



167TACD2020

BETWEEN/

APPELLANT

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

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 in respect of a vehicle brought into the State from the UK.
2. 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. The appeal also concerns the rate of VRT charged on the importation of the vehicle.
3. The vehicle, the subject matter of this appeal, is a Mitsuoka Galue II, registration number **Redacted**. The vehicle was assigned an OMSP of €14,500 and a CO₂ emissions rating of 226 and more (36%) on registration on 8 October 2019, resulting in VRT payable of €5,220. The appellant also paid a late registration penalty of €167 at that time. The Appellant appealed the amount of VRT payable on the vehicle to the Respondent and was notified by the Respondent that the total VRT amount of €5,387 was correct and that no refund was due. The Appellant duly appealed to the Tax Appeals Commission by notice of appeal received on 2 December 2019.

4. This appeal is determined by consent of the parties, without an oral hearing, in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

5. The Appellant runs a Limousine Hire business and specialises in the hire of **Redacted** for weddings and special events. He purchased a second hand Japanese Mitsouka Galue II limousine, from a specialist Japanese import car dealership in the UK. The Appellant imported the vehicle into the State and registered the vehicle at the National Car Testing Service ("NCTS") on 8 October 2019. The Appellant paid an amount of €5,387 VRT on registration of the vehicle.
6. The Appellant contends that the valuation (OMSP) assigned to the vehicle of €14,500 was excessive and submitted a first stage VRT appeal to the Respondent. After the first stage appeal, the Respondent notified the Appellant that the VRT charged was correct and that no refund was due.
7. The Appellant did not accept that the OMSP of €14,500 was correct and duly appealed the decision of the Respondent by notice of appeal to the Tax Appeals Commission. The Appellant submits that the correct OMSP is in the range of approximately €5,000 and is seeking a refund for the amount of what he believes is overcharged VRT.
8. The Appellant also contends that the VRT charge of 36% was excessive and that based on an appraisal obtained by him from a Classic Car restorer, the CO₂ emissions range should be 175 – 188 grams per kilometre and that the VRT rate that should be applied to the OMSP is 30%.

Legislation (See Appendix 1)

Appeal process - Section 146 of the Finance Act, 2001

Chargeable Value - Section 133 Finance Act, 1992, as amended.



Charge of Excise Duty - Section 132 Finance Act, 1992, as amended.

Submissions

Appellant Submissions

The Appellant in his Notice of Appeal stated the following:

*"We set out in complete detail all documentation in relation to the purchase of the car in question. Reg. No **Redacted** – a Japanese saloon car, almost 18 years old, with an aftermarket fibreglass front.*

*We set out in detail the true value of the car including an appraisal from the previous owner giving an arms-length value of the car of £2800 Stg and cosmetic changes £1000 approx. (see attached from **Redacted** UK).*

*We are attaching a VRT valuation of the car upon which it was based. This shows OMSP (Open Market Selling Price) of €2000, and a VRT amount of €720. Also, as they couldn't determine the CO2 emissions, they charged us the highest rate of VRT @36%. **Redacted** state that the CO2 emissions range between 175grams per kilometre and 188grammes per KM, depending on model."*

The Appellant in his Statement of Case stated the following:

"I consider the matter to be a simple case as I have already submitted all the relevant information to the VRT appeals officer and I have an expert valuation of the car in question from the UK and have now obtained an up to date valuation of the car in question from an insurance and Revenue accredited assessor/valuer. I am also supplying a similar advertisement for a car of the same type.



Also, I am providing the VRT breakdown obtained vis the Revenue website which states that the VRT payable on the car is €720 so basically I was charged €4667 for some cosmetic changes that were made to a car 18 years ago."

