



165TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Tax Appeals Commission (TAC) pursuant to s.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 s.949U of the Taxes Consolidation Act, 1997.

Facts



3. The vehicle, the subject matter of this appeal, is a Nissan S-cargo G20 03DR first registered in Ireland in 1989 as a commercial vehicle, bearing registration number **REDACTED**.
4. The Appellant purchased the vehicle as a van on 21 September 2017 and subsequently converted the vehicle to passenger motor vehicle.
5. By letter dated 18 April 2018 the Respondent advised the Appellant of the additional VRT amount arising from the conversion of the vehicle from a commercial van to a passenger motor vehicle.
6. The Appellant paid the additional VRT of €1,696 based on an open market selling price (OMSP) of €6,000 determined by the Revenue Commissioners on 18 April 2018.
7. The Appellant made a first stage appeal to the Revenue Commissioners under s.145 of the Finance Act, 2001 (as amended). On appeal, the OMSP was not revised by the Revenue Commissioners and this was communicated to the Appellant in a letter dated 11 October 2018. The Appellant was aggrieved by the determination of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commissioners (TAC) against the determination. A Notice of Appeal was received by the Tax Appeals Commission on 1 May 2019.
8. The TAC permitted the late appeal on 28 May 2019 following the acceptance of the Appellant's reasons in making a late appeal

Legislation

9. 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). ”*

10. Section 131 of the Finance Act, 1992 (as amended) provides:

(3)(a)Where a registered vehicle is converted, the prescribed particulars shall be declared to the Commissioners for the purpose of the entry in the register of particulars in relation to the conversion and the Commissioners may enter in the register such particulars in relation to the conversion as they consider appropriate.

(b)The owner of a vehicle which has been converted shall deliver to the Commissioners with the declaration under paragraph (a) in relation to the conversion the certificate in relation to the vehicle and the Commissioners shall enter on the certificate such particulars in relation to the conversion as they consider appropriate.

11. Section 132 of the Finance Act, 1992 (as amended) provides:

(1)[Subject to the provisions of this Chapter] and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid [at whichever of the rates specified in subsection (3) is appropriate] on—

(a)the registration of a vehicle, and

(b)a declaration under section 131(3).

[(2) Vehicle registration tax shall become due and be paid at the time of the registration of a vehicle or the making of the declaration under section 131(3), as may be appropriate, by—

(a)an authorised person in accordance with section 136(5)(b),

(b)the person who registers the vehicle,

(c)the person who has converted the vehicle where the prescribed particulars in relation to the conversion have not been declared to the Commissioners in accordance with section 131(3),

(d)the person who is in possession of the vehicle that is a converted vehicle which has not been declared to the Commissioners in accordance with section 131(4),

and where under paragraphs (a) to (d), more than one such person is, in any case, liable for the payment of a vehicle registration tax liability, then such persons shall be jointly and severally liable.]

12. 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

13. The Appellant submitted that the OMSP used by the Respondent is excessive and the valuation of his vehicle is between €1,250 and €3,500. The Appellant provided evidence in support of his views on the OMSP in the form of invoices showing the amount both he and the previous owner paid for the vehicle i.e. €1,700 and €2,400 respectively.
14. The Appellant submitted that there were similar vehicles on sale from www.adverts.ie at €1,250 in May 2018 and at €3,500 in May 2017.
15. The Appellant submitted print outs from a UK website showing similar vehicles for sale in the UK for stg£1,800 and stg£1,750. Both of these vehicles were commercial type vehicles.

