



59TACD2021

BETWEEN/



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 was 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 a five seater Land Rover Defender 110 County TD5 first registered in the UK on 25 October 2002 now bearing registration number [REDACTED]. The Appellant purchased the vehicle with an odometer reading of 144,004 miles, for stg £13,300 in Belfast UK on 28 October 2019. The vehicle was registered with the National Car Testing Service (NCTS) in November 2019. The Respondent assigned an OMSP of €5,695, and applied a VRT rate of 13.3% resulting in a VRT charge of €757.

4. The Appellant appealed unsuccessfully to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal, the Revenue Commissioners did not revise the OMSP.
5. This was notified to the Appellant by letter dated 7 May 2020. The Appellant was aggrieved with the OMSP determination of the Revenue Commissioners and duly appealed to the Tax Appeal Commissioners against the determination. A notice of appeal was received and accepted as in time (due to delay in receipt of Revenue letter) by the Tax Appeals Commission on 22 June 2020.
6. The Appellant sought a refund of €542 in respect of her calculation of the excess VRT charged. She has also sought clarity on whether or not she has been charged NOX duty, sought confirmation that the vehicle is classified as a commercial crew-cab and asked for the book in support.

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 130 of the Finance Act 1992 - Interpretation

‘category B vehicle’ means a category N1 vehicle or a motor caravan

9. Commission Regulation (EU) No. 678/2011



Category N1 vehicle is defined in EU Regulation 678/2011 as follows; “*Motor vehicles designed and constructed for the carriage of goods and having maximum laden mass of 3.5 tons.*”

10. Section 132(3) of the Finance Act 1992

(3) The duty of excise imposed by subsection (1) shall be charged, levied and paid –

(c) In case it is a category B vehicle, at the rate of an amount equal to 13.3 per cent, of the value of the vehicle or €125, whichever is the greater.

11. 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

12. The Appellant Submitted:

- a. That she had checked the likely amount of VRT payable was €215 prior to acquiring the vehicle according to a website referred to as [REDACTED]. She was surprised to discover on registration of the vehicle with the Respondent that the VRT charge amounted to €757. This obliged her to borrow the additional money to pay the VRT.
- b. That on appeal the Respondent advised her that the valuations provided in her submissions to the first stage appeal were not even the same version of her vehicle. She disputed this statement from the Respondent.
- c. A screenshot from [REDACTED] that advised the user that the depreciated OMSP of a vehicle similar to hers would amount to €1,620 and attract a VRT charge of €215.
- d. That the screenshot valuation used by the website displays an initial OMSP of €18,000 and a depreciation rate of 91% in arriving at the OMSP of €1,620.
- e. Evidence of 2011 and 2012 versions of her vehicle for sale at €31,950 and €29,950 respectively.

13. The Respondent submitted:



- a. That the matter had been examined in some detail with reference to the tax and duty inclusive retail price a vehicle of the same description might fetch on the open market in the State and determined in accordance with its letter of 7 May 2019 that a reduction in the OMSP charged at registration was not warranted.
- b. Screenshots to support the adequacy and fairness of the OMSP of €5,695 assigned at registration. These screenshots from reputable car sales websites in Ireland displayed 2000 (year) versions of the vehicle concerned at prices ranging from €9,500 to €11,995 and another 2003 version retailing at €15,950.
- c. That the example provided by the Appellant from the [REDACTED] website uses a make / model - a Land Rover SP HSE TDV6 that appears to be a completely different model to the Appellant's Land Rover Defender 110 Country.
- d. That from the Google research the [REDACTED] example appears to be a saloon type vehicle, rather than the commercial / agricultural version of the Appellant's vehicle.
- e. That in the [REDACTED] example the mileage used is 240,000, while the Appellant's vehicle has nearly 100,000 miles less on the odometer.
- f. That it is important to note that the website on which the Appellant relied belongs to a business that is completely unconnected to the Respondent.
- g. That the website [REDACTED] warns (at folio 6) its paying clients that it will not be held responsible where users rely on its website valuations.
- h. That the correct rate of VRT for the Appellant's vehicle was 13.3%.

Analysis and Conclusion

14. 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.



15. The initial OMSP assigned in relation to the vehicle the subject matter of this appeal was €5,695. The Appellant's ground of appeal in relation to the OMSP assigned was that it was excessive.
16. The Appellant in support of her appeal offered the view of an independent website not controlled by the Respondent that the OMSP should be €1,620.
17. The OMSP calculated by the website on which the Appellant has relied has taken the view that the vehicle in question would have an initial OMSP of €18,000, which was then depreciated by 91% to arrive at an OMSP and VRT charge of €1,620 and €215 respectively.
18. This is patently an incorrect view of the appropriate OMSP, which seeks to determine the price the vehicle would fetch on the open market. It is obvious that the starting point of €18,000 does not represent the as new price of the vehicle concerned. Furthermore, the vehicle used in the example from the website does not appear to be the same as the Appellant's vehicle.
19. 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?
20. The Respondent has supported its view of the adequacy and fairness of the OMSP of €5,695 initial valuation by providing details of comparator vehicles for sale in the Irish market. The examples provided show vehicles for sale in Ireland at significantly greater prices than the OMSP assigned by the Respondent.
21. Both the Appellant and the Respondent agree that the purchase price of the vehicle the subject of this appeal was stg £13,300.
22. 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.
23. The OMSP is essentially the price at which a dealer in Ireland could sell the vehicle for in an arm's length transaction having accounted for input costs, a margin and the appropriate duties and taxes.



24. The Appellant has also sought clarity on whether or not she has been charged NOX duty, sought confirmation that the vehicle is classified as a commercial crew-cab and asked for the book in support.
25. The rate of VRT at 13.3%, which did not include a NOX charge was applied in accordance with Section 132(3) of the Finance Act 1992
“In case it is a category B vehicle, at the rate of an amount equal to 13.3 per cent, of the value of the vehicle or €125, whichever is the greater”
26. The TAC has no jurisdiction in determining whether the vehicle is classified as a commercial crew-cab and does not have any responsibility in providing any records to the Appellant. Enquiries of this nature should be addressed to the Respondent as appropriate.
27. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 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”*.
28. I find that the Appellant has not furnished sufficient information and documentation that 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. In fact, submissions from both parties provide sufficient evidence to suggest that the assigned OMSP could be revised upwards. However as the Respondent has satisfied itself that the OMSP assigned is adequate I will not determine a greater OMSP than already assigned by the Respondent.
29. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that she qualifies for any refund of the VRT paid.

Determination





30. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €5,695 to be a fair and reasonable OMSP in relation to the particular vehicle and that the Appellant is not entitled to the refund sought.

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

CHARLIE PHELAN
APPEAL COMMISSIONER

3 MARCH 2021

