



70TACD2020

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. On agreement of the parties 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 Volkswagen Passat 2.0 TDI, first registered in the United Kingdom, now bearing registration number REDACTED. The Appellant registered the vehicle and paid VRT of €4,978 based on an open market selling price (OMSP) of €28,163 determined by the Revenue Commissioners. In addition, the Appellant paid a late registration charge of €191 and a National Car Testing Service (NCTS) cancellation fee of €23.81.
4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was not revised by the Revenue Commissioners. This was notified to the Appellant by letter dated 8 May 2019. A footnote to that letter indicated that the Appellant should seek to have the late fee reclaimed from the Appellants Local Revenue Office and that the cancellation fee should be appealed to his local NCTS centre. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the amount of the VRT determination of €4,978, against the amount of the late registration of €191 and against the NCTS cancellation fee of €23.81. A notice of appeal was received by the Tax Appeals Commission on 5 June 2019.

Legislation

5. 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)."*

6. 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. "

7. Section 135B 6 (a) of the Finance Act, 1992 (as amended) provides where:

an authorised person pays an amount of vehicle registration tax in respect of a vehicle which was not due, any repayment of the overpaid amount and interest (if any) payable under section 105D shall, subject to the provisions of this subsection, be made to the authorised person on condition that the authorised person pays the amount of the repayment and interest to the person who was the registered owner of the vehicle at the time of the registration of the vehicle.

Submissions

8. The Appellant submitted:

- a) Prior to purchasing the vehicle, he priced the specific car on the Revenue online calculator and inputted the specification of the car. Based on this calculation, he proceeded to purchase the car on 28th of February 2019 for stg. £13,798.99.
- b) After purchasing the car, he attended the Carrick on Shannon NCT Centre and was surprised to discover that the online calculator used by him prior to purchasing the vehicle and the calculator used in the NCT Centre that day, differed substantially. Thus creating an additional liability to VRT of €994.
- c) That the assistant in the NCT centre checked the online calculations and verified that using two different statistical codes provided two different results in the amount of VRT due.
- d) That the Respondents apply a different statistical code for the car which applies a higher valuation in their NCT centre than what their online calculator applies.





- e) That it is entirely unfair and a misleading practice of Revenue to undervalue on its online calculator and then charge a higher valuation when the vehicle is presented for registration and payment of VRT.
- f) That the process is fundamentally unfair and in breach of his constitutional rights to fair procedures and a misapplication of Section 133 of the Finance Act 1992.
- g) That it is a clear case requiring the application of the principle of equitable estoppel to prevent the Respondent from taking unfair advantage over the Appellant, an unwitting consumer who relied to his detriment on the online calculator. The Appellant submitted a number of legal judgments in support of this assertion.
- h) That the Revenue Commissioners, submission that the difference is due to a difference in the CO₂ emissions of the vehicle, is fundamentally flawed, in so far as it differs from the online calculator based on the information inputted.
- i) That he should not therefore be subjected to the arbitrary application of Revenue's interpretation of the matter when it is incapable of being compared prior to purchase at any point.
- j) Print outs from websites advertising similar vehicles at prices below the OMSP determined by Revenue for the vehicle in question.
- k) Print outs from the VRT calculator showing the different rates of VRT applicable to vehicles with different statistical codes. Viz code 40187978 (relied on by the Appellant) indicated a VRT charge of €3,793 and code 42487978 (used by the Respondent) indicated the actual VRT charge imposed by Revenue through its agent the NCTS.
- l) That he was unable to attend the NCT Centre on 16th March 2019 as arranged because he was not in possession of the UK registration certificate at that time.
- m) That there was a two week waiting list for an appointment at the NCT Centre. Consequently, the additional VRT charge of €191 for late registration was outside of his control.
- n) That he was not advised of the cancellation charge by the NCT centre.

9. The Respondent submitted:

- a) That the Appellant used an incorrect statistical code when pre-determining what amount of VRT he would be likely to pay when importing the vehicle.



- b) That the vehicle imported and presented for inspection does not match the statistical code used in advance of the purchase by the Appellant.
- c) That there is an important caveat on the Revenue website when using the online calculator reminding users that a different amount may be payable if a different rate of CO2 emissions is applicable.
- d) That the online estimate produced by the Appellant referred to a version of the vehicle which had CO2 emissions of 106 while the vehicle registered had CO2 emissions of 109. This clearly indicates that they are not the same (model/version) vehicle.
- e) That in relation to the two estimates furnished by the Appellant from car dealers:
 - The first one from Carzone was a Volkswagen Passat Highline, thus not the same model.
 - The second estimate, which was not dated, didn't give enough information to show if it was the same model/version.
- f) That Revenue is satisfied that the OMSP used is reasonable, and that no new information/documents have been furnished with the appeal to justify altering the OMSP.

Analysis and findings

10. The OMSP ascertained by the Respondent in relation to the vehicle the subject matter of this appeal was €28,163. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners was excessive. The Appellant submits that the OMSP of the vehicle the subject matter of the appeal should be €22,314 as ascertained by him in advance of purchasing the car using Revenue's own online calculator. In the alternative the Appellant seeks to use a different OMSP supported by print out car prices from two car dealer websites estimates furnished by the Appellant from CarsIreland.ie and from Carzone. These estimates show 2017 Volkswagen Passat cars for sale varying in price from €20,995 to €30,000 in May 2019.
11. The Appellant seeks to have the late registration VRT charge refunded because through no fault his own he was unable to make the appointment to avoid such





a late charge. The Revenue website contains full information on the documents required for registration, the time line (7 days from arriving in the State) for making a pre-registration appointment with the NCTS and the time line for having the registration completed (30 days from the vehicle entering the State) to avoid additional charges to VRT.

12. The Appellant further seeks to have the NCT cancellation fee refunded for the same reason.
13. 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 Revenue's online calculator and on an Irish website advertising vehicles for sale to support his version of what the OMSP should be. The Respondent has examined the matter – at registration and at 1st stage review and has found that the initial OMSP was a fair and reasonable valuation.
14. 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 assessment to tax, raised by the Respondent is incorrect.
15. 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.*'
16. The question to be answered in this appeal is whether, the Appellant can rely on his interpretation of Revenue's online calculator in assessing the OMSP of





a vehicle prior to importation. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Appellant's interpretation of the OMSP of the vehicle in question is correct. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that he qualifies for a refund of the VRT paid.

Determination

17. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the OMSP of €28,163 determined by Revenue on inspection of the vehicle at registration is correct in relation to the vehicle.
18. Where a vehicle has not been registered within 30 days of its arrival in the State, an additional amount of VRT is due and payable in accordance with the formula set out in Regulation 8 of the Vehicle Registration and Tax Regulations 1992. The Appellant was unable to attend the NCT Centre on 16th March 2019 as arranged because he was not in possession of the UK registration certificate at that time. The Appellant has therefore failed to register the vehicle within the time limits set out and consequently the VRT charge imposed is correct. I determine that the Respondent has correctly applied the additional VRT of €191.
19. The matter of a cancellation fee charged by the NCTS is not a matter for appeal to the Tax Appeals Commission and I make no determination in this regard.
20. The appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER

10 February 2020

