



64TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

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. 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 section 949U of the Taxes Consolidation Act, 1997.



Facts

3. The vehicle, the subject matter of this appeal, is a REDACTED (2010), bearing registration number REDACTED. The Appellant paid £11,000 for the vehicle to a UK Supplier in June 2018. The Appellant registered the vehicle on 10 July 2018. A declaration was signed by the Appellant at the National Car Testing Service centre on 10 July 2018 which described the date of first registration of the vehicle as 13 March 2010 and mileage at the date of Irish registration of 91,144.
4. An OMSP of €16,008 was originally determined for the vehicle resulting in a VRT charge of €5,442 (a calculation of €16,008 @ 34%), together with a late registration charge of €174, resulting in a total VRT charge of €5,616. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal an OMSP of €16,008 was determined for the vehicle resulting in no change to the VRT charge of €5,616. This was notified to the Appellant by letter dated 25 September 2018. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the determination.

Legislation

5. 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) for the purposes of calculating VRT. This section is set out in Appendix 1.
6. Extracts from Section 8 (Valuation System for New and Used Vehicles) of the Revenue Commissioners VRT Manual are set out in Appendix 2.



Submissions and Analysis

7. 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. In accordance with section 133 (3) of the Finance Act, 1992 (as amended), 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.
8. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €16,008. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners of €16,008 was excessive. In the notice of appeal, the Appellant submits that the VRT charge for the vehicle the subject matter of the appeal should be €1,282. This is on the basis of as an OMSP of €3,563 at a VRT rate of 36%. In support of his appeal, the Appellant made the following submissions:
 - (a) Printout from Revenue's VRT Calculator as 19 July 2018, showing a VRT calculation of €1,282 payable on a July 2010, REDACTED with 91000 miles, with an OMSP at the date of first registration of €59,591 depreciated to a 'Current OMSP' of €3,563 (94% reduction) under a 'Depreciation code allocated by Revenue' of K1.
 - (b) A copy of the original UK New vehicle purchase invoice (December 2009) where the cost of the car was £41,228 and converts to €46,334 at the Euro/STG£ rate at that time.

9. The Appellant stated the following in his submissions:

"I have explained to the Revenue in REDACTED (Appeals Unit) that I have enquired from several car dealerships, including the manager of the main REDACTED Dealers here in REDACTED, for an estimate of the OMSP of my car. They have all said they couldn't because there is no reference for them to base an estimate on. Furthermore, they all said that no one is interested in a three litre petrol car"...

"I wanted to purchase a second hand REDACTED, petrol. Three were available in the UK that I could afford, all around £11,000. I checked the VRT Calculator and it indicated I would incur a charge of €1,282 for an engine with 271g/KM emissions (mine was 223g/KM). A similar year 2010 car, diesel will incur a much higher VRT charge of €4998. So I purchased the petrol version and got a shock when told I would have to pay €5,600. This is the essence of my problem. The VRT Calculator did not give me the correct information. If it did I would not have purchased the car"

10. The Respondent made the following submission:

"Revenue's OMSP of €16,008 was arrived at by using a comparator vehicle which was nearest to the vehicle that is the subject of the appeal. The vehicle was a REDACTED, Petrol. This vehicle has a slightly lower spec. but was the closest vehicle Revenue had on its system at the time of registration.

The OMSP (new) of €76,231, was adjusted for depreciation as it was over 8 years old at date of registration on 19 July 2018, to arrive at the revised OMSP of €16,008.”

11. To arrive at the depreciated OMSP of €16,008, Revenue classed the comparator vehicle as depreciating at the rates shown in category A.1 (at rate of 79% depreciation over 8 years). The VRT calculator, relied upon by the Appellant, used a depreciation rate under category K1 (at a rate of 94% depreciation). There was no explanation put forward by Revenue as to why the A.1 category of depreciation was used, although it can be inferred that the Respondent deemed the comparator vehicle to fall within this depreciation category.
12. In appeals before the Tax Appeals Commission the onus is on the Appellant to show that the OMSP of €16,008 is incorrect. In this appeal the Appellant submitted that the OMSP calculated by Revenue’s online VRT calculator should be used. The Appellant submitted a copy of this calculation dated in July 2018, at the time he bought and registered the vehicle. The specifications entered accord with the make, model, mileage etc. of his vehicle and would, in my opinion constitute a suitable comparator. The depreciation rate shown on this VRT Calculator report for an 8-year old vehicle first registered in July 2010 was 94%.
13. As noted above the Appellant also stated that he made enquiries with several car dealerships as to the OMSP of his vehicle. He stated that they were unable to provide him with an estimate due to the model and engine type of his vehicle.

