



**AC Ref: 22TACD2016**

**[NAME REDACTED]**

**Appellant**

**V**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal concerns the valuation of a vehicle for the purposes of ascertaining the open market selling price ('OMSP') in respect of the calculation of Vehicle Registration Tax ('VRT').
2. VRT is a duty of excise, charged at a percentage rate, according to the CO2 emissions, of the price, inclusive of all taxes and duties which, in the opinion of the Respondent, the vehicle might reasonably be expected to fetch on a first arm's length retail sale in the State at the time of registration, subject to specified minimum charges. The relevant legislation is set out below.

**Background**

3. The vehicle, the subject matter of this appeal, is a [YEAR REDACTED] BMW 520 F10 M 4 door Sport, diesel, registration [REDACTED] with manual transmission. Mileage at the time of purchase was 68,730 km. The Appellant registered the vehicle on [DATE REDACTED]. The OMSP was initially valued at €25,006 and VRT applied at a rate of 18% resulting in a charge of €4,501.
4. In [DATE REDACTED], the Appellant appealed to the Central VRT office and the OMSP was reduced to €21,600. This reduction gave rise to a repayment to



the Appellant of €613 which was notified to the Appellant on [DATE REDACTED]. On [DATE REDACTED] the Appellant appealed pursuant to section 146 of the Finance Act 2001.

5. On [DATE REDACTED] the Respondent wrote to the Appellant proposing a reduced OMSP calculation of €21,898, based on an average of three comparator vehicles from the Car Buyers Guide for sale on that date. The Respondent submitted that the three cheapest vehicles were chosen to calculate this average figure. The sum was rounded down to €21,800. The Respondent applied the standard reduction of 5% and a further reduction of 5% as a goodwill gesture. The final OMSP totalled €19,675 which gave rise to a further refund to the Appellant of €347. The Appellant did not accept the reduced OMSP of €19,675, submitting that it was excessive.

### **Legislation**

Section 146 of the Finance Act 2001;

*"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."*

#### 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 vehicle registration tax, 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.*



*(2)(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.*

*(2)(c) Notwithstanding the provisions of paragraph (b), where a price is 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 a similar type and character is being offered for sale in the State at the time of such declaration, the open market selling price may be determined 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**

6. In oral submissions the Appellant contended that trade advertisements are inflated and speculative and that some of the vehicles chosen for valuation purposes would have had extras which his vehicle did not have. The Appellant submitted that when the Appellant advertised the vehicle for €21,000 and no phone calls were received inquiring as to a sale. The Appellant submitted that this indicated that the car was overvalued at €21,000, in circumstances where it was bought for €25,000. In response to this, the Respondent submitted that, regarding the proposed OMSP of €19,675, the three cheapest comparator vehicles were chosen to average the lower OMSP valuation of €19,675 which the Respondent submitted, was fair and reasonable.
7. The Appellant requested that the Respondent provide evidence that the cars chosen for the purposes of valuation, achieved sales in respect of their advertised prices. The Respondent submitted that the vehicles were advertised on private websites and that the website owners would not be obliged to provide the Respondent with this information. The Respondent stated that cars are advertised at what the seller expects to receive in terms of price. The Respondent submitted that it is up to the individuals involved in a sale, to negotiate this outcome.
8. In addition to the above, the Appellant submitted that a double charge to VRT arose. The Appellant submitted that the advertised value of a second hand vehicle included a sum attributable to VRT. Per the Appellant's letter dated [DATE REDACTED], the Appellant contended for an OMSP of €14,580. The



Appellant calculated this figure based on an estimated OMSP of €18,000 reduced by the VRT sum paid on importation. The Respondent disagreed with this submission. The Respondent submitted that the value of a second hand vehicle is determined only by what a seller can obtain for the vehicle in the open market. The Respondent submitted that the price obtainable on the open market is a fair and reasonable estimation of value in respect of a vehicle and is therefore the relevant amount for valuation purposes.

9. The Appellant complained that when the Appellant drove to [LOCATION REDACTED] on [DATE REDACTED], the VRT centre was closed. The Appellant was subsequently fined for late payment of VRT which was due on that date. The Respondent apologised to the Appellant for this inconvenience and informed this Commission that the Appellant was subsequently refunded the full amount of the fine, namely, €139.

### **Analysis**

10. When a car is brought into the State, the car is valued on the year, its mileage, its condition and the CO2 emissions. The rate of VRT is judged solely on CO2 emissions. Every car is subject to VRT on first registration in the State.
11. The OMSP ascertained in relation to the vehicle at the NCT office was €25,006. This was appealed to the Central VRT office and was reduced to €21,600. The Appellant was refunded €613 of VRT paid. The proposed OMSP of €19,675 per the Respondent's letter of [DATE REDACTED] gave rise to a refund of VRT in the sum of €347. In total, the OMSP was reduced from €25,006 to €19,675, a total reduction of €5,331.
12. In my view the Respondent has taken prudent and reasonable steps in the calculation of the OMSP by engaging fully with the Appellant, by choosing the lowest valuations available on a given date upon which to base an average valuation and by the inclusion of the 10% reduction (5% as standard and 5% goodwill) in order to achieve the lowest OMSP reasonably possible. Thus I determine, based on the evidence and submissions together with the valuation





methods and calculation processes that the sum of €19,675 is a fair and reasonable OMSP valuation.

**Conclusion.**

13. Based on a consideration of the evidence and submissions in this case together with a review of the valuation methods and calculation processes, I determine €19,675 to be a fair and reasonable OMSP in relation to the vehicle.
14. Accordingly the appeal is determined in accordance with section 949AL TCA 1997.

**APPEAL COMMISSIONER**

**December 2016**

