



07TACD2023

Between

[REDACTED]

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This appeal to the Tax Appeals Commission (“the Commission”) relates to a claim for repayment of vehicle registration tax (“VRT”) in accordance with section 135D of the Finance Act 1992, as amended (hereafter ‘FA 1992’), known as the “export repayment scheme”.
2. The appeal is in respect of the valuation of a [REDACTED] vehicle, registration [REDACTED] (“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”) repayable. The Appellant also claims that the Respondent erred in its calculation of the VRT repayable.
3. The appeal proceeded by way of remote hearing on 13th September 2022.

Background

4. The Appellant had the vehicle advertised for sale in October 2020 at its showroom in [REDACTED] with an asking price of €274,995.

5. On 20th October 2020, the Appellant had the vehicle inspected by the Respondent for the purpose of ascertaining the OMSP as they had a buyer in the United Kingdom ("UK") who was interested in purchasing the vehicle.
6. After presenting the vehicle for export, the Appellant received a letter from the Respondent on 20th November 2020 informing them that they considered the OMSP of the vehicle to be €212,000.
7. The Appellant was aggrieved by this OMSP, as it was lower than anticipated and it appealed the OMSP and consequent VRT repayable to the Commission on 30th July 2021.

Legislation and Guidelines

8. The following legislation is relevant to this appeal.

Section 146 of the Finance Act 2001 (as amended)

"(1) Except where section 145(3) applies, any person who—

(a) has paid an amount of excise duty,

(b) has received a notice of assessment under section 99A, or is otherwise called upon by the Commissioners to pay an amount of excise duty that, in their opinion, that person is liable to pay, or

(c) has received a repayment of excise duty or has made a claim for such repayment that has been refused, and is aggrieved by any of the matters referred to in paragraphs (a) to (c), may, subject to subsection (3), in respect of the liability to excise duty concerned or the amount of that liability, or the amount of the repayment or the refusal to repay, appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act 1997 within the period specified in subsection"

Section 135D, Finance Act, 1992 (as amended) - Repayment of amounts of vehicle registration tax on export of certain vehicles.

"(1) The Commissioners may repay to a person an amount calculated in accordance with this section of vehicle registration tax based on the open market selling price of a vehicle which has been removed from the State, where—

(a) the vehicle is a category M1 vehicle,

(b) the vehicle has been registered under section 131 and the vehicle registration tax has been paid,

(c) the vehicle was, immediately prior to being so removed, registered under section 131,

(d) within 30 days prior to being so removed—

(i) the vehicle and any documentation to which paragraph (b) or (c) relates, and

(ii) where applicable, a valid test certificate [within the meaning of the Road Traffic (National Car Test) Regulations 2014 (S.I. No. 322 of 2014)] in respect of the vehicle, have been examined by a competent person and all relevant matters have been found by that person to be in order,

(e) at the time of examination to which paragraph (d) relates, the open market selling price of the vehicle (being the price to which subsection (2) relates) is not less than €2,000, and

(f) the requirements of subsection (3) have been complied with.

Section 63 Finance Act 2014

(2) The amount of vehicle registration tax to be repaid shall–

(a) be calculated by reference to the open market selling price (being that price as determined by the Commissioners) of the vehicle at the time of the examination referred to in subsection (1)(d), and

(b) include an amount that is calculated by means of one or more than one formula or other means of calculation as may be prescribed by the Minister by regulations made by him or her under section 141.

(3) A claim for repayment for an amount of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the Commissioners for that purpose and shall be accompanied by–

(a) documentation to prove to the satisfaction of the Commissioners that the vehicle was removed from the State within 30 days of its examination under this section, and

(b) proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union.

(4) The amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of–

(a) the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter, and

(b) an administration charge of [€100].”

Submissions

Appellant

9. The Appellant submitted that the vehicle was a prestige motor vehicle and as such there were few comparable vehicles for sale in Ireland on which to base the OMSP.

10. The Appellant advised that the nearest example it could find which matched the specification of the vehicle was that which a competitor had for sale in April 2021 at €259,950. The Appellant advised that same vehicle was for sale in October 2020 (when its vehicle was valued by the Respondent) for an asking price of €299,950 but unfortunately it did not print out the valuation at that time. The Appellant provided the Commission with a copy of the April 2021 advertisement which confirmed that the vehicle was similar to the one sold by it and that the asking price was €259,950 as advised by the Appellant.
11. The only other evidence the Appellant could provide in respect of the OMSP was another advertisement from a reputable source which listed a 2018 (182) similar specification vehicle with higher mileage than that of its vehicle and an asking price of €225,000. This advertisement was dated 13th February 2021.
12. The Appellant submitted that these advertisements were evidence that the OMSP placed on the vehicle by the Respondent, €212,000 in October 2020 was far below the true market value of the vehicle. The Appellant requested the Commission to substitute a more realistic valuation to its vehicle and repay the additional VRT rebate to them.
13. The Appellant further submitted that the Respondent's valuation was based on erroneous calculations and this discounted the vehicle from its true worth. These erroneous calculations are discussed in paragraphs 27 to 30 of this determination.