14. The Respondent submitted that the nearest comparator vehicle that they could identify had an OMSP at the date of first purchase as a new vehicle of €76,231. The new vehicle price of this comparator is €29,897 in excess of the actual UK purchase price (converted to €'s) (€76,231 - €46,334) and €16,840 in excess of the €59,391 OMSP at the date of first purchase of the vehicle entered by the Appellant on the VRT calculator and shown on the VRT calculator report (€76,231 - €59,391). In my opinion, even after taking into account the higher vehicle prices in Ireland, the extent of the differences suggests that the Respondent's choice of comparator vehicle may not be accurate.
15. The depreciation rate applied to this comparator in the calculation of the OMSP of €16,008 was 79%. No arguments were presented as to the accuracy or merits of either the 79% or 94% depreciation rates by either party.
16. As a result of the difficulties in establishing what the appropriate depreciation rate is and given that the only comparator vehicle submitted by the Respondent was a vehicle which had a new vehicle purchase price significantly in excess of both the UK new vehicle purchase price and the Revenue VRT calculator price, I undertook a review of the OMSP of similar comparator vehicles. This review of the Irish OMSP of vehicles with similar specifications and mileage for registration years 2010 to 2012 indicated an average OMSP of circa €12,000.
17. An OMSP of €12,000 would equate to a depreciation rate of 74% of the STGE price when it was purchased new in the UK in 2010 or 80% of the OMSP on the equivalent vehicle entered by the Appellant in the VRT calculator and appearing on the VRT calculator report. The latter OMSP of €59,391 takes



account of the higher price of vehicles in Ireland compared to the UK as it was the OMSP determined by Revenue on the VRT calculator.

18. Based on the comparator vehicles that I reviewed it appears to me that a rate of 80% is a reasonable and accurate estimate of the depreciation for the vehicle in this appeal. This further supports the view that the OMSP would have been in the region of €12,000.
19. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, and having regard to variations in model, specification and mileage, I determine that €12,000 is the OMSP in relation to the vehicle.

Determination

20. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €12,000 as the OMSP of the vehicle the subject matter of the appeal. I determine that the VRT payable should be €4,080 (€12,000 @ 34%).
21. I determine that as the Appellant has paid VRT of €5,442 (excluding late penalty), he should be refunded €1,362 (excluding any adjustment to the late penalty).
22. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

PAUL CUMMINS
APPEAL COMMISSIONER
7 FEBRUARY 2020

APPENDIX 1

Legislation

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.”*



APPENDIX 2

Extracts from Section 8 (Valuation System for New and Used Vehicles) of the Revenue Commissioners VRT Manual

3 Valuation of Used Vehicles

3.1 Determination of the OMSP

In order to calculate the amount of VRT to be applied to a used vehicle imported into the State, Revenue is required to determine 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 (the OMSP). Used vehicles may be divided into 3 groups:

1. Used vehicles where the identical model is currently available new and for which an OMSP has been declared by a manufacturer or sole wholesale distributor;
2. Used vehicles where the identical model, while not currently available, was available at some stage in the past and for which an OMSP was declared by a manufacturer or sole wholesale distributor;
3. Used vehicles where the identical model was not available on the Irish market and for which an OMSP was never declared by a manufacturer or sole wholesale distributor. This group includes:
 - Vehicles for which “similar models” are or were available in the UK or Northern Ireland markets but not in the State;
 - Used vehicles from Japan;
 - Used vehicles from other countries;
 - Modified vehicles;
 - Motor caravans;
 - Classic/collectible vehicles.

