



124TACD2021

BETWEEN

THE 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') in respect of the calculation of Vehicle Registration Tax ('VRT') by the Revenue Commissioners ("the Respondent").
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 2004 BMW M3 E46, registration number [REDACTED]. The Appellant imported the vehicle from the United Kingdom on 11th May 2019 and registered the vehicle on 10 June 2019 within the required deadline. The Appellant paid STG£18,000 for the vehicle in the UK. An OMSP of €11,000 was assigned resulting in a VRT charge of €3,960 based on the percentage rate of 36 per cent of the OMSP.
4. The Appellant appealed to the Tax Appeals Commission ("the Commission") on the grounds that the OMSP was excessive.

Legislation

5. The requisite legislation which applies to such an appeal is section 146 of the Finance Act 2001 and section 133 of the Finance Act 1992. They are set out as follows for convenience and to assist the parties:

Section 146 of the Finance Act 2001:

(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).

Section 133 Finance Act, 1992, as amended:

(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."

Submissions

6. Appellant's Submission

The Appellant included correspondence that he had sent to the Respondent as part of his first stage VRT appeal, in his Statement of Case. The Appellant sought to appeal on the basis of comparison with other valuations of Z4M coupes and E46 M3 vehicles. The following are the most relevant extracts:

"Dear Sir,

As requested in your letter dated 26th June regarding my VRT appeal I have provided additional proof/evidence as to the comparable values of Z4M coupe's and E46 M3's, the basis of my appeal that I sent 12th June.

I have enclosed 3 different examples of Z4M coupe's for sale as proof of Z4M coupe values as follows:

Example 1: UM coupe, 2007, 74,000 miles, Price £17,450

Example 2: Z4M coupe, 2006, 64,000 miles, Price £20,500

Example 3: Z4M coupe, 2007, 72,000 miles, Price £18,995

I have also enclosed 3 different examples of E46 M3's for sale as proof of E46 M3 values. There was of course my own vehicle, a 2004 car with 63,000 miles which I purchased for £18,000. See details of 3 additional examples of E46M3 values as below:

Example 1: E46 M3 coupe, 2004, 72,000 miles, Price £18,995

Example 2: E46 M3 coupe, 2005, 69,000 miles, Price £17,995

Example 3: E46 M3 coupe, 2004, 71,000 miles, Price £17,450

As you can see the values of E46 M3's and Z4M coupe's are very similar, the average price for both cars across the 3 examples is £18,981 and £18,146 for the Z4M coupe and E46 M3 coupe respectively. I think I have demonstrated equivalence in values between the two cars.

The OMSP for the Z4M coupe in Ireland on the revenue calculator is €4,547 which equates to a VRT payable of €1,636. Due to the many similarities between the 2 vehicles as outlined in my initial letter and the comparable costs of each car as demonstrated I feel that the OMSP/VRT on the two vehicles should be equivalent. I was charged €3960 VRT. Based on the information provided I believe I have demonstrated that I was charged approx. €2,324 too much, in my view an overpayment of €2324.

Can you please consider my appeal for a reduced rate of VRT."

"Dear Sir/Madam,

I recently purchased a car in the UK and on importation into Ireland paid VRT to the revenue. I did appeal this via the normal channel to the VRT appeals office in Wexford, however my appeal was not successful. I wish to appeal this determination from the VRT appeals office. I enclose a copy of the latter I received from the VRT appeals office.

Regarding the basis of my appeal, please read letter '#1' and '#2' enclosed, which are my original appeal to the VRT appeals office. The vehicle I imported is no longer on the online VRT calculator. In short in my original appeal I outline how I used a very similar vehicle (same make, body style, engine, year of production etc.) that was still listed on the online calculator to gauge the VRT that would be payable, they sell for equivalent amounts in the UK, for which I provided several examples and therefore I assumed the OMSP and VRT payable in Ireland would be similar.

The argument from the VRT appeals office seems to be inferring the OMSP charged by them was reasonable — stating "as the purchase price was greater than the OMSP charged at the point of registration it is obvious that there would be no grounds for an appeal." It is reasonable if this was open and transparent and applied consistently on all vehicles however that is not the case. With older cars similar to the performance vehicle that I imported the relationship between OMSP and the true vehicle value in Ireland is not consistent of that with newer vehicles, the OMSP on the online calculator is only a small percentage of the true market value of the vehicle for these older cars similar to mine. I'm not sure why this is, I can only assume its because if VRT was charged in this fashion the final cost (purchase price + VRT) would inhibit or deter anyone from importing such a vehicle given the typical 36% VRT rate on larger/older vehicles, you would end up with a vehicle costing you way in excess of what it would be worth in Ireland. With newer vehicles yes the OMSP and true market value is very similar and therefore it is clear the way the VRT is calculated and what you will have to pay should you choose to import a vehicle. With older vehicles the link between OMSP and true market value is not there, I will give you some examples below of performance cars of similar vintage and value to the BMW M3 that I purchased, the OMSP and VRT payable as per the online VRT calculator and the typical true market value of the cars to show how the OMSP as listed on the revenue calculator in Ireland is only a fraction of the true market value in Ireland.

