



Between:

████████████████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the “Commission”) as an appeal against a determination made by the Revenue Commissioners (hereinafter the “Respondent”). The appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price (the “OMSP”) in respect of the calculation of Vehicle Registration Tax (hereinafter “VRT”).
2. The total amount of tax at issue is €21,010.

Background

3. On 26th October 2020 Ms ██████████ (hereinafter the “Appellant”) imported a ██████████ with 3,780 miles on its odometer which had first been registered on 2nd January 2020 (hereinafter the “vehicle”) in to the State from the UK.
4. On application by the Appellant to import and register the vehicle, an OMSP of €61,796 was applied to the vehicle by the Respondent. This resulted in a VRT liability of €21,010

which the Appellant paid to the National Car Testing Service and the vehicle was registered with the registration number [REDACTED] on 9th December 2021.

5. The Appellant has appealed the OMSP valuation which the Respondent applied to the vehicle.
6. The oral hearing took place remotely before the Commissioner on 3rd June 2022. The Appellant appeared at the oral hearing and was not represented. The Respondent was represented by appeals officers. The Commissioner heard evidence and submissions on behalf of the Appellant and on behalf of the Respondent.

Legislation and Guidelines

7. The legislation relevant to the within appeal is as follows:

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 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 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

Appellant's Submissions

8. The ground of appeal submitted by the Appellant in her Notice of Appeal stated that :

“The car was built on the 13.11.2018 and dated 02.01.2020 as first registration. The price for VRT should reflect those dates.”

9. At the oral hearing the Appellant confirmed that she was no longer relying on this ground of appeal.

10. The Appellant submitted that she had been told by the dealer from whom she purchased the vehicle that the VRT for the vehicle should have been somewhere between €13,000 and €14,000. She stated that she was surprised at the amount of VRT charged by the Respondent which was in or around €7,000 more than she had anticipated.

11. The Appellant submitted a vehicle sales invoice from [REDACTED] Motors from whom she purchased the vehicle which confirmed that she paid a total price of GBP£35,999 for the vehicle which was comprised of GBP£29,999.17 plus Value Added Tax (hereinafter “VAT”) of GBP£5.999.83.

12. The first ground of appeal on which the Appellant relied was the submission of comparator advertisements. In that regard the Appellant submitted that at the time of importing the vehicle there were no comparator vehicles for sale in the State and that in the course of this appeal she had found it difficult to find comparator advertisements. However she had managed to find some comparator advertisements as follows:

- i. [REDACTED] for GBP£39,420 advertisement dated 11th August 2021 with no year of first registration available;
- ii. [REDACTED] first registered in 2019 for GBP£36,500 date of advertisement not visible;
- iii. [REDACTED] first registered in 2017 for sale in Ireland for €49,500 advertisement dated 28th September 2021;

13. The second ground of appeal on which the Appellant relied was that the OMSP applied to the vehicle by the Respondent was excessive and that the methodology of calculating same used by the Respondent was flawed. The Appellant submitted that the methodology

used by the Respondent in coming to the OMSP amounts to a VRT rate of in excess of 50% of the original purchase price of the vehicle.

14. The Appellant submitted that, if the Respondent was correct in reaching the converted figure for the purchase price of the vehicle, the correct methodology for calculating the OMSP was as follows:

Original Invoice Selling Price	GBP£35,999
Less 20% UK VAT of GBP£6,000	GBP£29,999
Convert GBP£ to € @0.89 rate ¹	€33,707
Plus Irish VAT of 21% of €7,078	€40,785
Plus VRT of 34%	€13,867
OMSP inclusive of all taxes and duties	€54,652

15. The Appellant submitted that based on this methodology the correct amount of VRT payable on the vehicle should have been €18,582.

Respondent's Submissions

16. The Respondent submitted that at the time the Appellant sought to import the vehicle there were no comparator vehicles for sale on the Irish market. As a result they engaged the services of a motor assessor who submitted an OMSP valuation for the vehicle as being €72,500.
17. The Respondent submitted that instead of applying the OMSP which the motor assessor had submitted, they decided, based on the purchase price of the vehicle paid by the Appellant, to assign an OMSP of €61,796 to the vehicle and to disregard the OMSP valuation provided by the motor assessor. The Respondent submitted that the OMSP was calculated as follows:

¹ This was the GBP£ to € exchange rate applied by the Revenue Commissioners at the date of first registration of the vehicle in the UK in January 2020.