3.1.1 Used vehicles where it is possible to determine values on the basis of market values within the State

This will normally apply in the case of vehicles, referred to at 1 and 2 above, which are or were at some time distributed as new vehicles in the State and were at some time the subject of a declaration of OMSP by a sole wholesale distributor.



OMSPs of used vehicles will be directly related to the current market prices for vehicles of the same make, model and version with the equivalent specification in the State. These prices will be determined following research of trade data (e.g. price lists, sales guides, websites and direct enquiries with trade sources). For vehicles that are no longer available as new vehicles, the last retail price as new, will be used as the current OMSP.

3.1.2 Used cars where it is not possible to determine values on direct comparison with market values in the State

Where an identical vehicle is not available for comparison purposes, a “similar” model will be identified, having particular regard to characteristics such as price range, body type, engine capacity, transmission, fuel type, CO₂ emissions etc., by reference to the general motor vehicle guides available at the time of declaration, by consultation where necessary with trade sources and by reference to established precedents. An OMSP will be determined by comparison to the value of the “similar” model, with adjustments being made for increased or decreased specification as appropriate.

To assist in the calculation of the likely VRT using this method, a VRT estimate form has been devised. Using this form, it is possible to estimate the VRT due on a particular vehicle by establishing retail ratios between similar models that are on sale in both the UK and Ireland. By applying an average of those ratios to the particular vehicle, it is possible to estimate to a degree of confidence the likely OMSP that may be determined by Revenue officials for this vehicle when it is presented for registration and thus the expected VRT liability. The form and instructions on its use are included at Appendix 4. A completed sample is attached at Appendix 5.

For vehicles from other countries for which there is no market and for which it is difficult to identify a “similar” model and therefore no base for calculating what the vehicle might reasonably be expected to fetch on a first arm’s length sale, a method of “grossing up” may be used. The original purchase price (or an average purchase price) of the imported model is taken as a starting point. This is then grossed up by reference to the exchange rate between the country of purchase and the State and the differences in the tax base (e.g. different VAT rates and a dealer’s profit margin). This process will yield a figure from which the current OMSP for VRT purposes can be derived.



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 information (including documentation provided by the person presenting the vehicle for registration) into account.

3.2 Assign a Depreciation Table

Having established the OMSP, the correct rate of depreciation for the vehicle must be established. This is done by examining the source literature available for the particular vehicle (or similar model) in order to establish what a vehicle of that type would fetch on first arm's length sale by retail in the State. The literature should be able to indicate what a similar model of various ages would fetch.

The officer carrying out the valuation will use a depreciation calculator to operate the OMSP against a set of depreciation tables maintained by Revenue (Appendix 1) to produce a set of values based on those tables. The valuation officer will then compare the research findings against these values to find the closest possible match between the research and a particular depreciation table set of values. This corresponding depreciation table will be assigned to this model (see Appendix 1 for further details).

The OMSP and depreciation table relating to this vehicle will then be added to the Revenue database of used vehicles so that the VRT charge for all future vehicles of this particular make, model, version and variant can be calculated at registration. This data becomes the cornerstone of Revenue's on-line [VRT calculator](#).

4 Example of a VRT Calculation

The example below uses an EU Classification M1 (passenger car) petrol engine vehicle that emits 160 grams of CO₂ per kilometre and is therefore charged VRT at 27% and is presented for registration in June 2013.

In practice, when a vehicle is presented for registration and the vehicle category and CO₂ emissions have been established, the valuation process takes place as set out below (if the same make, model, version and variant has previously been valued, steps 1 and 2 will have previously been carried out by a valuation officer):

- Step 1 **Establish an OMSP** for the particular make, model, version and variant. For this example assume the OMSP is €20,000;
- Step 2 **Establish a rate of depreciation** for the particular make, model, version and variant. For this example assume the rate of depreciation is similar to table A1 at Appendix 1;
- Step 3 **Establish the extras** on the vehicle. It has been established that this particular vehicle has a package of extras valued at €1,000;
- Step 4 **Establish the age** of the vehicle. Assuming the vehicle was first registered in July 2010, it is now 3 years old (see para. 8.3.4.). Furthermore, the month of registration in the State is June (if the date of registration in the State was any month other than June or July a supplementary adjustment would be made depending on the month of registration);
- Step 5 **Establish the condition** of the car. The condition is “Fair”;
- Step 6 **Establish the kilometerage**. The odometer reading is 72,000 kilometres and the age in months is 35 (July 2010 – June 2013).

