



184TACD2020

BETWEEN/

APPELLANT

Appellant

V

THE 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. 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 2019 Skoda Octavia 2.0 TDI Scout 4x4 184PS, registration number REDACTED. The Appellant imported the vehicle from the UK. Prior to purchasing the vehicle, the appellant accessed the VRT enquiry calculator on the Revenue website and obtained an estimated VRT amount payable on the vehicle of €5,300. The VRT calculator indicated that the OMSP of the vehicle was €26,504.

4. The Appellant registered the vehicle on 20 December 2019. An OMSP of €34,095 was assigned to the vehicle resulting in a VRT charge of €8,182.
5. 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 of €34,095 was determined to be correct. The Appellant was notified of the decision by letter dated 11 March 2020.
6. The Appellant was aggrieved by the determination of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commissioners on 30 March 2020 on the grounds that the VRT charged was overstated.

Legislation

Section 133 of the Finance Act 1992 (See Appendix 1)

Section 132 of the Finance Act 1992 (See Appendix 2)

Appellant Submissions

7. The VRT payable on the vehicle was calculated as €8,182. The Appellant's grounds for appeal in relation to the VRT calculation is that the OMSP assigned to the vehicle is excessive.
8. The Appellant submitted that Revenue's online VRT calculator produced a lower OMSP estimate. The Appellant submitted that he checked the VRT calculator using the statistical code 46588258 prior to the registration of the vehicle which showed an estimated amount of VRT payable of €5,300. The Appellant furnished a copy of the online VRT calculator which shows an OMSP of €26,504, CO2 emissions of 134g/kg and an estimated VRT amount payable of €5,300.



9. The Appellant further submitted that on registration of the vehicle it became apparent that the CO2 emissions of the Appellant's vehicle were higher than the emissions of the vehicle with statistical code 46588258. The Appellant acknowledged that the higher VRT rate of 24% should apply to his vehicle by virtue of the higher CO2 emissions.
10. The Appellant submitted that the Respondent applied a new statistical code of 44088258 to the vehicle and assigned a higher OMSP of €34,095.
11. The Appellant submitted that the vehicle he purchased was '*identical, in every facet*' to the vehicle with statistical code 46588258, except for the level of CO2 emissions. The Appellant further submitted that the VRT payable should be calculated by applying the correct VRT rate of 24% to the OMSP shown for the vehicle with statistical code 46588258. This would result in a VRT amount payable of €6,360 i.e. €26,504 x 24%, which the Appellant contends is the correct amount of VRT payable on this vehicle. The Appellant therefore maintains that he is owed a refund of VRT paid of €1,822.
12. In support of his appeal the Appellant has furnished details of three 2019 Skoda Octavia 2.0 TDI Scout vehicles advertised for sale in the UK in November 2019. The Appellant converted the sterling asking price to euro then added an amount equal to the rate of VRT applicable to his vehicle (i.e. 24%) to arrive at a hypothetical market value of the vehicle. Details are as follows:

Asking Price in £	Asking Price in €	Asking price plus 24% VRT
£21,500	€25,155	€31,192
£21,595	€25,266	€31,330
£20,995	€24,564	€30,459

13. The evidence furnished by the Appellant included emails and quotes sent to the Appellant directly from the garages selling the vehicles. Included in the above is the vehicle order form for the Appellant's vehicle showing the total cost of the vehicle of £20,995.



14. The Appellant stated in his submissions that the average (of the asking price plus 24% VRT) of the three vehicles above is €30,993.

Respondent Submissions

15. The Respondent stated that the Appellant appealed the VRT calculation based on the statistical code used to determine the VRT amount due on the vehicle. The Respondent further stated that the statistical code input by the Appellant on the Revenue online VRT calculator of 44088258 is for a vehicle with lower CO2 emissions, a VRT rate of 20% and an OMSP of €26,504.
16. The Respondent contends that the correct statistical code for the vehicle is 46588258. The statistical code, they submit, uniquely identifies a particular make, model, version and variant of a vehicle, with an individual OMSP determined for that vehicle. For this particular vehicle, the OMSP was determined to be €34,095.
17. The Respondent submitted that the statistical code used by the Appellant refers to the same vehicle as the Appellant's vehicle. However, they stated, this statistical code is only available for vehicles originally registered between 1st July 2014 and 30th April 2015.
18. The Respondent also stated that when using the online VRT calculator the customer is presented with an estimated VRT amount including a warning as follows:

'Important Please Note. This is a current estimate. A different amount may be payable at the time of registration depending on various factors, including vehicle valuations and legislative changes. A different amount will be payable if the Open Market Selling Price of the vehicle has changed, or if a different rate of CO2 emissions is applicable'.



19. Included in the Respondents submissions are details of three comparator vehicles advertised for sale in the UK. The vehicles are advertised for sale on a well-known car dealership website and copies of the advertisements have been furnished. Details are as follows:

Asking Price in £	Asking Price in €	Asking price plus 24% VRT
£29,995	€35,175	€43,617
£24,990	€29,305	€36,338
£21,490	€25,201	€31,249

20. The Respondent submitted that the average of the three vehicles above (asking price plus 24% VRT) is €37,084. The Respondent applied depreciation of 6% (12% annually) to this figure to arrive at a value of €34,859. The Respondent noted that this calculation was being carried out some six months after the vehicle was registered. The Respondent contends therefore that the method they used in the calculation of the VRT to be correct.

