



**86TACD2021**

**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 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. On agreement of the parties 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 Honda 1.6 DTEC EX 5 Dr Auto. The Appellant registered the vehicle and paid VRT of €5,374 based on an open market selling price (OMSP) of €26,872 determined by the Revenue Commissioners.





4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal, the Revenue Commissioners did not revise the OMSP.
5. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Tax Appeal Commissioners (TAC) against the amount of the OMSP. A notice of appeal was received by the Tax Appeals Commission on 15 April 2020.
6. The Appellant sought a refund of VRT based on his interpretation of the OMSP of the vehicle as being €16,500 with a consequent VRT amount of €3,300.

### **Legislation**

7. 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.”*

8. 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*
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- (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**

9. The Appellant submitted:
- a) Commentary on dealers' margins on second hand cars in support of his assertion that the OMSP of his vehicle should exclude the dealer's margin.
  - b) That the Respondent overvalued the vehicle by €6,500. He based this on the average price of €18,000 for four similar cars advertised. In doing so, he reduced the average valuation by an amount equal to the dealer's margin (€1,500) to arrive at his estimated OMSP of €16,500.
  - c) That the EX Model has very little bearing on the sale price of second-hand cars as the majority of buyers are concerned with the condition of the body, tyres, brakes, service, etc. and ensuring the car was not in a crash.
  - d) That he had provided an advertisement for an EX model to the Respondent indicating a price of €25,900, which was reduced to €19,000.
  - e) That the Respondent's provision of two advertisements for EX Models of his vehicle did not reflect that one of these cars was subsequently offered to him for €20,000 by the dealer concerned.
  - f) A printout from a car dealer's website showing 16 similar vehicles for sale in Ireland for prices ranging from €18,000 to €22,000.
  - g) That the Respondent's website advises potential buyers that the OMSP is usually slightly different to the invoice price of a vehicle, and he pointed to the significant difference in his case.
  - h) That Second hand car prices vary depending on the time of the year and the location of vehicles (Dublin tending to be more expensive), when second hand cars can be reduced in price by dealers from September to December to reduce their stock of cars.
  - i) That the garage from whom he purchased the vehicle concurred with his views on what the VRT charge should be.



10. The Respondent submitted:

- a) That the OMSP (Section 133(2)(a), Finance Act, 1992, as amended) is the price, inclusive of all taxes and duties, which, in the opinion of the distributor, a new vehicle of the model and specification, including factory/distributor-fitted enhancements and accessories, would fetch on a first arm's length, retail sale in the open market in the State.
- b) That where it is a used vehicle the amount of OMSP is reduced to consider depreciation.
- c) That the vehicle is a Honda 1.6 DTEC EX 5 Dr Auto.
- d) That the advertisements provided by the Appellant were not for the same vehicle model as that of the Appellant.
- e) Evidence of two Honda 1.6 DTEC EX Models valued at €27,950 and €33,950.
- f) That accordingly the OMSP placed on the vehicle at €26,872 is a fair reflection of the value at the time of registration.

### **Analysis and findings**

11. 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.

12. The Appellant purchased the vehicle from a dealer in Ireland for a VRT exclusive price of €18,500. In consultation with the dealer, the Appellant estimated the VRT liability at €3,020 to €3,200. He was surprised by the amount of VRT applied by the Respondent and sought to have the VRT reduced on appeal.

13. The Vehicle was registered in the Appellant's name using the Dealer's TAN number on 12 November 2019.



14. The initial OMSP assigned in relation to the vehicle the subject matter of this appeal was €26,872. The Appellant's grounds of appeal in relation to the OMSP assigned was that it was excessive.
15. The Appellant in support of his appeal offered an alternative OMSP of €16,500 and a commentary on the inadequacy of the conclusions reached by the Respondent in supporting its initial OMSP of €26,872.
16. 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?
17. The Respondent has supported its view of the initial valuation by providing evidence of the advertised selling price of two vehicles precisely matching that of the Appellant, both of which exceed the OMSP provided to the Appellant in the instant appeal.
18. The Appellant has provided evidence in the form of advertisements for similar vehicles but not precise matches of his vehicle showing sales prices of between €18,000 and €22,000. He has argued that these valuations should be reduced further to remove the dealer's margin.
19. 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.
20. 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.
21. The Appellant has not provided evidence of precisely matching vehicles for sale in the state for an amount less than the OMSP assigned by the Respondent. He has not provided any evidence in support of his submissions that the EX Models for vehicles advertised for €25,900 and €27,950 were subsequently reduced to €20,000 and €19,000 respectively.





22. In accordance with section 133 of the Finance Act, 1992 (as amended) the OMSP of a vehicle other than a new vehicle is the price which the vehicle might reasonably be expected to fetch on a first arm's length sale in the State by retail at the time of registration.
23. 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.
24. 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.'*
25. I find that the Appellant has not 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 not succeeded in discharging the burden of proof and has not succeeded in showing that he qualifies for a refund of any of the VRT paid.

### **Determination**

26. 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 OMSP of €26,872 determined by the Respondent on inspection of the vehicle at registration is correct in relation to the vehicle.
27. The appeal hereby is determined in accordance with section 949AL TCA 1997.

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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**29 MARCH 2021**

