



53TACD2021

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 was adjudicated with a remote hearing on 25 February 2021.

Background

3. The vehicle, the subject matter of the appeal, is Toyota Prius Alpha Hybrid automatic 7-seater. The Appellant purchased the vehicle in Japan for US \$6,350 including shipping on 22 July 2019. The vehicle arrived into Ireland on 7 October 2019 and was presented for examination and registration on 18 October 2019. The vehicle was registered with the National Car Testing Service (NCTS) on 18 October 2019. An OMSP of €11,303 was assigned by the Respondent. The Appellant paid net VRT €1,132 on registration of the vehicle.
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 18 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 13 December 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 depreciation rate applied by the Respondent in its calculation of VRT, based on the manufacturer's OMSP, was altered during the time the car was in transit between Japan and Ireland.
- b. This change in the depreciation rate resulted in a VRT charge greater than expected by her from reviewing the Respondent's website in relation to the likely VRT payable on her vehicle.
- c. Evidence of the historical changes to the depreciation rates contained in the Respondent's database for applying VRT, obtained from the Respondent in a freedom of information request.
- d. That the change in the VRT charge amounted to an additional VRT charge of between €492 and €572.
- e. That the VRT system is not transparent and changes to the depreciation rates are not notified on the Respondent's website.
- f. That she is aware of a similar importation of a newer car earlier in 2019 where the VRT charged was significantly less than the amount paid on her vehicle.

9. The Respondent submitted:

- a. The vehicle was valued at €11,303 and VRT was charged at the rate of 14%. This led to a charge of €1,582 for VRT, however as the vehicle is a Hybrid a reduction of €450 was given. This is the correct reduction for a hybrid vehicle aged 7 years or over but less than 8 years.
- b. That the OMSP allocated to this vehicle at registration was €11,303, and it should be noted that VRT is charged at the rate of a percentage according to the CO2 emissions of 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 by retail (the OMSP).
- c. 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 18 November 2019, that a reduction in the OMSP charged at registration was not warranted.



- d. That this conclusion was substantiated on 9 June 2020 from similar vehicles for sale in the State and the two that are closest in description and mileage were advertised on Done Deal:
 - Toyota Prius 2012, odometer 74,566 miles asking price €11,950
 - Toyota Prius 2012, odometer 180,000 km asking price €10,850
- e. That the average of these prices of €11,400 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.
- f. That the Respondent had offered by letter on 12 November 2020 an alternative depreciation rate for the vehicle which resulted in an offer to refund an amount of €214.

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. The initial OMSP assigned in relation to the vehicle the subject matter of this appeal was €11,303. This OMSP was arrived at using the algorithm contained in the Respondent's database that attempts to identify 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.*
- 12. The Respondent acknowledged that the database is constantly updated to reflect the OMSP of various cars on the market.
- 13. The Respondent conceded that the depreciation rate within the database was amended during the period the Appellant's vehicle was in transit to Ireland but advised that this was entirely a matter for Revenue to update its views on the OMSP in relation to various vehicles.



14. The data provided by the Respondent to the Appellant in relation to the Appellant's specific car showed the following movements in the depreciation rates whilst the as new OMSP remained relatively static;

Statistical Code	As new OMSP €	Effective date	Depreciation Group
40681006	33,815	01/12/2017	G1
40681006	33,815	01/12/2017	G1
40681006	33,815	07/08/2019	B1
40681006	33,815	30/08/2019	C1
40681006	33,845	01/01/2020	C1

15. In advance of the Appeal Hearing the Respondent had offered in its letter to apply the C1 (instead of the B1 rate initially applied) depreciation rate resulting in an offer of refund of €214 as submitted above. The Respondent was unable to explain why the appropriate C1 rate (as per the table above) had not been allocated initially to the Appellant and suggested that there may have been an error in the information (FOI) provided as replicated in the table above.
16. The Respondent offered to apply a further reduction in the VRT arising in its OMSP resulting in an offer of a refund of €314 to the Appellant.
17. 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?
18. The Respondent has supported its view of the initial valuation by taking average valuations of comparator vehicles in the Irish market.
19. 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.



20. 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.
21. The Appellant in this case has highlighted an apparent inconsistency in applying the standard algorithm used to determine the OMSP of a vehicle for the purposes of applying VRT.
22. The Appellant drew attention to the fact that a similar but newer vehicle to hers attracted a lower VRT charge earlier in 2019. This is in fact highlighted in the table above where a far greater depreciation would have been applied to a vehicle imported prior to 7 August 2019. The importer of that car would have no incentive to contest the OMSP assigned. However the Respondent changed its depreciation table in August 2019 to more accurately reflect the market value of these cars.
23. Notwithstanding the above, VRT is at all times assessed on the basis of the price the vehicle would fetch on a first arm's length sale thereof in the State by retail. The Respondent is obliged to amend its data based estimate of the OMSP to ensure it captures the correct OMSP.
24. In the event of a dispute in relation to the OMSP of a vehicle such as in this case the Respondent is obliged to substantiate the OMSP allocated and has done so by seeking prices in the open market for comparators.
25. The Appellant has not provided any alternative evidence of what the OMSP of her vehicle should be and has only queried the depreciation rate applied by the Respondent in its valuation system to the new value of a vehicle similar to hers.
26. In appeals before the Appeal Commissioners, 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 judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [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”.

27. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Appellant’s interpretation of the VRT arising on the vehicle in question is correct. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that she qualifies for any refund of the VRT paid.
28. The Respondent has offered a refund of €314 in total in the matter and I will accordingly determine that the OMSP should be revised to reflect a figure commensurate with a net VRT liability of €818.

Determination

29. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine the revised OMSP calculated in accordance with paragraph 28 above to be a fair and reasonable OMSP in relation to the particular vehicle and that the Appellant is entitled to a refund of €314.
30. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
26 FEBRUARY 2021

