



Between

**118TACD2022**

██████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) in respect of the valuation of a Volvo C30 motor vehicle, registration ██████████ (“the vehicle”), imposed by the Revenue Commissioners (“the Respondent”) for the purposes of ascertaining the open market selling price (“OMSP”) with a view to the calculation of Vehicle Registration Tax (“VRT”). The OMSP imposed by the Respondent was €7595, which resulted in the Appellant paying VRT of €2810.
2. The appeal proceeded by way of hearing on 19 May 2022.

**Background**

3. The Appellant imported the vehicle from the United Kingdom in July 2020. Due to delays caused by the Covid-19 pandemic, he did not receive the log book until January 2021. On 28 February 2021, the vehicle was assigned an OMSP of €7595, and the Appellant paid VRT of €2810.

4. The Appellant was aggrieved by this OMSP, as it was greater than had been estimated by the Respondent's VRT calculator online tool. On 30 July 2021 he appealed the OMSP and consequent VRT charged to the Commission.
5. The parties attended a remote oral hearing on 19 May 2022. Towards the end of the hearing, the Respondent offered to have the vehicle physically inspected by an assessor appointed by it, for the purpose of attempting to settle the matter. The Appellant agreed to this proposal. As a result, the Commissioner agreed to stay determination of the appeal for one month to allow for the inspection to take place.
6. The inspection did not resolve the appeal and therefore the Commission notified the parties that the matter would proceed to determination. Both parties submitted additional documentation for the attention of the Commissioner following the inspection. While the Commissioner agreed to stay the determination of the appeal solely to enable the parties to attempt to settle the matter, and not to allow them submit additional documentation, he has considered these additional materials for the purposes of this determination.

#### **Legislation and Guidelines**

7. Section 133 of the Finance Act 1992, as amended, provides *inter alia* that:

(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.*

[...]

(3)

*'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*

8. The Appellant submitted that prior to purchasing the vehicle he checked the Respondent's online VRT calculator. He stated that the calculator offered two models for the Volvo C30, a hatchback and a sports coupé, which he considered strange because, in his view, they were the exact same model. He said that the online calculator suggested that VRT for the hatchback would be €1271 and €1586 for the sports coupé. He stated that he contacted the Respondent to query why there were two models, and was told that there should only be one and that they would look into it, but that he should go ahead and book his VRT inspection.
9. He submitted that he was told at the VRT centre that they did not have any model on record. When he informed them that this was incorrect, he was told that the model available online was the SE LUX version. He stated that this should not have negatively

impacted the valuation of the vehicle, as the SE LUX was a higher trim version with features such as heated seats and satellite navigation that his vehicle did not have.

10. The Appellant stated that he was surprised to be told that the VRT that was payable was €2810. He stated that he was advised by the VRT office to pay the sum, otherwise his vehicle would be seized, but that they could see that the amount was too high and he should appeal the OMSP assigned and seek a refund.
11. The Appellant stated that he had paid a purchase price of £7488 for the vehicle, which he stated was significantly above the market price due to the limited edition colour of the car (rebel blue), and that this was *“the reason I paid a significant amount more for the vehicle as I have been after one for a number of years.”*
12. In the additional documentation submitted after the hearing, the Appellant pointed out that the costs of second hand cars had increased significantly in recent times (e.g. “Used car asking prices are now 30% higher than a year ago”, RTE.ie, 31 March 2022), and provided a number of comparator prices for the vehicle, within a range of £4250 to £6970. He also rejected the report provided by the assessor engaged by the Respondent and stated that *“the ‘independent’ assessors are clearly working in cohorts [sic] with the [Respondent].”*
13. He accepted that he had been offered €600 by the Respondent to settle the appeal, which he had rejected, and that he was seeking the difference between what he had paid in VRT and what the Respondent’s online VRT calculator had indicated he would have to pay.

