



26TACD2023

Between

████████████████████

Appellant

and

REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission (“the Commission”) by ██████████ (“the Appellant”) in respect of the valuation of ██████████ 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 €33,500 and the VRT at issue is €13,735.
2. The appeal proceeded by way of hearing on 29 November 2022.

Background

3. The Appellant imported the vehicle from Northern Ireland on 23 December 2021, having paid a purchase price of GB£17,500. On 23 February 2022, the vehicle was assigned an OMSP of €33,500, and the Appellant paid total VRT of €15,069 (VRT1 €13,735 + VRT2 late fee €879 + VRT3 NOx €455).

4. The Appellant was aggrieved by this OMSP, as it was considerably more than the purchase price paid by him, and also greater than had been estimated by the Respondent's VRT calculator online tool. He appealed the OMSP to the Respondent at first instance. The Respondent upheld the OMSP but refunded the VRT2 late fee of €879 "due to the delay in issuing a stat code to register your vehicle." The VRT3 NOx levy was not in dispute; subsequently on 6 April 2022 the Appellant appealed the VRT1 fee to the Commission.

Legislation

5. 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 and Evidence

Appellant

6. The Appellant stated that prior to purchasing the vehicle, he had checked the Respondent's online VRT calculator. There was not an exact match for the vehicle, but he considered that the [REDACTED] was identical to the vehicle with the addition of a retractable roof, and this had an estimated VRT of €7,200. He considered that this car was more valuable than the vehicle he purchased, yet the estimated VRT was almost half what he paid.
7. He stated that the Respondent told him that the OMSP for the vehicle was assessed by reviewing the DoneDeal website and taking the average listed price for four similar cars. However he had reviewed DoneDeal and it was clear that there was a wide range of prices (€26,960 - €39,000) with the most expensive example having been modified substantially. Furthermore, a number of the prices were subsequently reduced; for example, a car priced for €29,950 with full warranty ultimately sold for €23,000.
8. The Respondent's assessor had referred to a car on DoneDeal with an asking price of €34,950; however this was subsequently reduced to €29,950 and there was no guarantee it sold at that price. That car also had a lower mileage than the Appellant's vehicle, so was more valuable. The Appellant purchased a valuation of the vehicle from a third party website, VRT.ie, which gave an estimated VRT of €7,238.
9. The Appellant also was unhappy with the rate of VRT applied. The rate increased from 37% to 41% on 1 January 2022, and he believed that the lower rate should have been applied.

10. He accepted that the Respondent's VRT calculator was only an estimate. However he would have expected that an estimate would be plus or minus 10% of what was ultimately charged.

Respondent's Evidence

11. [REDACTED] was a representative of the independent assessor appointed by the Respondent to carry out a physical inspection of the vehicle. He stated that the vehicle was inspected in April 2022 and the assessor was satisfied that the OMSP applied by the Respondent was accurate. He stated that the vehicle was rare and highly sought after.

Respondent's Submissions

12. The OMSP applied by the Respondent was inclusive of all taxes and duties, and in order to calculate the OMSP for the vehicle, the UK VAT was removed and Irish VRT at 41% was added (€19,765 + €13,735). The Appellant had submitted examples of other cars available to purchase for the first stage of his appeal, and the average price of those cars was €35,145, which was greater than the OMSP applied.

13. The vehicle was inspected by independent consultants, who considered the vehicle to be in "*immaculate condition*" and that the OMSP of €33,500 was fair and justified. The online VRT calculator was a guide only, and in this instance the model of the Appellant's vehicle was not available.

14. The Respondent had offered the Appellant €1,500 to settle the matter, which had been rejected. This was offered as a goodwill gesture to account for the fact that the rate of VRT was 37% when the Appellant purchased the vehicle; however the correct rate of 41% was applied on the date of assessment.

Material Facts

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

15.1 The Appellant imported the vehicle from Northern Ireland on 23 December 2021, having paid a purchase price of GB£17,500.

15.2 On 23 February 2022, the vehicle was assigned an OMSP of €33,500, including VRT1 of €13,735.

15.3 The independent assessor appointed by the Respondent carried out a physical assessment of the vehicle and concluded that the OMSP was “accurate”.

