



76TACD2020

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. The appeal was adjudicated by way of a hearing.

Facts

2. The vehicle, the subject matter of this appeal, is a Toyota RAV4 2.2 D4D ICON AWD 150BHP 5DR (2013), bearing registration number [REDACTED]. The Appellant registered the vehicle on 10 October 2017. A Vehicle Import Receipt



describes the date of first registration of the vehicle as [REDACTED] 2013 and mileage at the date of registration of 50,488.

3. An OMSP of €20,768 was originally determined for the vehicle resulting in a VRT charge of €4,776 (a calculation of €20,768 @ 23%). The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal an OMSP of €16,855 was determined for the vehicle resulting in a VRT charge of €3,877 (a calculation of €16,855 @ 23%). This was notified to the Appellant by letter dated 14 November 2017. No information was provided by the Revenue Commissioners in the letter to explain the basis for the revised OMSP. The revised OMSP gave rise to a refund to the Appellant of €899. 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 30 November 2017.

Legislation

4. 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)."*

5. 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.”*

Submissions and Analysis

6. 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. 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.

7. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €16,855. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners of €16,855 was excessive. In the notice of appeal, the Appellant submits that on 12 September 2017 the online VRT enquiry calculator produced VRT of €3,341 for a RAV4 2.2 D4D ICON AWD 150BHP 5DR, being an OMSP of €14,526 and a rate of VRT of 23%. On 10 October 2017, at the National Car Testing Service centre, an OMSP of €20,768 was determined giving rise to VRT of €4,776. The Appellant submits that, based on the online VRT enquiry calculator, it was represented to the Appellant that the VRT would be in the region of €3,341 on the registration of a RAV4 2.2 D4D ICON AWD 150BHP 5DR with 50,000 miles. The Appellant registered his vehicle within four weeks of the online calculation.
8. At the date of registration of the vehicle in the State the OMSP was determined at €20,768. On appeal to the Revenue Commissioners the OMSP was determined at €16,855. In the course of the appeal to the Appeal Commissioners, the Revenue Commissioners re-examined the OMSP and revised the OMSP by reference to four Irish comparator vehicle valuations (€17,950, €19,950, €16,950 and €16,950). The average of the four valuations (€17,950) was reduced by 10% to calculate an OMSP of €16,155. The Revenue Commissioners presented the following documentary evidence:
 - (a) Printout from an Irish website advertising a sale by retail of a Toyota RAV4 2.2 D-4D LUNA 4WD (2012) with 89,553 kilometres for €17,950.

- (b) Printout from an Irish website advertising a sale by retail of a Toyota RAV4 2.0 D-4D ICON 2WD (2013) with 49,727 kilometres for €19,950.
 - (c) Printout from an Irish website advertising a sale by retail of a Toyota RAV4 2.0 D-4D AURA (2013) with 65,000 kilometres for €16,950.
 - (d) Printout from an Irish website advertising a sale by retail of a Toyota RAV4 2.0 D-4D AURA 2WD (2013) with 103,021 kilometres for €16,950.
9. In relation to the online VRT enquiry calculator, printouts were presented by the Appellant and the Revenue Commissioners. A comparison of the printouts from the online VRT enquiry calculator shows:

	Appellant	Respondent
Date	12 September 2017	22 May 2018
Statistical Code	41288255	41288255
Model	RAV4 2.2 D4D	RAV4 2.2 D4D
Make	Toyota	Toyota
Version	ICON AWD 150BHP 5DR	ICON AWD 150BHP 5DR
OMSP determined by Revenue	€32,940	€32,940
Monthly Adjustment	+98%	+101%
Depreciation Code allocated by Revenue	F1	A4
Odometer Reading	50000 miles	50488 miles
Date of First Registration	[REDACTED] 2013	[REDACTED] 2013
Rate of Depreciation	55%	43%
Current OMSP determined by Revenue	€14,526	€18,963
CO ₂ Emissions	149	149
Rate of VRT	23%	23%
VRT	€3,341	€4,361

10. The Revenue Commissioners accept that the Appellant selected the exact vehicle when inputting the details on the online VRT enquiry calculator on 12 September 2017. From the above analysis of the printouts, it is the different rates of depreciation that has a bearing on the VRT calculations. The printout presented by the Appellant has a depreciation code of F1 (a depreciation rate of 55%) whereas the printout presented by the Revenue Commissioners has a depreciation code of A4 (a depreciation rate of 43%). The Revenue Commissioners could not confirm the rate of depreciation applied at the date of registration of the vehicle on 10 October 2017. Based on an OMSP of €32,940 for a new RAV4 2.2 D4D ICON AWD 150BHP 5DR and an OMSP of €16,155 for a four year old RAV4 2.2 D4D ICON AWD 150BHP 5DR, this represents a decrease of approximately 50% in the value of the vehicle.
11. The Revenue Commissioners submit that prior to using the online VRT enquiry calculator the webpage informs a person that the calculator will ‘*estimate the VRT charge*’. The Revenue Commissioners further submit that the following note at the end of the online VRT enquiry calculator is a disclaimer which informs a person of the limitations of the calculator:

“The amount shown is that payable on the date of enquiry. A different amount may be payable if the Open Market Selling Price has changed and/or if a different rate of CO₂ emissions is applicable”

The Revenue Commissioners accept that the Appellant selected the exact vehicle when inputting the details on the online VRT enquiry calculator on 12 September 2017. The estimate of the VRT calculated on 12 September 2017 was €3,341 (based on an OMSP of €14,526 @ 23%). The VRT calculated on 10 October 2017 was €4,776 (based on an OMSP of €20,768 @ 23%). This represents a difference in VRT of €1,435 and a difference in OMSP of €6,242. In considering the extent to which the limitations of the online VRT enquiry calculator apply, it is relevant that

the Revenue Commissioners accept that the Appellant selected the exact vehicle when inputting the details on the online VRT enquiry calculator.

12. The OMSP determined for the vehicle the subject matter of the appeal at the National Car Testing Service centre was €20,768. On appeal to the Revenue Commissioners the OMSP was determined at €16,855. On appeal to the Appeal Commissioners the Revenue Commissioners submitted that the OMSP should be determined at €16,155. The various considerations of the OMSP by the Revenue Commissioners produces a difference of €4,613 in the OMSP for a RAV4 2.2 D4D ICON AWD 150BHP 5DR (2013) with approximately 50,000 miles.
13. At the hearing, the Revenue Commissioners sought to explain the differences by way of a general statement that the system is continually reviewed against various sources including SIMI, car sales guide and online advertisements of retail sales and adjusted accordingly.
14. It is my function to determine the OMSP for a RAV4 2.2 D4D ICON AWD 150BHP 5DR (2013) bearing registration number [REDACTED] at 10 October 2017. 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. It is not within the jurisdiction of the Appeal Commissioners to consider whether a representation was made to the Appellant by the Revenue Commissioners through the online VRT enquiry calculator and to determine the consequences, if any, of reliance on any such representation. It is my function to determine the price that a RAV4 2.2 D4D ICON AWD 150BHP 5DR (2013) bearing registration number [REDACTED] might reasonably be expected to fetch on a first arm's length sale in the State by retail at 10 October 2017. For the purposes of determining the OMSP, it is the value of the vehicle on the date of registration of the vehicle and not a subsequent date. If comparator vehicle

valuations are provided in support of the appeal, the vehicles should be the same model with similar specification and sale by retail, where possible.

15. 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 €15,340 is a fair and reasonable OMSP in relation to the vehicle.

Determination

16. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €15,340 as the OMSP of the vehicle the subject matter of the appeal. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

3 FEBRUARY 2020