



27TACD2019

Between/

APPELLANT

Appellant

-v-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This matter comes before the Tax Appeals Commission by way of appeal pursuant to section 146 of the Finance Act, 2001 against a decision of the Respondent refusing the Appellant's application for 'transfer of residence' exemption from Vehicle Registration Tax ("**VRT**") pursuant to section 134(1)(a) of the Finance Act 1992, as amended.
2. The Appellant's application for relief was initially refused by the Respondent on the 11th of January 2017. The Appellant therefore paid VRT of €9,418 in respect of the vehicle and brought a first stage appeal against that refusal pursuant to section 145 of the Finance Act 2001, as amended. That first stage appeal was refused by the Respondent on the 7th of March 2017 and it is the Appellant's appeal against that decision which now comes before me for determination.

B. Facts relevant to the Appeal

3. The appeal was heard by me on the 12th of June 2019. I heard evidence from both the Appellant and her husband at the hearing, which I found to be truthful and accurate. I have also had the benefit of comprehensive and helpful written submissions from both the Appellant and the Respondent, and have had regard to the documentation submitted by the Appellant with her Notice of Appeal.
4. The Appellant was born in the United Kingdom and resided there continuously until the 14th of December 2016. She attended school and university in England and began working for **COMPANY A** in **COUNTY A** in September 2001. She worked continuously for that firm until the 31st of December 2016, and was made a director of the company in 2009.
5. In 2009, the Appellant married her husband, an Irishman who was then working in England. They initially resided in a tied house which her husband enjoyed as part of his employment. In June of 2010, the Appellant and her husband moved to **LOCATION B** in **COUNTY B**, which had the benefit of being close to both the Appellant's parents' home and to her place of work. The Appellant and her husband initially lived in rented accommodation but in October of 2010 the Appellant purchased a dwellinghouse at **ADDRESS REDACTED** by **LOCATION B**.
6. At about the same time, the Appellant's husband ceased working in England and returned to Ireland to work on the family farm, which he expected to ultimately take over. He is also involved in a business which acts as a **NATURE OF BUSINESS REDACTED**, which requires him to travel frequently to the United Kingdom. Since 2010, the Appellant's husband has resided at his family home in **COUNTY REDACTED**, where both he and the Appellant now live. Neither the Appellant nor her husband have purchased or rented any other residential property in Ireland during the relevant period.
7. The Appellant became pregnant with her first child in the early part of 2016. This, coupled with the proposed sale of the business for which she had worked since 2001, resulted in her deciding to move to Ireland. She gave evidence that her intention was to move to Ireland in the Spring of 2017.



8. The Appellant and her husband gave evidence, which I accept, that during the years between 2010 and 2016 inclusive, he frequently travelled to England and she frequently travelled to Ireland in order to spend time together. I was furnished with a detailed table, evidenced by copies of plane and ferry tickets, showing that in the 12 months prior to the 14th of December 2016, the Appellant travelled to Ireland on 14 occasions and spent 145 days in Ireland during those 12 months. During the same 12-month period, the Appellant's husband travelled to England from Ireland on 14 occasions and spent some 67 days in England.
9. The Appellant put her house in **LOCATION B** on the market in June of 2016, and anticipated that the sale would take at least 6 months to complete. As it transpired, the Appellant received a satisfactory offer for her house the day after it went on the market, and the sale was completed by the 29th of July 2016. The Appellant therefore went to live with her parents in **LOCATION C** for the remainder of her time in England.
10. The Appellant purchased the motor vehicle the subject of this appeal, a **MAKE AND MODEL OF VEHICLE REDACTED**, on the 11th of June 2016. She gave evidence that it was her intention to export this vehicle to Ireland, availing of the transfer of residence exemption, when she moved to Ireland the following Spring. Consistent with this intention, she purchased insurance and paid UK Vehicle Tax in respect of the car for a period of 12 months.
11. The initial medical care of the Appellant in the course of her pregnancy took place in England. A particular medical issue meant that the Appellant could no longer travel back and forth between Ireland and England and she therefore decided to have her child in Ireland. She travelled to Ireland on the 31st of August 2016 and her child was born here the following month.
12. The Appellant spent some 80 days in Ireland before and after the birth of her child. While she was in Ireland, the vehicle the subject matter of this appeal remained at her parents' home and was not used by anyone else in her absence. She returned to England twice more thereafter before moving to Ireland, and importing the vehicle, on the 14th of December 2016. During the 6 months prior to the 14th of December 2016, the Appellant was the only person to use the vehicle and she drove approximately 2,500 miles during this period.

13. The Appellant ceased her employment with **COMPANY A** on the 31st of December 2016.

C. Relevant Legislation

14. Section 134(1)(a) of the Finance Act 1992, as amended, provides as follows:-

(1) A vehicle may, subject to any conditions, restrictions or limitations prescribed by the Minister by regulations made by him under section 141, be registered without payment of vehicle registration tax if the vehicle is –

(a) the personal property of a private individual and is being brought permanently into the State by the individual when he is transferring his normal residence from a place outside the State to a place in the State...

15. Regulation 3(1) of the Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993 (S.I No. 59/1993) (hereinafter “**the Regulations**”) defines “normal residence” for the purposes of those Regulations as follows:-

“normal residence” means the place where a person usually lives, that is to say, where he lives for at least 185 days in each year, because of personal and occupational ties, or, in the case of a person with no occupational ties, because of personal ties.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in 2 or more countries shall be regarded as being the place of his personal ties:

Provided that such person returns to the place of his personal ties regularly. This proviso shall not apply where the person is living in a country in order to carry out a task of a duration of less than one year...”

