



99TACD2020

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 Nissan Qashqai +2 360 1.5 DCI (2014), bearing registration number [REDACTED]. The previous registration



number was [REDACTED]. The vehicle entered the State on 13 June 2017. The Appellant registered the vehicle on 28 July 2017. The date of first registration of the vehicle is [REDACTED] 2014 and mileage at the date of registration in the State was 31,501.

4. An OMSP of €17,810 was originally determined for the vehicle resulting in a VRT charge of €3,383 (a calculation of €17,810 @ 19%). The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal an OMSP of €16,000 was determined for the vehicle resulting in a VRT charge of €3,040 (a calculation of €16,000 @ 19%). This was notified to the Appellant by letter dated 28 August 2017. The revised OMSP gave rise to a refund to the Appellant of €343. 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 12 September 2017.

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*

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- (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

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. 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 €16,000. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners of €16,000 was excessive. The Appellant purchased the vehicle from [REDACTED], a UK business which operates used car auctions through an online platform. The Appellant purchased 'Lot Number [REDACTED]' for Stg£7,480, being the vehicle the subject matter of the appeal. The Appellant presented a report from an online website [REDACTED] for a vehicle bearing registration number [REDACTED] and date of first registration of [REDACTED] 2014. The report includes the following:

“Write-Off (Cat. A/B/C/D) Yes

Write-Off Description [REDACTED]/2017, Category D UK

We have a record of this vehicle being previously written-off. It was a Category D write-off, which means the vehicle has been damaged and the insurer has decided not to repair. The vehicle may be repaired and returned to the road.”

9. The Appellant submits that as the vehicle was damaged the OMSP should be based on the historical condition of the vehicle. In support of the appeal, the Appellant presented photographs of the damaged vehicle. In the appeal to the Revenue Commissioners dated 28 July 2017, the Appellant stated he had incurred costs of €1,500 in repairing the vehicle to a roadworthy condition, however, further repairs were required which would increase the total cost of repairs. No documentary

evidence was presented to the Appeal Commissioners in support of the cost of repairs.

10. The Appellant submits that the OMSP of the vehicle should be the price paid for the vehicle, the euro equivalent of the price paid being €8,720, resulting in a VRT charge of €1,656.80 (a calculation of €8,720 @ 19%). Alternatively, the Appellant submits that the OMSP of the vehicle should take into consideration that the vehicle is a repaired category D write-off, which means that the OMSP should be 60% of the OMSP determined for an undamaged vehicle. No evidence was presented in support of this submission. This gives rise to an OMSP of the vehicle the subject matter of the appeal of €10,686 (being 60% of €17,810 – the value determined at the National Car Testing Service centre) resulting in a VRT charge of €2,030.34 (a calculation of €10,686 @ 19%). In the Statement of Case submitted by the Appellant to the Tax Appeals Commission dated 22 November 2017, the Appellant submits that the value of a category D write-off, even after repairing to a roadworthy condition, is 30%-40% less than an undamaged vehicle of the same specification. No evidence was presented in support of this submission.
11. At the date of registration of the vehicle in the State the OMSP was determined at €17,810. On appeal to the Revenue Commissioners the OMSP was determined at €16,000. In the Statement of Case submitted by the Revenue Commissioners to the Tax Appeals Commission dated 13 December 2017, the Revenue Commissioners state that the revised OMSP was arrived at by reducing the OMSP of €17,810 by 10% to arrive at a revised OMSP of €16,000. The Appellant appealed to the Appeal Commissioners as the Appellant considered that matters outlined in the appeal to the Revenue Commissioners dated 28 July 2017 had not been sufficiently addressed and there was no clarification on how the revised OMSP had been determined by the Revenue Commissioners. No information was provided by the Revenue Commissioners in the letter to the Appellant dated 28 August 2017 to explain the basis for the revised OMSP of €16,000.



12. In the appeal to the Appeal Commissioners, the Revenue Commissioners submit that the OMSP of €16,000 is fair and reasonable. In reviewing the matter for the purposes of the appeal to the Appeal Commissioners, the Revenue Commissioners reviewed Irish websites advertising vehicles for sale by retail and provided printouts of four vehicles which the Revenue Commissioners consider are comparator vehicle valuations. The four comparator vehicle valuations are €19,495, €19,995, €20,950 and €21,995. The Revenue Commissioners also included the OMSP determined at the National Car Testing Service centre of €17,810 in the analysis. The Revenue Commissioners reduced each comparator vehicle valuation by 20% to arrive at an average valuation of €16,309. The Revenue Commissioners presented the following documentary evidence as comparator vehicle valuations:

- (a) Printout from an Irish website advertising a sale by retail of a Nissan Qashqai +2 360 1.5 (2014) with 61,000 kilometres for €19,495.
- (b) Printout from an Irish website advertising a sale by retail of a Nissan Qashqai +2 360 1.5 (2014) with 67,592 kilometres for €19,995.
- (c) Printout from an Irish website advertising a sale by retail of a Nissan Qashqai +2 360 1.5 (2014) with 104,998 kilometres for €20,950.
- (d) Printout from an Irish website advertising a sale by retail of a Nissan Qashqai +2 XE 1.5 (2014) with 78,350 kilometres for €21,995.

13. For ease, the analysis of the Revenue Commissioners is presented in tabular format below:

www.carzone.ie	Valuation	Valuation less 20%
(a)	€19,495	€15,596
(b)	€19,995	€15,996
(c)	€20,950	€16,760
(d)	€21,995	€17,596

NCTS	€17,810	€14,248
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TOTAL	€100,245	€80,196
AVERAGE (÷5)	€20,049	€16,039

As the average valuation of €16,309 exceeds the OMSP of €16,000, the Revenue Commissioners submit that an OMSP of €16,000 is fair and reasonable.

14. In my view, the four comparator vehicle valuations at (a) to (d) above forms part of the verification process in measuring the OMSP of a Nissan Qashqai +2 360 1.5 DCI (2014), and thereafter a percentage adjustment is applied for the condition of the vehicle. The average of the four comparator vehicle valuations at (a) to (d) above is €20,608, and when reduced by 10% gives a value of €18,547. The OMSP determined at the National Car Testing Service centre was €17,810. Therefore, based on the comparator vehicle valuations, and having regard to the difference in model at (d) and variations in mileage and specification, the OMSP of a Nissan Qashqai +2 360 1.5 DCI (2014) is €17,810. As the vehicle the subject matter of the appeal was a repaired category D write-off, the value of €17,810 is reduced by a further 20% as an adjustment for the condition of the vehicle to arrive at an OMSP

of €14,248. This is consistent with the process presented by the Revenue Commissioners in Determination 67TACD2019.

15. 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 the charging of the tax (being the date of registration in the State). This means the OMSP is not measured as the price paid for the vehicle, as submitted by the Appellant. For the purposes of determining the OMSP, the vehicle is valued in the condition in which it is presented at the date of registration. 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 €14,248 is a fair and reasonable OMSP for 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 €14,248 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

2 MARCH 2020

