



**53TACD2019**

**BETWEEN/**

**Appellant**

**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. The vehicle, the subject matter of this appeal, is a Convertible Sports Car (Model X), which was assigned an OMSP of €74,250 on registration of the vehicle at the National Car Testing Service ("NCTS"), resulting in VRT payable of €26,730. The Appellant appealed the amount of VRT payable on the vehicle to the VRT appeals office in the Revenue Commissioners. The Respondent notified the Appellant by letter dated 15 February 2018 that the VRT amount of €26,730 was correct and that no refund was due. The Appellant duly appealed to the Tax Appeals Commission by notice of appeal received on 15 March 2018.
3. This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

## Background

4. The Appellant purchased a 2011 Convertible Sports Car (Model X) from a seller in the UK and imported the vehicle into Ireland on 24 November 2017. The Appellant paid €48,861 EUR for the vehicle. The vehicle was registered with the NCTS on 20 December 2017. The NCTS assigned an OMSP of €74,250 which resulted in a VRT charge of €26,730, which the Appellant duly paid. The rate of VRT on this vehicle is 36% and there is no dispute between the parties in this regard.
5. The Appellant contends that the OMSP assigned to the vehicle, on registration, by the NCTS is overstated and contends for a reduced OMSP to be applied to the vehicle.

## Legislation

### 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 and Analysis**

6. The Appellant states in her submissions that the purchase price of the vehicle in 2011 when new was £106,893 GBP. In support of this the Appellant has furnished a copy of the vehicle order form which shows that the vehicle cost the original purchaser £106,893 when new.
7. The Appellant then states that second hand models of the same vehicle were being sold in November 2017 for £44,000, which equates to depreciation of 58.8% on the vehicle over a six-year period.
8. The Appellant further states that the £106,893 converted to euro is €121,462 and assigns a hypothetical value to the vehicle (when it was new) of €148,678 which includes the VRT which would have applied to the vehicle at that time. The basis of this calculation is not fully understood.
9. The Appellant, in her submission, then applies the depreciation which she has calculated of 58.8% to this value and arrives at a figure of €61,255 which the Appellant contends is the correct OMSP of the vehicle.
10. The OMSP is *“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”*. 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. The OMSP of the vehicle is not dictated by notional depreciation amounts. While it can be helpful to look at other factors such as depreciation, particularly in the absence of comparator vehicles, in this instance the Appellant has carried out a crude calculation in arriving at the OMSP contended for, which I cannot accept.



11. The Appellant states that there are currently no similar 2011 vehicles for sale in Ireland and has furnished two advertisements for comparator 2011 vehicles (both Convertible Sports Car (Model X's)) which were advertised for sale in the UK. The asking price of these vehicles is £46,995 and £44,995 respectively. The vehicle for sale at £44,995 has similar mileage to the vehicle the subject matter of the appeal.
12. The Appellant further submits that she received an independent valuation of the vehicle as at November 2017 which indicated a valuation of €65,000 - €66,000. In support of this valuation the Appellant furnished the valuation which was contained in an email which originated from the email account of 'W W'. It is not clear who this person is or how this person is qualified to assess the value of the vehicle. Furthermore, the valuation provided is not on headed paper nor is it signed. The veracity of this valuation cannot be verified and so in my view this does not assist the Appellant in her appeal.
13. The Appellant submits that in early 2017 she test drove a 2010 Convertible Sports Car (Model Y) and was advised by the motor dealers, who are based in Belfast, that in their experience the VRT payable on that particular vehicle would be circa €18,000 bringing the overall price of the vehicle to approximately €60,000. The Appellant submits that she therefore expected to pay VRT of circa €21,000 on the importation of her 2011 Convertible Sports Car (Model X). This in my view does not assist the Appellant in her appeal. The VRT is calculated based on 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. The Appellant cannot rely on a verbal approximate valuation received from a motor dealer based in Northern Ireland.
14. The Respondent contends that the Central Vehicle Office in Wexford obtained the OMSP of €74,250 from their independent assessor and that comparable vehicles and ratios were used when arriving at the open market selling price. The Respondent states in their submission that *"we can advise that these models were not available for sale on the Irish market at the time of our valuation and we have based our OMSP on the UK market"*. In support of this the Respondent has provided copies of advertisements for five comparator vehicles as follows:
  - a. A 2010 Convertible Sports Car (Model X) with a selling price of £47,950
  - b. A 2011 Convertible Sports Car (Model X) with a selling price of £49,945 (this vehicle has similar mileage to the Appellant's vehicle)
  - c. A 2012 Convertible Sports Car (Model X) with a selling price of £53,990



- d. A 2012 Convertible Sports Car (Model X) with a selling price of £57,950 and
- e. A 2015 Convertible Sports Car (Model X) with a selling price of £71,950.

All of these vehicles were advertised for sale in the UK. The Respondent has not explained the basis of their calculation of the OMSP value of €74,250 which was assigned to the vehicle. Of the comparator vehicles used only one of the vehicles is a 2011 model. This particular vehicle had similar mileage to the vehicle the subject of the appeal and was advertised for sale at £49,945

15. The Respondent further submits that a well-known car dealership in Dublin has a 2014 model of a similar vehicle (a Convertible Sports Car (Model Z)) for sale on their website for €99,995. The Respondent has furnished a copy of this advertisement.
16. The Appellant submits that the 2014 comparator vehicle which the Respondent has submitted is not comparable to the Appellants vehicle as it is a different model, different variant and different year. I agree with the Appellant that it is not a comparable vehicle as it is three years newer than the vehicle the subject of the within appeal.
17. It is clear that there are few comparator vehicles of the type involved in this case and that the process of valuing such vehicles is one of best estimate. In the within appeal neither party produced any comparator vehicles for sale in the State making it difficult to ascertain the price the vehicle might reasonably be expected to fetch in the open market in Ireland.
18. It is my view that in the absence of comparator vehicles for sale in the State I must look to valuations of similar vehicles for sale in the UK market, as the Respondent did in arriving at their value for the OMSP. Having carefully reviewed all of the documentation submitted by both parties there are two advertisements (both advertised for sale in the UK) which strike me as most comparable to the vehicle the subject matter of the appeal and these are as follows:
  - a. A 2011 Convertible Sports Car (Model X) with a selling price of £44,995 furnished by the Appellant, and
  - b. A 2011 Convertible Sports Car (Model X) with a selling price of £49,945 furnished by the Respondent.



19. The average of the asking price of these two vehicles, which is £47,470 GBP, is in my view, a potentially appropriate OMSP which could be applied to this vehicle. Using the average exchange rate (per the European Central Bank) on the 20 December 2017, which was 1.322 (Euro: Sterling), would give a rounded-up and converted OMSP of €62,755. Given that there may be additional costs in bringing such a vehicle to the Irish market from the UK, I determine that a reasonable OMSP for the vehicle, the subject of this appeal, at the date of registration to be €65,000. The VRT payable on the vehicle is thus €23,400 and therefore the Appellant is due a refund of €3,330.

### **Conclusion**

20. For the reasons set out above I determine that the OMSP of the vehicle, the subject of the within appeal, should be reduced to €65,000 and a refund of €3,330 should be issued to the Appellant.

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

**PAUL CUMMINS**  
**APPEAL COMMISSIONER**  
**31 OCTOBER 2019**