Original Invoice Selling Price	GBP£35,999
Less 20% UK VAT of GBP£6,000	GBP£29,999
Convert GBP£ to € @0.89 rate ²	€33,707
Plus Irish VAT of 21% of €7,078	€40,785
Plus VRT (€40785/0.66) ³	€21,010
OMSP inclusive of all taxes and duties	€61,796

18. The Respondent submitted that the basis of the valuation was that they accepted the purchase price paid by the Appellant based on the invoice / receipt submitted by the Appellant. They then converted that purchase price from British Pounds to Euro by applying the difference in the applicable VAT rates in the UK and Ireland and converting the price from British Pounds to Euro using the exchange rate which the Respondent had previously set for January 2020 which was the date of first registration of the vehicle. The converted purchase price figure was €40,785. The Respondent submitted that the figure of €40,785 was not the OMSP but was rather a figure which was reflective of the actual amount which the Appellant had paid for the vehicle.

19. The Respondent submitted that in order to reach a figure which reflected the OMSP of the vehicle an additional amount needed to be added to reflect “all taxes and duties” as set out in section 133(3)(c) of the Finance Act 1992 as amended. Section 133(3)(c) of the Finance Act 1992 as amended provides that when calculating the rate of VRT for 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...”

20. The Respondent submitted that as the applicable rate of VRT for the vehicle based on its emissions was 34%, the figure of €40,785 reflected 66% of the OMSP. The Respondent

² This was the GBP£ to € exchange rate applied by the Revenue Commissioners at the date of first registration of the vehicle in the UK in January 2020.

³ VRT rate based on emissions of the vehicle is 34%

increased the converted purchase price of the vehicle to reach a figure representative of 100% of the OMSP inclusive of all taxes and duties. This came to the amount of €61,796.

21. The Respondent submitted that once they had reached an OMSP of €61,796 VRT of 34% was then chargeable on the vehicle in order to import the vehicle into the State and this resulted in a VRT liability of €21,010.

Material Facts

22. The material facts in the within appeal are not at issue and the Commissioner accepts the following material fact:

- i. On 26th October 2020 the Appellant imported into the State a [REDACTED] [REDACTED] with 3,780 miles / 6,083 km on its odometer which had first been registered in the UK on 2nd January 2020. The imported vehicle had an OMSP of €61,796 applied to it by the Respondent which resulted in a VRT liability of €21,010.

Analysis

23. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners [2010] IEHC 49*, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

“This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable.”

24. The Commissioner has considered the submissions made on behalf of both Parties in the appeal.

25. On the one hand the Appellant has submitted two grounds of appeal namely (1) that the Commissioner should accept the comparator advertisements as being the basis for an OMSP and (2) that if the Commissioner does not accept the comparator advertisements, the OMSP should be €54,652 as set out at paragraph 14 above and therefore the correct VRT liability was €18,582.

26. On the other hand the Respondent has submitted that the basis of its calculation of the OMSP is correct and the VRT payable was correctly calculated at €21,010.

Ground 1 – Comparator vehicle advertisements:

27. The Appellant has submitted three advertisements for comparator vehicles as set out at paragraph 12 above. The Commissioner notes that two of these advertisements are for vehicles situate in the UK and as such are not of assistance in reaching an OMSP for the vehicle the subject matter of the within appeal. The Commissioner further notes that the only comparator vehicle situate in Ireland which was submitted by the Appellant was a 2017 registered vehicle for sale at €49,500. The Commissioner notes that this vehicle was 3 years older than the vehicle the subject matter of the within appeal and that the advertisement is dated 28th September 2021 some 9 months after the vehicle the subject matter of the within appeal was imported into the State. The Commissioner finds that the comparator advertisements submitted by the Appellant were not of assistance in reaching an OMSP for the purposes of the within appeal given the age and location of the UK based comparators and given the age of the Ireland based comparator and the date of the advertisement.
28. Therefore the Commissioner does not accept the comparator advertisements submitted by the Appellant and therefore finds that the Appellant has not established, based on her first ground of appeal, that the VRT amount the subject matter of the within appeal was not payable.

Ground 2 – OMSP Calculation Method

29. The Appellant has accepted that the method for converting the purchase price from GBP£ to Euro used by the Respondent was correct. The Appellant takes issue with the methodology applied by the Respondent thereafter. The Appellant submits that the OMSP should be reached by taking the converted purchase price and adding 34% to that price to reach the OMSP.
30. The Respondent on the other hand submitted that the OMSP was correctly reached by taking the converted purchase price as representing 66% of the OMSP and then by increasing this to reach a figure of 100%. The Respondent submits that this is based on the need to ensure that the OMSP reflects the price inclusive of all taxes and duties pursuant to section 133(3)(c) of the Finance Act 1992 as amended. The Respondent submitted that, in the case of the vehicle the subject matter of the within appeal, the OMSP was calculated by taking the converted purchase price of €40,785 and increasing it to €61,796.

