



150TACD2020

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. On agreement of the parties this appeal is determined, without an oral hearing, in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

3. The vehicle, the subject of this appeal, is a Honda Crossroad 2.0 RT4 5DR Auto, registration **REDACTED** which was imported from Japan. The vehicle was registered with the National Car Testing Service (NCTS) on 26 April 2017. An OMSP of €6,229 was assigned at the time of registration, resulting in a VRT charge of €2,242 which the Appellant duly paid.
4. On appeal to the Central VRT office, the OMSP of €6,229 was determined to be overstated and a reduced OMSP of €4,983 was assigned. This reduction gave rise to a refund of €448 which was notified to the Appellant by letter dated 18 July 2017. Pursuant to section 146 of the Finance Act 2001 the OMSP valuation was appealed to the Tax Appeals Commission by notice of appeal dated 17 August 2017.

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)]

(1A) Any person aggrieved by any of the following matters may appeal the matter 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).*

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 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]⁴⁷ 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

5. The Appellant contends that the OMSP placed on the vehicle of €4,983 was overstated. The Appellant formed this view because of the condition of the vehicle when it was brought into the country.
6. The Appellant contends that the OMSP of the vehicle should be between €3,000 and €3,200. The Appellant submits that the vehicle was '*close to scrap yard condition*' when he imported it from Japan. The Appellant asserts that he '*spent hundreds of euros to make it pass the NCT*'.
7. The Appellant included in his submission a list of issues in relation to the vehicle which needed attention. Included also is some detail in relation to damage and scratches to the exterior of the vehicle. The Appellant maintains that the vehicle could not reasonably be valued at the OMSP assigned by the Respondent due to the state of disrepair of the vehicle.
8. In further support of his appeal the Appellant provided copies of receipts for parts which the Appellant purchased for the vehicle. The receipts furnished by the Appellant total €696.26.
9. The Appellant also submitted copies of advertisements of similar vehicles showing the asking price as follows:

Year of Manufacture	Asking Price
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2009	£3,995
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2007	£2,500
2007	€4,500
2009	€4,700

10. Two of the advertisements are for vehicles showing an asking price in British Pounds of £3,995 and £2,500 respectively. Two of the advertisements are for vehicles where the asking price is quoted in Euro of €4,500 and €4,700 respectively. None of the advertisements are for vehicles of the same year of manufacture as the vehicle the subject of the within appeal.
11. The Appellant contends that those vehicles advertised for sale are in '*showroom condition*' in comparison to his own vehicle which '*needs serious repair work*'.
12. The Appellant has also furnished a printout from the Revenue online VRT calculator in respect of a Honda Crossroad with the same statistical code as the Appellants vehicle. The printout is for a vehicle with lower CO2 emissions than the Appellants vehicle and shows an OMSP of €6,167. The calculated VRT amount payable on this vehicle is €1,850 which the Appellant contends is less than the VRT amount that he was charged on his vehicle i.e. €2,242.
13. In correspondence dated 21 May 2018, the Respondent provided a breakdown in relation to how the OMSP of €4,983 was reached. The Respondent contends that having reviewed the initial OMSP of €6,229 assigned it was determined the OMSP was overstated and was revised downwards to €4,983.
14. The Respondent submits that an OMSP valuation was not readily available as this type of vehicle had not previously been for sale in the State and the National Car Testing Service ("NCTS") did not have details of this particular vehicle in their registration system. As a result, the initial OMSP of €6,229 was arrived at by using the OMSP of a comparable vehicle, a Honda CRV.
15. The Respondent further submits that on appeal to the Central Vehicle Office ("CVO"), the OMSP was considered to be overstated and was reduced by 20% to take account of the condition of the vehicle. A reduced OMSP of €4,983 was assigned and the Appellant was notified.



16. The Respondent advised that on receipt of notification from the Tax Appeals Commission that the Appellant had further appealed this OMSP, they undertook another review of the assigned OMSP. The Respondent in their submission furnished copies of four different advertisements for Honda CRV vehicles for sale on car dealership websites as follows;

Year of Manufacture	Asking Price
2008	€7,900
2008	€6,995
2008	€7,500
2008	€7,500

17. The Respondent calculated the average of the asking price to arrive at a figure of €7,473. The Respondent then reduced the average of those valuations by 20% to account for the condition of the vehicle to arrive at an OMSP of €5,979. The Respondent applied a further 10% reduction as a goodwill gesture which resulted in an OMSP of €5,291. As this was well in excess of the OMSP assigned to the vehicle the Respondent took the view that the assigned OMSP of €4,983 was reasonable.

Analysis

18. All vehicles are subject to VRT on first registration in the State. 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.
19. The OMSP assigned in relation to the vehicle the subject matter of this appeal was €4,983. The Appellant's ground of appeal in relation to the OMSP assigned, was that it was excessive.
20. In support of his appeal the Appellant has furnished copies of advertisements of similar vehicles showing the asking price. I don't believe the advertisements quoted in British Pounds are relevant to the OMSP of the vehicle in this State. The



advertisements quoted in Euro are for vehicles for a different year of manufacture. The asking price for the vehicle manufactured in 2007, which is a year older than the Appellant's vehicle is €4,500. The Appellant is contending for an OMSP in the region of €3,000 and submits that the advertised vehicles are in 'showroom condition' by comparison to his imported vehicle.

21. While I accept the Appellants assertion that the vehicle requires some repair work I do not believe that the advertisements of comparator vehicles submitted by the Appellant significantly assist him in his appeal as it is not evident that the advertised vehicles are in 'showroom condition' as contended.
22. The Appellant has also furnished a printout from the Revenue online VRT calculator in respect of a Honda Crossroad with the same statistical code as the Appellants vehicle. I don't believe this assists the Appellant in his appeal as the printout shows an OMSP of €6,167 which is higher than the OMSP assigned to the Appellants vehicle. The VRT calculated on this particular vehicle is lower than that paid by the Appellant by virtue of the fact the CO2 emissions on this vehicle are lower than that of the Appellant's vehicle which results in a lower rate of VRT being applied and consequently a lower VRT payable.
23. While I accept that the vehicle requires some repair work it is not clear from the submission to what extent the damage to the vehicle and the issues which require attention affect the OMSP of the vehicle.
24. The Appellant indicated in his submission that he spent '*hundreds of euro*' preparing the vehicle for the NCT. The VRT payable is calculated with reference to the '*open market selling price of the vehicle at the time of the charging of the tax*'. In other words, the VRT is calculated with referenced to the OMSP of the vehicle at the time of registration. Therefore, the Appellants submission with regard to the outlay on repairs carried out prior to registration does not assist him in his appeal.
25. The Respondent provided four advertisements for similar vehicles of the same year of manufacture of the Appellants vehicle. The Respondent has taken the average of these four advertisements and applied a further significant discount to arrive at an OMSP of €5,291. This calculated OMSP is well above the OMSP of €4,983 which has been assigned to the Appellants vehicle.



Conclusion

26. 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.
27. 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.'*
28. 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 €4,983 to be a fair and reasonable OMSP in relation to the vehicle. This appeal is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

15 July 2020

