



103TACD2021

BETWEEN

THE APPELLANT

Appellant

v

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price (hereinafter referred to as the “OMSP”) in respect of the calculation of Vehicle Registration Tax (hereinafter referred to as “VRT”). The Appellant submitted an appeal to the Tax Appeals Commission (“the Commission”) received on 26th February 2020.
2. On agreement of the parties, this appeal is determined without an oral hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts

3. The vehicle, the subject matter of this appeal, is a BMW Z4 2.0 E85 I Sport Roadster with registration number [REDACTED]. The Appellant imported the vehicle on 29th August 2019 and registered it at the National Car Testing Service Centre on 21st December 2019. The Appellant paid the VRT amount of €2,072 based on a VRT rate of 30% applied to an OMSP of €6,908. In addition, the Appellant paid a late registration fee of €236, which is not in dispute.
4. The Appellant appealed to the Revenue Commissioners (“the Respondent”) under section 145 of the Finance Act, 2001 (as amended) on the basis that the OMSP applied to the vehicle was overstated. Further to the appeal, the Respondent

revised the OMSP downwards to €6,270. The Respondent notified the Appellant of the revised OMSP by letter dated 3rd February 2020. The Appellant appealed the revised OMSP to the Commission pursuant to section 146 of the Finance Act, 2001 (as amended) by notice of appeal received on 26th February 2020.

Legislation

5. Section 146 of the Finance Act, 2001 (as amended) provides:

- “(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.*

.....

“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

7. The Appellant submits that the revised OMSP placed on the vehicle by the Respondent of €6,270 is overstated. In support of this submission, the Appellant has furnished a printout from the VRT calculator on the Revenue Commissioners website, which indicates an OMSP of €2,747. The Appellant contends that an amount of €824 VRT is payable on the vehicle based on a VRT rate of 30% applied to the OMSP of €2,747.
8. The Appellant further submits that the calculation of the VRT is incorrect in that the VRT rate has been applied to an OMSP, which already includes a previous VRT charge. The following is an extract from the Appellant's submission in this regard;

“In addition, as the OMSP is the price of a car, including all taxes and duties, the calculation of a rate of 30% over the OMSP is incorrect in my opinion. Above calculation results in a VRT charge over a vehicle price where this same charge has already been applied”.

9. The Respondent submits that vehicles are valued based on their OMSP, age and associated depreciation, condition of the vehicle and value of similar cars for sale in the State. The Respondent submits that they took the lowest value of the advertised vehicles above i.e. €6,750 and applied a reduction of €480 to take account of the high mileage on the Appellant's vehicle to arrive at a reduced OMSP of €6,270. This resulted in a refund of €191 due to the Appellant. The Respondent furnished copies of the advertised vehicles with their statement of case. The Respondent submits that they had carried out their own internet search during the course of dealing with the first stage VRT appeal and found the following vehicles advertised for sale:

Year of Manufacture	Model	Sale Price
2006	BMW Z4 2.0 E85I Roadster	€6,995
2006	BMW Z4 2.0 E85I Roadster	€7,990
2006	BMW Z4 2.0 E85I Roadster	€6,750

10. The Respondent submits that the Appellant (in his first stage appeal) furnished copies of similar vehicles advertised for sale online as follows;

Year of Manufacture	Model	Sale Price
2006	BMW Z4 (unknown model)	€4,450
2005	BMW Z4 Coupe	€3,000
2004	BMW Z4 Coupe	€4,495

11. The Respondent submits that the advertised vehicles relied upon by the Appellant are similar to the vehicle the subject of the appeal but are not the same model as the Appellant's vehicle, which carries a higher specification.
12. As regards the printout from the VRT calculator provided by the Appellant in support of his appeal the Respondent submits that the vehicle described therein is for a vehicle with a lower specification and lower CO2 emissions.

Analysis and findings

13. VRT is calculated on a vehicle by applying a VRT rate to the market value of the vehicle (the OMSP). The rate is determined by reference to the CO2 emissions of the vehicle, which in this case is 181g/km and accordingly the VRT rate to be applied is 30%. There is no dispute between the parties as regards the VRT rate. The issue and the matter to be determined in this appeal is the correct OMSP for this vehicle. This is the value that the vehicle is likely to sell for in the open market.
14. The OMSP assigned by the Respondent to the vehicle is €6,270. The Appellant contests this valuation on the basis that the OMSP assigned by the Respondent is not in accordance with that quoted on the Respondent's online VRT calculator and accordingly the correct OMSP of the vehicle is €2,747. In support of this argument, the Appellant has furnished a printout from the VRT calculator for a vehicle with a statistical code of 43585304 and which indicates an OMSP of €2,747.
15. The VRT statistical code is used to uniquely identify the make, model and version of a vehicle. The statistical code according to the vehicle import receipt for the Appellant's vehicle is 45484965. Therefore, the Commissioner finds that the printout from the VRT calculator furnished by the Appellant is for a different vehicle and does not assist the Appellant in his appeal.
16. The Respondent states in their submission that the Appellant had furnished copies of advertised vehicles for sale as part of his first stage appeal to them. The Commission invited the Appellant to provide copies of these advertised vehicles but he failed to do so. Two of the advertised vehicles are older than the Appellant's vehicle and so the Commissioner cannot be convinced that these assist the Appellant in his appeal. One of the advertisements is for a vehicle manufactured in 2006, the same year as the Appellant's vehicle but without having sight of the advertisement, the Commissioner is unable to draw any favourable conclusions for the Appellant.
17. The Appellant also states in his submissions that the (VRT) "*calculation results in a VRT charge over a vehicle price where this same charge has already been applied*". The Appellant has not expanded on this argument but the legislation is quite clear that the OMSP is, "*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...*". The legislation does not allow for a reduction for any VRT previously paid on the same vehicle. Therefore, this submission does not assist the Appellant in his appeal for a lower OMSP.
18. The Respondent examined the matter at first stage review and having found similar vehicles advertised for sale online reduced the original OMSP from €6,908 to €6,270. The Respondent furnished copies of the advertised vehicles used as the basis for the revised OMSP. The advertised vehicles furnished by the Respondent are for vehicles with the same year of manufacture as the Appellant's vehicle. While the Commissioner could not verify that the advertisements are for *identical* models to the Appellant's vehicle, the Commissioner is satisfied that the advertisements are similar. The Commissioner is also satisfied that in the course of their review the Respondent took a reasonable approach by taking the lowest

advertised sales price and applying a further discount to take account of the high mileage on the Appellant's vehicle.

19. In appeals before the Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the tax charged is incorrect. The Appellant was correct to appeal to seek clarity on the VRT. The Commissioner notes that the Appellant was correct in seeking a reduction in the first instance from the Respondent but the Commissioner cannot establish that any further reduction is applicable in this appeal.
20. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at paragraph 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.'*
21. The Commissioner finds that the Appellant has not furnished sufficient information and documentation which would allow the Commissioner 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, the Commissioner determines 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

22. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, the Commissioner is satisfied that the OMSP of €6,270 assigned to the vehicle is correct.
23. The appeal hereby is determined in accordance with section 949AL TCA 1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
9th June 2021