31. The Commissioner has considered the submissions of both Parties and does not accept the Appellant's submission that the converted purchase price should be increased by 34% to reach the OMSP.

32. Section 133(3)(c) of the Finance Act 1992 as amended sets out that when calculating the rate of VRT for 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..."

33. In the judgment of the High Court in *Perrigo Pharma International Activity Company v McNamara, the Revenue Commissioners, Minister for Finance, Ireland and the Attorney General* [2020] IEHC 552 (hereinafter "Perrigo"), McDonald J., reviewed the most up to date jurisprudence and summarised the fundamental principles of statutory interpretation at paragraph 74 as follows:

"The principles to be applied in interpreting any statutory provision are well settled. They were described in some detail by McKechnie J. in the Supreme Court in Dunnes Stores v. The Revenue Commissioners [2019] IESC 50 at paras. 63 to 72 and were reaffirmed recently in Bookfinders Ltd v. The Revenue Commissioner [2020] IESC 60. Based on the judgment of McKechnie J., the relevant principles can be summarised as follows:

(a) If the words of the statutory provision are plain and their meaning is self-evident, then, save for compelling reasons to be found within the Act as a whole, the ordinary, basic and natural meaning of the words should prevail;

(b) Nonetheless, even with this approach, the meaning of the words used in the statutory provision must be seen in context. McKechnie J. (at para. 63) said that: "... context is critical: both immediate and proximate, certainly within the Act as a whole, but in some circumstances perhaps even further than that";

(c) Where the meaning is not clear but is imprecise or ambiguous, further rules of construction come into play. In such circumstances, a purposive interpretation is permissible;

(d) Whatever approach is taken, each word or phrase used in the statute should be given a meaning as it is presumed that the Oireachtas did not intend to use surplusage or to use words or phrases without meaning.

(e) In the case of taxation statutes, if there is ambiguity in a statutory provision, the word should be construed strictly so as to prevent a fresh imposition of liability from being created unfairly by the use of oblique or slack language;

(f) Nonetheless, even in the case of a taxation statute, if a literal interpretation of the provision would lead to an absurdity (in the sense of failing to reflect what otherwise is the true intention of the legislature apparent from the Act as a whole) then a literal interpretation will be rejected.

(g) Although the issue did not arise in Dunnes Stores v. The Revenue Commissioners, there is one further principle which must be borne in mind in the context of taxation statute. That relates to provisions which provide for relief or exemption from taxation. This was addressed by the Supreme Court in Revenue Commissioners v. Doorley [1933] I.R. 750 where Kennedy C.J. said at p. 766:

“Now the exemption from tax, with which we are immediately concerned, is governed by the same considerations. If it is clear that a tax is imposed by the Act under consideration, then exemption from that tax must be given expressly and in clear and unambiguous terms, within the letter of the statute as interpreted with the assistance of the ordinary canons for the interpretation of statutes. This arises from the nature of the subject-matter under consideration and is complementary to what I have already said in its regard. The Court is not, by greater indulgence in delimiting the area of exemptions, to enlarge their operation beyond what the statute, clearly and without doubt and in express terms, except for some good reason from the burden of a tax thereby imposed generally on that description of subject-matter. As the imposition of, so the exemption from, the tax must be brought within the letter of the taxing Act as interpreted by the established canons of construction so far as possible”.

34. Having regard to the principles of statutory interpretation affirmed by McDonald J in *Perrigo*, the Commissioner finds that the words of the statutory provision contained in section 133(3)(c) of the Finance Act 1992 as amended are plain and their meaning is self-evident. The Commissioner finds that applying the ordinary, basic and natural meaning of the words of that section means that an OMSP for the purposes of calculating VRT is the expected retail price of a vehicle inclusive of taxes and duties.

35. In coming to the contested OMSP the Respondent accepted the actual purchase price paid by the Appellant and converted same to Euro. The Respondent then applied a figure for taxes and duties based on the fact that the price of a car for sale in the State with similar emissions as the vehicle comprises an amount for the car plus import duties and Value Added Tax and is also comprised of a VRT amount to the value of 34%.
36. The Commissioner finds that the methodology used by the Respondent in calculating the OMSP based on the actual purchase price of the vehicle was correct and that the amount of €61,796 represented the OMSP of the vehicle at the time the Appellant applied to import the vehicle into the State.
37. The Commissioner finds that if the methodology advanced by the Appellant was to be accepted, this would not result in a OMSP which was representative of a 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 as mandated by section 133(3)(c) of the Finance Act 1992.
38. Therefore the Commissioner finds that the Appellant has not established, based on her second ground of appeal, that the VRT amount the subject matter of the within appeal was not payable.