Respondent

14. The Respondent advised that the Appellant originally brought the vehicle into Ireland on 13th February 2019 with an odometer reading of 6 miles. When the Appellant presented the vehicle to the Respondent in February 2019, it had valued the vehicle essentially as a brand new car at €250,500. The Appellant paid VRT at the appropriate rate (36%) on this valuation which equated to €90,180.
15. The Respondent submitted that as it had valued the OMSP of the vehicle as €250,500 in February 2019, it was unrealistic for the Appellant to value the vehicle in October 2020 when it had 16,333 miles on the odometer at €274,950.
16. The Respondent advised that it considered a more appropriate valuation on the vehicle in October 2020 to be that which it had advised the Appellant, €212,000 and repaid VRT in the sum of €76,220 to it.

17. The Respondent advised that the Appellant was required to have a “First Stage Appeal” in accordance with the provisions of section 145 Finance Act 2001 before the matter could proceed to the Commission.
18. This first stage appeal is an appeal held internally by the Respondent and in practice is determined by an officer appointed for that purpose who was not involved in the original decision. The Respondent confirmed that it completed this internal appeal and the valuation derived at in that appeal, €210,000 was lower than that placed on the vehicle in October 2020. As that valuation was lower they informed the Appellant of this position and confirmed that although the valuation was lower than that originally placed on the vehicle, it was prepared to leave the higher valuation in place.
19. The Respondent advised that the value calculated at that first stage appeal was based upon the valuation of three similar vehicles for sale in the UK which when combined produced an average UK selling price of stg£141,782. From this average valuation, the consultant engaged by the Respondent (“the consultant”) deducted the UK Value Added Tax (“VAT”) at the appropriate rate (20%) which he claimed was stg£28,356 (this calculation was both incorrect and unnecessary – see paragraph 27 below).
20. After computing the ex-VAT UK cost of the average valuation, the consultant added Irish VAT at the appropriate rate of 23% which equated to stg£26,087. This gave a revised valuation of stg£139,513 (stg£141,782 – stg£28,356 + stg£26,087). From this revised valuation, stg£139,513, the consultant then added VRT at the appropriate rate, (36%) which gave a combined valuation of stg£189,787 (being stg£139,513 + [stg£139,513 @ 36%]). Finally in arriving at the valuation, the consultant adjusted the sterling value to euros, using the average rate of exchange for euro to sterling, .9074 and this gave the purported OMSP of €209,154 (rounded to €210,000).
21. The Respondent advised that it had attempted to settle the appeal in advance of the appeal presenting itself before the Commission with the Appellant by revising the OMSP of €212,000 to €225,000 but this offer was rejected by the Appellant.
22. The Respondent advised that this final offer to the Appellant had been derived from examining the only like car on the Irish market at that time which was advertised for sale at €249,950. The Respondent advised that this was the same vehicle included by the Appellant in its submissions but it had been discounted down from the asking price submitted by the Appellant, €259,950 to €249,950 at the time it reviewed the vehicle. The Respondent advised that allowing for the higher mileage on the Appellant’s vehicle (16,333

miles) as opposed to the mileage recorded on this vehicle (5,439) it was of the view that the correct OMSP was €225,000.

Material Facts

23. 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:

23.1.1. The Appellant had the vehicle inspected by the Respondent for the purpose of ascertaining its OMSP on 20th October 2020. The mileage on the vehicle at that time was recorded as 16,333 miles.

23.1.2. The vehicle was subsequently exported from Ireland and purchased by a UK buyer.

23.1.3. On 20th November 2020, the vehicle was valued by the Respondent at €212,000.

23.1.4. Owing to the classification of the vehicle, there are few comparable vehicles on which to base the OMSP of the vehicle.

23.1.5. The Appellant produced two such comparable vehicle valuations sourced from advertisements from Irish car dealers which are dated February and April 2021.

23.1.6. The Respondent produced three such valuations sourced from the UK advertisements. These advertisements were all dated 7th June 2021.

23.1.7. The vehicle was registered in 2019 (191) and is a "First Edition" model.

Analysis

24. In order to claim a repayment in accordance with section 135D of the Finance Act 1992, a number of conditions must be met including; that the vehicle is a VRT category M1 vehicle, that VRT was paid in full at the time of registration, that the vehicle was examined by a competent person 30 days prior to removal from the State and that the OMSP was not less than €2,000 at the time of examination of the vehicle. All of these conditions were met and complied with.

