



Ref: 75TACD2020

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') and the VRT rate applicable to the relevant vehicle 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 2018 Skoda REDACTED, registration number REDACTED. The Appellant imported the vehicle from the Northern Ireland on 24 May 2018. On 20 June 2018 the appellant accessed the VRT enquiry calculator on the Revenue website and obtained a VRT calculation of €6,765. This indicated that the Current OMSP was €35,608 and the applicable VRT rate was 19%.
4. The Appellant registered the vehicle on 21 June 2018. An OMSP of €37,271 and a VRT rate of 23% was assigned resulting in a VRT charge of €8,572.

5. On appeal to the VRT Appeals Unit, the Current OMSP was maintained at €37,271 and the rate of VRT was unchanged from 23%.
6. The Appellant appealed to the Tax Appeals Commission on 6 July 2018 on the grounds that the OMSP was excessive, that the VRT rate was excessive and that the VRT amount calculated by the Online VRT calculator of €6,765 should be the amount due.

Legislation

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

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

Submissions and analysis

7. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO₂ emissions. 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.
8. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €37,271. The Appellant's grounds for appeal in relation to the OMSP assigned was that it was excessive.
9. The Appellant submitted that the online VRT calculator produced a lower OMSP estimate. The Appellant stated that she checked the VRT calculator on a number of occasions prior to the registration of the vehicle and that the correct vehicle details had been entered on the VRT calculator. The Appellant did not furnish any additional evidence verifying the accuracy of this estimate other than copies of the online VRT calculator showing an OMSP of €35,608.



10. The rate of VRT ascertained in relation to the vehicle the subject matter of this appeal was 23%. The Appellant's grounds for appeal in relation to the rate of VRT assigned was that it was excessive.
11. The Appellant submitted that the online VRT calculator produced a lower VRT rate estimate. The Appellant did not furnish any evidence verifying the accuracy of this estimate other than copies of the online VRT calculator showing a rate of VRT of 19%.
12. The Respondent stated that the amount quoted on the Online VRT calculator is an estimate of the VRT that will be charged and that the details selected must match the vehicle in every way. The Respondent stated that the statistical code and therefore the vehicle model entered on the VRT calculator by the appellant may have been incorrect. The Respondent submitted that the statistical code for the vehicle the subject of this appeal was REDACTED. The rate of VRT pertaining to this vehicle of 23% is based on the CO2 emissions of 149g/km. The OMSP pertaining to the vehicle was €37,271. The Respondent stated that the website contained a number of disclaimers addressing this risk including the fact that the estimate shown on the calculator is that payable on the date of the enquiry.
13. The Appellant stated that she could not afford the additional VRT charges and "Had I known this fee was higher I would not have purchased the car".
14. Section 132 and Section 133 requires that the vehicle be individually valued and the rate of VRT established at the time of registration and is not based on an estimate provided by the online VRT calculator. Other than the VRT calculator amounts, neither party in this appeal provided independent valuations of the correct OMSP.

Conclusion

15. 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.
16. 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.'

17. In my view the Appellant has failed to show that the rate of VRT applicable to this vehicle, and which is based on the CO2 emissions of 149 g/km, should be 19% and not 23% as charged on registration.
18. Having considered the submissions from both parties and in the absence of independent OMSP valuations, by either party, I determine that, on the balance of probabilities, the OMSP is the average of the two OMSP's advocated by the parties, this amount being €36,440.
19. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €36,440 to be a fair and reasonable OMSP in relation to the vehicle and I determine that 23% is the correct rate of VRT for the vehicle based on the CO2 emissions of 149g/km. On this basis, the VRT charged should have been €8,381 and a refund of €191 is due to the Appellant.
20. This appeal is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

27 February 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—

(i) by reference to the Table 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 the Table to this subsection of the value of the vehicle or €720, whichever is the greater,

TABLE

CO ₂ Emissions (CO ₂ g/km)	Percentage payable of the value of the vehicle
0 g/km up to and including 80 g/km	14% or €280 whichever is the greater
More than 80 g/km up to and including 100 g/km	15% or €300 whichever is the greater
More than 100 g/km up to and including 110 g/km	16% or €320 whichever is the greater
More than 110 g/km up to and including 120 g/km	17% or €340 whichever is the greater
More than 120g/km up to and including 130g/km	18% or €360 whichever is the greater
More than 130g/km up to and including 140g/km	19% or €380 whichever is the greater



More than 140g/km up to and including 155g/km	23% or €460 whichever is the greater
More than 155g/km up to and including 170g/km	27% or €540 whichever is the greater
More than 170g/km up to and including 190g/km	30% or €600 whichever is the greater
More than 190g/km up to and including 225g/km	34% or €680 whichever is the greater
More than 225g/km	36% or €720 whichever is the greater

