



Ref: 186TACD2020

BETWEEN/

REDACTED

Appellant

AND

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 2010 Vauxhall Astra, 1.9CDTI, 8V Design (120PS) 5 DR, with 127,882 miles on the odometer – sold as an Opel Astra in Ireland, first registered in the United Kingdom in January 2018, now bearing the registration number **REDACTED**. The Appellant registered the vehicle and paid VRT based on an open market selling price (OMSP) of €5,263 determined by the National Car Testing Service (NCT) on behalf of the Revenue Commissioners. The Appellant paid VRT of €1,210 and a late registration fee of €66 which equates to 23% 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). Following the first stage appeal to Revenue, the

OMSP was revised downwards by the Revenue Commissioners. Revenue advised a new OMSP of €4,000 having applied a 20% reduction in respect of the vehicle's condition and made a repayment of €356 including a repayment of the registration fee. The revised OMSP was notified to the Appellant by letter dated 14th June 2018. The Appellant was still aggrieved by the revised determination of the Revenue Commissioners and appealed to the Appeal Commissioners against the revised determination on 3 July 2018.

5. In advance of a formal determination in the matter by the Tax Appeals Commission (TAC) the Respondent engaged further with the Appellant and offered another OMSP based on the average value of three similar cars for sale in Ireland. The Respondent applied a 20% reduction in these average prices in consideration of the condition of the Appellant's vehicle. The revised OMSP of €3,198 gave rise to an offer of a further refund of €185. The Appellant did not accept the further revision of the OMSP and refund offered, in the circumstances.

Legislation

6. 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).”*

7. 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.”*

8. Section 141 of the Finance Act, 1992 (as amended) provides

(1)(a)The Commissioners may make such regulations as they consider necessary or expedient for the purpose of managing the registration of vehicles and managing, securing and collecting vehicle registration tax.

(b)The Commissioners shall not make regulations for a purpose specified in subsection (3).



(2) In particular, but without prejudice to the generality of subsection (1), regulations under subsection (1) may -

(a) prescribe the method of establishment and maintenance of the register,

(b) prescribe the particulars to be declared to the Commissioners under section 131,

(c) prescribe the manner in which a declaration under section 131 shall be made,

[...]

(e) prescribe the manner of assigning identification marks under section 131(5),

(f) prescribe the size, shape and character of the identification marks aforesaid and the manner in which they are to be rendered easily distinguishable, whether by night or by day,

(g) require that specified particulars shall be marked on a vehicle and shall be accessible and legible,

(h) prescribe the method of charging, securing and collecting vehicle registration tax,

(i) make provision in relation to the authorisation of persons under section 136,

(j) make provision in relation to the manufacture, storage, conditions of use and disposal of unregistered vehicles and of converted vehicles in respect of which any vehicle registration tax has not been paid,

(k) require an authorised person to keep in a specified manner, and to preserve for a specified period, specified records and accounts relating to the receipt, manufacture, delivery and sale of unregistered or converted vehicles and to allow an officer of the Commissioners, duly authorised by them in that behalf, on production of his authorisation if so requested by any person affected, to inspect and take copies of or extracts from such records and accounts and any other books or documents kept by him relating to any of the matters aforesaid,



(l) require an authorised person to make proper entry with the proper officer of the Commissioners of all premises intended to be used by him in the carrying on of his business and to provide for the method of entry with the said officer,

(m) prescribe the form and contents of declarations under section 133 and the times at which they shall be made, [...]¹⁶

[(n) prescribe the manner of accounting for vehicles under section 137,

(o) make provision in relation to the deletion of an entry from the register,

(p) make provision in relation to the establishment and maintenance of the zz register,

(q) specify the fee payable on the assignment of an identification mark under subsection 131(5A),

(r) specify the conditions subject to which unregistered vehicles may be used in a public place by an authorised person,

[(s) make provision (including the prescription of conditions, restrictions and limitations) in relation to [subsections (7) and (11)] of section 134 and section 135B,]]

[(t) prescribe [the required vehicle dimensions and] what constitutes permanently fitted equipment for the purposes of the definition of 'motor caravan' in section 130,

(u) prescribe the manner in which the rigid partition which completely and permanently separates the cab from the area designed, constructed or adapted exclusively for the carriage of goods in a crew cab or a pick-up is to be fixed for the purposes of the definition of 'crew cab' and 'pick-up' in section 130,

(v) prescribe the manner in which the floor length of the area designed, constructed or adapted exclusively for the carriage of goods in a crew cab or a pick-up is to be measured for the purposes of the definition of 'crew cab' and 'pick-up' [in section 130,]]

[(w) make provision for the purposes of paragraphs (ba) to (bf) of section 131(1) and sections 135 and 136A, in respect of the carrying out of specified functions by competent persons relating to the registration of [vehicles, and].]



