



42TACD2021

BETWEEN/

APPELLANT

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

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 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').
2. This appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Background

3. The vehicle, the subject matter of the appeal, is a BMW X4 xDrive20d M Sport registration no **REDACTED**. The Appellant purchased the vehicle for stg £36,995 in the UK on 18th September 2019. The vehicle was first registered in the UK on 8 January 2019. The vehicle was registered with the National Car Testing Service (NCTS) in September 2019. An OMSP of €59,533 was assigned by the Respondent, resulting in a VRT rate of 24% and a VRT charge of €14,288.
4. The Appellant appealed unsuccessfully to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was not revised by the Revenue Commissioners.

5. This was notified to the Appellant by letter dated 12 November 2019. The Appellant was aggrieved with the OMSP determination of the Revenue Commissioners and duly appealed to the Tax Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 19 November 2019.

Legislation

6. Section 146 of the Finance Act 2001:

Section 146 Finance Act 2001 provides as follows;

“A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.”

7. Section 133 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

8. The Appellant Submitted:

- a. That the OMSP of €59,533 was excessive and supported this assertion with independent valuations from two Irish car dealer websites showing similar vehicles for sale at €58,945 and €58,995 respectively.
- b. The BMW pricelist showing the new version of his vehicle for sale at €65,095 (without extras).
- c. That there are very few vehicles similar to his car for sale in Ireland.
- d. An alternative OMSP of €56,139 taking the UK new retail price (£49,120) and the price paid by him (£36,995) to determine a depreciation rate of 24.68% on the Irish retail price (€74,535) with extras.



- e. An alternative OMSP of €56,045 using his own and the Respondent's lower comparator car valuation figure.
 - f. That the higher comparator price obtained by the Respondent of €67,975 was not obtainable in the market at the time as it was only marginally below the new retail price of a similar car in the Irish market. The Appellant stated that the car was not sold at that price and remained unsold on the forecourt of the particular garage.
 - g. A determination 53TACD2019 from the TAC website in support of his appeal suggesting that the OMSP be derived in the same way as determined in that case.
 - h. That the correct rate of VRT was 23% rather than 24% as applied by the Respondent.
9. The Respondent submitted:
- a. That the matter had been examined in some detail with reference to the tax and duty inclusive retail price a vehicle of the same description might fetch on the open market in the State and determined in accordance with its letter of 12 November 2019 that a reduction in the OMSP charged at registration was not warranted.
 - b. That this conclusion was reached by taking the average price (€63,485) of two similar vehicles for sale in the State and applying a 5% reduction for forecourt discount. The Respondent supported this conclusion by supplying evidence of the two prices from garages of €67,975 and €58,995 (the same example as supplied by the Appellant).
 - c. That the average price of €63,485 would not reduce the VRT payable on the vehicle at registration and thus concluded there was no case for a reduction in the OMSP at registration.
 - d. That the correct rate of VRT for the Appellant's vehicle was 24%.

Analysis and Conclusion

10. 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 Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State."*



In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.

11. In correspondence between the TAC, the Appellant and the Respondent it was accepted by the Appellant that the correct rate of VRT applicable was 24% as ascertained by the Respondent. Consequently I have not considered this matter further.
12. The initial OMSP assigned in relation to the vehicle the subject matter of this appeal was €59,533. The Appellant's ground of appeal in relation to the OMSP assigned, was that it was excessive.
13. The Appellant in support of his appeal offered alternative OMSP figures and a commentary on the conclusions reached by the Respondent in supporting its initial OMSP of €59,533.
14. The question to be answered in this appeal is; how much would the vehicle be likely to fetch if sold on the open market in Ireland?
15. The Respondent has supported its view of the initial valuation by taking average valuations of comparator vehicles in the Irish market. However one of those vehicles is clearly an outlier in terms of the price sought by the particular garage.
16. Section 133 Finance Act, 1992, as amended provides that in the case of a vehicle other than a new vehicle, the OMSP is '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...' at the time of registration.
17. The OMSP is essentially the price at which a dealer in Ireland could sell the vehicle for in an arm's length transaction having accounted for input costs, a margin and the appropriate duties and taxes.
18. In taking the average of two prices to support its initial valuation where one is clearly an outlier the Respondent has failed to accurately determine, what, a dealer in Ireland could sell the vehicle for in an arm's length transaction having accounted for input costs, a margin and the appropriate duties and taxes.



19. I find that the Appellant has furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Respondent's interpretation of the OMSP of the vehicle in question is incorrect. As a result, I determine that the Appellant has succeeded in discharging the burden of proof and has succeeded in showing that he qualifies for a further reduction in the OMSP assigned by the Respondent.

20. I have used the Respondent's lower comparator vehicle price as the basis for determining the OMSP of the Appellants vehicle and I have determined that the OMSP of the vehicle the subject of this appeal is €56,045

Determination

21. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €56,045 to be a fair and reasonable OMSP in relation to the particular vehicle and that the Appellant is entitled to a further refund of €837.12. This is based on 24% of the difference between the initial OMSP assigned at registration and the determined OMSP (i.e. €59,533 - € 56,045 = €3488 @24% = €837.12).

22. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

28 JANUARY 2021

