



67TACD2019

BETWEEN/

NAME REDACTED

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. This appeal is adjudicated in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts

3. The vehicle, the subject matter of this appeal, is a Hyundai i30 SE B/D 110PS 5DR (2017), bearing registration number [REDACTED]. The Appellant registered the



vehicle on 27 August 2018. A Declaration was signed by the Appellant at the National Car Testing Service centre on 27 August 2018 which described the date of first registration of the vehicle as [REDACTED] 2017 and mileage at the date of registration of 15,387.

4. An OMSP of €14,588 was originally determined for the vehicle resulting in a VRT charge of €2,480. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal an OMSP of €13,200 was determined for the vehicle resulting in a VRT charge of €1,980 (a calculation of €13,200 @ 15%). This was notified to the Appellant by letter dated 8 October 2018. The revised OMSP gave rise to a refund to the Appellant of €500. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 6 November 2018.

Legislation

5. 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 consignor 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)."*

6. 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 and Analysis

7. All vehicles are subject to VRT on first registration in the State. The rate of VRT is calculated according to the CO₂ emissions. Section 133 of the Finance Act, 1992 (as amended) provides that the value of the vehicle for the purposes of calculating



VRT is the OMSP (as defined) of the vehicle at the time of charging the VRT. The OMSP of a vehicle other than a new vehicle is the price, inclusive of all taxes and duties, which the vehicle might reasonably be expected to fetch on a first arm's length sale in the State by retail.

8. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €13,200. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners of €13,200 was excessive. The Appellant submits that as the vehicle, a 2017 Hyundai i30 Diesel Hatchback, was damaged when it was brought into the State, the OMSP should be based on the historical condition of the vehicle. In support of the appeal, the Appellant furnished photographs of the damaged vehicle. The Appellant provided an invoice from [NAME REDACTED] with a purchase price of €4,950 and a purchase date of 16 July 2018. The Appellant submits that the OMSP should be €6,450 measured as the price paid for the vehicle of €4,950 plus an amount of €1,500 for repairs to the vehicle. No evidence was produced in support of the quantum of the repairs. Thereafter, the Appellant registered the vehicle on 27 August 2018.
9. At the date of registration of the vehicle in the State the OMSP was determined at €14,588. On appeal to the Revenue Commissioners the OMSP was determined at €13,200. The Revenue Commissioners have stated that the revised OMSP was arrived at by reference to three Irish comparator vehicle valuations for a 2017 Hyundai i30 1.6 Diesel Hatchback (€18,995, €18,750 and €17,950) with the average of the three valuations being €18,565. The Revenue Commissioners reduced the average of the valuations by 10% to arrive at an OMSP of €16,709. This value was reduced by a further 20% as an adjustment for the condition of the vehicle the subject matter of the appeal to arrive at a figure of €13,367. The Revenue Commissioners determined an OMSP for the vehicle of €13,200.

10. 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 the charging of the tax i.e. at the time of registration. The vehicle is valued in the condition in which it is presented at the time of registration. A previous determination (06TACD2018) states that it is incorrect to submit that the OMSP should be based on the price paid for the vehicle outside the State. 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 €13,200 is a fair and reasonable OMSP in relation to the vehicle.

Determination

11. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €13,200 as the OMSP of the vehicle the subject matter of the appeal. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

FIONA McLAFFERTY
APPEAL COMMISSIONER

19th NOVEMBER 2019

