



21TACD2024

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 a ██████████ 4 door motor vehicle, registration number ██████████ (“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 €10,704 and the VRT at issue is €4,388.
2. The appeal proceeded by way of an oral hearing on 27 October 2023.

Background

3. On ██████████ 2022, the Appellant purchased the vehicle in Japan for €4,650 (as converted from Japanese Yen). Together with shipping at €1,492 and tax and customs duty at €1,885, the total cost to the Appellant was €8,027. The vehicle was registered in this jurisdiction on ██████████ 2022. On registration, the Respondent imposed an OMSP of €15,000, with VRT arising at €6,150.

4. The Appellant appealed the OMSP to the Respondent at first instance. In its first stage appeal decision of 8 March 2023, the Respondent reduced the OMSP to €10,704, by deducting the amount of €4,296, incurred by the Appellant on repairs of the vehicle, from the original OMSP of €15,000. As a result, the Appellant was issued with a refund of €1,762 in respect of VRT.
5. The Appellant remained aggrieved at the OMSP applied by the Respondent, and appealed to the Commission on 15 March 2023. The appeal proceeded by way of a remote hearing on 27 October 2023. The Appellant attended and was assisted by his representative, [REDACTED]. The Respondent was represented by its officers.

Legislation and Guidelines

6. 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.

7. The Respondent's "Tax and Duty Manual – Vehicle Registration Tax Section 6 – VRT Appeals" states, in respect of first stage appeals to the Respondent, at page 4:

"The following should be included where the appeal is against the determination of the chargeable value or the amount of VRT charged:

- The appellant's opinion of the arm's length retail value, including VRT and Value Added Tax (VAT), of the vehicle in the Republic of Ireland, at the time the VRT was charged;*
- The appellant's opinion of the amount of VRT that should have been charged;*
- The appellant's opinion of the amount of refund that is due.*

The appellant should enclose evidence, obtained at their own expense, to support the opinion of the chargeable value. The evidence might include:

- Signed dealer or valuer opinions of the price, including VRT and VAT, that a dealer in the Republic of Ireland might have been expected to achieve for the vehicle in an arm's length sale at the time VRT was charged*

and

- Copies of VRT and VAT inclusive advertisements by dealers in the Republic of Ireland for similar vehicles relevant to the time that the VRT was charged."*

8. The Respondent's "Tax and Duty Manual – Vehicle Registration Tax Section 8 – Valuation System for New and Used Vehicles" states at page 5 that

"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."

Submissions

Appellant

9. The Appellant contended that the vehicle should be valued as a "similar model" to the Lexus IS200, which is the Irish equivalent of the [REDACTED]. The Appellant referred to 94TACD2022, wherein Commissioner O'Driscoll was satisfied that the Lexus GS300 was a similar model to the Toyota Aristo, and stated that that was an "identical scenario" to the matter under appeal.
10. The vehicle is an [REDACTED] model. The Lexus IS200 [REDACTED] was distributed in Ireland, had a published OMSP and aside from badging was identical to the [REDACTED]. The only difference between the [REDACTED] and [REDACTED] was that the [REDACTED] had a 4 cylinder 1998cc engine, and the [REDACTED] had a 6 cylinder 1988cc engine. Consequently, the [REDACTED] was 8% more expensive than the [REDACTED] in Japan when new. The OMSP value of the [REDACTED] is therefore assessable at the OMSP of the [REDACTED] in Ireland plus 8%: i.e. €42,097. Using the Respondent's depreciation rate code E1 and rate of 96%, the correct OMSP should be €1,684, resulting in VRT due of €820 (the minimum amount).
11. Furthermore, the Appellant stated that he procured two valuations of the vehicle from Toyota dealers, and that the combined average OMSP of the two valuations was approximately €2,500. However, these valuations were disregarded by the Respondent in favour of advertisements from DoneDeal.ie. He also procured an inspection of the vehicle by an insurance assessor, who estimated the OMSP at approximately €2,500 – 3,000. The Appellant submitted that the overall average OMSP, using the comparison with the [REDACTED] together with the two dealer valuations and the assessor inspection, was €2,171.

12. Finally, the Appellant had also searched DoneDeal.ie, and provided five advertisements for [REDACTED] with an average asking price of €3,526. This illustrated the flawed approach of the Respondent in seeking to rely on unvouched advertisements placed by private individuals.
13. In oral submissions, the Appellant's agent reiterated the above and explained how the proposed valuation based on the "similar model" assessment of the [REDACTED] was reached. He stated that the vehicle was in poor condition when brought into the jurisdiction and that repair work to the value of €4,296 was carried out on it. He stated that the Respondent had failed to follow its own VRT Manual requirements when imposing the OMSP of the vehicle, because it had failed to apply the "similar model" approach and had relied on advertisements placed by private individuals rather than official dealers.

