



65TACD2020

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 with a hearing in accordance with Chapter 4 Part 40A of the Taxes Consolidation Act, 1997.



Facts

3. The vehicle, the subject matter of this appeal, is a REDACTED, bearing registration number REDACTED. The Appellant paid £7,200 for the vehicle to a private owner in the UK in 2011. The Appellant registered the vehicle on REDACTED 2017.
4. An OMSP of €13,711 was originally determined for the vehicle resulting in a VRT charge of €3,701 (a calculation of €13,711 @ 27%). The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal an OMSP of €13,711 was reduced for the vehicle to €11,369 resulting in a reduced VRT charge of €3,070. This was notified to the Appellant by letter dated 22 September 2017. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 17 November 2017.
5. Subsequently, the appeal was admitted as a late appeal in accordance with S.9490 TCA97.

Legislation

6. 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.

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 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 €11,369. The Appellant appealed to the Appeal Commissioners on the basis that the VRT determined by the Revenue Commissioners of €3,070 was excessive. In his notice of appeal, the Appellant made the following submissions in support of his appeal:
 - (a) the printouts for the three comparator vehicles used by the Respondent to arrive at their revised OMSP of €11,369.
 - (b) He stated that he purchased the car from a neighbour of a friend.
 - (c) He stated that the VRT determined by Revenue was well above the amount he expected to pay.
 - (d) He stated *"as the car at the time was 6 years old the selling price in most garages was around the 10,000 euros. If you reduce that by 10% you will arrive at about the price I paid for the car of 9,000 euros"*

9. The Respondent in its submissions stated:

“Originally, Revenue valued the vehicle at €13,711. Following Section 145 appeal Revenue revised the OMSP to €11,369. To arrive at this figure Revenue took the average of 3 (comparator) vehicles (advertisements). Vehicle 1: €12,450, Vehicle 2: €12,450 and Vehicle 3: €12,995. The average of €12,632 was reduced by 10% to give the revised OMSP of €11,369 (i.e. €12,632 less €1,263 = €11,369).”

10. During the hearing, the Appellant argued that the comparator vehicles used by the Revenue all had a lower CO2 emission level of 139 compared to his vehicle of 169. That meant that the comparator vehicles attracted lower motor tax rates and therefore their market value would be enhanced. For this reason, he believed that the OMSP stated by the Respondent was overstated. When asked what he thought the OMSP should be, he stated that it should be circa €9,500 (€9,000 for the approximate cost plus €500 vendor profit).
11. The Respondent acknowledged that the emissions in the comparator vehicles were 139 but argued that this would not be a determinant in their market value.

Determination

12. 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 vehicle model, I am satisfied on the balance of probabilities, that the OMSP lies between €11,369 and €10,000.

13. Accordingly, I determine that €10,684, being the average of these two valuations, is the OMSP in relation to the vehicle. I determine that the VRT payable should be €2,885 (€10,684@27%).
14. I determine that as the Appellant has paid VRT of €3,070 to date, he should be refunded €185.
15. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

PAUL CUMMINS
APPEAL COMMISSIONER

6 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."*