



**68TACD2019**

**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.
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 an Audi A6 2.0 S-Line Black Ed TDI Ultra (2018), bearing registration number [REDACTED]. The Appellant registered the vehicle on 15 January 2019. The date of first registration of the



vehicle was [REDACTED] 2018 and mileage at the date of registration in the State was 16,282.

4. An OMSP of €38,709 was originally determined for the vehicle resulting in a VRT charge of €6,967 (a calculation of €38,709 @ 18%). The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal, the OMSP was not revised by the Revenue Commissioners. This was notified to the Appellant by letter dated 29 January 2019. 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 1 February 2019.

### **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 CO<sub>2</sub> 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 open market selling price (OMSP) of the vehicle at the time of charging the VRT. 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.



8. In the Notice of Appeal to the Tax Appeals Commission, the Appellant seeks to appeal the VRT charged on the vehicle the subject matter of the appeal on the basis that an incorrect statistical code was selected for the vehicle resulting in an overpayment of VRT. In the Notice of Appeal, the Appellant refers to statistical code 43288161 and statistical code 41888161 and submits that the Revenue Commissioners selected the statistical code which calculated the highest amount of VRT to be charged.
  
9. At the date of registration of the vehicle in the State the OMSP was determined at €38,709. The statistical code selected at the date of registration was 43288161. On appeal, the OMSP was not revised by the Revenue Commissioners. For the purposes of the appeal to the Appeal Commissioners, the Revenue Commissioners provided information on statistical code 43288161 and statistical code 41888161. Statistical code 43288161 refers to an Audi A6 S-Line BI Ed Ultra with CO<sub>2</sub> emissions of 116. Statistical code 41888161 refers to an Audi A6 S-Line BI Ed Ultra with CO<sub>2</sub> emissions of 114. The Revenue Commissioners provided a copy of the UK Registration Certificate for the vehicle previously bearing registration number [REDACTED] (registered in the State by the Appellant and bearing registration number [REDACTED]) which describes CO<sub>2</sub> emissions of 116. The statistical code 43288161 was selected at the date of registration of the vehicle the subject matter of this appeal being a code for a vehicle with CO<sub>2</sub> emissions of 116.

### **Determination**

10. 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”.*

11. Based on a review of the facts and a consideration of the submissions, material and evidence furnished by both parties, I am satisfied that the Appellant has not discharged the burden of proof and I determine that the VRT charge of €6,967 shall stand. This appeal is hereby determined in accordance with section 949AL of the Taxes Consolidation Act, 1997.

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**FIONA McLAFFERTY**  
**APPEAL COMMISSIONER**

**20<sup>th</sup> NOVEMBER 2019**