The true market value listed below for the cars is supported by several examples of each car, the Z4M coupe values are per my previous VRT appeal — I gave 3 examples with an average price of £18,891 which equates to €21,828, there were no Z4M coupe for sale in Ireland at that time. The audi RS4 value is based on two examples on car zone in Ireland, adds are enclosed. The average of the 2 cars is €25,450. The BMW m5 example is based on two examples, adds also enclosed, the average price of the 2 cars was €19,925.

Vehicle	OMSP	VRT Payable	True Market Value	OMSP % of True Market Value
06 BMW Z4M Coupe	€4,547	€1,636	£18,981 (€21,828)	20.8%
06 Audi RS4	€8,621	€3,103	€25,450	33.8%
05 BMW M5	€7,139	€2,570	€19,925	35.8%

As you can see the true market value and the OMSP on the online revenue VRT calculator are not even close, the OMSP in Ireland for which the VRT is calculated from is

approximately one third of the true market value. The average OMSP as a percentage of the true market value based on supported examples across the 3 different cars is 30.1%. The information provided above demonstrates a typical relationship between the OMSP and true market value of similar performance cars to my own BMW M3. The average market value of my BMW M3 as supported by 3 examples in my previous appeal was £18,146 (approx. €20,800). I paid £18,000 for my car which equates to approx. €20,700. Applying the same 30% rate to convert the true market value to OMSP equates to €6,210 OMSP. I believe this is a fairer OMSP by which to charge VRT on my car. The VRT rate is 36% this equates to a VRT of €2235. I was charged €3,960 VRT I therefore feel I am due a refund of €1,725.

The fact you cannot obtain an estimate for a car not listed on the revenue site by any means prior to purchasing a car is very frustrating, given the fact you must purchase a car and then present it to the revenue to find out the chargeable VRT is very unreasonable for the motorist. It means that it is very hard to budget for a car and determine whether you can afford the purchase or not. It's really an unknown as to what the VRT might be, also the fact you have to pay the VRT before appealing is also a challenge.

I am now in the situation given what I paid for the car (€20,700) plus the unreasonable level of VRT paid (€3,960) that the car is worth nowhere near what it could achieve for sale in Ireland. I enclose two examples for sale currently in Ireland, of which these are the best examples I could find, the average of the two cars is €15,125, there are other cars for sale from €11,000. This is a far cry from the nearly €25,000 that my car currently stands me. I do not mind paying VRT however I want to pay a fair and reasonable amount in line with what is charged on other similar high-performance vehicles that are currently listed on the revenue site as I demonstrated.

I ask that you consider my appeal for a VRT refund.”

7. Respondent's Submission

The Respondent stated the following in its Statement of Case:

“Outline of relevant facts.

This is an appeal against the Valuation (known as The OMSP – Open Market Selling Price) applied by Revenue, of a vehicle imported by the appellant.

The OMSP is the price, inclusive of all taxes and duties, which, in the opinion of the distributor, a new vehicle of the model and specification, including factory/distributor-fitted enhancements and accessories, would fetch on a first arm's length, retail sale in the open market in the State (Section 133(2)(a), Finance Act, 1992, as amended). The OMSP on a used vehicle is adjusted for depreciation.

The Appellant imported a BMW M3 E46, 2 door Coupe on 11 May 2019. The vehicle was registered on 10 June 2019. It was valued at €11,000 (OMSP) by Revenue and €3,960 VRT was paid i.e $€11,000 \times 36\% = €3,960$.

He appealed the OMSP to Revenue. With his appeal he submitted estimates of some vehicles for sale. However, the vehicles were different makes/models and none of them were valued at less than €11,000.

Revenue believes that the OMSP used (€11,000) is a fair reflection of the value at the time of registration”

Analysis

8. 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, namely on the price, inclusive of all taxes and duties, which, in the opinion of the Respondent, the vehicle might reasonably be expected to fetch on a first arm's length sale in the State.
9. The OMSP ascertained by the Respondent in relation to the vehicle the subject matter of this appeal was €11,000. The Appellant's grounds for appeal in relation to the OMSP assigned to the vehicle was that it was excessive.
10. The Appellant submitted the sales price of six various equivalent type vehicles which all had United Kingdom prices in excess of €11,000. The Appellant did not furnish any examples of equivalent vehicles which had values less than €11,000.
11. In addition, the Appellant submitted three examples of vehicles similar to his vehicle ('high performance vehicles') and argued as follows:

"As you can see the true market value and the OMSP on the online revenue VRT calculator are not even close, the OMSP in Ireland for which the VRT is calculated from is approximately one third of the true market value."

The Appellant submitted these examples as evidence that for VRT purposes the OMSP calculation is approximately 30% of the 'true market value'. Based on this the Appellant reasoned that the Respondent should be consistent in its treatment and should apply this 30% relationship between the OMSP calculation and the 'true market value' to the calculation of the OMSP for his vehicle.

