



**90TACD2021**

**BETWEEN/**

**APPELLANT**

**Appellant**

**-AND-**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Appeal**

1. This is an appeal to the Tax 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 Hyundai I30, first registered in the United Kingdom, now bearing registration number [REDACTED]. The Appellant registered the vehicle and paid VRT of €2,266 based on an open market selling price (OMSP) of €14,163 determined by the Revenue Commissioners.



4. The Appellant appealed to the Revenue Commissioners under section 145 of the Finance Act, 2001 (as amended). The Revenue Commissioners refused to process the appeal as it was made outside the time limits provided in the legislation.
5. This was notified to the Appellant by letter dated 8 October 2019. The Appellant felt aggrieved by the determination of the Revenue Commissioners. The Appellant consequently appealed to the Tax Appeal Commissioners (TAC) against the decision of the Revenue Commissioners not to process her appeal. The substantive issue in this appeal concerns the amount of the VRT paid on registration of the Appellant's vehicle, based on the Respondent's view of the OMSP.
6. The appeal was received and accepted by the TAC on 5 November 2019.

### **Legislation**

7. 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 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 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**

#### 9. The Appellant submitted:

- a) That she was not aware of the time limits to submit her appeal to the Revenue Commissioners in accordance with s. 145 TCA 1997.
- b) That the car was purchased in Co Tyrone on 5 July 2019.



- c) That the car was damaged at the time of purchase, which required certain repairs as evidenced, by the supporting invoices and receipts presented to the TAC.
  - d) A copy of the vehicle import receipt from the Respondent's agent showing the date of registration of the vehicle on 21 July 2019.
10. The Respondent submitted:
- a) That it was unable to process the first stage appeal because the Appellant failed to submit such an appeal on time.
  - b) That notwithstanding the above, the Respondent submitted that as a gesture of goodwill it examined the OMSP applied at registration and offered a partial refund of the VRT charged at registration of €92.
  - c) That it had sought three comparator vehicles for sale in the state with an average asking price of €13,590 and offered the refund based on this average as being the correct OMSP of the Appellant's vehicle.
  - d) That it had noted the Appellant's assertion that the vehicle was in need of certain repairs but pointed out that its agent classified the vehicle as "good" on examination at registration stage.
  - e) That the invoices presented for repairs were all for dates after the vehicle was registered in the state.

### **Analysis and findings**

- 11. I have not considered the matter of the lateness of the Appellant's appeal under s. 145 TCA 1997 as both the Respondent and the TAC have accepted the substantive matter of the appeal as concerning the OMSP (and consequent VRT amount) of the vehicle at registration.
- 12. The revised OMSP as ascertained by the Respondent in relation to the vehicle the subject matter of this appeal is €13,590.
- 13. The Appellant provided no alternative OMSP or precise details of her vehicle supporting her assertion that a lower OMSP and consequent lower VRT amount should be applied because of the repairs required to the vehicle.
- 14. The Respondent has reconsidered the OMSP applied by seeking comparator vehicles in the Irish market and has offered to reduce the OMSP accordingly.



15. 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.
16. The Appellant has sought a reduction of the VRT charged based on necessary repairs carried out after the vehicle was registered in the state.
17. The Respondent has examined the matter – at registration and following the acceptance of the appeal by the TAC and has found that the initial OMSP should be amended to €13,590.
18. 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.
19. 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.'*
20. The question to be answered in this appeal is whether the Appellant has provided sufficient information and documentation to support her views in the matter of the VRT charged at registration.
21. 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 revised 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 she qualifies for a refund of VRT greater than that offered by the Respondent.

### **Determination**

22. 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 revised OMSP of €13,590 determined by the Respondent on review of the OMSP is correct in relation to the vehicle. As a consequence the Appellant is entitled to a refund of VRT amounting to €92.

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

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**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**6 APRIL 2021**

