



**73TACD2020**

**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**

2. The vehicle, the subject matter of this appeal, is a REDACTED, registration number REDACTED. The Appellant imported the vehicle from Northern Ireland and registered the vehicle in 2018 within the required deadline. An OMSP of €27,193 was assigned resulting in a VRT charge of €6,254.

On appeal to the VRT Appeals Unit in July 2018, the OMSP was adjusted to €24,000 resulting in a VRT charge of €5,520. A refund of €734 was paid to the Appellant.

The Appellant appealed to the Tax Appeals Commission on 20 July 2018 on the grounds that the OMSP was excessive.



## Legislation

### Section 146 of the Finance Act 2001:

(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).

### 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 vehicle registration tax, 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.

(2)(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.





(2)(c) Notwithstanding the provisions of paragraph (b), where a price is 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 a similar type and character is being offered for sale in the State at the time of such declaration, the open market selling price may be determined 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**

3. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO<sub>2</sub> 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 Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.
4. The OMSP ascertained in relation to the vehicle the subject matter of this appeal was €24,000. The Appellant's grounds for appeal in relation to the OMSP assigned was that it was excessive.
5. The Appellant submitted a "Car Valuation Check", dated 01 October 2018, from the MyVehicle.ie website which indicated that the value of the vehicle was €23,000. The Appellant did not furnish any further evidence verifying the accuracy of this OMSP estimate.
6. The Respondent submitted 3 valuations for REDACTED. Even after deducting a 10% discount from the quoted prices, all 3 valuations were in excess of €25,000. As a result, the Respondent submitted that the valuation of €24,000 was reasonable.
7. The valuation from the MyVehicle.ie website submitted by the Appellant was sent to the Respondent for their consideration. However, the Respondent contended that the MyVehicle.ie valuation did not alter their evidence that led to their decision that the OMSP was not lower than €24,000 and therefore should stand.





## Conclusion

8. 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.
9. In the High Court case of *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. 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.'*
10. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine that the Appellant did not succeed in discharging the burden of proof in this appeal and I determine €24,000 to be a fair and reasonable OMSPI in relation to the vehicle.
11. This appeal is determined in accordance with section 949AL TCA 1997.

**PAUL CUMMINS  
APPEAL COMMISSIONER**

**20 February 2020**

