



**111TACD2020**

**BETWEEN/**

**REDACTED**

**Appellant**

**V**

**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. On agreement of the parties this appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

**Background**

3. The vehicle, the subject matter of this appeal, is a Mercedes-Benz C180 KBE SPORT 4 door Automatic first registered in the United Kingdom bearing the registration no REDACTED on 18 June 2009, now bearing the Irish registration number REDACTED. The Appellant registered the vehicle and paid VRT based on an open market selling price (OMSP) of €7,796 determined by the Revenue Commissioners. The car was registered with the National Car Testing Service (NCT) on 6 July 2018. The Appellant paid VRT of €2,473 including a late registration amount of €74. which equates to 30% of the OMSP as determined by Revenue.
4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was revised to €6,200, and the

late registration amount was rescinded. The Respondent advised the Appellant of this revision in a letter dated 3 May 2018. The revision resulted in a revised VRT charge of €1,860. The difference €553 was refunded to the Appellant. The Appellant was still aggrieved by the revised OMSP determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the determination.

## 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 –*

- (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**

### **7. The Appellant submitted that:**

- a) The vehicle was purchased at auction in the UK in poor condition for stg£2,500. In support of this the Appellant provided as evidence several photographs of a Mercedes car bearing a registration no REDACTED with significant damage to its bodywork.
- b) The vehicle underwent significant repairs after its importation.
- c) The vehicle was offered for sale in REDACTED on 16 May 2018 and only attracted an unaccepted bid of €3,400. The Appellant provided photographic evidence in support of a screen shot showing a price offering at auction of €3,400.
- d) The vehicle was eventually sold at auction for €3,500 in August 2019. The Appellant provided evidence of this sale in the form of a settlement invoice and cheque from REDACTED.
- e) The Respondent's agent did not have the full details of the vehicle and was unable to apply the correct OMSP at registration.
- f) The vehicle was incorrectly assessed as being in good condition whereas in fact it was in poor condition when imported into the State.
- g) The OMSP should be based on the cost of the vehicle to him and proffered an



OMSP of €3,400.

8. The Respondent submitted that:

- a) 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 Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.*
- b) In an effort to resolve matters in advance of an appeal to TAC, Revenue sought further evidence of the open market price attributable to the vehicle.
- c) The Respondent checked similar vehicles for sale in the state from independent dealers and offered a further reduction in the OMSP to €5,826 based on an average price from those dealers. In the event the Appellant rejected the further revision of the OMSP on 23 July 2018.
- d) The car was registered with the National Car Testing Service (NCT) on 6 July 2018. The NCT as agent for the Respondent described the car as being in good condition at the time of inspection.

## Analysis

9. The OMSP initially assigned in relation to the vehicle the subject matter of this appeal was €7,796. The Respondent offered a revised OMSP on review and was willing to reduce this further to €5,826 in an effort to settle this appeal.
10. The Respondent outlined the basis of its valuation and revised this downwards based on open market prices obtained from independent dealers.
11. The Appellant sought to have a more favorable OMSP assigned to the vehicle. He displayed the price achieved in 2019, he offered photographic evidence of the damage to the vehicle and he proffered an alternative OMSP of €3,400.
12. The Appellant provided as evidence several photographs of a Mercedes car bearing a registration no REDACTED with significant damage to its bodywork. If the vehicle was presented for inspection as indicated in the photographs submitted it seems unlikely that the Respondent's agent could describe it as in good condition.
13. It is not possible to determine the amount expended on the repairs as the Appellant did not support this contention with evidence of the cost of these repairs.



14. The photographs submitted depicting the damaged vehicle show a different UK registration plate than the vehicle the subject of this OMSP appeal.
15. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO2 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 Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.*

### Conclusion

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 assessment to tax, raised by the Respondent is incorrect.
17. 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.'*
18. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Appellant's interpretation of the OMSP of the vehicle in question is correct. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that he qualifies for a further reduction in the OMSP.

### Determination

19. 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 the revised OMSP of €5,826 as determined by Revenue on review is correct in relation to the vehicle.
20. The appeal hereby is determined in accordance with section 949AL TCA 1997.





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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**6 April 2020**