16. The Appellant submitted that he was not made aware of how the Respondent arrived at the OMSP of €6,000 for his vehicle following its conversion to a passenger motor vehicle. However, the Appellant provided a copy of a letter from the Respondent dated 24 April 2018 in which the Respondent advised of its use of an outside consultant in ascertaining the OMSP of rare types of vehicles of this age and very low mileage.
17. The Appellant submitted that he believed the mileage recorded of 46,321km at the time of purchase was incorrect. He submitted and provided photographic evidence of an indication on the vehicle's timing belt that the actual mileage was 74,000km sometime in 2016. Consequently, he believed, based on an average mileage of 8,000km, the correct mileage to be approximately 90,000km at the point of conversion to a passenger motor vehicle.
18. The Respondent provided evidence of how the OMSP was arrived at. The Respondent sought the advice of an independent consultant because the vehicle was a rare vehicle with low mileage of 46,321km. The Respondent provided the details of the vehicle and asked the following question to the independent valuer: *"This was imported as a 2 seat N1 commercial from Japan in 2007 and now has been converted to a M1 3-seater. I need an OMSP as a 3 seat M1 as described above."*
19. The independent valuer responded as follows:
"Valuation €6,000 The valuation provided in this case is based on the vehicle detail set out above and our research of the vehicle and current market."
20. The Respondent submitted that it arrived at the VRT charge as follows:
- | | |
|---------------------------|--------|
| OMSP €6,000 X 36% VRT | €2,160 |
| VRT paid as a Van | € 464 |
| Net VRT due on conversion | €1,696 |

21. The Respondent submitted that it was not in a position at the first stage appeal, to consider any adjustment to the stated mileage in the absence of any proof that the odometer reading was incorrect, on the initial presentation of the vehicle when converted to a passenger motor vehicle.
22. Following a request from the Tax Appeals Commission, the Respondent provided details of the mileage on the vehicle's odometer of 27,457km when presented for inspection on importation from Japan on 4 September 2007.
23. Following a request from the Tax Appeals Commission, the Respondent provided an alternative and revised OMSP of the vehicle from an independent valuation service if the vehicle's odometer was 90,000km.

Analysis

24. 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.
25. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €6,000. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners was excessive. The Appellant submitted an alternative OMSP and sought a revaluation because he believed the odometer reading was incorrect.
26. The Appellant provided photographic evidence from the vehicle of a mark indicating that the timing belt was changed at 74,000km. If this was validated as

being correct the OMSP arrived at by the independent valuer would require some alteration. I have concluded that the evidence supplied is credible as the van/car was constructed in 1989, used as a van in Japan until 2007, used as a van by two businesses in Ireland until purchased by the Appellant in 2017. The Respondent may have been naïve in believing the odometer reading at the date of purchase, but his assertion of a possible mileage at the date of conversion of 90,000km is credible and represents a reasonable level of usage over the lifetime of the vehicle.

27. The Respondent did not consider the Appellant's submission in relation to the estimated odometer reading of 90,000km at the first stage appeal and confirmed the OMSP as advised by the independent valuer which was based on an odometer reading of 46,321. The vehicle was imported from Japan in 2007 as a used vehicle and underwent an examination by the Respondent in determining its OMSP for the purposes of applying the VRT of €464 paid at that time. The Respondent provided evidence of the odometer reading of 27,457km in 2007 from its records.
28. The vehicle had been used by at least one person in Japan from its first registration in 1989 and by two users in Ireland following its importation before being purchased by the Appellant. I find it unlikely that its average mileage over 28 years was less than 2,000km annually. I also find it unlikely even if the Japanese mileage of 27,457km was correct at the time of importation that two Irish users of the commercial vehicle over a period of 10 years would only use the vehicle for 18,864km.
29. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and credible evidence provided in relation to the critical requirement of the changing the timing belt of the vehicle and the unlikelihood of the accuracy of the odometer I have determined that the OMSP assigned is excessive.

30. The Respondent has provided an alternative OMSP of €5,000 to the TAC based on an estimated odometer reading of 90,000km at the date of conversion and I am satisfied that this provides a fair reflection of the OMSP for the vehicle.

Determination

31. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €5,000 as the OMSP as correct, in respect of the vehicle the subject matter of this appeal.

32. The Appellant is entitled to refund of VRT as follows:

OMSP €5,000 X 36% VRT	€1,800
VRT paid as a Van	€464
Net VRT due on conversion	€1,336
VRT Paid	€1,696
Refund due	€360

33. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
7 SEPTEMBER 2020