"Outline of the relevant facts

- I purchased a Mitsouka Galue II, reg no Redacted from Redacted on 06/09/2019. I paid £4500 STG + £300 STG (delivery) for the car.*
- I needed the car on the road quickly so I applied immediately for a VRT inspection. This was carried out on 08/10/2019. The amount of VRT turned out to be more that the car's value which cannot be right.*
- I was charged the highest rate of VRT (36%) even though the UK assessor's report states a lower CO2 emission.*
- I paid the VRT of €5387 as the legislation states that you have to pay the VRT before you can appeal the amount. I started the appeal process straight away, including the offer of a third-party valuer nominated by Revenue but to no avail.*
- I have included the price of similar type cars and their asking prices. I also explained that any after market modifications would have little or no bearing on the valuation of a car 18 years later, hence both a UK and an Irish valuation.*
- Redacted*
- Redacted we have amassed vast knowledge of wedding car values. With this knowledge and the supporting documentation which I am including with this Statement of Case, it shows a definite discrepancy.*
- I asked our insurance company Redacted for insurance cover. When they inputted the Reg No and Chassis, it came back as a Nissan Gloria with an open market selling price of about €2000, so in the event of this car being in a collision, this is the maximum that they would pay out.*
- In late 2016 I purchased a Brantford Elite with only 9000 miles on the clock, a much more substantial car than the car in question and 10 years newer. The VRT was €5100 on the Brandford (photo attached), so again this highlights a discrepancy in the VRT on the car in question."*



Respondent Submissions

The Respondent, in its Statement of Case stated the following:

"The statutory provisions being relied on in relation to the matter under appeal

Section 133 of the Finance Act, 1992, as amended, provides for the determination of the chargeable value of an EU Category M1 vehicle (passenger car) or EU Category N1 vehicle (commercial) for the purposes of calculating Vehicle Registration Tax (VRT) in VRT Categories A and B.

Outline of the relevant facts

The appellant purchased a 2002 4-Door Mitsuoka Galue II - Registration Redacted. The valuation applied to the vehicle at registration was €14,500 and the VRT was calculated at €5,387. The appellant purchased this vehicle from Redacted.

The following is an extract from Section 3.1.2 of Vehicle Registration Tax Manual Section 8; 'For unique vehicles (e.g. classic/collectible vehicles, limousines, kit/reconstructed vehicles and other exotic vehicles) which, by their unique characteristics, are not capable of being valued by reference to other vehicles on sale in the State, Revenue seeks the opinion of an automotive consultant retained by Revenue. The OMSP is then determined by taking their opinion and any other relevant Tax and Duty



Manual Vehicle Registration Tax Manual Section 8 7 information (including documentation provided by the person presenting the vehicle for registration) into account.'

Revenue requested an independent valuation from Redacted on 26th September 2019, prior to the registration of the vehicle. The consultant responded on 4th October 2019, indicating that an OMSP of €14,500 should be applied to the vehicle.

The appellant registered the vehicle and paid €5,220 VRT on 8th October 2019. The appellant subsequently appealed the VRT amount charged and has argued that the VRT due should be approximately €1,000. His original submission was received on 24th October 2019. In this submission the appellant outlines that their VRT valuation of €1,000 is based on cars that the appellant has registered in the past, however Revenue contend that these vehicles are different vehicles to this particular vehicle, and that this is not a realistic method of calculating VRT. The appellant also states the price agreed with the dealer was £4,800 GBP. As part of the submission the appellant forwarded a deposit note, showing a receipted payment of £500 GBP and a balance of £8,100 GBP due. This deposit note is dated 1st September 2019. The appellant subsequently provided Revenue with a commercial invoice for £4,800, dated 6th September 2019.

On 26th November 2019 Revenue sought further guidance from the consultant regarding how the valuation was arrived at. Redacted responded through Revenue's 'My Enquiries' service on 27th November 2019 outlining that the basis for which the valuation was arrived at was by sourcing an example of a similar car in the UK. The valuer converted the UK price for the vehicle to Euro and added the VRT to the car to arrive



at the value of €14,500.