15.4 In its decision on the Appellant’s first stage appeal, the Respondent refunded the VRT2 late fee of €879 “due to the delay in issuing a stat code to register your vehicle.”

Analysis

16. 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.*”
17. 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 CO₂ component is calculated by multiplying the applicable rate by the OMSP. The NO_x levy is calculated separately and then added to the CO₂ 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.
18. In this instance, the Respondent assigned an OMSP to the vehicle of €33,500. The Appellant was aggrieved by this because he had paid a purchase price in Northern Ireland of £17,500 and had used the Respondent’s online VRT calculator to estimate the VRT he would pay. While the particular model of the vehicle was not available, the Appellant used comparators which he believed were similar but of a higher specification. One comparator suggested a VRT of €7,200.
19. It is understandable that the Appellant was unhappy with the OMSP assigned, given the amount of VRT he had to pay was significantly greater than what he had expected, based on the online 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.*”
20. The Commissioner notes that the Respondent procured an independent assessor to carry out a physical assessment of the vehicle prior to the hearing herein. The Commissioner has considered the assessor’s report and notes the finding that “*The vehicle is in*

immaculate condition. This is a rare vehicle, model and spec combined with this engine size and everything on the vehicle appears to be standard...Having reviewed the above we are satisfied that our OMSP of 33,500 euro at the time of our research is accurate in this case."

21. The Appellant took issue with the methodology applied by the Respondent in applying the OMSP. The Commissioner accepts the evidence of the Respondent that the OMSP was based on the prices available on the DoneDeal website at the time of the assessment. However, he also notes the unchallenged evidence of the Appellant that the asking prices for comparator vehicles were subsequently reduced on DoneDeal, and he considers it appropriate to take this into account when considering if the OMSP applied by the Respondent was correct.
22. 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. In the circumstances, given the evidence that the asking prices for similar vehicles were reduced on DoneDeal after the application of the OMSP, the Commissioner considers it appropriate to reduce the OMSP to €31,000.
23. Furthermore, the Commissioner is not satisfied that the correct rate of VRT was applied by the Respondent in this instance. In his first stage appeal to the Respondent, the Appellant stated that *"The car was purchased December 23rd, 2021...I immediately brought it to the VRT inspection centre that day. However, this model of car was not on the system so I was told I would be contacted with the VRT fee in due course."* In its decision on his first stage appeal, the Respondent refunded the VRT2 late fee *"due to the delay in issuing a stat code to register your vehicle."*
24. The VRT rate increased from 37% to 41% on 1 January 2022. The Respondent offered €1,500 to the Appellant prior to the hearing in order to settle the matter, which was not accepted. At the hearing, the representative of the Respondent stated that this was a goodwill gesture to account for the difference in the VRT rates, but that the correct rate of 41% had been applied.
25. The OMSP was applied on 23 February 2022 and, therefore, the correct VRT rate was 41% on that date. However, the Commissioner notes the evidence of the Appellant that he was unable to have the car assessed for VRT on 23 December 2021 as the model of car was not on the system, and he further notes the acknowledgement by the Respondent that there was a *"delay in issuing a stat code to register your vehicle."*

26. In the circumstances, the Commissioner considers that a VRT rate of 37%, rather than 41%, should be applied to the vehicle in order to ensure that the Appellant is not unfairly penalised for a delay in his ability to register the vehicle for which he was not at fault. The OMSP applied by the Respondent was €33,500 and VRT at 41% was €13,735. The Commissioner has found the correct OMSP to be €31,000. VRT at 37% on this OMSP comes to €11,470, which the Commissioner is satisfied should be applied in this instance. The difference between the VRT paid by the Appellant (13735) and the VRT that the Commissioner considers correct (11470) is €2,265, and the Commissioner determines that the Respondent should refund this sum to the Appellant.

Determination

27. 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 directs the Respondent to refund €2,265 to the Appellant in respect of motor vehicle registration [REDACTED].

28. 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
12/12/2022