



AN COIMISIÚIN UM ACHOMHAIRC CHÁNACH  
TAX APPEALS COMMISSION

Between

121TACD2025

[REDACTED]

**Appellant**

and

**THE REVENUE COMMISSIONERS**

**Respondent**

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**Determination**

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## Introduction

1. This matter comes before the Tax Appeal Commission (hereinafter the "Commission") as an appeal against a determination made by the Revenue Commissioners (hereinafter the "Respondent"). The appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price (the "OMSP") in respect of the calculation of Vehicle Registration Tax (hereinafter "VRT").

## Background

2. Mr [REDACTED] (hereinafter the "Appellant") imported a [REDACTED] [REDACTED] (hereinafter the "Vehicle") in to the State.
3. On presentation to the National Car Testing Service for registration, the Appellant declared that the Vehicle had 145,673KM on its odometer. In addition, the Vehicle was declared as having an invoice selling price of €6,672.00. No invoice for the Vehicle has been submitted in this appeal.
4. On application by the Appellant to import and register the Vehicle, an OMSP of €15,611 was applied to the Vehicle by the Respondent.
5. The VRT was calculated as being €3,588.20 comprising of VRT of €3,122.00, Nox VRT3 of €455 and vEMC fee of €11.20. The Appellant paid the VRT calculated by the Respondent and the Vehicle was registered under the registration number [REDACTED].
6. The Appellant was not satisfied with the OMSP applied to the Vehicle by the Respondent and sought a first stage appeal with the Respondent.
7. On 20 February 2024, the Respondent wrote to the Appellant with the outcome of the first stage appeal and informed the Appellant that, having examined the matter in some detail, the Respondent was satisfied that an OMSP of €15,611 was a reasonable assessment of the Vehicle's OMSP at the time of registration. The Appellant was not satisfied with the outcome of the first stage appeal and has appealed the OMSP valuation which the Respondent applied to the Vehicle to the Commission.
8. The Commission wrote to the parties in this appeal informing them that the Commissioner intended to determine this appeal without an oral hearing pursuant to the provisions of section 949U of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997"). No objection was received from the parties and this appeal has therefore been determined without an oral hearing pursuant to the provisions of section 949U of the TCA 1997.

## Legislation and Guidelines

9. The legislation relevant to this appeal is as follows:

Section 112(1) of the TCA 1997:

Section 133 Finance Act, 1992, as amended:

*“(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 enhancements or accessories have not been removed from the vehicle or not sold therewith for the purposes 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**

### *Appellant’s Submissions*

10. In his Notice of Appeal, the Appellant stated the following as his Grounds of Appeal:

*"OMSP price assessed high @ €15,611*

*Valuation @ 10,000 as per online [REDACTED] emailed to Revenue on 27/6"*

11. The Appellant submitted the following comparator vehicles for consideration in support of this appeal:

11.1. A 2017 [REDACTED] 2.0 Diesel High Spec with 120,000 miles and a price of €10,950;

11.2. A 2017 [REDACTED] 2.0 D [REDACTED] with no details of mileage or price.

12. In his Statement of Case, the Appellant did not submit any further information which he wished to rely on.

#### *Respondent's Submissions*

13. In its Statement of Case, the Respondent submitted the following:

*"Revenue valued the vehicle at €15,611 (OMSP) at registration. The vehicles registration number is [REDACTED].*

*The vehicle is a [REDACTED].*

*At first stage appeal 6 comparator vehicles were considered.*

*These vehicles had values of between €17,950 and €22,995, all of which are higher than the OMSP of €15,611.*

*At second stage a comparator submitted by the appellant showing a value of €10,950. However, not enough information was on this advertisement to establish if it was the same model/variant.*

*While Revenue requested a physical inspection be carried out, this wasn't possible as the vehicle was sold on by the appellant.*

*Revenue consider the OMSP of €15,611 to be a reasonable value at the date of registration."*

14. The following comparator vehicles were utilised by the Respondent during the first stage appeal and were submitted to the Commissioner in this appeal:

14.1. A 2017 [REDACTED] 2.0L [REDACTED] 180PS [REDACTED] 4DR with 76,000KM advertised at €17,950;

14.2. A 2017 [REDACTED] 2.0 D [REDACTED] with 172,825KM advertised at €19,995;

- 14.3. A 2017 [REDACTED] 2.0 D [REDACTED] with 148,170KM advertised at €21,995;
- 14.4. A 2017 [REDACTED] 2.0 D [REDACTED] 180PS with 161,708KM advertised at €22,950;
- 14.5. A 2017 [REDACTED] 2.0 D [REDACTED] 177BHP 4DR with 177,027KM advertised at €22,950;
- 14.6. A 2017 [REDACTED] 2.0 D [REDACTED] 180 with 135,157KM advertised at €22,995.