[(x) for the purpose of the formula in subsection (4) of section 136A, prescribe one or more than one formula or other means of calculation for the purpose of the meaning assigned to 'B' in that subsection.]

[(3) The Minister may make such regulations as he considers necessary or expedient for the purpose of giving full effect to sections 134 ([other than subsections (6), (7), and (11)]) and 135]

[(3A) Without prejudice to the generality of subsection (3), regulations under that subsection may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of giving full effect to the Directives, [Council Directive 83/182/EEC of 28 March 1983 and Council Directive 2009/55/EC of 25 May 2009].]

[(3B) The Minister may make such regulations as he or she considers necessary or expedient for the purpose of prescribing one or more than one formula or other means of calculation for the purposes of the amount referred to in section 135D(2)(b).]

(4) In particular, but without prejudice to the generality of subsection (3) regulations under subsection (3) may -

(a) prescribe the criteria for eligibility for the remission or repayment of vehicle registration tax,

(b) prescribe the amount of vehicle registration tax that may be remitted or repaid in respect of vehicles or specified vehicles or classes of vehicles,

(c) specify the time limits within which applications to the Commissioners for remission or repayment of vehicle registration tax under section 134 shall be made,

(d) prohibit the grant of such remission or repayment as aforesaid to a person in respect of vehicles in excess of a specified number,

(e) specify the periods during which a vehicle, in respect of which vehicle registration tax has been remitted or repaid, may not be disposed of, hired out or lent, and

(f) provide for such other matters as the Minister considers necessary or expedient for the purposes of giving full effect to this subsection.

.....



Submissions

9. The Appellant submitted that the vehicle was an ambulance in Northern Ireland until it was sold at auction and subsequently purchased by the Appellant for €1,000. The Appellant submitted that the OMSP valuation should be aligned with the price paid for the vehicle because it was used as an ambulance.
10. The Appellant submitted that the vehicle had been subject to a significant level of cosmetic adjustments, including the application of ambulance signage, the insertion of aerials, cables and adjustments to seat mechanisms. The Appellant provided photographic evidence of these adjustments to the TAC.
11. The Appellant submitted that the vehicle falls in to a category of vehicle with a unique history for VRT valuation purposes. He further submitted that he had supplied the photographic evidence to the Respondent of the vehicle's condition in support of his estimate of the OMSP of €1,000.
12. The Appellant submitted that the maximum adjustment of 20% applied by the Respondent in relation to the condition of his vehicle is not provided for in the VRT legislation as set out in the Finance Act 1992.
13. The Appellant submitted that the comparator vehicles used by the Respondent to make further revisions to the OMSP were not similar to his vehicle. He submitted that the comparator cars were not 1.9 diesel versions (like his), didn't have similar mileage and didn't have any notable cosmetic damage. The Appellant accepted that the comparator cars were a good starting point but asserted that the application of the cosmetic changes to these cars (as applied to his vehicle when used as an ambulance) would further reduce the value of these cars and he again suggested a revised valuation of €1,000.
14. The Appellant raised other issues concerning his view of the openness of Revenue published guidelines, the possibility of the Tax Appeals Commission penalising Revenue for what he perceived as its failure to apply the correct OMSP and he sought to have the TAC make Revenue reimburse him for the time expended on the matter.



15. The Respondent submitted details of how the initial valuation of €5,263 was arrived at. The vehicle was inspected at its agent's premises who described the condition of the vehicle as good. The Respondent applied an OMSP of €5,263 on consultation with its database for valuing the particular vehicle.
16. The Respondent submitted details of how the vehicle was subsequently reevaluated at the Appellant's request and an OMSP of €3,198 was offered using comparator vehicle prices from an Irish website advertising cars for sale in Ireland.
17. The Respondent submitted evidence of the basis for the further revision of the OMSP to €3,198 (including a 20% reduction in relation to the vehicle condition) from three advertisements on popular websites for similar vehicles for sale on the open market.
18. The Respondent provided copies of the website print outs for the three comparator cars which were as follows:
- | | |
|---|--------------|
| a) Opel Astra 1.3 cdi, 102,000 miles | Price €4,995 |
| b) Opel Astra 1.7 diesel, 275,000 miles | Price €3,000 |
| c) Opel Astra 1.7 diesel, 115,155 miles | Price €3,999 |
19. The Respondent submitted that the Revenue Commissioners had made the Regulation that 20% is the maximum relief allowed for vehicles that have not had any work done and referred the TAC to section 141 Finance Act 1992 (Regulations) (1) (a) and (4)(b).
20. The Respondent submitted and quoted from Section 133 of the Finance Act, 1992 (as amended) and from previous TAC Determinations that the OMSP "*is 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*"

Analysis

21. 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.*"



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.

