



**89TACD2021**

**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 Ford Mondeo Zetec Edition 5, first registered in the United Kingdom, now bearing registration number [REDACTED]. The Appellant registered the vehicle and paid VRT at 18% of €3,690 based on an open market selling price (OMSP) of €20,501 determined by the Revenue Commissioners. In addition, the Appellant paid a NOx charge of €210.



4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). On appeal the OMSP was not revised by the Revenue Commissioners. This was notified to the Appellant by letter dated 7 July 2020. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Tax Appeal Commissioners (TAC) against the amount of the VRT determination of €3,690 on 9 July 2020.

### **Legislation**

5. 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 consignee 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).”*

6. 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*
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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**

7. The Appellant submitted:

- a) That the Respondent's website indicated the OMSP of his vehicle amounted to €18,518 and displayed a total VRT and NOx charge payable on registration of €3,358 (VRT €3,148 NOx charge €210).
- b) The printout from the Respondent's website in support of his views in the matter.

8. The Respondent submitted:
- a) That it values vehicles based on their OMSP, age and associated depreciation, state of the vehicle and value of similar cars for sale in the State.
  - b) That the vehicle imported and registered by the Appellant was a Ford Mondeo Zetec Edition 5 door hatchback.
  - c) Evidence of the examination of the vehicle by its agent at registration stage in the form of a VRT receipt displaying details of the vehicle examined.
  - d) That this vehicle model has a unique statistical code of 43888318, with CO<sub>2</sub> Emissions of 130 and a VRT rate of 18%.
  - e) That the vehicle described in the printout provided by the Appellant in support of his appeal is not the same as the vehicle presented for registration.
  - f) That the printout provided is for a different model, a Ford Mondeo 2.0 TDCi, 150PS, with a unique statistical code of 46187759 with CO<sub>2</sub> emissions of 115 and a VRT rate of 17%.
  - g) That the vehicle which he actually registered has higher CO<sub>2</sub> emissions, a consequent higher rate of VRT and a lower depreciation rate than that for which he got the VRT estimate.
  - h) That its website, provides an estimate only, for users and the website very clearly highlighted that a differing amount of VRT may be payable at registration depending on various factors.

### **Analysis and findings**

9. The OMSP ascertained by the Respondent in relation to the vehicle the subject matter of this appeal was €20,501. The Appellant appealed to the Tax Appeal Commissioners on the basis that the OMSP determined by the Revenue Commissioners was not in accordance with that quoted on the Respondent's website. The Appellant submits that the OMSP of the vehicle the subject matter of the appeal should be €18,518 as ascertained by him using the Respondent's own online calculator.



10. The Appellant provided no alternative OMSP or precise details of his vehicle supporting his assertion that the lower OMSP should be applied. The Respondent has provided precise details of the vehicle presented for registration.
11. 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. The Appellant relied on Revenue's online calculator to support his version of what the OMSP should be. The Respondent has examined the matter – at registration and at 1<sup>st</sup> stage review and has found that the initial OMSP was a fair and reasonable valuation.
12. 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.
13. 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.'*
14. The question to be answered in this appeal is whether, the Appellant can rely on his interpretation of Revenue's online calculator in assessing the OMSP of a vehicle prior to importation. 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 Appellant's interpretation of the OMSP 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 refund of the VRT paid.

### **Determination**

15. 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 €20,501 determined by the Respondent on inspection of the vehicle at registration is correct in relation to the vehicle.





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

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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**

**30 MARCH 2021**

