



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 €6,660.00.

Background

3. In November 2021 ██████████ (hereinafter the “Appellant”) imported a ██████████ ██████████ with 85,031km on its odometer which had first been registered in the year 2000 (hereinafter the “vehicle”) in to the State from Japan.

4. On application by the Appellant to import and register the vehicle, an initial OMSP of €19,000, which was subsequently reduced to €18,000 prior to the vehicle being imported and registered, was applied to the vehicle by the Respondent. This resulted in a VRT liability of €6,953 which the Appellant paid to the National Car Testing Service and the vehicle was registered with the registration number [REDACTED] on 11th November 2021. The amount of VRT liability was comprised of €6,660 of VRT due at the time of registration, a late payment penalty of €228 and €65 VRT due from NOx emissions. The late payment penalty was subsequently amended by the Respondent to €0 and is not in dispute. The amount of VRT due from NOx emissions is also not in dispute.
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 16th May 2022. The Appellant appeared at the oral hearing and was not represented however he was assisted by two advisors. 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 Appellant submitted that he purchased the vehicle in April 2021 from a Japanese motor auction site for €6,378 which was comprised of €3,790 for the vehicle, €1,099 in shipping costs, €1,193 in Value Added Tax and €296 in customs charges.
9. He submitted that the vehicle arrived in Ireland on 8th October 2021 and that on 29th October 2021 an OMSP of €19,000 was received from the Respondent following inspection at the National Car Testing Centre in Waterford. He submitted that on 29th October he requested a review of the OMSP and that on 10th November 2021 the Respondent revised the OMSP to €18,000 following a further inspection of the vehicle by their independent assessor.
10. On 11th November 2021 the Appellant paid the VRT based on the OMSP received from the Respondent to the National Car Testing Service and the vehicle was registered in the State. The Appellant unsuccessfully appealed the OMSP to the Respondent on 25th November 2021.
11. The Appellant submitted that the vehicle is a type of car which was only ever marketed and sold in Japan and that it is in all respects, aside from having twin turbo, the same car as a [REDACTED] which said cars were marketed and sold in Ireland.
12. No independent expert witness evidence was adduced on behalf of the Appellant however the following documentation was submitted in support of a valuation of the vehicle:
 - i. A valuation from [REDACTED] [REDACTED] dealer Waterford, dated 1st November 2021 which valued the vehicle at €6,000 – €7,000;
 - ii. A valuation from [REDACTED] Car Sales dated 2nd November 2021 which valued the vehicle at €4,500;

- iii. A valuation from [REDACTED], through which the vehicle the subject matter of the within appeal was purchased, dated 12th November 2021 which valued the vehicle at €8,000.
- iv. A valuation report from [REDACTED], Consulting Motor Vehicle Assessor and Accident Investigator dated 13th November 2021 which valued the vehicle at €4,775.97.

13. The Appellant submitted that the Respondent's valuation is flawed. The basis on which the Appellant made this submission was as follows:

- i. The Respondent's independent assessor had not followed the process set out in the Respondent's VRT Manual for the valuation of the vehicle and the setting of an OMSP for same. Specifically the Appellant submitted that the correct method of valuation which the Respondent should have used in valuing the vehicle was that set out in paragraph 3.1.2 of Section 8 (Valuation System for New and Used Vehicles) of the Revenue Commissioners VRT Manual. That paragraph, he submitted, sets out the correct valuation method to be used for used cars where it is not possible to determine values on direct comparison with market values in the State. The Appellant submitted that a similar model car should have been used to value the vehicle's OMSP and that the correct similar model car which should have been used was a [REDACTED];
- ii. The three Japanese cars on which the Respondent's valuation was based were pristine, ultra-low mileage examples from specialist dealers whereas the vehicle the subject matter of the within appeal had been crashed and had been changed from silver to white;
- iii. In reaching the OMSP the assessor should have included information and prices from Japanese motor auction websites. He submitted that over 7 million cars are sold through motor auction websites every year in Japan and this is the largest motor vehicle market in Japan;
- iv. All of the comparator cars which the assessor used in reaching the OMSP had much lower mileage than the vehicle the subject matter of the within appeal;
- v. The vehicle is not a rare or unique vehicle and the Respondent has not put forward any evidence that the vehicle is rare or unique. The Appellant submitted that whilst the vehicle might be an unpopular vehicle because of the large fuel requirements and high road tax, it is not a rare or unique car;

- vi. The vehicle is a type of car which was produced in large quantities in Japan which had an average production quantity of 28,000 cars per annum over a period of 8 years;
- vii. At the time of importing the vehicle, the Respondent's VRT calculator website estimated the value of a [REDACTED], which is another similar car model to that of the vehicle the subject matter of the within appeal, with a first registration date of October 2000 as being €2,029 with VRT payable of €750.

