



43TACD2021

BETWEEN/

APPELLANT

Appellant

AND

REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This is an appeal to the Tax Appeal Commissioners (TAC) pursuant to section 146 of the Finance Act, 2001 (as amended) against a determination made by the Revenue Commissioners. The 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 is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Background

3. The vehicle, the subject matter of the appeal, is an Audi A7 3.0 TDI, Version BI TDI SLINE QTR0 313 PS AUTO registration no **REDACTED**. The vehicle was first registered in the UK on 26 March 2016. The vehicle was registered with the National Car Testing Service (NCTS) on 18 April 2018. An OMSP of €57,274 was assigned by the Respondent, resulting in a VRT charge of €15,464 which was paid by the Appellant.
4. The Appellant appealed the OMSP valuation to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was revised



by the Revenue Commissioners to €46,583 and the Appellant received a repayment of VRT in the amount €2,887.

5. This was notified to the Appellant by letter dated 20 June 2018. The Appellant was still aggrieved with the revised OMSP determination of the Revenue Commissioners and duly appealed to the Tax Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 12 July 2018.

Legislation

6. Section 146 of the Finance Act 2001;

Section 146 Finance Act 2001 provides as follows;

“A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.”

7. Section 133 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

8. The Appellant Submitted:

- a. That the revised OMSP of €46,583 was still excessive and supported this assertion with an independent valuation from his nearest SIMI approved dealer who inspected and photographed the vehicle and arrived at a valuation of €44,250 based on its market research. The valuation included a commentary that the vehicle required repairs to the bonnet and new tyres to the value of €1,778 and €1,800 respectively.
- b. That the independent dealer advised a value of €42,472 if it were to purchase the vehicle requiring the outlined repairs and new tyres.
- c. Price details for four similar cars with 2016 registration from the Donedeal website showing similar cars for sale in the state for €47,950, €44,950, €45,495 and €45,836.
- d. That the Respondent had treated him unfairly by not providing him with any information as to how the revised OMSP was calculated.
- e. That the vehicle in question is a four seater rather than the usual five seater indicating a probable lower selling price.

9. The Respondent submitted:

- a. That the revised OMSP valuation was arrived at by taking an average of three vehicle valuations, two of which were provided by the Appellant and a third valuation from was taken from Car Sales Guide of June 2018.
- b. Evidence of these three valuations as follows - €44,250 as provided by the Appellant from the SIMI garage, €47,950 from the Donedeal website and €47,550 from the Car Sales Guide of June 2018.

Analysis and Conclusion

10. 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.



11. The revised OMSP assigned in relation to the vehicle the subject matter of this appeal was €46,583. The Respondent took an average of three valuations as outlined above to arrive at this figure. The Appellant's ground of appeal in relation to the OMSP assigned, was that it was excessive and he provided five alternative valuations of the OMSP.
12. The question to be answered in this appeal is; how much would the vehicle be likely to fetch if sold on the open market in Ireland?
13. The Respondent has supported its view of the revised valuation by taking the average valuations of a comparator vehicle in the Irish market, the Appellant's own valuation from an SIMI dealer and the book value of the vehicle from the Car Sales Guide of June 2018.
14. 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 Revenue 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 [*emphasis added*]. The OMSP is essentially the price at which a dealer in Ireland could sell the vehicle for in an arm's length transaction having accounted for input costs, a margin and the appropriate duties and taxes.
15. The Respondent has fairly taken the average of three prices (including two supplied by the Appellant) in arriving at the OMSP of €46,583. On the other hand the Appellant wishes to have the valuation of €44,250 as provided by the SIMI garage used as the OMSP of his vehicle. The Appellant has also suggested other valuations as provided in his submissions in support of both the first stage appeal and in his appeal to the TAC.
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. I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that the OMSP assigned 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. The Appellant did not submit a statement of case in support of his appeal despite directions by the TAC to do so on three separate occasions. Nevertheless his submissions in support of his appeal to the TAC, included sufficient information, to determine the appeal. The Appellant in his submissions dated 11 July 2018 suggested that the Respondent had treated him unfairly by not providing him with any information as to how the revised OMSP was calculated. The Respondent in its statement of case provided the TAC with a copy letter issued to the Appellant dated 4 July 2018 which in fact clearly set out the basis on which the revised OMSP had been determined.
19. 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. 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 Appellant's view in his submissions supporting his appeal that the Respondent had treated him unfairly. I must therefore decline to consider this argument or to make any finding in relation thereto

Determination

20. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €46,583 as assigned by the Respondent to be a fair and reasonable OMSP in relation to the particular vehicle and that the Appellant is not entitled to any further refund in the matter.
21. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN

APPEAL COMMISSIONER

29 JANUARY 2021

