



52TACD2021

BETWEEN/

APPELLANT

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

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 valuation of a vehicle for the purposes of ascertaining the open market selling price ('OMSP') in respect of the calculation of Vehicle Registration Tax ('VRT').
2. This appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Background

3. The vehicle, the subject matter of the appeal, is an Audi RS4 2.7 Avant Quattro 5DR registration no **REDACTED**. The Appellant purchased the vehicle for stg £13,500 in the UK in November 2019. The vehicle was first registered in the UK on 11 January 2001. The vehicle was registered with the National Car Testing Service (NCTS) on 9 December 2019. An OMSP of €28,500 was assigned by the Respondent, resulting in a VRT charge of €10,260.
4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was revised downwards to €21,300 by the Revenue Commissioners.

5. This was notified to the Appellant by letter dated 3 March 2020. The revised OMSP resulted in a refund due the Appellant of €2,592.
6. The Appellant was aggrieved by the revised OMSP determination of the Revenue Commissioners and duly appealed to the Tax Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 30 March 2020.

Legislation

7. Section 146 of the Finance Act 2001:

Section 146 Finance Act 2001 provides as follows;

“A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.”

8. Section 133 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 –*
 - (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 and Analysis

9. The Appellant Submitted:

- a. That the OMSP should amount to €10,780 based on the average valuations supplied in support of his appeal.
- b. He supported this assertion with independent valuations from an Irish car dealer website and from two Irish garages who valued the vehicle at €5,700, €12,000 and €12,750 respectively.
- c. He supplied an actual VRT valuation provided by the Respondent in respect of a similar vehicle imported in 2008 in which an OMSP of €15,833 was applied by the Respondent.
- d. In addition the Appellant supplied the actual invoice for the purchase of the car for €13,500 and an extract from the Parkers' (a UK company) valuation tool with valuations ranging from stg£10,860 to stg£16,235.
- e. The vehicle is in only poor to fair condition requiring both mechanical and body part rectification. He supplied photographic evidence in support of this.

10. The Respondent submitted:

- a. That the matter had been examined in some detail and in correspondence dated 3 March 2020, the Respondent revised its initial OMSP of €28,500 to €21,300.
- b. That the VRT Appeals officer in the absence of similar vehicles for sale in Ireland took the adjusted (for Euro) purchase price of the vehicle and applied a notional 36% (VRT amount) to arrive at a revised valuation for the OMSP of the vehicle.

11. Following correspondence between the TAC and the Respondent it was ascertained that the initial valuation of €28,500 was arrived at using an independent consultant to ascertain the OMSP. The Consultant advised as follows

"At the time of our valuation, this exact model vehicle was not for sale on the Irish market so we sourced our examples in the UK market instead, converted the average values of these example to Euro making adjustments for mileage and then added the VRT"

The Respondent provided these examples to the TAC.

12. The Respondent also sought to explain why a similar vehicle imported in 2008 was valued differently than the Appellant's vehicle. In that case the statistical code used



at that time has been discontinued in the Respondent's database for defining the OMSP. The use of the code was discontinued as it did not reflect the true value of the vehicle concerned because as these vehicles get older they become more valuable due the fact that they are rare in the market. The Respondent advised that it now uses a consultant to determine the OMSP of this type of car.

13. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO2 emissions. The OMSP of a vehicle is determined in accordance with section 133 Finance Act 1992, as amended i.e. *"on the price, inclusive of all taxes and duties, which, in the opinion of the Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State."* In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.
14. The revised OMSP assigned in relation to the vehicle the subject matter of this appeal was €21,300. The Appellant's ground of appeal in relation to the OMSP assigned, was that it was excessive.
15. The Appellant in support of his appeal offered independent valuations from an Irish car dealer website and from two Irish garages who valued the vehicle at €5,700, €12,000 and €12,750 respectively. In addition the Appellant supplied the actual invoice for the purchase of the car for €13,500 and a valuation from Parkers (a UK company) with valuations ranging from stg£10,860 to £16,235.
16. The question to be answered in this appeal is; how much would the vehicle be likely to fetch if sold on the open market in Ireland?
17. The vehicle in the instant appeal does not qualify as a classic car as it less than 30 years old. Nevertheless its fits in a unique market for collectors due its rarity (only 6,030 units were manufactured between 1999 and 2001- *source Wikipedia*) and the fact that it is no longer in production. The classic car markets in Ireland and the UK are often similar after accounting for currency differences.
18. However the vehicle in the instant appeal is not regarded as a classic car and will not meet the criteria for such until it is 30 years old. It attracts a 36% VRT charge in Ireland. In addition the Irish road tax rate on this vehicle is based on its CO2 emissions.



19. The Respondent has offered to ignore its own consultant's view in the matter of the OMSP at €28,500 based on UK comparators and has instead taken the view that the OMSP of the vehicle should be representative of the Euro equivalent price paid for the vehicle in the UK with an added element of Irish VRT.
20. In this the Respondent has added 36% (the VRT rate applicable) to the Euro equivalent price paid by the Appellant in arriving at the revised Irish OMSP of the vehicle in the amount of €21,300. The Respondent and its consultant were unable to find similar vehicles for sale in Ireland because of the limited availability of the car in the Irish market.
21. Section 133 Finance Act, 1992, as amended provides that in the case of a vehicle other than a new vehicle, the OMSP is *'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...'* at the time of registration.
22. The OMSP is essentially the price at which a dealer in Ireland could sell the vehicle in an arm's length transaction having accounted for input costs, a margin and the appropriate duties and taxes.
23. In only taking the purchase price of the car, without consideration of the Appellant's views or an independent valuation of Irish prices, as the base for calculating the OMSP, the Respondent failed to accurately determine, what, a dealer in Ireland could sell the vehicle in an arm's length transaction having accounted for input costs, a margin and the appropriate duties and taxes.
24. I find that the Appellant has furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Respondent's interpretation of the OMSP of the vehicle in question is incorrect. As a result, I determine that the Appellant has succeeded in discharging the burden of proof and has succeeded in showing that he qualifies for a further reduction in the OMSP assigned by the Respondent.

Determination





25. I have ignored the Appellant's outlier valuation from a car dealer website of €5,700 and I have taken the average value of the other valuations provided by him to arrive at an OMSP of €14,812 as follows:

	Valuation €	Average €
Irish Garage 1	12,750	
Irish Garage 2	12,000	
UK valuation tool (<i>Mid – point between fair and good adjusted for Stg and VRT</i>) (similar also to £ price paid as used by Respondent)	19,688	
	€44,438	€14,812

26. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €14,812 to be a fair and reasonable OMSP in relation to the particular vehicle and that the Appellant is entitled to a further refund of any VRT paid based on this OMSP.

27. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER

1 MARCH 2021