#### *Respondent*

14. The Respondent stated that an OMSP is inclusive of all taxes and duties. It stated that the Appellant had paid £7488 for the vehicle, which converted to €8659, and which was over €1000 more than the OMSP applied by it. It stated that the OMSP was calculated by way of research on DoneDeal.ie, where a Volvo C30 was for sale at €7995. The Respondent applied a 5% discount to identify an OMSP of €7595.
15. The Respondent submitted that the Appellant had contacted it in April 2020 to query why the make and model of the vehicle was not available on the online VRT calculator, and that it had replied to him that not every make and model was available on the calculator, which in any event only provided an estimate. It stated that the Appellant was advised to carry out his own research on the market value of the vehicle.
16. The Respondent submitted that the vehicle was unique and was assessed as of the day it was presented. It stated that valuations can go up and down and that prices change based

on market forces. It stated that the rare colour of the vehicle was taken into account when assessing its value.

17. The Respondent had asked an independent assessor in November 2021 to review the OMSP of €7595 applied. The assessor, who did not carry out a physical inspection of the vehicle, proposed reducing the OMSP to €7500, and the Respondent offered to refund €35 in VRT paid to the Appellant in settlement of the dispute. This offer was rejected by the Appellant.

18. After the oral hearing, the Respondent provided the assessor's report following the physical inspection of the vehicle on 21 June 2022. The report stated that "*the value placed on this vehicle is fair, reasonable and correct at 7500.00 euro.*" The Respondent refuted the Appellant's contention that it was "in cahoots" with the assessor. It also stated that, regarding the comparators provided by the Appellant, any vehicle imported now from the UK would be subject to VAT at 23% and customs duties, which were not imposed on the vehicle when the Appellant imported it in 2020 (prior to Brexit). The Respondent stated that it had offered the Appellant a refund of €600 to settle the appeal but this had been rejected.

### **Material Facts**

19. Having read the documentation submitted, and having listened to the oral submissions of the parties at the hearing, the Commissioner makes the following findings of material fact:

19.1. The Appellant purchased the vehicle in the United Kingdom and imported it into the State in July 2020. He paid a purchase price of £7488 (€8659).

19.2. On 28 February 2021, the Respondent assigned an OMSP to the vehicle of €7595.

19.3. On 21 June 2021, an assessor inspected the vehicle on behalf of the Respondent and concluded that an OMSP of €7500 was "fair, reasonable and correct."

### **Analysis**

20. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J. stated at para. 22: "*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. All vehicles are subject to VRT on first registration in the State. The VRT rate is calculated based on the Carbon Dioxide emissions plus the Nitrogen Oxide emissions. The CO<sub>2</sub> component is calculated by multiplying the applicable rate (in this instance 37%) by the OMSP. The NO<sub>x</sub> levy is calculated separately and then added to the CO<sub>2</sub> value to produce the VRT due. The OMSP of a vehicle is determined in accordance with section 133 of the 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.
22. In this instance, the Respondent assigned an OMSP of €7595 to the vehicle. This resulted in the Appellant being obliged to pay a CO<sub>2</sub> component of VRT of €2810. The Nitrogen Oxide component of VRT charged is not in dispute.
23. The Appellant is aggrieved that the OMSP applied by the Respondent was greater than what had been indicated by the online VRT calculator. However, it is important to note that the VRT calculator provides an estimate only. The Respondent's website states that "*The VRT calculator will usually give a good estimate of the VRT due if registering a particular vehicle on that same day. However, this is an estimate only. Revenue only calculate the exact VRT due when a vehicle is presented for registration.*"
24. The evidence of the Appellant was that he purchased the vehicle in the UK in July 2020. Due to a delay in being provided with the log book, he was unable to present it for VRT registration until February 2021. The Respondent's evidence was that the Appellant had contacted it in April 2020 to discuss the estimates provided by the VRT calculator; this was approximately ten months before the OMSP was assigned. The VRT calculator is an indication for individuals to assist only. It is not the final OMSP that is applied on registration by the Respondent.
25. While the Appellant considers the OMSP applied to be excessive, he does not deny that it was less than the purchase price actually paid by him for the vehicle (£7488/€8659). The Commissioner notes that the OMSP was approximately €1000 less than the purchase price (allowing for currency fluctuations). Therefore, it is somewhat of a challenge for the Appellant to argue that the OMSP should be considerably lower when the vehicle could be sold and has sold at a higher rate in the United Kingdom.
26. The Appellant argued that he had paid above the market rate because the vehicle was painted a rare colour. However, the Commissioner considers that this is to misunderstand how the OMSP is calculated. The OMSP is specific to the particular motor vehicle being

assessed, and therefore the Respondent is entitled to take into account features, such as a rare colour, that are likely to increase the value of the motor vehicle.