Determination

39. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in her appeal. It is understandable that the Appellant might be disappointed with the outcome of this appeal. The Appellant was correct to check to see whether her legal rights were correctly applied.
40. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA1997") and in particular, section 949 thereof. 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 TCA1997.



Clare O'Driscoll
Appeal Commissioner
10th June 2022

APPENDIX 1

Extracts from Section 8 (Valuation System for New and Used Vehicles) of the Revenue Commissioners VRT Manual

“3 Valuation of Used Vehicles

3.1 Determination of the OMSP

In order to calculate the amount of VRT to be applied to a used vehicle imported into the State, Revenue is required to determine 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 (the OMSP). Used vehicles may be divided into 3 groups:

1. Used vehicles where the identical model is currently available new and for which an OMSP has been declared by a manufacturer or sole wholesale distributor;

2. Used vehicles where the identical model, while not currently available, was available at some stage in the past and for which an OMSP was declared by a manufacturer or sole wholesale distributor;

3. Used vehicles where the identical model was not available on the Irish market and for which an OMSP was never declared by a manufacturer or sole wholesale distributor. This group includes:

- Vehicles for which “similar models” are or were available in the UK or Northern Ireland markets but not in the State*
- Used vehicles from Japan*
- Used vehicles from other countries*
- Modified vehicles*
- Motor caravans*
- Classic/collectible vehicles.*

3.1.1 Used vehicles where it is possible to determine values on the basis of market values within the State

This will normally apply in the case of vehicles, referred to at 1 and 2 above, which are or were at some time distributed as new vehicles in the State and were at some time the subject of a declaration of OMSP by a sole wholesale distributor.

OMSPs of used vehicles will be directly related to the current market prices for vehicles of the same make, model and version with the equivalent specification in the State. These prices will be determined following research of trade data (e.g. price lists, sales guides, websites and direct enquiries with trade sources). For vehicles that are no longer available as new vehicles, the last retail price as new, will be used as the current OMSP.

3.1.2 Used cars where it is not possible to determine values on direct comparison with market values in the State

Where an identical vehicle is not available for comparison purposes, a “similar” model will be identified, having particular regard to characteristics such as price range, body type, engine capacity, transmission, fuel type, CO2 emissions etc., by reference to the general motor vehicle guides available at the time of declaration, by consultation where necessary with trade sources and by reference to established precedents. An OMSP will be determined by comparison to the value of the “similar” model, with adjustments being made for increased or decreased specification as appropriate.

To assist in the calculation of the likely VRT using this method, a VRT estimate form has been devised. Using this form, it is possible to estimate the VRT due on a particular vehicle by establishing retail ratios between similar models that are on sale in both the UK and Ireland. By applying an average of those ratios to the particular vehicle, it is possible to estimate to a degree of confidence the likely OMSP that may be determined by Revenue officials for this vehicle when it is presented for registration and thus the expected VRT liability. The form and instructions on its use are included at Appendix 3. A completed sample is attached at Appendix 4

For vehicles from other countries for which there is no market and for which it is difficult to identify a “similar” model and therefore no base for calculating what the vehicle might reasonably be expected to fetch on a first arm’s length sale, a method of “grossing up” may be used. The original purchase price (or an average purchase price) of the imported model is taken as a starting point. This is then grossed up by reference to the exchange rate between the country of purchase and the State and the differences in the tax base (e.g. different VAT rates and a dealer’s profit margin). This process will yield a figure from which the current OMSP for VRT purposes can be derived.

For unique vehicles (e.g. classic/collectible vehicles, limousines, kit/reconstructed vehicles and other exotic vehicles) which, by their unique characteristics, are not capable of being valued by reference to other vehicles on sale in the State, Revenue seeks the opinion of an automotive consultant retained by Revenue. The OMSP is then determined by taking their

opinion and any other relevant information (including documentation provided by the person presenting the vehicle for registration) into account.

3.2 Assign a Depreciation Table

Having established the OMSP, the correct rate of depreciation for the vehicle must be established. This is done by examining the source literature available for the particular vehicle (or similar model) in order to establish what a vehicle of that type would fetch on first arm's length sale by retail in the State. The literature should be able to indicate what a similar model of various ages would fetch.

The officer carrying out the valuation will use a depreciation calculator to operate the OMSP against a set of depreciation tables maintained by Revenue (see 5 Depreciation Tables below) to produce a set of values based on those tables. The valuation officer will then compare the research findings against these values to find the closest possible match between the research and a particular depreciation table set of values. This corresponding depreciation table will be assigned to this model (see 5 Depreciation Tables below for further details).

The OMSP and depreciation table relating to this vehicle will then be added to the Revenue database of used vehicles so that the VRT charge for all future vehicles of this particular make, model, version and variant can be calculated at registration.

This data becomes the cornerstone of Revenue's on-line VRT calculator."