



182TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Appeal Commissioners pursuant to section 146 of the Finance Act, 2001 (as amended) against a determination made by the Revenue Commissioners. The appeal concerns the value of a vehicle for the purposes of a charge to vehicle registration tax (VRT), the value being measured as the open market selling price (OMSP) of the vehicle at the time of the charging of the tax.
2. On agreement of the parties this appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts

3. The vehicle, the subject matter of this appeal, is a BMW M5 5 ltr. V10, first registered in the United Kingdom on 6 February 2006, now bearing registration number **REDACTED**. The Appellant registered the vehicle and paid VRT of €9,000 based on an open market selling price (OMSP) of €25,000 determined by the Revenue Commissioners.
4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was revised to





€20,600 by the Revenue Commissioners resulting in a repayment of €1,584 to the Appellant. This was notified to the Appellant by letter dated 8 October 2018.

5. The Appellant was still aggrieved by the revised OMSP determined by the Revenue Commissioners and appealed to the Tax Appeal Commission against the revised OMSP of €20,600. A notice of appeal was received by the Tax Appeals Commission on 9 October 2018.

Legislation

6. Section 146 of the Finance Act, 2001 (as amended) provides:

- “(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 (2).*
- (1A) Any person aggrieved by any of the following matters may appeal to the Appeal Commissioners in accordance with section 949I of the Taxes Consolidation Act, 1997 within the period specified in subsection (2)*
- (a) a determination of the Commissioners under section 145;*
 - (b) a refusal to authorise a person as an authorised warehousekeeper, or to approve a premises as a tax warehouse, under section 109, or a revocation under that section of any such authorisation or approval;*
 - (c) a refusal to authorise a person as a registered consignee under section 109IA or a revocation under that section of any such authorisation.*



- (d) *a refusal to authorise a person as a registered consignee under section 109A or a revocation under that section of any such authorisation;*
 - (e) *a refusal to approve a person as a tax representative under section 109U(2) or a revocation under that section of any such approval;*
 - (f) *a refusal to grant a licence under section 101 of the Finance Act 1999 or a revocation under that section of any such licence that has been granted.*
- (2) *The period specified for the purpose of making an appeal under this section is the period of 30 days after the date of –*
- (a) *the payment of excise duty in the case of an appeal under subsection (1)(a),*
 - (b) *the notice of assessment or other notice calling for payment of the amount concerned in the case of an appeal under subsection (1)(b),*
 - (c) *the repayment or the notice of the refusal to repay in the case of an appeal under subsection (1)(c), or*
 - (d) *the notice of the determination, refusal or revocation concerned in the case of an appeal under subsection (1A).”*

7. Section 133 of the Finance Act, 1992 (as amended) provides:

- “(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*
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- (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 enhancement or accessories have not been removed from the vehicle or not sold therewith for the purpose 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

8. The Appellant submitted:

- a) Prior to purchasing the vehicle, he accessed the Revenue online calculator and inputted the specification of the car. The VRT calculator suggested a VRT charge of €4,197 would apply to his prospective purchase.
- b) That based on the information provided by the VRT calculator he proceeded to purchase the car in **REDACTED**.
- c) That there is only one model of his car with a 4,999 cc engine and cannot be confused with other models.
- d) After purchasing the car, he attended the **REDACTED** NCT Centre and was advised that he would be notified of the VRT amount due.



- e) He was shocked to discover that the VRT charge notified to him was €9,000.
- f) He paid the VRT sought and proceeded to appeal to Revenue to revisit the OMSP.
- g) He checked the VRT calculator again and noted that the particular car was taken offline.
- h) That the Revenue officer advised him that he should have retained a copy of the suggested online VRT charge.
- i) That he provided advertisements to Revenue showing the current market value of his car.
- j) Advertisements for four similar vehicles with an average price of €21,087.
- k) That the online suggested VRT charge should have been applied to his vehicle.

9. The Respondent submitted:

- a) That there is no record on the Revenue systems of a VRT enquiry being made on a vehicle such as the Appellant's, which subsequently necessitated manual valuation at the time of registration.
- b) That the vehicle's revised OMSP of €20,667 was determined at first stage review based on the average advertised prices for similar vehicles in the Irish market.
- c) Copies of these advertisements in support.
- d) That VRT is charged on the open market selling price which amounted to 36% of €20,667 or €7,416 on the Appellant's vehicle.

Analysis and findings

10. The OMSP ascertained at first stage appeal by the Respondent in relation to the vehicle the subject matter of this appeal was €20,667. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners was not in accordance with the online VRT calculator and was excessive. The Appellant submits that the VRT due on the OMSP of the vehicle the subject matter of the appeal should be €4,197 as ascertained by him in advance of purchasing the car using Revenue's own online calculator.



11. In accordance with section 133 of the Finance Act, 1992 (as amended) the OMSP of a vehicle other than a new vehicle is the price which the vehicle might reasonably be expected to fetch on a first arm's length sale in the State by retail at the time of registration.
12. The Appellant has relied on Revenue's online calculator to support his version of what the OMSP should be. The Respondent has examined the matter – at registration and at 1st stage review and has revised the initial OMSP downwards to €20,667.
13. The Appellant has proffered another average valuation which is in fact higher than that used by the Respondent in its first stage review of the OMSP.
14. The Respondent has not provided evidence of how the initial OMSP of €25,000 was determined but has supported its revised OMSP from advertisements for similar cars.
15. The Respondent has asserted that there is no record of the Appellant or anyone else having accessed its VRT calculator online. In fact the Respondent asserted that the OMSP had to be determined manually in providing the initial OMSP to the Appellant.
16. There is an important caveat on the Revenue website when using the online calculator reminding users that a different amount may be payable at the time of registration depending on various factors including vehicle valuations and legislative changes.
17. In appeals before the Tax Appeals Commission, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the assessment to tax, raised by the Respondent is incorrect.
18. In the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: '*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.*'
19. The question to be answered in this appeal is whether, the Appellant can rely on his interpretation of Revenue's online calculator in assessing the OMSP of





a vehicle prior to importation. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Appellant's interpretation of the VRT calculated on the OMSP of the vehicle in question is correct. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that he qualifies for any further refund of the VRT paid.

Determination

20. In the circumstances, and based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the OMSP of €20,667 determined by Revenue is correct in relation to the vehicle.
21. The appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
22 OCTOBER 2020

