



**19TACD2021**

**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. This Appeal was determined by an oral hearing, which, due to Covid 19 restrictions, took place remotely by electronic means on 3 November 2020.

**Background**

3. The vehicle, the subject matter of the appeal, is a Honda S200, version AP1. registration **REDACTED**. The Appellant purchased the vehicle for stg £8,990 in the UK on 16 February 2019 and presented the vehicle for registration on 9 March February 2018, at the Applus National Car Testing Service (NCT) who act as the Respondent's agents for the collection of VRT. The vehicle was first registered in the UK in September 2006. The vehicle was first registered in Ireland with the National Car Testing Service (NCTS) on 24 May 2019.
4. An OMSP of €14,200 was assigned by the Respondent, resulting in a VRT charge of €5,112 and a late fee charge of €352. The Appellant submitted a first level appeal to the Revenue Commissioners, on 21 June 2019, under section 145 of the Finance Act, 2001 (as amended).

5. By letter dated 17 July 2019 the Respondent advised the Appellant that Revenue would not revise the OMSP in that first level appeal. The Appellant did not accept the findings in the Respondents examination of the matter in relation to the OMSP applied and appealed to the Tax Appeals Commission on 4 November 2019. The Appellant is seeking a refund of the excess VRT paid arising from the Respondent's over-valuation of the OMSP.

## Legislation

6. Section 145 of the Finance Act 2001;

*(3) Any person who is the subject of a decision of the Commissioners in relation to any of the following matters [and who is aggrieved by the decision] may appeal to the Commissioners against that decision:*

*(a) the registration of a vehicle, or the amendment of an entry in the register referred to in section 131 of the Finance Act 1992;*

*(b) the determination of the open market selling price of a vehicle under [section 133] of the Finance Act 1992;*

*(c) the granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under [that section;]*

*(d) the liability to vehicle registration tax or the repayment of vehicle registration tax.]*

*(4) An appeal under this section shall be made in writing and shall set out in detail the grounds of the appeal.*

*(5) An appeal under this section shall be lodged by the person concerned with the Commissioners within 2 months from the date of the notification by the Commissioners of the decision concerned, or within such longer period as they may, in exceptional cases, allow.]*

*(6) An appeal shall, subject to subsection (12), be determined by the Commissioners within a period of 30 days from its lodgement with the Commissioners.*



*(7) The Commissioners may appoint one or more of their officers for the purposes of carrying out their functions under this section but no such officer shall determine an appeal under this section in respect of a decision he or she has made.*

*(8) The Commissioners shall notify in writing an appellant concerned of their determination of an appeal and the reasons for their determination.*

*(9) Where the Commissioners determine on appeal that the amount due is less than the amount paid, they shall repay the amount overpaid to the appellant concerned.*

*(10) Where the Commissioners determine on appeal that the amount due is greater than the amount paid, the appellant concerned shall pay the amount underpaid.*

*(11) For the purpose of determination of an appeal any goods or vehicles to which the appeal relates are to be produced to the Commissioners for inspection, if so required.*

*(12) Where an appeal has been lodged but not determined in accordance with subsection (6) there shall be deemed to have been a determination by the Commissioners on the last day of the period of 30 days from the date the appeal was lodged that the appeal was not upheld but such deeming shall cease to have effect if a determination is subsequently made by the Commissioners before a determination is made by the Appeal Commissioners under section 146 in respect of the matter concerned.*

*(12A) Where a person is required to furnish a return or to pay an amount of vehicle registration tax for the purpose of any requirement of excise law, no appeal lies under this section until such time as the person furnishes the return and, as the case may be, pays or has paid the amount of vehicle registration tax.]*

**7. 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).*

**8. 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]<sup>47</sup> 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**

### **Appellant**

9. The Appellant submitted that the OMSP should be calculated based on the purchase price of the car on importation i.e. stg. £8,990. He suggested that price be used by Revenue as the case should be treated on a case by case basis in the specific circumstances of the specialist car purchased.
10. The Appellant submitted that the market value data for his car is unfair compared to other vehicles of the same model and of different models in the same category with big engines, or other two seat cars.
11. The Appellant submitted that the Respondent in its reply to his first stage appeal, stated that *"some models are not listed on the VRT calculator, as they require valuation on a case by case basis"*. However, the VRT assessment arrived at was based on market



data from 14 other cars as advised to him by the Respondent. The Appellant advised that the Respondent had not valued his actual car when seeking comparator vehicles in arriving at the OMSP.