### **Material Facts**

15. The material facts are not in dispute in this appeal and the Commissioner accepts same as material facts:
- 15.1. The Appellant imported a [REDACTED] in to the State with 145,673KM on its odometer which had an OMSP of €15,611 applied by the Respondent which resulted in a VRT liability of €3,588.20.

### **Analysis**

16. As with all appeals before the Commission the burden of proof lies with the Appellant. As confirmed in *Menolly Homes v Appeal Commissioners* [2010] IEHC 49, the burden of proof is, as in all taxation appeals, on the taxpayer. As confirmed in that case by Charleton J at paragraph 22:-

*"This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioner as to whether the taxpayer has shown that the tax is not payable."*

17. The standard of proof is the balance of probabilities.
18. The Commissioner has considered the submissions made and the documentation submitted on behalf of both Parties.
19. Section 133(3) of the Finance Act 1992 sets out the following in relation to the OMSP of used vehicles:

*"(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 enhancements or accessories have not been removed from the vehicle or not sold therewith for the purposes 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."*

20. On the one hand, the Appellant has submitted documentary evidence from two sources, only one of which indicated a price, as follows:

20.1. A 2017 [REDACTED] 2.0 Diesel High Spec with 120,000 miles and a price of €10,950;

20.2. A 2017 [REDACTED] 2.0 D [REDACTED] with no details of mileage or price.

21. On the other hand, the Respondent has submitted the following documentary evidence from six sources:

21.1. A 2017 [REDACTED] 2.0L [REDACTED] 180PS [REDACTED] 4DR with 76,000KM advertised at €17,950;

21.2. A 2017 [REDACTED] 2.0 D [REDACTED] with 172,825KM advertised at €19,995;

21.3. A 2017 [REDACTED] 2.0 D [REDACTED] with 148,170KM advertised at €21,995;

21.4. A 2017 [REDACTED] 2.0 D [REDACTED] 180PS with 161,708KM advertised at €22,950;

21.5. A 2017 [REDACTED] 2.0 D [REDACTED] 177BHP 4DR with 177,027KM advertised at €22,950;

21.6. A 2017 [REDACTED] 2.0 D [REDACTED] 180 with 135,157KM advertised at €22,995.

22. Neither party has objected to this appeal being determined without an oral hearing.

23. Having considered all of the evidence and the written submissions, the Commissioner finds that the OMSP of the Vehicle applied by the Respondent was not overstated. All of the comparator vehicles submitted by both parties relate to 2017 [REDACTED] Diesel cars.

24. The information contained in the documentary evidence submitted by the Appellant is sparse. Only one of the comparator advertisements which he has submitted contained a price, that being €10,950. The mileage in the advertisement is indicated as being 120,000 miles which may be converted to 193,121KM.



25. On the other hand, the six comparator vehicles submitted by the Respondent range in price from €17,950 to €22,995.
26. As set out in *Menolly*, the burden of proof in appeals before a Commissioner rests on the appellant who must prove, on the balance of probabilities, that the Respondent's assessment to tax or decision was incorrect.
27. Based on the submissions made and the documentary evidence submitted, the Commissioner finds that the Appellant has not discharged the burden of proof to establish that the OMSP of €15,611 was incorrect. The Commissioner prefers the submissions of the Respondent in relation to comparator vehicles and notes the sparse nature of the information contained in relation to the comparator vehicles submitted by the Appellant in support of this appeal.

### **Determination**

28. For the reasons set out above, the Commissioner determines that the Appellant has not succeeded in his appeal and determines that the OMSP of €15,611 declared by the Respondent in relation to the Vehicle shall stand.
29. This Appeal is determined in accordance with Part 40A of the Taxes Consolidation Act 1997 (hereinafter the "TCA 1997") and in particular sections 949AK thereof. This determination contains full findings of fact and reasons for the determination, as required under section 949AJ(6) of the TCA 1997.

### **Notification**

30. This determination complies with the notification requirements set out in section 949AJ of the TCA 1997, in particular section 949AJ(5) and section 949AJ(6) of the TCA 1997. For the avoidance of doubt, the parties are hereby notified of the determination under section 949AJ of the TCA 1997 and in particular the matters as required in section 949AJ(6) of the TCA 1997. This notification under section 949AJ of the TCA 1997 is being sent via digital email communication only (unless the Appellant opted for postal communication and communicated that option to the Commission). The parties will not receive any other notification of this determination by any other methods of communication.

### **Appeal**

31. Any party dissatisfied with the determination has a right of appeal on a point or points of law only within 42 days after the date of the notification of this determination in accordance with the provisions set out in section 949AP of the TCA 1997. The

Commission has no discretion to accept any request to appeal the determination outside the statutory time limit.

A handwritten signature in black ink, appearing to read 'Clare O'Driscoll', with a stylized, cursive script.

Clare O'Driscoll  
Appeal Commissioner  
12 March 2025