



168TACD2020

BETWEEN/

APPELLANT

Appellant

V

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. This appeal is determined in accordance with section 949X of the Taxes Consolidation Act 1997, as amended ('TCA 1997'). The Appeal hearing took place remotely on the TAC electronic platform due to Covid 19 restrictions, on 8 September 2020.

Background

3. The vehicle, the subject matter of the appeal, is an AC Brooklands 5.0 ACE 2dr, registration **REDACTED**. The Appellant purchased the vehicle for stg £25,760 including commission of £2,760 (€28,700 approx.) in the UK on 2 June 2018. The vehicle was first registered in the UK on 6 October 2010. The vehicle was registered with the National Car Testing Service (NCTS) on 19 November 2018. An OMSP of €38,250 was assigned by the Respondent, resulting in a VRT charge of €15,628 including a late fee charge of €1,858.
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 29 January 2019.

The Appellant was aggrieved by the determination of the Revenue Commissioners and duly appealed to the Tax Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 26 February 2019.

Legislation

Section 146 of the Finance Act 2001;

Section 133 Finance Act, 1992, as amended:

Submissions

5. The Appellant Submitted in advance of the appeal hearing:
 - a. That the OMSP should amount to between €24,000 and €26,000 depending on currency conversion and import costs.
 - b. He supported this assertion with a valuation report from REDACTED - a specialist firm engaged in classic car sales and restoration.
 - c. The vehicle is an extremely rare car, is one of only 22 manufactured and is the only one of its kind in Ireland.
 - d. That accordingly it is impossible to establish the correct OMSP of the vehicle in Ireland.
 - e. That the VRT imposed amounted to a premium of 55% on the Euro value of the cost of the vehicle.
 - f. That the vehicle is part of a private collection of classic cars, used occasionally and not for daily driving.
 - g. That the vehicle has only 25,000 miles on the clock and will only be driven for about 1,000 miles annually by the Appellant.
 - h. That in six years' time the VRT applicable will only amount to €200.
 - i. That road tax alone amounts to €1,000 per annum.
6. The Appellant submitted at the appeal hearing that the Irish and UK markets for classic cars are very similar and that cars often move within the confines of a joint market with similar prices pertaining when converted to sterling or euro.
7. The Appellant submitted at the appeal hearing that REDACTED a specialist garage had valued the car in euros as the open market price obtainable in Ireland



8. The Appellant submitted and that REDACTED were more qualified to value the subject vehicle than the Respondent's valuer who were more adept at valuing modern vehicles.
9. The Respondent submitted in advance of and repeated at the appeal hearing:
 - a. That the matter had been examined in some detail and in correspondence dated 29 January 2019, the Respondent expressed its satisfaction with the initial OMSP of €38,250 provided by its independent valuation provider in quantifying the VRT as paid by the Appellant.
 - b. That the VRT Appeals officer noted four similar cars for sale in the UK market priced at £25,000, £25,300, £34,650 and £38,250. The Respondent provided the advertisements for these vehicles in evidence.
 - c. That the VRT Appeals officer decided that the initial OMSP was not excessive based on an exercise as follows; Euro price paid €28,700 plus VRT @ 36% rate results in an OMSP of €39,032 which is greater than the OMSP determined at registration.
 - d. That it was not in a position to settle the appeal by agreement as the vehicle is a very, very unusual vehicle – less than 100 ever made and the only example in the state.
 - e. That the vehicle was described by the Appellant as being a “muscle car” – a high performance 5.0 L petrol vehicle, of a type sometimes used in drag racing.
 - f. That the Appellant stated that this isn't a typical collectible vehicle due to its rarity and age.

Analysis

10. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO₂ emissions. The OMSP of a vehicle is determined in accordance with section 133 Finance Act 1992, as amended i.e. *“on the price, inclusive of all taxes and duties, which, in the opinion of the Revenue Commissioners, the vehicle might reasonably be expected to fetch on a first arm's length sale thereof in the State.”* 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 in Ireland.
11. The OMSP assigned in relation to the vehicle the subject matter of this appeal was €38,250. The Appellant's ground of appeal in relation to the OMSP assigned, was that it was excessive.



12. The Appellant in support of his appeal offered an independent valuation from an Irish car dealer specialist in classic car sales and restoration and his own estimate of the Irish attainable price as being the cost of the vehicle to him.
13. The Respondent's initial calculation on 19 November 2018, of the VRT payable, based on the advice of an independent valuer, was provided in evidence.
14. The Respondent provided further evidence of similar cars for sale in the UK market with an average price of stg £30,800.

Conclusion

15. The specific car in the instant appeal is very rare and consequently difficult to arrive at a fair OMSP in Ireland where a rate of 36% VRT is applicable to its OMSP. A simple Google search illustrates the rarity of the vehicle as follows:

REDACTED

16. 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.
17. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.
18. Accordingly, I am satisfied that it would be ultra vires for me to embark upon a consideration of, or to make a finding or determination in relation to, the issues raised by the Appellant in relation to the nature of his use of the vehicle or to the issue of the



future qualification of the vehicle for a lower rate of VRT raised in his submissions. I must therefore decline to consider this argument or to make any finding in relation thereto.

19. Section 133 Finance Act, 1992, as amended provides that in the case of a vehicle other than a new vehicle, the OMSP is '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...' at the time of registration. The difference in the retail prices of motor vehicles between Ireland and the UK is attributed to currency fluctuations, dealers' margins, VAT rate differences and principally to VRT.
20. The Appellant is incorrect in his submission that the OMSP should be based on the price paid for the vehicle in the UK. The Appellant's own expert has not stated if his valuation represents

'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...'

The valuation report in fact states

"in our opinion, to replace this car or to buy one of this standard on the open market would be between €24,500 - €26,000 depending on currency conversion and import costs"

21. The Respondent has provided examples of similar cars for sale in the UK and there is also the evidence of the UK price as paid by the Appellant. All of these prices are exclusive of Irish VRT and cannot therefore be used as a basis on which to assess the amount which the vehicle would likely fetch if sold on the open market in Ireland. The Respondent has fairly added 36% (the VRT rate applicable) to the price paid by the Appellant in demonstrating that its independent valuer has arrived at a fair OMSP for the vehicle. If the Respondent had added 36% to the average of all the UK prices the valuation would have displayed an even greater divergence from the independent valuer's determination of the OMSP.
22. The question to be answered in this appeal is; how much would the vehicle be likely to fetch if sold on the open market in Ireland?



23. The classic car markets in Ireland and the UK may well be similar after accounting for currency differences. However the vehicle in the instant appeal is not a typical classic car in two respects: It is less than 30 years old and it attracts a 36% VRT charge in Ireland.
24. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine €38,250 to be a fair and reasonable OMSP in relation to the particular vehicle and that the Appellant is not entitled to a refund of any VRT paid based on this OMSP.
25. This appeal is determined in accordance with section 949AL TCA 1997.

COMMISSIONER CHARLIE PHELAN

10 SEPTEMBER 2020