Respondent

14. The Respondent stated that it referred the vehicle to a consultant before registration who recommended an OMSP of €15,000. At first stage appeal, the Respondent gave credit to the Appellant for the repairs carried out to the vehicle, and reduced the OMSP by €4,296, which resulted in a refund of €1,762. The Respondent also refunded additional VRT imposed due to late registration in the amount of €366.
15. The Respondent did not accept the Lexus IS200 as a comparator to the vehicle, as its consultant had been able to use similar [*sic*] cars to the vehicle that were available in Ireland. The Respondent reverted to its consultant after the Appellant appealed to the Commission, and the consultant confirmed that the original OMSP of €15,000 was reasonable. The Respondent considered that that the original OMSP of €15,000 was a fair reflection of the value of the vehicle, in good condition, at the date of registration. Furthermore, a reduction of €4,296 was made at first stage appeal to take the repairs into account.
16. At the hearing, [REDACTED], who prepared the consultant's report on behalf of the Respondent, gave evidence. He stated that he believed the vehicle was in good condition, and he carried out a search for other cars of the same make and model. He found a number of advertisements of cars dating from 1998 to 2004, with asking prices ranging from €9,600 to €16,000. He did not accept that the vehicle, an [REDACTED] could properly be compared with the AS200, as the [REDACTED] had a higher performance than the AS200 and had a higher market value in this country. He did not accept that the Appellant's suggestion of an 8% difference in price between the models was correct.

17. In response to the Appellant's representative, [REDACTED] agreed that the AS200 was identical to the Lexus IS200, and stated that there was not an identical comparator to the [REDACTED] in this country. He stated that his report was carried out on the basis of a desktop review and that he had not personally inspected the vehicle in question.
18. The Respondent's officer also stated that it was not accepted that the [REDACTED] and IS200 were similar. The vehicle was unusual and therefore the Respondent had asked a consultant to provide the OMSP. The Respondent was happy with the consultant's report and his valuation. The Respondent had given the Appellant credit for the repairs carried out on the vehicle and had not queried any of the receipts provided.

Material Facts

19. 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:
 - 19.1. The vehicle is a [REDACTED]
 - 19.2. The Appellant purchased the vehicle in Japan on [REDACTED] 2022. The Appellant paid the purchase price of €4,650 (as converted from Yen).
 - 19.3. The vehicle was registered in the jurisdiction on [REDACTED] 2022. On registration of the vehicle, the Respondent imposed an OMSP of €15,000, with VRT arising at €6,150. The VRT rate applicable to the vehicle was 41%.
 - 19.4. The Appellant appealed the OMSP applied by the Respondent. In its first stage appeal decision of 8 March 2023, the Respondent reduced the OMSP to €10,704, by deducting the amount of €4,296, incurred by the Appellant on repairs of the vehicle, from the original OMSP of €15,000. As a result, the Appellant was issued with a refund of €1,762 in respect of VRT.
 - 19.5. In support of his appeal, the Appellant provided (1) an estimated valuation of €2,500 - €3,000 from [REDACTED]; (2) an estimated valuation of €2,000 - €3,000 from [REDACTED]; (3) a desktop valuation of €2,500 - €3,000 from [REDACTED], vehicle assessor; (4) a breakdown comparison of the vehicle with the Lexus IS200 which suggested an OMSP of €1,684; and (5) five advertisements from DoneDeal.ie for similar cars to the vehicle, with asking prices between €1,234 and €4,999, three of which had asking prices of €4,900, €4,999 and €4,999 .

19.6. The Respondent provided a desktop valuation by [REDACTED], consultant from [REDACTED], to support the OMSP applied by it.

19.7. The vehicle was a 'similar model' to the Lexus IS200. However, other vehicles of the same make and model of the vehicle under appeal were available to the Respondent for comparison purposes.

Analysis

20. The burden of proof in this appeal rests on the Appellant, who must show that the OMSP imposed by the Respondent in respect of the vehicle was incorrect. In the High Court case of *Menolly Homes Ltd v. Appeal Commissioners* [2010] IEHC 49, Charleton J stated at paragraph 22 that "*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 CO₂ component is calculated by multiplying the applicable rate by the OMSP. It was not in dispute in this appeal that the applicable VRT rate was 41%. 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.