Appellant Replying Submissions

21. The Appellant submitted the following in respect of the comparator vehicles submitted by the Respondent:

- *'Comp 1 provided is above market value as outlined in Autotrader website when vehicle details selected, sheet 8 shows 'higher price', but not exact detail of higher rate - £6,359/€7,675 above market value for June 2020'*
- *'Comp 2 is also above market value for June 2020, £1,540/€1,800 above market value'*
- *'Comp 3 incorrectly states car as a 1.5ltr. Vehicle is 2ltr with 150bhp. Comps 1 and 2 also 2ltr but with 180bhp'*

22. The Appellant also asserted that the comparator vehicles submitted by the Respondent showed the asking price as at June 2020 when a higher market value rate



applied, as there were far less vehicles available for sale on the market at that time. The Appellant contends that around the time he purchased the vehicle i.e. October/November 2019 there were far more vehicles on the market when company cars are returned and put up for sale before the end of the calendar year, which lowers the market value.

Further Submissions

23. Following a direction issued by the Tax Appeals Commission, the Respondent advised that the OMSP of €34,095 originally assigned to the vehicle was incorrect, owing to a clerical error made by their valuation office. The correct OMSP for the vehicle is €30,307, which results in a refund owing to the Appellant of €908. This new OMSP they state was arrived at as follows:

"The ratio has been recalculated and the new Starting OMSP is now €34,440

Query vehicle UK price £29675/Comparable vehicle UK price £26,380 = Ratio 1.12

Comparable vehicle Irish Price €30750 (NOx exclusive as pre 1/1/20) x 1.12 = €34,440

The valuation principal works on establishing a ratio between the 2 vehicles in the UK market and then applying that ratio to the Irish OMSP for the comparable vehicle returning the Query vehicle price.

24. The Respondent then applied 12% depreciation to the new starting OMSP, to arrive at a revised OMSP of €30,307, which the Appellant did not accept.

Analysis

25. The VRT payable on any vehicle imported into the State is calculated by applying an appropriate rate of VRT to the Open Market Selling Price (OMSP) of the vehicle.
26. 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 Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.

27. There is no dispute between the parties regarding the level of CO₂ emissions of the vehicle i.e. 141g/km. Referring to table 1 of the Finance Act 1992 (see Appendix 2), the correct rate of VRT to be used in the calculation is 24%. This rate of VRT is agreed between the parties.
28. The matter requiring adjudication is the correct OMSP to be used in the calculation of the VRT payable.
29. The difficulty in assigning an OMSP to this particular vehicle is the shortage of similar vehicles for sale in the State. Both parties to the appeal have submitted evidence of comparator vehicles for sale in the UK.
30. On further review of the OMSP assigned, following a direction issued by the Tax Appeals Commission, the Respondent revised the OMSP down to €30,307.
31. The Appellant states in his submissions that the average of the three comparator vehicles he has furnished in support of his appeal is €30,993, an OMSP higher than the revised OMSP of €30,307 assigned by the Respondent.
32. 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 relevant tax is not payable.
33. 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.'*



Determination

34. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €30,307 to be a fair and reasonable OMSP in relation to the vehicle. On this basis, the VRT charged on the registration of the vehicle should have been €7,274 and a refund of €908 is due to the Appellant.
35. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

14 October 2020



Appendix 1

Section 133 Finance Act 1992 (as amended) – Chargeable Value

“(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 vehicle registration tax, 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.

(2)(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.

(2)(c) Notwithstanding the provisions of paragraph (b), where a price is 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 a similar type and character is being offered for sale in the State at the time of such declaration, the open market selling price may be determined 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 enhancements or accessories have not been removed from the vehicle or not sold therewith for the purposes 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."



Appendix 2

Section 132 Finance Act 1992 (as amended) – Charge of excise duty

(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,]

Table 1

CO ₂ Emissions (CO ₂ g/km)	Percentage payable of the value of the vehicle
0g/km up to and including 80g/km	15% or €300 whichever is the greater
More than 80g/km up to and including 100g/km	16% or €320 whichever is the greater
More than 100g/km up to and including 110g/km	17% or €340 whichever is the greater



More than 110g/km up to and including 120g/km	18% or €360 whichever is the greater
More than 120g/km up to and including 130g/km	19% or €380 whichever is the greater
More than 130g/km up to and including 140g/km	20% or €400 whichever is the greater
More than 140g/km up to and including 155g/km	24% or €480 whichever is the greater
More than 155g/km up to and including 170g/km	28% or €560 whichever is the greater
More than 170g/km up to and including 190g/km	31% or €620 whichever is the greater
More than 190g/km up to and including 225g/km	35% or €700 whichever is the greater
More than 225g/km	37% or €740 whichever is the greater