Following a first stage appeal Revenue were satisfied that the Open Market Selling Price of €14,500, applied at the time of registration, was correct, based on the recommendation of the consultant, mentioned above. On 28th November 2019 Officer Redacted sent the appellant an email to inform him of this decision. On 3rd December Redacted sent the appellant a letter to confirm this decision.

In correspondence received from the appellant by Revenue on 2nd December 2019, the appellant contends that they have received 3 valuations from SIMI registered traders, all of who value the car at approximately €3,000. I have only seen evidence of two of these valuations, one of which is from an assessor in the UK outlining their perceived valuation of the UK value of the vehicle. Having examined these valuations I note that each of the assessments calculate the value of the vehicle based on a Nissan Cedric Gloria Y33/ Laurel Y34. The vehicle registration and the commercial invoice received from the dealer in the UK state the vehicle is a Mitsuoka Galue II. While the vehicle may initially have been a Nissan Cedric Gloria Y33/ Laurel Y34, the modifications carried out in Japan have altered the vehicle to the extent that the make and model are changed. Neither valuation takes into account the VRT applicable when determining a valuation in this State.

I have researched the internet and I have found it very difficult to find vehicles of this make/model. At the time of my research there were no vehicles similar to the vehicle under appeal available on the Irish or the UK market. I extended my research to include Japanese export sites, in order to ascertain a fair and reasonable valuation and I uncovered 3



advertises of similar vehicles, with the following asking prices; €12,653, €9,348 and €11,634. The valuations are for similar vehicles; however they are vehicles of a lower engine power and/or are older in age. The following is a breakdown of my findings

Asking price	Year of registration	Engine Capacity	Value 1/11
• €12,653	1997	1,990cc	I
	Value including VRT (36%): €17,208		
• €9,348	2002	2,000cc	II
	Value including VRT (36%): €12,713		
• €11,634	2000	3,000cc	II
	Value including VRT (36 %): €15,822		

I also note that as part of the submission the appellant offers an advert for a 2001 Mitsuoka Galue showing a value of €3,576. This is a 2001 Mitsuoka Galue. The vehicle under appeal is a 2002 Mitsuoka Galue II, a newer model than the vehicle in the submission.

Revenue contend that: Section 133 Finance Act, 1992, as amended provides that in the case of a vehicle other than a new vehicle, the OMSP is 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 at the time of registration.

Accordingly, Revenue believe the method used in the calculation of VRT and the calculation thereof to be correct."



Analysis

9. 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.
10. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €14,500 and in the absence of the precise proof CO₂ emissions at the date of manufacture a VRT rate of 36% was applied. 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 also argued that the rate of VRT should be lower than 36%.
11. Dealing first with the rate of VRT, Revenue provided evidence of how the OMSP was computed, as outlined in the Respondent's submissions and confirmed that the 36% rate of VRT was used in the absence of the provision of the level of CO₂ emissions when the vehicle was first manufactured.
12. In the circumstances, based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am of the view that the VRT rate of 36% was correctly applied to the OMSP in accordance the provisions of Section 132 (3) of the Finance Act, 1992 (as amended) because the Appellant was unable to provide evidence or certification of the precise level of CO₂ emissions when the vehicle was first manufactured.

I will now deal with the OMSP.

13. The Appellant was asked to explain the apparent discrepancy between the invoice for the purchase of the car and the higher deposit note submitted. In his submissions to Revenue in relation to the VRT payable the Appellant submitted a copy of a deposit



note, in his personal name, dated 1 September 2019 showing £500 deposit paid. This note indicated that the balance owing was £8,100. He also submitted an invoice dated, 6 September 2019, in his company's name for the purchase of the same car for an amount of £4,800, delivery included. On the face of it these two documents appear inconsistent. The Appellant was asked to explain the context of each document and to reconcile the apparent differences. The Appellant replied in the following terms:

"The deposit note (receipt) was sent to the company who delivered the car as an arm's length value for insurance purposes for the transport company's underwriter. This would be an approximate value of what the car would have been worth in Ireland including a reasonable VRT payment, far short of €14,500.00."

