



61TACD2021

BETWEEN/

APPELLANT

Appellant

-AND-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Appeal Commissioners 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 a charge to vehicle registration tax (VRT), in accordance with the provisions of the Finance Act 1992 as amended.
2. This appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Facts

3. The vehicle, the subject matter of this appeal, is a Saab 900 first registered in Ireland on 30 November 2018, bearing the registration number [REDACTED]



4. The Appellant imported the vehicle on 5 November 2018 and paid VRT of €720 based on the estimated CO2 emissions of the vehicle.
5. The Appellant made a first stage appeal to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal, the Revenue Commissioners did not revise the OMSP and this was communicated to the Appellant in a letter dated 21 January 2019. The Appellant was aggrieved by the determination of the Revenue Commissioners and made a second stage appeal to the Tax Appeal Commissioners (TAC) against the determination. The Tax Appeals Commission received a notice of appeal on 22 January 2019.

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 ware housekeeper, 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 132 (3) of the Finance Act, 1992 (as amended) provides:

[(3) The duty of excise imposed by subsection (1) shall be charged, levied and paid-

[(a) in case the vehicle the subject of the registration or declaration concerned is a category A vehicle—

(i) by reference to the Table to this subsection, or

(ii) where—

(I) the level of CO₂ emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and

(II) the Commissioners are not satisfied of the level of CO₂ emissions by reference to any other document produced in support of the declaration for registration,

at the rate of an amount equal to the highest percentage specified in the Table to this subsection of the value of the vehicle or €720, whichever is the greater,]

Submissions

8. The Appellant submitted that the OMSP used by the Respondent is excessive and the OMSP valuation of his vehicle is approximately €1,000. The Appellant provided evidence in support of his views on the OMSP in the form of an advertisement for a similar vehicle for sale on the www.donedeal.ie website.
9. The Appellant submitted that the vehicle was purchased on the ebay website for stg £51.
10. The Appellant submitted that the vehicle requires significant repairs including new shock absorbers, a re-spray and new headlining.



11. The Appellant submitted that the vehicle's value would be reduced because it does not qualify as a classic car for road tax purposes.
12. The Appellant provided a copy of the Respondent's letter dated 21 January 2019 following the first stage appeal to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). That letter suggested that the VRT charge was based on the OMSP and stated that the matter was reviewed in some detail with reference to the tax and duty inclusive price that the vehicle might fetch on the open market.
13. The Statement of Case provided by the Respondent includes the following:

Outline of relevant facts.

This is an appeal against the Valuation (known as The OMSP – Open Market Selling Price) applied by Revenue, of a vehicle imported into the State.

The appellant, in this case, imported a vehicle (Saab 900) on 05/11/2018. The vehicle was registered on 30/11/2018 and the VRT charged was €720

Section 132 Finance Act 1992, as amended by Section 63(b) Finance Act 2013 states, inter alia,

(3) The duty of excise imposed by subsection (1) shall be charged levied and paid

(a) in the case of a vehicle subject to the registration or declaration concerned is a category A vehicle –

(i) By reference to the Table in this subsection (attached),

(ii) Where –

(1) The level of CO2 emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity, and

(11) The Commissioners are not satisfied of the level of CO2 emissions by reference to any other document produced in support of the declaration for registration, at the rate of an



amount equal to the highest percentage specified in the Table to this subsection of the value of the vehicle or €720, whichever is the greater

The CO2 emissions of the vehicle imported by the appellant could not be determined and therefore the minimum VRT payable was €720.

Revenue believe that the correct VRT was charged in accordance with Section 132(3) FA 1992, as amended.

14. Following a request from the Tax Appeals Commission the Respondent provided a copy of the UK vehicle registration certificate (previously supplied to the Respondent by the Appellant). The certificate did not display the CO2 emissions of the vehicle.

Analysis

15. The Appellant submitted that the VRT charge of €720 was excessive because it exceeded the value of the vehicle, which cost Stg£51. The Respondent submitted that in the absence of satisfactory documentation in support of the level of CO2 emissions, the Respondent was obliged to apply VRT in accordance with the provisions of s. 132(3) of the Finance Act 1992, which resulted in a VRT charge of €720
16. All vehicles are subject to VRT on first registration in the State. The rate of VRT is calculated according to the CO₂ emissions.
17. 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.



18. Section 132(3) (iii) of the Finance Act, 1992(as amended) provides that where

‘the level of CO2 emissions cannot be confirmed by reference to the relevant EC type-approval certificate or EC certificate of conformity and

‘the Commissioners are not satisfied of the level of CO2 emissions by reference to any other document produced in support of the declaration for registration,

[VRT shall be charged]

*‘at the rate of an amount equal to the highest percentage specified in the Table to this subsection of the value of the vehicle or €720, **whichever is the greater**,’*

[**emphasis added**].

19. Neither the Respondent nor the Appellant supplied any details of the actual level of CO2 emissions for the particular vehicle. Furthermore, the UK registration certificate was of no assistance in determining the level of CO2 emissions.

20. 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.’

21. I find that the Appellant has not furnished sufficient information and documentation that would allow me to conclude, on the balance of probabilities, that the Appellant’s interpretation of the OMSP or of the VRT charge imposed in respect of the vehicle in question is correct. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that he qualifies for a reduction in the OMSP or VRT charge assigned at registration.

22. The amount of the VRT imposed in the instant appeal i.e. €720 was based on the table in s. 132 at the greater amount provided for as above. In these circumstances, the OMSP ascribed to the vehicle by both parties is not relevant as the minimum VRT chargeable is €720.





23. Accordingly, I have made no determination in relation to the OMSP of the vehicle but instead I have determined that the VRT charge is correct.

Determination

24. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I determine the VRT of €720 as charged on registration is correct, in respect of the vehicle the subject matter of this appeal.

25. The Appellant is not entitled to any refund of VRT.

26. This appeal is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
12 MARCH 2021