22. In this instance, the Appellant purchased the vehicle in Japan for the equivalent of €4,650. On registration in this jurisdiction, the Respondent assigned an OMSP of €15,000, which was subsequently reduced on appeal to €10,704. The VRT arising on foot of this OMSP was €4,388 (10704 x 0.41).

23. In support of his contention that the OMSP assigned by the Respondent was excessive, the Appellant has submitted a considerable range of evidence. In particular, the Commissioner has had regard to the following:

- A letter dated 13 February 2023 from [REDACTED], Toyota dealer, which states inter alia that "*Following inspection of [the vehicle] and taking into account market demand, paint and lacquer condition etc., the estimated value of the above vehicle is €2,500 – €3,000.*"

- A letter dated 17 January 2023 from [REDACTED], which states inter alia, *“Thank you for your on-line valuation enquiry regarding [the vehicle], and all pictures received with thanks...The car is in fair condition, noting paint fade, lacquer peel, and a damaged aftermarket body kit which would all devalue the car from a collectors or concours [sic] point of view...I would place a retail value of €2000 - €3,000 on this car, referencing market values for the Lexus IS200 equivalent in average condition.”*
- A report dated 11 April 2023 by [REDACTED], Consulting Motor Vehicle Assessor & Accident Investigator, which was titled “Desktop Valuation Report” and which stated inter alia, *“Should the vehicle in question be presented in good condition with no work required I would suggest a valuation of €7,500. However on inspection of the images and invoices supplied I believe that the value is far less...Taking these repair costs into account I would re-evaluate the current market value of this vehicle to be in the region of €2500-€3000 before the repairs were carried out...The [REDACTED] was not sold new in Ireland and the Lexus IS200 was and they are basically the same vehicle just re-badged...This report is based on a visual desktop inspection...”*
- The Appellant, via his representative, carried out a comparison between the vehicle and the Lexus IS200 on a ‘similar model’ basis and calculated, using inter alia the Respondent’s online VRT calculator, that the correct OMSP for the vehicle was €1,684.
- Five advertisements from DoneDeal.ie, provided by the Appellant, for similar cars to the vehicle, with asking prices between €1,234 and €4,999, three of which had asking prices of €4,900, €4,999 and €4,999.

24. Against this, the Respondent submitted a consultant’s report prepared by [REDACTED] of [REDACTED], which stated inter alia that

“Based on the information on the CVO provided, the vehicle details are outlined below...Condition: Good...”

We note that both vehicles ([REDACTED] and [REDACTED]) are similar, but not identical. In this case, we have since revisited the open market and our findings below outline several identical vehicles ranging from 1998 registered to 2004 registered [REDACTED] [REDACTED] models currently available in the open market. Therefore, a comparison to a “similar” vehicle is not applicable in this case as there is [sic] direct comparisons

available. Based off the current market values of direct comparison vehicles, we believe that our initial valuation of 15,000 euro is fair and reasonable in this case.”

The report appended photographs of advertisements, apparently from the DoneDeal.ie website, which show eight 1998-2004 [REDACTED] cars for sale, with asking prices between €9,600 and €16,000. It appears to the Commissioner that the average asking price from the advertisements is €12,662.

25. It seems clear to the Commissioner, based on the above summary, that the preponderance of evidence before him goes to show that the Appellant is correct to contend that the OMSP imposed by the Respondent was excessive. In particular, he notes that the Appellant has provided two valuations from dealers, and one consultant's report, each of which involved an assessment of the vehicle itself, and which valued the vehicle between €2,000 - €3,000. This is subject to the caveat that both the consultant's report and the valuation from [REDACTED] were done on a desktop basis, and do not appear to have involved a direct physical examination of the vehicle. The letter from [REDACTED] suggests that they may have carried out a direct physical inspection of the vehicle; however, the letter provides no details of any such physical inspection and the rationale supporting the valuation is sparse.
26. Against that, the report carried out on behalf of the Respondent does not appear to have involved any examination of the vehicle at all. There is no independent analysis of the vehicle, but rather the condition of the vehicle is stated to be "good", which was "based off the information on the CVO provided." The suggested OMSP was arrived at simply by way of a comparison with advertisements for other [REDACTED] found on DoneDeal.ie, rather than through an examination of the vehicle itself. Contrary to the statement in the Respondent's report that the vehicle's condition was good, the letter from [REDACTED] and the report of [REDACTED] both indicate that the vehicle required repairs, and this assessment was based on a review of photographs of the vehicle. While the Respondent did give credit to the Appellant for repairs subsequently carried out to the vehicle, the Commissioner considers that the fact that the OMSP was originally arrived at on the basis of an assessment of the condition of the vehicle that did not correspond to the assessment by other experts/dealers who had actually inspected it (albeit remotely), indicates that the Respondent's report was fundamentally flawed.
27. The Appellant submits that the 'similar model' approach should be applied to compare the vehicle with a Lexus IS200, and using the Respondent's VRT calculator, submits an appropriate OMSP of €1,684. The Respondent accepts that the vehicle and the Lexus IS200 are similar, but declined to apply the 'similar model' approach on the basis that it

