



Ref: 125TACD2020

BETWEEN/

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 without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts

3. The vehicle, the subject matter of this appeal, is a Mitsubishi Lancer CT9A EVO5 GSR 4DR first registered in Japan in 1998, bearing registration number



REDACTED. The Appellant registered the vehicle and paid VRT of €3,780 based on an open market selling price (OMSP) of €10,500 determined by the Revenue Commissioners.

4. The Appellant made a first stage appeal 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. The Appellant was aggrieved by the determination of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 19 July 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.”*

7. Section 132 (3) of the Finance Act, 1992 (as amended) provides:

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

[(a) in case the vehicle the subject of the registration or declaration concerned is a category A vehicle—

- (i) by reference to the Table to this subsection, or*
- (ii) where—*



(I) the level of CO₂ emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and

(II) the Commissioners are not satisfied of the level of CO₂ emissions by reference to any other document produced in support of the declaration for registration,

at the rate of an amount equal to the highest percentage specified in the Table to this subsection of the value of the vehicle or €720, whichever is the greater,]

Submissions

8. The Appellant submitted that the OMSP used by the Respondent is excessive and the valuation of his car in Ireland is between €8,000 and €8,500 exclusive of VRT and between €10,000 and €11,000 with Irish registration including VRT paid. The Appellant offered no evidence in support of his views on the OMSP.
9. The Appellant proffered the opinion that the VRT charge for his vehicle should be in the region of €1,500 to €1,800. He provided evidence of the CO₂ emissions from a recent NCT emissions test but offered no evidence of the level of CO₂ emissions when the vehicle was first manufactured.
10. The Respondent provided evidence of how the OMSP was initially arrived at. This consisted of three valuations received from three independent dealers of €10,500, €14,000 to €15,000 and €11,000. The Respondent provided another valuation from a private internet seller of €10,500. The Respondent took the average of these valuations to be €12,000 and allowed some deductions in arriving at an OMSP of €10,500 on which VRT of 36% was computed in arriving at the amount paid by the Appellant of €3,780.



11. The Respondent submitted that the level of CO₂ emissions attributable to the vehicle was not supplied by the Appellant when presenting the vehicle for inspection. In the absence of these details the Respondent applied the highest VRT charge of 36%.
12. The Respondent submitted that having fully reviewed both the determination of the OMSP and the CO₂ levels in calculating the VRT payable on this particular vehicle it found that the correct VRT amount was charged in the instant case.

Analysis

13. 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.
14. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €10,500 and in the absence of the precise proof CO₂ emissions at the date of manufacture a VRT rate of 36% was applied. The Appellant appealed to the Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners was excessive. The Appellant submitted an alternative OMSP without providing evidence of such alternative OMSP. The Appellant further submitted details of the vehicle's CO₂ emissions from an NCT test used in determining if the emissions were within acceptable range for the purposes of a certificate of road worthiness.

15. At the date of registration of the vehicle in the State the OMSP was determined at €10,500 and a VRT rate of 36% was applied. On 1st stage appeal to Revenue the OMSP was not revised by the Revenue Commissioners.
16. Revenue provided evidence of how the OMSP was computed and confirmed that the 36% rate of VRT was used in the absence of the provision of the level of CO₂ emissions when the vehicle was first manufactured.
17. I have determined that the OMSP assigned at registration, reviewed at first stage appeal and substantiated by the Respondent further, in advance of a hearing by the Appeal Commissioners is a fair and reasonable OMSP in relation to the vehicle.
17. 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 registration. The Appellant relied on his own view of what the OMSP should be. The Appellant mistakenly relied on the data from the NCT test of CO₂ emissions ranges in support his view on the quantum of the VRT charge. The Respondent has examined the matter three times – at registration, at 1st stage review and on further examination in advance of a hearing. Revenue has found on all occasions that the initial OMSP was a fair and reasonable valuation and that the VRT rate applied was in accordance with Section 132 (3) of the Finance Act, 1992 (as amended).
18. 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 €10,500 is a fair and reasonable OMSP in relation to the vehicle and that the VRT rate of 36% in accordance the provisions of Section 132 (3) of the Finance Act, 1992 (as amended) was correctly applied to this OMSP in the absence of the provision of the precise level of CO₂ emissions when the vehicle was first manufactured.

15. 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*”.

Determination

16. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties I determine €10,500 as the OMSP and the rate of VRT of 36% as correct, in respect of the vehicle the subject matter of this appeal.
17. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
8 MAY 2020