27. 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. Prior to the hearing, the Appellant had submitted a small number of comparators, but the Commissioner is satisfied that these do not demonstrate that the OMSP applied to the vehicle was excessive, as they indicated a market price greater than the OMSP (i.e. €7650 and £14365).
28. Following the hearing, the Appellant submitted a greater number of comparators, being online valuation tools which suggested a price range of £4250 to £6970. While the Commissioner has had regard to these comparators, he considers them of limited benefit in determining this appeal. The Commissioner accepts that the price of second hand motor vehicles has increased significantly since the Appellant purchased the vehicle. Against this, the comparators appear to have been accessed recently and therefore the depreciation of the vehicle since the OMSP was applied would have to be considered. Additionally, the Respondent pointed out that the UK comparators provided by the Appellant would now be subject to VAT at 23% and customs duties (CCT) if imported into the State. VAT and CCT were not applied to the vehicle as it was imported by the Appellant prior to the UK leaving the European Union.
29. Furthermore, the Commissioner has had regard to the inspection report prepared by an assessor instructed by the Respondent. Whereas previously the assessor had carried out a 'desktop' consideration of the OMSP, the assessment performed on 21 June 2022 was on foot of a physical inspection of the vehicle. The assessor commented that *"The colour of this vehicle is unusual it is Rebel Blue and we believe a Volvo enthusiast would place a higher value on this exact colour than other colours readily available in the market place...Taking all of the above the market place at the time that this valuation was placed on this vehicle and the availability of this vehicle with its exact colour Rebel Blue I feel that the value placed on this vehicle is fair, reasonable and correct at 7500.00 euro."*
30. The Appellant has rejected the inspection report on the basis that it was procured by the Respondent, and has alleged that the assessor and the Respondent were "in cahoots". No evidence has been provided to support this allegation and the Commissioner does not believe that it is justified. It is correct that the assessor was procured by the Respondent; however this was agreed by the parties at the hearing herein and it was on this basis that the Commissioner agreed to stay the determination of the appeal pending the carrying out

of the inspection. It was open to the Appellant at any time to procure his own assessor to inspect the vehicle and suggest the appropriate market price.

31. The Commissioner's role is not to step into the shoes of the VRT calculator, nor is it to be an expert on the market price of various makes and models of motor vehicles; rather it is to assess if the Respondent has applied the legislation correctly. The Commissioner considers that of most significance in this case is (i) that the Appellant paid a purchase price for the vehicle that was greater than the OMSP, and (ii) that both assessment reports procured by the Respondent stated that the market value of the vehicle was €7500. In particular, the Commissioner considers that the report carried out on foot of the physical inspection of the vehicle on 21 June 2022 is the only evidence before him that provides a direct assessment of the vehicle (rather than an online assessment or desktop valuation), and therefore greater weight should be afforded to it than any of the other valuations or assessments submitted.
32. In the circumstances, the Commissioner is not satisfied that the Appellant has demonstrated that the OMSP should be reduced to the extent sought by him. However, the Commissioner does consider that the appropriate OMSP for the vehicle is €7500, rather than €7595 as applied by the Respondent, as this is the estimation of the market value provided by the assessor procured by it and on foot of a physical inspection of the vehicle. Therefore, the Commissioner determines that the appropriate OMSP for the vehicle is €7500.
33. The VRT due on foot of an OMSP of €7500 is €2775 ( $7500 \times 0.37$ ). The Appellant paid VRT of €2810. Therefore, the Commissioner determines that the Respondent should refund €35 ( $2810 - 2775$ ) to the Appellant.

### **Determination**

34. 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 correct OMSP for motor vehicle registration number [REDACTED] is €7500, and the Commissioner directs the Respondent to refund the Appellant €35, being the difference between the amount of VRT paid by him and the amount owed.
35. The appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act 1997 as amended ("the TCA 1997"). This determination contains full findings of fact and reason 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 TCA 1997.



Simon Noone  
Appeal Commissioner  
06<sup>th</sup> July 2022.