



57TACD2019

BETWEEN/

Appellant

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This 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 determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

3. The Appellant purchased a Mercedes Benz SLK 250D AMG Sport 2 door automatic vehicle in the UK and imported it into the State on 26 January 2019.
4. The vehicle was registered at the National Car Testing Service ("NCTS") on 14 February 2019 and given the registration number 161xxxx. An OMSP of €27,455 was assigned to the vehicle, resulting in VRT payable of €4,941.
5. The Appellant appealed the amount of VRT payable on the vehicle to the VRT appeals office in the Revenue Commissioners. The Respondent notified the Appellant by letter

dated 19 March 2019 that the VRT amount of €4,941 was correct and that no refund was due. The Appellant duly appealed to the Tax Appeals Commission by notice of appeal received on 03 April 2019.

6. The Appellant contends that the OMSP assigned to the vehicle, on registration, by the NCTS is overstated and contends for a reduced OMSP to be applied to the vehicle, resulting in the VRT payable being close to or equal to €3,680.

Legislation

Section 133 Finance Act, 1992, as amended:

(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 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 Analysis

7. The Appellant states in his submissions that the Revenue VRT calculator did not contain details of the Mercedes SLK (the model of the Appellant's vehicle) on its database but that it did contain the Mercedes SLC, a vehicle with similar mileage, CO2 emissions and date of manufacture. According to the Appellant, the VRT calculator on the Respondents website, showed a VRT amount of €3,682 for this particular type of vehicle of comparable age, which the Appellant believed to be the amount which would be payable on the importation of his vehicle.
8. The Appellant further states that Mercedes changed the brand name of the Mercedes SLK to Mercedes SLC in January 2016.
9. The Appellant did not furnish any evidence in support of his appeal but noted that he had already furnished the Revenue Commissioners with a copy of the VRT calculation for the Mercedes SLC which he took from the Revenue VRT calculator and also a copy of a press article which referred to the change of brand name from Mercedes SLK to Mercedes SLC. The Respondent has included these documents in their submissions.



10. The Respondent submits that they acquired two valuations for the Mercedes SLK from main dealers. One of these valuations was for €30,000. The Respondent applied a 5% reduction to this (as is common in VRT appeals) to arrive at a valuation of €28,500. The other valuation was within the range '€27,000 - €28,000'. The Respondent took the midpoint of this, being €27,500. It appears that these valuations were obtained over the telephone.
11. The Respondent further submits that they also relied on an advertisement of a similar 2015 vehicle for sale on a well-known car dealership website for €24,750. The Respondent added an additional €4,000 to this figure to account for the fact that the vehicle in the within appeal was a younger (2016) model and then applied a 5% discount to arrive at a figure of €27,312.
12. The Respondent contends that the average of these three figures (€28,500, €27,500 and €27,312) is €27,771, which is higher than the valuation assigned at the NCTS (€27,455) and so determined that the valuation of €27,455 should stand.
13. The OMSP is *"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"*. 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.
14. The Appellant relies on a VRT amount calculated by the VRT calculator on a different model to the vehicle the subject matter of the appeal. This in my view does not assist the Appellant in his appeal. Also, the Respondent's website displaying the VRT calculator states that the calculator provides an estimate of VRT payable. The website also makes a number of qualifications to the outcomes from the calculator. The VRT calculator is not the determinant of the VRT payable.
15. The Appellant submits that the Mercedes SLK changed its name to Mercedes SLC in 2016 and furnished a printout of a press release issued to that effect. The source of this document is an online car magazine and there is very little information contained therein. This document does not help the Appellant in his appeal.
16. 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 relevant tax is not



payable. In *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.*

17. While the Appellant may feel he has been misled by the VRT calculator, this is not a matter which the Tax Appeals Commission has jurisdiction to adjudicate on.

Conclusion

18. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties and having regard to the comparator vehicle valuations I determine that the OMSP assigned to the vehicle of €27,455 to be an accurate OMSP.

19. The appeal hereby is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS
APPEAL COMMISSIONER
15 NOVEMBER 2019

