



Ref: 122TACD2020

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 2018 Volkswagen Tiguan TDI SE NAV 150 first registered in the United Kingdom in January 2018, now bearing the registration number **REDACTED**. The Appellant registered the vehicle and paid VRT based on an open market selling price (OMSP) of €29,863 determined by the Revenue Commissioners. The car was registered with the National Car Testing Service (NCT) on 12 September 2019. The Appellant paid VRT of €5,674 which equates to 19% 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). Following the first stage appeal to Revenue, the OMSP was revised downwards by the Revenue Commissioners. The new OMSP of

€26,800 and repayment due of €582 was notified to the Appellant by letter dated 21 November 2019. The Appellant was still aggrieved by the revised determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the revised determination on 25 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 in his first stage appeal to Revenue submitted that:
 - a) The Revenue website points out that *“the VRT calculator will usually give a good estimate of the VRT due if registering a particular vehicle on that same day. However, this is an estimate only. Revenue only calculate the exact VRT when a vehicle is presented for registration.”*
 - b) Accordingly, he wished to point out that his vehicle’s unique history and condition were not taken into consideration.
 - c) He believed the OMSP was an estimate on the day of registration and not an accurate valuation of the OMSP of the vehicle.
8. The Appellant went on to explain to the first stage appeal in detail why he believed the OMSP assigned was incorrect by describing
 - a) The damage to the vehicle and he itemised costs to him of repairing the vehicle as well as acquiring a new spare key. These costs amounted in total to €2,348.67. He provided invoices in support of this expenditure.
 - b) He alleged that the National Test Centre (NCT) official acting on behalf of Revenue failed to examine the damage to the vehicle at the inspection for registration.



- c) He also stated that he had to purchase other items to improve the condition of the car. He didn't offer any prices or invoices in support of these costs.
 - d) He provided three different valuations of the OMSP from two Irish dealers and one from Volkswagen UK for consideration by Revenue. The Irish valuations amounted to €23,000, and €22,495 whilst Volkswagen UK offered valuations ranging in price from €18,310 to €20,260.
 - e) He provided evidence from the VW websites in Ireland and in the UK that his vehicle was assigned the brand SE NAV BMT in the UK but called a comfortline model (CL BMT M6F) in Ireland.
 - f) He proffered that his vehicle manufactured in 2017 is a lower specification than a 2018 Highline R-Line and so should be valued at €25,000 less a reduction of 10% for being in poor condition giving an OMSP of €22,500.
 - g) He concluded that the VRT chargeable should be reduced to €4,275 and sought a repayment of €1,399. He supported this conclusion by referring to the estimate provided by the Irish Volkswagen dealers
9. The Appellant provided all of the material and evidence from the first stage appeal to TAC in support of the appeal herein.
10. The Appellant submitted further information to TAC in support of his instant appeal as follows:



- a) That he sold his vehicle in January 2020 for €25,700 and wished to have that sale price considered in conjunction with other facts in his appeal.
 - b) The Appellant submitted three extracts from the Revenue VRT calculator of the same car model but with higher specifications than his (such as sunroof, alloy wheels reversing camera body kit etc.) vehicle.
 - c) He proffered, that the VRT calculator assigned a higher depreciation rate to these vehicles resulting in a lower OMSP, in support of his argument that the OMSP assigned to his vehicle was excessive. He offered support for his argument in this matter in the published TAC case 71TACD2019.
11. The Respondent submitted that the initial OMSP was arrived at using the correct statistical code for the Appellant's vehicle 48286737 which presented an OMSP of €29,863.
 12. The Respondent on first stage appeal proposed a 10% deduction in respect of the invoices presented and offered a revised OMSP of €26,800 with a consequent refund to the Appellant of €582.
 13. The Respondent in reviewing the OMSP in its first stage appeal process verified the OMSP of the vehicle in December 2019 as being €28,632 based on an average of three valuations submitted from Franchised dealerships thus giving confidence to its initial OMSP arrived at in September 2019.
 14. The Respondent submitted that the fact that the Appellant sold the car for less than the calculated OMSP is not grounds to reduce the OMSP as there is an element of risk to a purchaser from a private person as against a dealer who could provide vehicle history and warranty.
 15. The Respondent submitted an explanation as to the different rates of accelerated depreciation applied to different models of vehicles with higher specifications and submitted evidence in support of its contention that the Appellant's vehicle was not treated disproportionately in regards its depreciation tables.
 16. The Respondent submitted and quoted from Section 133 of the Finance Act, 1992 (as amended) and from previous TAC Determinations that the OMSP "*is 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"

Analysis

17. The Respondent proposed a revised OMSP of €26,800 at first stage appeal in relation to the vehicle the subject matter of this appeal. This proposed OMSP was arrived at by making an allowance for the invoices submitted by the Appellant in support of the damage evident on the vehicle at registration. In the event this proposal was rejected by the Appellant.
18. The amount allowed €2,987 was greater than the full cost of repairs €2,349 as evidenced by the Appellant.
19. 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, quotations for his own car and advised that the car was sold for less than the revised OMSP proposed. He proposed an OMSP of €22,500 for the purposes of calculating the correct VRT due.
20. 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.* In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.

Conclusion

21. 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.



22. 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.'*
23. 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

24. 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 revised OMSP of €26,800 proposed by Revenue in its first stage review of the OMSP assigned to the vehicle at registration is correct in relation to the vehicle. Accordingly, the Appellant is entitled to a refund of €582 as proposed by Revenue in that review.
25. The appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
9 April 2020