Respondent's Submissions

14. The Respondent submitted that at the time of registering the vehicle there were no comparator vehicles for sale on the Irish market, although he did accept that the vehicle the subject matter of the within appeal is the same as the [REDACTED] cars which were marketed in Ireland
15. The Commissioner heard evidence from [REDACTED] on behalf of the Respondent. [REDACTED] is a Certified Motor Engineer with the Institute of the Motor Industry and is a Motor Engineer Assessor with [REDACTED].
16. He stated that the vehicle had been assessed as having an OMSP of €18,000 and that there were no like-for-like cars on the Irish market at the time the vehicle the subject matter of the within appeal was being imported. The OMSP, he stated, had been reached by researching Japanese motor dealer websites for other similar cars.
17. [REDACTED] stated that the vehicle had originally been assessed as having an OMSP of €19,000 but that on physical inspection of the vehicle it had been reduced to €18,000. This reduction was reached taking into consideration the vehicle's colour change, marks to the alloy wheels and marks on the seats. He stated that there was no structural damage to the vehicle.
18. [REDACTED] submitted that prior to the hearing of the within appeal the OMSP had been reviewed and had been reduced to €16,000 but that the Appellant did not accept this.
19. In support of the OMSP [REDACTED] pointed to an advertisement which was on an Irish website at the time of the oral hearing which had a similar car to the vehicle the subject matter of the within appeal for sale in Northern Ireland for STG£12,000 and that VRT would apply to this car if it were to be imported into the State.

Material Facts

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

- i. The Appellant imported a [REDACTED] with 85,031km on its odometer which had an OMSP of €18,000 applied by the Respondent which resulted in a VRT liability of €6,660.

Analysis

21. 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.”

22. The Commissioner has considered the submissions made on behalf of both Parties along with the evidence adduced in the appeal. On the one hand the Appellant has submitted documentary evidence from four sources which suggests the vehicle has an OMSP of somewhere between €4,500 and €8,000. On the other hand [REDACTED] has given evidence of how he came to an OMSP of €18,000.

23. When asked by the Commissioner whether [REDACTED] cars and [REDACTED] model cars were in essence the same vehicles, [REDACTED] stated that they are. [REDACTED] additionally stated that the only difference between the vehicle the subject matter of the within appeal and [REDACTED] cars which were marketed in Ireland was that the vehicle is twin turbo and [REDACTED] cars marketed in Ireland were not. [REDACTED] provided no explanation as to why he did not apply the “similar model” valuation method as set out in paragraph 3.1.2 of Section 8 of the Respondent’s VRT Manual (see Appendix 1).

24. In circumstances where [REDACTED] agreed that a [REDACTED] car is a similar model car to that of the vehicle the subject matter of the within appeal, the Commissioner finds that the “similar model” valuation method as set out in paragraph 3.1.2 of Section 8 of the Respondent’s VET manual was the appropriate method which should have been applied when assessing the OMSP in this case.

25. The Commissioner has considered whether the vehicle the subject matter of the within appeal was an unusual or rare car. The Appellant has submitted sales figures for [REDACTED]

■ cars which show average worldwide sales per annum from 1997 to 2004 as being in or around 28,000. The Commissioner finds that the vehicle the subject matter of the within appeal was not an unusual or rare car based on the uncontested sales figures which the Appellant submitted. As a result the Commissioner finds that it was not appropriate to assess the vehicle the subject matter of the within appeal on the basis that it was an unusual or rare car.

26. Having considered all of the evidence and submissions, the Commissioner finds that the OMSP of the vehicle applied by the Respondent is overstated. The Commissioner finds that the OMSP of the vehicle the subject matter of the within appeal is €5,944. The Commissioner has reached this OMSP value by taking an average of all of the valuations submitted by the Appellant as follows:

	Valuation €	Average €
■	8,000	
■	6,500 ¹	
■	4,775	
■	4,500	
	23,775	5,944

Determination

27. For the reasons set out above, the Commissioner determines that the Appellant has succeeded in his appeal and that the correct amount of VRT payable on the vehicle ■ ■ was €2,199. The Appellant is therefore entitled to a refund of VRT paid in the amount of €4,461. The VRT due from NOx emissions is not in dispute and remains payable at €65.

28. The Commissioner commends the Appellant and the Respondent for the manner in which this appeal was conducted.

29. 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

¹ The Commissioner took the mid-range of this valuation as the reference amount.

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
30th May 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."