



164TACD2020

BETWEEN/

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Tax Appeals Commission (TAC) pursuant to s.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 with a hearing in accordance with s.949Y of the Taxes Consolidation Act, 1997. The hearing took place on 27 August 2020.

Facts

3. The vehicle, the subject matter of this appeal, is a Dacia Sandero, 1.5dCi (90) Laureate 5Dr, first registered in the United Kingdom on 6 August 2015, bearing



registration number REDACTED. The Appellant registered the vehicle in Ireland on 31 July 2018 and paid VRT of €1,115.00 based on an open market selling price (OMSP) of €7,437 determined by the National Car Testing Service (NCT) on behalf of the Revenue Commissioners.

4. The Appellant appealed to the Revenue Commissioners under s.145 of the Finance Act, 2001 (as amended). On appeal the OMSP was revised to €5,900 by the Revenue Commissioners. This was notified to the Appellant by letter dated 18 September 2018. The Appellant was aggrieved by the revised determination of the Revenue Commissioners and appealed to the Tax Appeals Commission against the revised determination. A Notice of Appeal was received by the Tax Appeals Commission on 16 October 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*

—
(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 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.
8. The revised OMSP ascertained in relation to the vehicle the subject matter of this appeal was €5,900. The Appellant appealed to the Appeal Commissioners on the basis that the revised OMSP determined by the Revenue Commissioners was excessive. The Appellant submits that the OMSP of the vehicle, the subject matter of the appeal should reflect the price he paid for it i.e. €2,563, due to the damage to the vehicle when he purchased it as an uneconomic repair/write off. The Appellant formed this view on the basis of the estimate he provided for repairs to the vehicle.
 9. On 1st stage appeal to Revenue the OMSP was revised downwards by 20% by Revenue. The Respondent applied a 20% reduction to the initial OMSP provided by the NCT Service. A footnote to the letter revising the valuation downwards explains the basis of the reduction as follows:

“NB Vehicle classed as category N so allowed maximum relief of 20%”
 10. Revenue submitted evidence that the vehicle was described in a vehicle search as *“insurance loss – no structural damage and repairable. Insurer decided not to repair”*. The Appellant submitted photographic evidence of the damage to the vehicle and further provided two varying estimates for the repairs required in the amount of €3,906 and €4,930.
 11. The Appellant provided a valuation report dated 4 July 2018 indicating that the vehicle should be valued at €9,000 in its pre-accident state and €3,900 in its condition at July 2018.
 12. The Appellant offered a valuation of €7,750 to €8750 from a car dealer's website but did not provide a copy of this in evidence.

13. Revenue submitted details from a popular car sales website that indicated indicative retail prices for the Appellant's car model, age and mileage in the price range €7,500 and €11,950. Revenue used these figures in support of its revised valuation of €5,900 and stated that it had taken account of the state of the Appellant's car when presented for inspection.
14. The evidence provided by the parties are not reflective of the state of the vehicle when presented for inspection. The vehicle was initially valued by the NCT service using a statistical code and allowances related to the age, mileage etc. The revised valuation offered by the Respondent on appeal offered a "*maximum*" relief of 20% in the OMSP. The TAC sought an explanation of this and were advised by the Respondent in advance of the Appeal hearing as follows:
- "... in the absence of documentary evidence of **actual payment - (rather than a quote)** for repairs undertaken on a vehicle, the maximum reduction allowed for Category N vehicles is 20%. A greater than 20% reduction in the OMSP will be allowed only on the basis of vouched evidence of the repairs undertaken."*
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 s.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*". In other words, the OMSP of the vehicle is arrived at by assessing the amount which the vehicle would likely fetch if sold on the open market in Ireland.
16. The question for determination therefore is what amount the vehicle in its un-repaired state would fetch if sold on the open market in Ireland? The arbitrary maximum reduction of 20% applied to the initial valuation, by the Respondent fails



to answer the question satisfactorily. The differing estimated costs of repairs suggested by the Appellant also fail to answer the question because there is no evidence of the actual expenditure on the repair. The estimated value of €3,900 provided by the Appellant ignores the open market test required in s.133 of the Finance Act 1992. The Appellant describes his business as “Auto Repairs”. In all probability therefore he carried out the repairs to the vehicle himself and achieved some savings from the repair shop estimates provided in evidence.

17. None of the vehicles were described in the advertisements provided by the parties as *“insurance loss – no structural damage and repairable. Insurer decided not to repair”*. Furthermore the Appellant argued that the prices quoted by the Respondent were asking prices rather than actual prices achieved and were also for vehicles that had not been subjected to repairs.
18. The parties agreed a mechanism that arrived at the OMSP which the vehicle would likely fetch if sold on the open market to cover transport, indicative VRT included, profit and other costs. The OMSP agreed is reflective of the initial OMSP provided by the NCT service of €7,437 with an allowance for required repairs of €3,147. In this, the parties agreed an OMSP of €4,290. In the circumstances, and based on a review of the facts and a consideration of the submissions, material, evidence and consensus reached by both parties, I have determined the OMSP as being €4,290 as a fair and reasonable OMSP in relation to the vehicle.

Determination

19. 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. 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”.

20. Based on a review of the facts and a consideration of the submissions, materials and evidence provided by both parties I determine €4,290 as the OMSP of the vehicle the subject matter of the appeal. The Appellant is therefore entitled to a refund of the excess VRT paid, based on an OMSP of €4,290 rather than the initial or revised OMSP determined by Revenue.
21. This appeal is hereby determined in accordance with s.949AL of the Taxes Consolidation Act, 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER

28 AUGUST 2020