



**04TACD2017**

**NAME REDACTED**

**Appellant**

**-and-**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

***A. Background***

1. This appeal was brought pursuant to section 146 of the Finance Act 2001, as amended, against a decision of the Respondent regarding the quantum of the Vehicle Registration Tax which the Appellant was entitled to be repaid following the sale and export of his/her motor vehicle.

***B. Matter under appeal***

2. On or about the **DATE REDACTED** 2015, the Appellant sold and exported his/her Morgan Plus 8 2-door convertible motor car bearing registration number **REGISTRATION REDACTED** to a garage in Wales. The car had a Rover 3.9 litre V8 engine and had done approximately 34,950 miles.



3. The Appellant applied for a refund of the VRT paid in respect of the car pursuant to section 135D of the Finance Act 1992, as amended. The National Car Testing Service assessed the Open Market Selling Price of the car on the **DATE REDACTED** 2015 as being €12,500 which would, on the basis of a VRT rate of 36% and deducting the standard administration fee of €500, have resulted in a refund of VRT to the Appellant of €4,000.
4. The Appellant appealed to the Revenue Commissioners pursuant to section 145(2) of the Finance Act 2001, as amended, against the valuation placed on the car by the NCTS. On or about the **DATE REDACTED** 2015, the Revenue Commissioners assessed the Open Market Selling Price of the vehicle as being €29,250 which would, on the basis of a VRT rate of 36% and deducting the standard administration fee of €500, have resulted in a refund of VRT to the Appellant of €10,030.
5. This matter comes before the Tax Appeals Commission by way of appeal by the Appellant, pursuant to section 146(1) of the Finance Act, 2001, as amended, against the decision of the Respondent made on the **DATE REDACTED** 2015.
6. The sole issue for determination on this appeal is the Open Market Selling Price of the Appellant's vehicle as of the **DATE REDACTED** 2015.

**C. Relevant legislation**

7. Section 135D of the Finance Act, 1992, as amended, provided as follows as of the date of export of the Appellant's motor vehicle:-



- (1) *The Commissioners may repay to a person an amount calculated in accordance with this section of vehicle registration tax based on the open market selling price of a vehicle which has been removed from the State, where–*
- (a) the vehicle is a category M1 vehicle,*
  - (b) the vehicle has been registered under section 131 and the vehicle registration tax has been paid,*
  - (c) the vehicle was, immediately prior to being so removed, registered under section 131,*
  - (d) within 30 days prior to being so removed–*
    - (i) the vehicle and any documentation to which paragraph (b) or (c) relates, and*
    - (ii) where applicable, a valid test certificate within the meaning of the Road Traffic (National Car Test) Regulations 2014 (S.I. No. 322 of 2014) in respect of the vehicle,**have been examined by a competent person and all relevant matters have been found by that person to be in order,*
  - (e) at the time of examination to which paragraph (d) relates, the open market selling price of the vehicle (being the price to which subsection (2) relates) is not less than €2,000, and*
  - (f) the requirements of subsection (3) have been complied with.*
- (2) *The amount of vehicle registration tax to be repaid shall–*
- (a) be calculated by reference to the open market selling price (being that price as determined by the Commissioners) of the vehicle at the time of the examination referred to in subsection (1)(d), and*



*(b) include an amount that is calculated by means of one or more than one formula or other means of calculation as may be prescribed by the Minister by regulations made by him or her under section 141.*

*(3) A claim for repayment for an amount of vehicle registration tax under this section shall be made in such manner and in such form as may be approved by the Commissioners for that purpose and shall be accompanied by–*

*(a) documentation to prove to the satisfaction of the Commissioners that the vehicle was removed from the State within 30 days of its examination under this section, and*

*(b) proof that the vehicle has subsequently been registered in another Member State or has been permanently exported outside the European Union.*

*(4) The amount of vehicle registration tax calculated for repayment under this section in respect of a vehicle shall be reduced to take account of–*

*(a) the net amount of any remission or repayment of that tax previously allowed on the vehicle under this Chapter, and*

*(b) an administration charge of €500.*

*(5) Any repayment of vehicle registration tax under this section shall be to the person named, at the time of the examination referred to in subsection (1)(d), on the records maintained under section 60 of the Finance Act 1993.*



***D. Submissions of the Parties***

8. I heard evidence from the Appellant and considered documents and submissions from both parties at the hearing of this appeal. I found the evidence of the Appellant to be truthful and accurate.
9. The evidence shows that the Appellant imported the motor vehicle from the United Kingdom on the **DATE REDACTED** 2003. The vehicle was assessed as having an Open Market Selling Price of €46,000 as of the date of import and so the Appellant paid VRT of €13,800. The Appellant sold the car in **DATE REDACTED** 2015 for GB£27,250, which was worth approximately €38,800 at the time.
10. The Appellant gave evidence, which I accept, that Morgan motor cars are rare in this jurisdiction; the Appellant estimated that there are 60 or 70 cars in Southern Ireland. The Morgan Motor Company has a long and proud history and to this day its cars are assembled by hand on ash frames, with each car being manufactured to the individual specification of each customer. Morgan cars can be fairly described as having a niche appeal and are likely to appeal to only the most committed of motoring enthusiasts. For this reason, the market for these motor cars is very limited in this jurisdiction, and this makes it difficult to readily identify comparators for the vehicle the subject matter of this appeal.
11. The Appellant testified that he/she had sought expert valuations from two dealers in classic and sports cars but both declined, on the basis that they had never sold a Morgan. The Appellant gave evidence that, in or around the time he/she sold his/her car, Ireland's only official Morgan dealer, **NAME REDACTED [MOTOR DEALERSHIP**



**A]** , had for sale a Morgan Plus 8 registered in 2002 for €62,500. Unfortunately, no written record of the advertisement of this car was available and, perhaps more importantly, there was no evidence available of the price for which this car was sold.

