



Ref: 107TACD2020

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 a BMW 520 D F10 M Sport 4 door Auto first registered in the United Kingdom, bearing registration number



REDACTED. The Appellant registered the vehicle and paid VRT of €5,659 based on an open market selling price (OMSP) of €33,289 determined by the Revenue Commissioners. The car was registered with the NCT on 13 June 2018 having being held in stock by the Appellant since 27 April 2018.

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 11 July 2018. 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 12 July 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.”*

7. Section 135B 6 (a) of the Finance Act, 1992 (as amended) provides where:

an authorised person pays an amount of vehicle registration tax in respect of a vehicle which was not due, any repayment of the overpaid amount and interest (if any) payable under section 105D shall, subject to the provisions of this



subsection, be made to the authorised person on condition that the authorised person pays the amount of the repayment and interest to the person who was the registered owner of the vehicle at the time of the registration of the vehicle.

Submissions and Analysis

8. 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.
9. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €33,289. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners was excessive. The Appellant submits that the OMSP of the vehicle the subject matter of the appeal should be €28,750. The Appellant formed this view on the basis of advertisements for three similar vehicles on an Irish website (Carzone) advertising vehicles for sale and provided the supporting print outs from the Carzone website in evidence. The Appellant's evidence showed three cars with prices ranging from €25,900 to €29,000 with an average price of €27,298. In addition, the Appellant stated in its appeal that the vehicle was sold for €28,750 after having it on sale for a number of months. The Appellant did not provide evidence of having sold it for this price.
10. At the date of registration of the vehicle in the State the OMSP was determined at €33,289. On 1st stage appeal to Revenue the OMSP was not revised by the Revenue Commissioners.

11. Revenue sought to resolve the matter in advance of a hearing by the Tax Appeals Commission. In a letter to the Appellant dated 6 September 2018 Revenue stated that it further reviewed the OMSP of the vehicle by reference to information on four vehicles sourced from the same Irish website advertising vehicles for sale. The valuations allowing a 10% discount (on the website price), ranged from €31,455 to €32,953. The Revenue advised the Appellant that the average of these prices at €33,255 was in line with the OMSP at registration and 1st stage appeal. In these circumstances Revenue saw no reason to revise the OMSP further. The Revenue Commissioners submit that whilst a revision to €32,953 was warranted, such revision would only result in a very small (€3) net refund to the Appellant. Accordingly, the Respondent offered no refund to the Appellant.
12. The evidence provided by the parties are not exact comparators to the vehicle in question as the odometer readings in miles differ considerably. The closest comparators of the vehicle in question are €29,000 with 48,467 odometer miles provided by the Appellant and €33,255 with 40,469 odometer miles provided by the Respondent. The vehicle itself had 44,071 odometer miles at registration in the State. I have determined that a median of these valuations of €31,128 is a fair and reasonable OMSP in relation to the vehicle.
13. 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. The Appellant relied on an Irish website advertising vehicles for sale to support their version of what the OMSP should be. The Respondent has examined the matter three times – at registration, at 1st stage review and on further examination to settle the matter. In the later examination Revenue used the same Irish website advertising vehicles for sale to arrive at an average valuation in line

with its initial and reviewed valuation. Revenue has found on all occasions that the initial OMSP was a fair and reasonable valuation.

14. 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 €31,128 is a fair and reasonable OMSP in relation to the vehicle.

Determination

15. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 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. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €31,128 as the OMSP of the vehicle the subject matter of the appeal. The Appellant (or the first registered owner) is therefore entitled to a refund of the excess VRT of €367 less any administration charges. Section 135B (6) Finance Act 1992 as amended provides that the Appellant, an authorised person for VRT purposes (a TAN holder) is obliged to pay the amount of this refund to the first registered owner. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.



CHARLIE PHELAN
APPEAL COMMISSIONER

28th January 2020