14. 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 his own view of what the OMSP should be. The Respondent has examined the matter three times – at registration, at 1st stage review and on further examination in advance of a hearing. Revenue has found on all occasions that the initial OMSP was a fair and reasonable valuation and that the VRT rate applied was in accordance with Section 132 (3) of the Finance Act, 1992 (as amended).
15. In the circumstances, based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I have determined, on the balance of probabilities that the OMSP lies somewhere between the value estimated by Revenue at €14,500 and the value of £8,600 (which converts to € 9450, approximately as at September 2019). Therefore a reasonable estimate would be that the OMSP lies half way between these values. This gives an OMSP of €11,975.
16. 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”.

Determination

17. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I determine €11,975 as the OMSP and the rate of VRT at 36%, in respect of the vehicle the subject matter of this appeal. This means that the VRT due is €4,311. This entitles the Appellant to a refund of €909 VRT, together with a proportionate reduction in the late VRT charge of €167.
18. This appeal is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS
TAX APPEAL COMMISSIONER
(Designated Public Official)
7 September 2020



Legislation (See Appendix 1)

Appendix 1

Legislation

Appeal process - Section 146 of the Finance Act, 2001

Chargeable Value - Section 133 Finance Act, 1992, as amended.

Charge of Excise Duty - Section 132 Finance Act, 1992, as amended.

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)."*



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.”*

Section 132 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*¹⁶



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.

(3) The duty of excise imposed by subsection (1) shall be charged, levied and paid-

[(a) in case the vehicle the subject of the registration or declaration concerned is a Category A vehicle (other than a vehicle that is a hybrid electric vehicle or a plug-in hybrid electric vehicle) designed to use heavy oil as a propellant—

(i) by reference to Table 1 to this subsection, or

(ii) where—



(I) the level of CO₂ emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and

(II) the Commissioners are not satisfied of the level of CO₂ emissions by reference to any other document produced in support of the declaration for registration,

at the rate of an amount equal to the highest percentage specified in Table 1 to this subsection of the value of the vehicle or €740, whichever is the greater,]

(aa) in case the vehicle the subject of the registration or declaration concerned is a Category A vehicle other than a vehicle charged under paragraph (a)—

(i) by reference to Table 2 to this subsection, or

(ii) where—

(I) the level of CO₂ emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and

(II) the Commissioners are not satisfied of the level of CO₂ emissions by reference to any other document produced in support of the declaration for registration,

at the rate of an amount equal to the highest percentage specified in Table 2 to this subsection of the value of the vehicle or €720, whichever is the greater,

.....



TABLE 2

<i>CO₂ Emissions (CO₂ g/km)</i>	<i>Percentage payable of the value of the vehicle</i>
<i>0 g/km up to and including 80 g/km</i>	<i>14% or €280 whichever is the greater</i>
<i>More than 80 g/km up to and including 100 g/km</i>	<i>15% or €300 whichever is the greater</i>
<i>More than 100 g/km up to and including 110 g/km</i>	<i>16% or €320 whichever is the greater</i>
<i>More than 110 g/km up to and including 120 g/km</i>	<i>17% or €340 whichever is the greater</i>
<i>More than 120g/km up to and including 130g/km</i>	<i>18% or €360 whichever is the greater</i>
<i>More than 130g/km up to and including 140g/km</i>	<i>19% or €380 whichever is the greater</i>
<i>More than 140g/km up to and including 155g/km</i>	<i>23% or €460 whichever is the greater</i>
<i>More than 155g/km up to and including 170g/km</i>	<i>27% or €540 whichever is the greater</i>
<i>More than 170g/km up to and including 190g/km</i>	<i>30% or €600 whichever is the greater</i>
<i>More than 190g/km up to and including 225g/km</i>	<i>34% or €680 whichever is the greater</i>
<i>More than 225g/km</i>	<i>36% or €720 whichever is the greater</i>

