT based on an open market selling price (OMSP) of €15,212 determined by the Revenue Commissioners. The car was registered with the National Car Testing Service (NCT) on 14 August 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 9 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 27 November 2019.

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

7. The Appellant submitted:

- a) That he examined the VRT calculator on the Revenue website in advance of presenting his vehicle for registration. The Revenue online calculator suggested a VRT amount of €1,954 would accrue on the vehicle when presented for inspection. He submitted a print out of this estimate from the Revenue website in evidence.
- b) That he presented the car for registration and was advised 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 €3,198 rather than €1,954 as anticipated.
- c) That his vehicle matched the statistical code he used (40386953) in advance of presenting the vehicle for registration i.e. a Lexus Hybrid with CO₂ emissions of 145 g/km. Revenue used a different statistical code (40286953) of a similar vehicle but that vehicle had CO₂ emissions of 148 g/km., when determining the amount of VRT due.
- d) That as he was working it was necessary to register the vehicle and he paid the VRT requested but was advised to appeal the matter.



- e) That on first stage appeal Revenue refused a refund as they said the vehicle model presented for inspection differed from the vehicle on which he had assumed to attract a lower VRT value.
8. The Respondent submitted:
- a) That the OMSP is the price, inclusive of all taxes and duties, which, in the opinion of the distributor, a new vehicle of the model and specification, including factory/distributor-fitted enhancements and accessories, would fetch on the first arm's length, retail sale in the open market in the State.
 - b) That the OMSP is adjusted for depreciation on used vehicles.
 - c) That the OMSP assigned to the particular vehicle was €15,212 on registration.
 - d) That the Appellant used an incorrect statistical code when pre-determining what amount of VRT he would be likely to pay on registration of the vehicle. The statistical code used by the Appellant relates to a car available between 1 November 2011 and 30 November 2015. The Appellant's car was first registered in the UK on 23 December 2010.
 - e) That the correct statistical code (40286953) which Revenue deemed proper to the vehicle the subject of this appeal is an exact match to the vehicle presented in every respect apart from the CO2 emissions. Revenue altered the CO2 emissions to 145 k/gm on registration to match the Appellant's car
 - f) That this version of a Lexus 450 H 3.5 SE-I CVT 5 Door Automatic was available between 3 July 2009 and 31 March 2012.

Analysis

9. 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.
10. The OMSP assigned in relation to the vehicle the subject matter of this appeal was €15,212. 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.



11. The Respondent pointed out that the vehicle presented for OMSP valuation was in fact a 2010 version of the Lexus with a statistical code of 40286953. The version on which the Appellant sought to rely on has a statistical code of 40386953 which the Respondent pointed out was not available in 2010 when the Appellant's car was first registered in the UK.

Conclusion

12. 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.
13. 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.'*
14. 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 registration. 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

15. 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 of €15,212 determined by Revenue on inspection of the vehicle at registration is correct in relation to the vehicle.
16. The appeal hereby is determined in accordance with section 949AL TCA 1997.





CHARLIE PHELAN
APPEAL COMMISSIONER
6 April 2020