- 12.** The Appellant gave evidence that his/her motor car was superior to that offered for sale by **NAME REDACTED [MOTOR DEALERSHIP A]**; his/her car had been fitted with a bespoke exhaust system at a cost of some €3,000 and with stainless steel wheels.
- 13.** The Appellant further submitted that regard should be had to the asking price of similar cars in the United Kingdom market, and argued that the Open Market Selling Price of those cars in this jurisdiction could be extrapolated therefrom by converting their asking prices from pounds sterling to Euro and calculating the VRT payable thereon. The Respondent objected to this approach and submitted that the selling prices in the UK were not relevant. I agree with the Respondent that the difference between the car markets in the two jurisdictions, particularly when considering what might loosely be described as specialist cars, makes it inappropriate to have regard to asking prices in the UK, and I have not done so in determining this appeal.
- 14.** On the basis of the contentions outlined above, the Appellant argued that his/her motor vehicle had an Open Market Selling Price of €62,000 to €64,000 as of the **DATE REDACTED** 2015. If one were to accept the lower of these two valuations as correct, this would mean that the Appellant would potentially be entitled to a refund of VRT in the amount of €21,820, which is substantially in excess of the amount he/she paid in VRT after importing the vehicle. I put it to the Appellant in the course of the hearing that section 135D(1) entitled the Revenue Commissioners to “*repay*” VRT when a vehicle was removed from the State and that on an ordinary reading of the word



“repay”, the amount to be returned by the Revenue Commissioners on the export of a vehicle could not exceed the amount that had been paid when the vehicle had been imported. The Appellant accepted that this was the case.

15. The Respondent obtained and submitted in evidence two valuations of the motor vehicle as of the **DATE REDACTED** 2015. The first, from **NAME REDACTED [MOTOR DEALERSHIP B]**, valued the car at €35,000 and the second, from **NAME REDACTED [MOTOR DEALERSHIP C]**, valued the car at €30,000. The Respondent used the average of these two valuations, minus a 10% deduction to arrive at the Open Market Selling Price of €29,250 which was the subject matter of this appeal.

16. The Respondent further argued that regard should be had to the fact that the vehicle had an Open Market Selling Price of €46,000 when it was imported into the State in 2003, and that the Open Market Selling Price of €29,250 was more than reasonable when taking into account the 12 years’ wear and tear the car had undergone before export.

### ***E. Analysis and Findings***

17. It was accepted by the parties that the onus of proof was on the Appellant to satisfy me that the Respondent was incorrect in determining that the Open Market Selling Price of the vehicle as of the **DATE REDACTED** 2015 was €29,250.

18. I did not have sufficient evidence before me to accept as correct the primary comparator suggested by the Appellant, namely the 2002 Morgan Plus 8 offered for sale by **NAME REDACTED [MOTOR DEALERSHIP A]** for €62,500. Other than the recollection of the Appellant, I was not furnished with any record of the car being



offered for sale at that price, nor do I have any evidence in relation to the car's specification and mileage or the sale price actually achieved.

**19.** Furthermore, for the reasons outlined in paragraph 13 above, I do not believe that it would be proper or appropriate for me to have regard to the asking prices for similar cars offered for sale in the United Kingdom.

**20.** However, I can and do have regard to the two valuations tendered in evidence by the Revenue Commissioners. I do not accept Revenue's argument that there is no market in this jurisdiction for Morgan cars; the fact that the Morgan Motor Company has appointed a main dealer to sell their cars in Ireland, coupled with the fact that there are some 60 or so Morgan owners in the country, established that there is a market for the cars, albeit a limited one.

**21.** I believe that the higher of the two valuations submitted by Revenue, namely €35,000, is the appropriate starting point for determining the Open Market Selling Price of the Appellant's car. I also believe that the likely purchasers of a Morgan motor car are likely to be particularly sensitive to and appreciative of the individual specification of a car offered for sale in this market. I believe that the fact that the Appellant's car was equipped with a bespoke exhaust system and stainless steel wheels would have increased the attractiveness of the Appellant's car to a willing purchaser and would accordingly have resulted in an increase in the car's value. I value that increase in the amount of €1,500.

**22.** Having regard to all of the foregoing, I am satisfied and find as a material fact that the Open Market Selling Price of the Appellant's vehicle as of the **DATE REDACTED** 2015 was €36,500.





***F. Determination***

**23.** Having carefully considered all of the evidence before me and the submissions made by the parties, I will for the reasons outlined above allow the Appellant's appeal and determine that the Appellant is entitled pursuant to section 135D of the Finance Act 1992, as amended, to the repayment of Vehicle Registration Tax in the total sum of €12,640.

**APPEAL COMMISSIONER**

**March 2017**