Activity		Value €
Step 1	Has verified an OMSP of 20,000	20,000



Step 2	Has assigned depreciation table Appendix 1	A1
Step 3	Has established an extras package of 1,000 but this is depreciated by 55% (refer to para. 8.3.3 above)	450
Step 4	Adjusted OMSP of the vehicle	20,450
Step 5	Has established that the vehicle is 3 years old, and in conjunction with Step 2 that the vehicle has depreciated to €14,519. It should be noted here that if the vehicle was registered in March a supplementary adjustment of +3% would be included increasing the OMSP to €14,954 but if the vehicle was registered in October the supplementary adjustment of – 3% would decrease the OMSP to €14,083	14,519
Step 6	Has calculated a reduction of 5% for “Fair” condition	725
Step 7	Has imposed a reduction for excess kilometres 72,000-52,500 (1500 x 35 months) = 19,500 Excess Allowance (refer to para. 8.3.6 above) (10x €70)+(2 x 60) (first 16000 excess €70, 3500 = 2 x €60)	820
	Total for VRT	12,974
	VRT due @ 27%	3,502

In practice, once the make, model, version and variant has been previously valued, the vehicle characteristics, the OMSP, the vehicle classification, levels of CO₂ emissions and the rate of depreciation for that model and version are recorded on the Revenue valuation database. Then the software applies the



individual vehicle characteristics of extras, age, mileage and condition against that data to calculate a VRT charge.

4.1 Appendix 1: Depreciation Tables

Prior to the introduction of Vehicle Registration Tax, Revenue officials conducted extensive research into the used car market in the State to determine if there was a pattern to the depreciation of used vehicles. This examination showed that a number of different patterns could be identified and that different models within the same marque often depreciated at different rates. As a result of this examination, the officials developed a set of tables. They then validated these tables against the used vehicle trade in the State. Following a number of iterations, the officials were satisfied that the tables accurately reflected the market conditions at the time and the depreciation tables became a part of the valuation process. Since then the tables have been constantly monitored and refined to ensure that they reflect the market conditions. In this way they have retained currency with the used vehicle market.

When a vehicle of a model or variant not previously valued by Revenue officials is presented for registration, it is valued by Revenue valuation officials. Part of the valuation process is to determine, by examination of various sources of information (including the Car Sales Guide, motoring magazines and the internet, etc.), what vehicles of various ages of that or a similar model might fetch on first arm's length sale by retail in the State. Having established a range of values, depending on age, the valuation officer will try to model those values against the 24 valuation tables until one with the closest match to that range of values is identified. This depreciation table is then assigned to that particular model or variant.

For example, vehicle X is presented for registration. Part of the research into that vehicle has shown that a 2 year old version depreciates on average to 68%, a 3 year old to 62% and a 4 year old version to 53%. The table matching those depreciation characteristics most closely is Table D1 with rates of 69%, 61% and 52% for 2, 3 and 4 year old models respectively. Therefore, this table is allocated to vehicle X. Thus, if in the future a 6 year old example of vehicle X is imported, the VRT will be calculated based on 37% of the OMSP as, according to Table D1, a six year old vehicle has depreciated to that level.

In this way, the Revenue systems can calculate the VRT due on all subsequent vehicles of that particular model and variant, irrespective of the age of the actual vehicle presented, because the valuation officer has already established the depreciation characteristics for that particular model and variant.

For completeness, Revenue officials regularly review the valuation of all vehicles on the database. A significant part of this review is to determine if the depreciation characteristics previously assigned to a particular model and variant still reflect the actual depreciation of that model. Where the literature indicates that the depreciation characteristics have changed, a new depreciation table - one that best reflects the current market conditions - is assigned. The review also highlights situations where a table might reflect the depreciation of a range of models over a number of years but not the full range. The depreciation table itself is then examined by reference to the market and elements may be adjusted as a result of this examination.