



114TACD2020

BETWEEN/

APPELLANT

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 **REDACTED** 5dr Automatic first registered in the United Kingdom on 25 September 2018, now bearing the registration number **REDACTED**. The Appellant registered the vehicle and paid VRT based on an open market selling price (OMSP) of €75,112 determined by the Revenue Commissioners. The car was registered with the National Car Testing Service (NCT) on 11 July 2019. The Appellant paid VRT of €23,284 which equates to 31% of the OMSP as determined by Revenue.
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 23 July 2019. The

Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the determination.

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 that:

- a) Revenue’s Current OMSP is not reflective of the vehicle’s current actual valuation in the Irish market.
- b) The current OMSP Data for comparable vehicles in the Irish Market indicate a range between €57,000 to €79,000 (2019- 191D Model).
- c) Revenue’s first stage review based the OMSP at “what the vehicle might reasonably have been expected to fetch on a first arms retail sale” and did not consider the appeal documentation presented which included hard facts of the actual OMSP for his make and model of vehicle.
- d) He had the vehicle valued by the Sales Executive REDACTED from the REDACTED, who valued the car at €50,000 trade value.
- e) He computed the purchase price paid as being €51,284 based on the UK VAT exclusive price and current exchange rates.
- f) His Self- Assessment of the vehicle’s open market selling price to be €58,385.04. This is based on 5 vehicle comparison datasheets for similar models of car and a year of registrations 2017 to 2019.



8. The Appellant provided the valuations for similar cars as follows:

- 2017 versions ranging in price from €56,950 to €58,950
- 2018 versions ranging in price from €48,612 to €58,950
- 2019 version with an indicative price of €89,950

9. The Respondent submitted that:

- a) Revenue values vehicles based on their OMSP, age and associated depreciation, state of the vehicle and value of similar cars for sale in the State.
- b) The vehicle in this case, REDACTED 5dr Automatic, is not frequently available for sale in the State.
- c) The appellant submitted examples of similar vehicles for sale in the State, however most of these were older with a smaller engine and a lower specification.
- d) In this instance, the actual purchase price of the vehicle was used in valuation of the OMSP as follows:
Purchase Price = Stg£44,950
Exchange rate 1.153 = €51,827
VRT payable at 31%, so OMSP calculated on basis of Purchase Price being 69% of Irish OMSP
This gives OMSP of vehicle as €75,112 and VRT at 31% = €23,284
- e) Details from both the Carzone and SIMI websites indicated the actual manufacturer's recommended retail price for such a vehicle in Ireland as being €93,150. The appellant's vehicle was 9 months old when brought into the State and Revenue applied a reduction of value at importation of approximately €18,000 (nearly 20%) to €75,112 to allow for 9 months depreciation.
- f) Using both the price paid by the appellant and the depreciated new vehicle recommended retail price, supports the valuation of the vehicle assigned by Revenue.

Analysis

10. The OMSP assigned in relation to the vehicle the subject matter of this appeal was €75,112. The Appellant sought to have a more favorable OMSP assigned to the vehicle purchased. He proffered alternative prices as indicated in advertisements for similar cars. He also proffered an alternative purchase price for his vehicle proposing the UK VAT exclusive price converted to euro as the base price.



11. The Respondent pointed out that the vehicles proffered for alternative OMSP valuation were not the same version or year of the car presented for inspection on which the OMSP of €75,112 was applied.
12. The Respondent outlined that the basis of its valuation was the Sterling value paid for the car from which it calculated an Irish OMSP based on this being exclusive of Irish VRT. This formula simply assumed that the purchase price represented 69% (i.e. 100% minus 31% based on the rate of VRT applicable to the car) of the Irish OMSP.
13. The Respondent further validated this OMSP on appeal with details from both the Carzone and SIMI websites that indicated the actual manufacturer's recommended retail price for such a vehicle in Ireland as being €93,150. This was further reduced by approximately 20% to take account of the fact that the car was 9 months old to substantiate the OMSP assigned to the vehicle on registration.
14. 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.*

Conclusion

15. 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.
16. 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.'*
17. 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 reduction in the OMSP assigned at registration.

Determination

18. 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 €75,112 determined by Revenue on inspection of the vehicle at registration is correct in relation to the vehicle.

19. The appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
6 April 2020