12. The Appellant argued and submitted evidence that the OMSP calculated by the Revenue online VRT Calculator understates the 'true market value' of high performance vehicles by approximately 70% and that this understatement should also be applied to his high performance vehicle leading to an OMSP for VRT purposes of €6,210. The VRT on this OMSP of €6,210 at a VRT rate of 36% would be €2,235. On that basis the Appellant submits that he is due a refund of €1,725.
13. When calculating the OMSP of used vehicles the Respondent online VRT calculator applies a rate of depreciation, based on the age and type of vehicle ('Depreciation Group'), to the OMSP of the equivalent new vehicle. The Revenue Guidance VRT Manual states that in determining the appropriate depreciation rate, Revenue *"conducted extensive research into the used car market in the State to determine if there was a pattern to the depreciation of used vehicles.... They then validated these tables against the used vehicle trade in the State..... Since then the tables have been constantly monitored and refined to ensure that they reflect the market conditions. In this way they have retained currency with the used vehicle market."*
14. The Revenue Guidance Manual also states that, *"Revenue Officials regularly review the valuation of all vehicles on the database..... The depreciation table itself is then examined by reference to the market and elements may be adjusted as a result of this examination."*

15. The depreciation rates used in the three examples submitted by the Appellant indicate that the VRT calculator depreciated the original new vehicle OMSP by 94%, 91% and 95%. The on-line calculator is an indication for individuals to assist only. It is not the final OMSP that is applied on registration by the Respondent.
16. The valuations for the six vehicles were sent to the Respondent and examined by them as part of the first stage VRT appeal. However, the Respondent contended that the evidence provided by the Appellant did not alter the evidence that led to their decision that the OMSP was not lower than €11,000 and therefore should stand. In their Statement of Case to the Commission, the Respondent submitted that:
- “With his appeal he submitted estimates of some vehicles for sale. However, the vehicles were different makes/models and none of them were valued at less than €11,000. Revenue believes that the OMSP used (€11,000) is a fair reflection of the value at the time of registration”*
17. The Commissioner understands the challenges that the Appellant faced in understanding the OMSP granted and he was entitled to appeal this valuation. The Appellant may have identified some issues with the depreciation rates used in the online VRT calculator and the rate used to value his vehicle. However, it is not the role of the Commission to make assumptions or assessments on individual depreciation rates for different types of vehicles and different models and performance levels. The Commission’s role is to assess if the OMSP assigned to the vehicle is in accordance with the legislative framework.
18. The test is the open market selling price in the State at the time of the registration. The price the Appellant paid was higher than the OMSP rate applied by the Respondent. Therefore, it is understandably a challenge for the Appellant to argue that the OMSP should be lower when the vehicle could be sold and has sold at a higher rate in the United Kingdom. That vehicle could not have been bought for €11,000 in the United Kingdom at that time, as evidenced by the fact that the Appellant bought the vehicle for £18,000. The Appellant could also not have bought the vehicle for €11,000 in Ireland based on the examples that he provided.
19. The onus is on the Appellant to provide evidence to justify his contention that the OMSP estimate used to calculate the VRT due on his vehicle is excessive. In this appeal, the evidence submitted by the Appellant indicates that the OMSP used in the calculation of the VRT due on his vehicle was not excessive. The Respondent considered the Appellant’s appeal and the Commissioner accepts that the Respondent applied the correct test, namely the open market selling price. The Commissioner understands that as vehicles get older, depreciation is a factor in the price and the Respondent has taken that into account in the calculation for VRT purposes.
20. But the Commissioner’s role is not to step into the shoes of either the VRT calculator, or assume new depreciation rates, or become an expert in depreciation across various models of vehicles and compare one against the other. The Commissioner’s role is to assess if the Respondent has applied the legislation correctly and in this case the Commissioner is satisfied that the Respondent has applied the legislation in the correct way and the OMSP is reasonable. The Appellant has referred to similar cars he found in the State with an average value of circa €15,125, if he had bought them in the State. He mentions that it is a “far cry from the €25,000 that my car currently stands me”. The Appellant also provided details of other high performance cars around the value of €18,000 to €25,000 depending

on the model that could be bought in the State. An individual in this case could have bought the vehicle in the United Kingdom and it appears from the details provided by the Appellant that such an individual could have bought the same or similar vehicle in the State for a lower cost or even a similar cost. However, it is not the role of the Commission to adjust VRT to assist with the purchase price of a vehicle in the United Kingdom to make it cost effective. The Commissioner appreciates that the Appellant may be disappointed but the Commissioner must ensure that she examines the legislative framework and makes her decisions based on that.

Conclusion

21. In appeals before the Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. 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.'*
22. Based on a consideration of the evidence and submissions together with a review of the documentation, the Commissioner determines the Appellant does not succeed in discharging the burden of proof in this appeal. The Commissioner determines €11,000 to be a fair and reasonable OMSP in relation to the vehicle registered.
23. This appeal is determined in accordance with section 949AL TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the Taxes Consolidation Act 1997.



Marie-Claire Maney
Chairperson
Appeal Commissioner
16th August 2021