25. In addition, section 135D (3) (b) FA 1992 requires the claimant to furnish proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union. This requirement was confirmed by the parties and hence the only matter to be determined by the Commissioner is whether the appropriate OMSP of the vehicle was correctly derived.

26. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on a balance of probabilities that the assessments are incorrect, see *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49. In cases involving tax reliefs or exemptions, it is incumbent on the taxpayer to demonstrate that the taxpayer falls within the relief or exemption, see *Revenue Commissioners v Doorley* (1933) 1 IR750 and *McGarry v Revenue Commissioners* (2009) ITR 131.
27. The consultant engaged by the Respondent in deriving his valuations (which was based on three similar cars from the UK), firstly deducted the UK VAT before adding on the Irish VAT. As the Appellant's vehicle was exported pre-Brexit this treatment was incorrect as Irish VAT was only calculated on UK cars if the vehicle was less than 6 months old or if there was less than 6,000km on the odometer.
28. As the Appellant's vehicle was more than 6 months old and had 16,333 miles on it when sold, it therefore follows that the consultant erred in factoring VAT into his calculations and this element of his workings is ignored. The table below sets out the vehicles and valuations which the consultant based his workings upon (discounting the VAT adjustment):

UK Vehicles - Used by Respondent's Consultant						
<i>Ad Date</i>	<i>Vehicle Type</i>	<i>Registration Period</i>	<i>Mileage</i>	<i>stg£</i>	<i>Euro</i>	
07/06/2021		1/9/18 - 28/2/19	5,408	139,898	154,175	
07/06/2021		1/9/18 - 28/2/19	6,051	137,950	152,028	
07/06/2021		1/9/18 - 28/2/19	11,900	147,500	162,552	
Average			7,786	141,783	156,252	

29. The Respondent's consultant in ascertaining the OMSP subsequently added on the VRT at the appropriate rate to the average valuation and applying this logic to the revised valuation would give an OMSP of €212,503 (€156,252 x 136%).
30. As VRT is calculated on the OMSP and as 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, this amounted to an error. Rather than calculate the VRT at 36% of the adjusted euro valuation, the Respondent's consultant should have divided the euro figure by .64 since this would have given the correct OMSP for the vehicle. Had he so done, this would have given an OMSP of €244,143 (being €156,252 divided by .64).

31. The Appellant in its evidence provided two valuations based upon identical vehicles to its as follows:

Irish Vehicles - Used by Appellant					
<i>Ad Date</i>	<i>Vehicle Type</i>		<i>Registration Period</i>	<i>Mileage</i>	<i>Euro</i>
19/04/2021	[REDACTED]	(1st Ed)	2019 (191)	4,570	259,950
13/02/2021		(1st Ed)	2018 (182)	24,640	225,000
Average				14,605	242,475

32. In noting that the Appellant's vehicle had 16,333 miles on the odometer, the Commissioner is of the view that while the advertisements used by both the Appellant and the Respondent are dated some months after the OMSP is required to be calculated, the lower average mileage shown in the above tables compensates for this time discrepancy.
33. Accordingly, the Commissioner determines that the OMSP of the vehicle should be derived by combining the average valuations shown above. In applying this methodology this gives an OMSP for the vehicle of €243,309 (€244,143 + €242,475 divided by 2).
34. The Commissioner notes that the OMSP assigned to the vehicle is only marginally reduced from the value assigned to the vehicle when it was first imported into Ireland, €250,500 despite having aged a year and accumulated some 16,000 miles on it. However, as has been publicised in the press, owing to vehicle production shortages which have arisen during the periods of Covid-19 Health Restrictions, the price of second hand vehicles has not radically reduced and in some instances has actually increased.
35. In the circumstances, the Commissioner is not satisfied that the Appellant has demonstrated that the OMSP should be increased to the extent sought by him. However, the Commissioner does consider that the appropriate OMSP for the vehicle is €243,309, rather than €212,000 as applied by the Respondent. Therefore, the Commissioner determines that the appropriate OMSP for the vehicle is €243,309.
36. The VRT refund on foot of an OMSP of €243,309 is €87,591 (€243,309 x 0.36). As the Respondent has already repaid €76,220 to the Appellant, there is a balance due to the Appellant of €11,271 (being €87,591 - €76,220 - €100 [administration fee]). Therefore, the Commissioner determines that the Respondent should refund a further €11,271 to the Appellant.

Determination

37. 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 the vehicle is €243,309 and the Commissioner directs the Respondent to refund the Appellant an additional €11,271, being the difference between the amount of VRT due to it and the amount previously refunded.
38. 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.

Andrew Feighery
Appeal Commissioner
14th October 2022