22. The Respondent in reviewing the OMSP in its first stage appeal process reduced the OMSP by 20% and repaid the excess VRT charged. In a further review of the OMSP in advance of a hearing by the TAC the Respondent proposed a further adjustment of the OMSP, again reducing the average valuation of three similar vehicles by 20% to €3,198 and offered a further refund of €185.
23. The Appellant in his submission provided credible written testimony on the actual vehicle presented for inspection and evaluation of the OMSP by the Respondent. He set out the following in relation to the vehicle:

“Also key to my argument is that the vehicle has a unique history which affects its valuation significantly; it was an ambulance service rapid response vehicle and as such is covered almost entirely with glued on highly reflective green and yellow stickers and has a yellow bonnet. Attempts to remove the stickers have been made however it will be an expensive process to have them removed properly. Where stickers have been removed it has left the paintwork in poor condition. There is also 6 half inch holes drilled in the roof panel to facilitate lights, sirens and aerials, this has caused warping and denting in the roof panel which again will be an expensive process to repair. Larger holes for blue lights have been drilled in the bumpers and wing mirrors which will also have to be repaired. Further expensive damage has been caused to the interior of the vehicle. The boot carpets have been cut away and the boot floor cut in half to facilitate equipment in the boot which was bolted down to the chassis. The parcel shelf was removed entirely and the back-seat latches altered to allow them to latch in a more vertical position against the equipment in the boot, they now move over an inch while latched. The back-seat brackets have been broken also. The dash board, glovebox and interior paneling have many holes drilled in them to secure communications and GPS equipment that was required by the ambulance service. There has also been significant damage to the original wiring to facilitate this equipment, as a result the entertainment system is not functional”.

24. The Respondent has used three different OMSP's in the instant case to arrive at the VRT due on the importation of the Appellant's vehicle.



25. The Appellant sought to have a more favorable OMSP assigned to the vehicle purchased. He proffered an alternative OMSP of €1,000 as being the price paid for the 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 assessment to tax, raised by the Respondent, is incorrect.

27. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.

28. Accordingly, I am satisfied that it would be ultra vires for me to embark upon a consideration of, or to make a finding or determination in relation to, the issues raised by the Appellant at paragraph 14 above. I must therefore decline to consider this argument or to make any finding in relation thereto.

29. Section 133 Finance Act, 1992, as amended provides that in the case of a vehicle other than a new vehicle, the OMSP is '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...' at the time of registration. Thus, the Appellant is incorrect in his submission that the OMSP should be based on the price paid for the vehicle in the UK.

30. The Respondent has taken three vehicles as outlined at paragraph 18 above to ascertain a fair OMSP for the Appellants vehicle. The highest valued vehicle is a 1.3 edition of the Opel Astra and the other two vehicles are 1.7 editions of the same car.



None of the vehicles are exact comparators of the Appellants vehicle and none of the vehicles had the cosmetic adjustments applied for use as an ambulance as detailed by the Appellant in his submission and photographs. It is clear therefore that the comparator vehicles do not offer much assistance in ascribing the correct OMSP. Nevertheless, as suggested by the Appellant these comparators are a good starting point in the process.

31. In making my determination I have ignored the outlier vehicle; a 1.3 version of the Opel Astra and its price at paragraph 18 (a), taken the average of the other two vehicles, applied a 20% reduction consistent with the Respondent's view and allowed a further estimated repair cost of €500 to reverse the cosmetic adjustments made to the vehicle for the purposes of its use as an ambulance.

32. The resulting OMSP is €2,300 as follows:

Average price of comparator vehicle (18 b & c above)	€3,500
20% reduction	-700
Cosmetic Reversal Reduction	<u>-500</u>
Revised OMSP	€2,300

33. 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.'*

34. I find that the Appellant has furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Respondent's interpretation of the OMSP of the vehicle in question is incorrect. As a result, I determine that the Appellant has succeeded in discharging the burden of proof and has succeeded in showing that he qualifies for a further reduction in the OMSP assigned at registration.

Determination





35. 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 €2,300 outlined above is correct in relation to the vehicle. Accordingly, the Appellant is entitled to a refund of the VRT based on an OMSP €2,300 to be calculated by agreement between the parties.

36. The appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
22 OCTOBER 2020