was possible to carry out a direct comparison with other [REDACTED]. The Commissioner notes that the Respondent's VRT Manual Section 8 states that, "*Where an identical vehicle is not available for comparison purposes, a "similar" model will be identified...*" The Commissioner considers that the Respondent was entitled to conclude that identical vehicles were available for comparison purposes, and that therefore the 'similar model' approach was not required.

28. In any event, the Commissioner does not consider that anything fundamental turns on whether the 'similar model' approach is used or not. This is because, even if he did consider it appropriate, he would prefer the evidence of the reports and dealers that assessed the vehicle itself over an OMSP suggested by the VRT calculator. 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.*"¹
29. Therefore, having concluded that the OMSP assigned by the Respondent was excessive, it falls to determine a fair and reasonable revised OMSP. The Commissioner notes that the two dealer valuations procured by the Appellant, and its expert consultant, all suggest an OMSP in the region of €2,000 - €3,000. Against that, the Commissioner does not believe he should disregard the evidence of the Respondent of advertisements for eight other cars of the same make and model with asking prices of between €9,600 and €16,000. It goes without saying that an asking price is not necessarily reflective of the price at which an item is ultimately sold, and it is also appropriate to recognise that the Appellant submitted five advertisements from DoneDeal.ie of [REDACTED] with a range of asking prices between €1,234 and €4,999 – although it is worth noting that three of the five advertisements had asking prices of €4,900, €4,999 and €4,999.
30. The Appellant stated that it was possible for anyone to put an advertisement online for a small amount of money, and the Commissioner understood the implication to be that one cannot be satisfied that any such advertisement is genuine. This is true insofar as it goes; however, the Commissioner did not understand that the Appellant to allege that any of the particular advertisements relied upon by the Respondent's consultant in his report were not genuine, and the Commissioner does not consider that there is any reason to doubt their authenticity.

¹ <https://www.revenue.ie/en/vrt/calculating-vrt/assessing-value.aspx>

31. The Appellant also alleged that the Respondent breached its own VRT Manual on relying on private advertisements rather than professional car dealers. As explained by the Commissioner at the hearing, the Commissioner does not have any jurisdiction to 'police' the Respondent's adherence with its own Guidelines, which do not have the force of law. However, the Commissioner notes that the Respondent's VRT Manual Section 6 states that, "*The appellant should enclose evidence, obtained at their own expense, to support the opinion of the chargeable value. The evidence might include... Copies of VRT and VAT inclusive advertisements by dealers in the Republic of Ireland for similar vehicles relevant to the time that the VRT was charged.*" The Commissioner does not understand this to necessarily limit a taxpayer (or the Respondent) to only submitting advertisements from professional dealers, albeit it seems likely that any such advertisement would have greater weight than a comparable advertisement placed by a private individual. In any event, the VRT Manual Section 6 only concerns first stage appeals to the Respondent, and does not have any direct relevance to appeals before the Commission.
32. In all the circumstances, the Commissioner considers that a fair and reasonable OMSP is €5,000. While this is greater than the OMSP suggested by the dealers and expert procured by the Appellant, it is considerably less than that applied by the Respondent, and it is also in line with three of the five advertisements submitted by the Appellant. The Commissioner also notes that it is similar to the price actually paid by the Appellant (€4,650), albeit that this was obviously paid in Japan and therefore not directly relevant to the setting of an OMSP in this jurisdiction. However, the Commissioner considers it generally indicative of the value of the vehicle.
33. Therefore, as it is determined that the appropriate OMSP is €5,000, the amount of VRT applying is €2,050 (5000×0.41). The Appellant originally paid VRT of €6,150, and subsequently received a refund of €1,762. Consequently, the Commissioner determines that the Appellant is entitled to a further refund of €2,338, which is to be paid by the Respondent to the Appellant to conclude the matter.

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 determines that the Appellant is entitled to a refund in the amount of €2,338 in overpaid VRT in respect of motor vehicle registration number [REDACTED].

35. This Appeal is determined in accordance with Part 40A of the TCA 1997, and in particular 949AL thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

Notification

36. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication **only** (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

Appeal

37. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.



Simon Noone
Appeal Commissioner
01 December 2023