12. The Appellant further submitted that OMSP prices of different models of cars in the same category (engine size, body type and CO2 emissions) are inconsistent and unfair. The Appellant added that the VRT calculation system is opaque enough to hurt car owners financially.
13. The Appellant objected to the Respondent's use of individual valuations for his vehicle and compared his vehicle to a similar type of car (a Mercedes Benz) with a price on first registration, when new, of 3 times the price of his car. The OMSP of that vehicle would be reduced to a figure where the VRT would amount to only €3,258 using the Respondent's VRT calculator.
14. The Appellant stated that the VRT legislation was being ignored by buyers of specialist cars by either storing the cars in the UK or by using the cars without Irish registration or the payment of VRT.
15. The Appellants submissions to Revenue at the first stage appeal pointed out the following:
  - The NCT office only shared the total price and directed him to Revenue for further clarity,
  - The online VRT calculator provided by Revenue does not accept the statistical code provided by the vehicle import receipt,
  - The Revenue central vehicle office was unable to give him any information on the breakdown of the value attributed but in fact directed him to send a general enquiry to Revenue
16. In his first stage appeal to Revenue he outlined his approach to the valuation that should be applied to his particular vehicle using the Revenue's own manual in calculating the OMSP as follows:
  - He outlined the known information for the vehicle such as age, mileage, CO2 emissions and concluded in line with Revenue's view that the correct rate of VRT for the vehicle is 36%,
  - He determined the OMSP of the vehicle when available in the Irish market in 2006 was €60,795,
  - He assigned a depreciation group – A6 per Revenue manual and a depreciation rate – 9% per the Revenue manual,





- He applied other adjustments as per the Revenue model *“by a process of elimination, a vehicle not assigned a good or poor condition is assigned a condition of fair”* and concluded a further reduction of 5%,
- He then concluded an OMSP for his vehicle of €5,250 and a consequent VRT liability at 36% of €1,890,
- He outlined to the first stage appeal that using the OMSP actually assigned by Revenue to the vehicle would indicate a 2006 valuation of his vehicle of €157,778 based on the Revenue model.

## Respondent

17. The Respondent submitted and confirmed the background details to the matter as outlined above. However, the Respondent noted that the late fee charge of €352 was inappropriately applied as the delay in valuing the vehicle was not the fault of the Appellant,
18. The Respondent submitted that the matter was reviewed in some detail at the first stage appeal with reference to the tax and duty inclusive retail price of a similar vehicle and concluded that the OMSP assigned to the vehicle of €14,200 required no further adjustment.
19. The Respondent submitted all of the documentation used in determining its initial OMSP determination as follows:
  - The initial valuation was arrived at by referring the subject vehicle to an independent assessor – REDACTED Ltd. on 6 April 2019,
  - The independent assessor provided a valuation of €14,200 with the following commentary *“The valuation provided in this case is based on the vehicle detail set out above and our research of the vehicle and current market. Similar vehicles were used when arriving at the open market selling price. We note that the vehicle was described as being in good condition with 218,498 Km recorded”*,
  - This OMSP valuation was communicated to the Respondent enabling him to register the vehicle on payment of the appropriate VRT on 24 May 2019,
20. The Respondent further submitted all of the documentation in concluding that the OMSP required no adjustments following the first level appeal as follows:





- The Respondent carried out a study of the marque and model of the vehicle using sources such as Wikipedia that described the attributes of the car and its components,
- The Respondent looked at other models of the same car that were at the time offered for sale in the State on the Done Deal website. These showed values of €17,900 for a 2004 AP 2 version of the Honda S 2000 and a price of €12,000 for a 2000 AP 1 version of the same car. It is noted that the 2000 car displayed a UK number plate so it is not certain if the price included the VRT amount due on registration in Ireland.
- The Respondent looked at the UK market for similar vehicles using the UK website cars and classic. This website showed prices for eight similar cars for sale in the UK with prices ranging from stg£9,995 to stg£17,500.
- The Respondent consulted a UK website called Honest John for further price levels and found that most cars in the range were priced at between stg£11,300 and stg£16,250.

## 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 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 Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.
22. The OMSP assigned in relation to the vehicle, the subject matter of this appeal was €14,200. The Appellant's grounds of appeal in relation to the OMSP assigned, was that it was excessive, not computed in accordance with the Respondent's own manual, unfair, and opaque in application.
23. The Appellant in support of his appeal offered an alternative based on his view of the Respondent's Tax and Duty Manual, Section 8, Valuation System for New and Used vehicles. In addition, he offered the evidence of the price paid for the vehicle.
24. The Appellant submitted that the OMSP assigned when worked backwards would indicate an OMSP of €157,778 in 2006.



25. The Respondent's initial calculation, of the OMSP was provided in evidence in the form of the independent assessor's valuation.
26. The Respondent provided detailed and widely available valuations of the OMSP of similar cars for sale in Ireland and details of UK prices. The Respondent in re-examining the OMSP on first level appeal found no basis to amend the initial OMSP established by its independent assessor.

## Conclusion

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 issue of whether the perceived application of VRT on the open market price inclusive of all taxes (including VRT) on a first arm's length sale, of the vehicle in the State as argued by the Appellant, is discriminatory or unfair or otherwise unlawful. I must therefore decline to consider this argument or to make any finding in relation thereto.
29. I am convinced by the evidence provided by the Respondent in support of its assertion that the OMSP of €14,200 represents the OMSP as described in Section 133 (3) (c) Finance Act, 1992, as amended *"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"*. This is essentially the price at which a dealer in Ireland could sell the vehicle in an arm's length transaction having accounted for input costs, a margin and the appropriate duties and taxes.



## **Determination**

30. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €14,200 to be a fair and reasonable OMSP in relation to the particular vehicle.
31. The Appellant is entitled to a refund of VRT in the amount of €352 applied incorrectly in relation to the late registration of the vehicle, in the circumstances as outlined by the Respondent at the hearing.
32. This appeal is determined in accordance with section 949AL TCA 1997.

**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**18 NOVEMBER 2020**