16. Regulation 4(1) of the Regulations then provides as follows:-

(1) Subject to paragraph (5), the relief under section 134 (1) (a) of the Act shall be granted for any vehicle -



- (a) which is the personal property of an individual transferring his normal residence to the State and which has been in the possession of and used by him outside the State for a period of at least six months before the date on which he ceases to have his normal residence outside the State,*
- (b) which has been acquired under the general conditions of taxation in force in the domestic market of a country and which is not the subject, on the grounds of exportation or departure from that country, of any exemption from or refund of value-added tax, excise duty or any other consumption tax, and*
- (c) in respect of which an application for relief, in such form as may be specified by the Commissioners, is made to the Commissioners not later than the next working day following its arrival in the State or, in case the vehicle requires the making of a customs entry on arrival in the State, not later than the next working day after its release from customs control.*

D. Submissions of the Parties

- 17.** The Appellant argues that her place of normal residence prior to the 14th of December 2016 was England, and that she meets all the other eligibility criteria for the transfer of residence relief, including the requirement that the vehicle be in her possession and used by her outside the State for a period of at least 6 months prior to the 14th of December 2016.
- 18.** The Respondent's argument in response is two-fold. Firstly, the Respondent submits that the Appellant's normal residence for some time prior to the 14th of December 2016 was in fact Ireland, and not England. They submit that the proper interpretation of the Regulations means that the 185-day rule can be negated in the case of a person whose occupational ties are in a different place to their personal ties. In the instant case, they argue that the Appellant's personal ties were in Ireland because this was where her husband now lived and where she intended to live, that the Appellant regularly returned to Ireland, and that Ireland had become the Appellant's place of normal residence, notwithstanding that her occupational ties were in England.



19. Secondly, the Respondent argues that even if they are incorrect in relation to the Appellant's place of normal residence, the Appellant is not entitled to the exemption because the vehicle was not used by her outside the State for a period of at least 6 months prior to her ceasing to live in England. The Respondent accepts that the vehicle was in the possession of the Appellant for the requisite period of 6 months prior to the 14th of December 2016 but argues that, because the Appellant spent some 99 days in Ireland during those 6 months, she cannot be said to have used the vehicle in England for 6 months.
20. The Respondent accepted in written submissions and at the hearing before me that, other than the two matters aforesaid, the Appellant satisfies the statutory criteria for exemption from VRT contained in the Regulations.

E. Analysis and findings

21. The first issue which requires determination is whether the Appellant's normal residence, within the meaning of the Regulations, during the period prior to the 14th of December 2016 was in England, as she contends, or in Ireland, as contended for by the Respondent.
22. One can understand why the Respondent took the view that Ireland had become the place of the Appellant's personal ties, in circumstances where **(a)** her husband has lived in this country since 2010, **(b)** the Appellant formed the intention in the early part of 2016 to move to this country, and **(c)** the Appellant made numerous visits to this country, spending some 145 days in the State over the course of 14 visits during the 12 months preceding her departure from England in December 2016.
23. However, I believe it is also relevant to have regard to the following considerations:-
- (a)** The Appellant was born and raised in England;
 - (b)** All of the Appellant's primary, secondary and tertiary education took place in England;
 - (c)** The Appellant's parents and siblings live in England;
 - (d)** The residential property purchased by the Appellant and in which she lived until the end of July 2016 was in England;



- (e) On the sale of that property, she went to live with her parents in a village where one of her siblings also resided;
- (f) The Appellant's intention was to continue to live in England until her house had been sold and the sale of her employer's business had been completed, which she believed would take until the Spring of 2017; and,
- (g) While the Appellant did make some 14 visits to Ireland during the 12 months prior to the 14th of December 2016, her husband equally made 14 visits to England during the same time period.

24. Having carefully considered all of the relevant evidence and submissions, I am satisfied that the place of the Appellant's personal ties up to the 14th of December 2016 was England, and not Ireland. As it is not in dispute that England was also the place of the Appellant's occupational ties, and because she spent more than 185 days in England during the relevant 12-month period, it follows inexorably that the Appellant's normal residence prior to the 14th of December 2016, for the purposes of Regulations, was in England, and I so find as a material fact.
25. The second issue which I am required to determine is whether the vehicle the subject of this appeal was used by the Appellant outside the State for a period of at least 6 months prior to the 14th of December 2016, as required by Regulation 4(1).
26. As has been noted in previous Determinations of the Tax Appeals Commission, the Regulations do not specify what precisely constitutes a vehicle being "used". In particular, the Regulations do not indicate what type, degree, frequency or regularity of use is required.
27. I note and agree with the Determination of this Commission reported at **10TACD2019**, which was more recently applied in the Determination reported at **19TACD2019**. The relevant paragraphs in the earlier Determination are 20, 25 and 26, which state as follows:-
- "20. I am satisfied that it is appropriate to apply a literal interpretation in respect of the expression 'in the possession of and used by for a period of at least 6 months...' and that the words therein should be afforded their ordinary and natural meaning. A stipulation in relation to the quantum of use required by the expression is notably absent from the regulation. Thus the level of use required is one that could be considered reasonable in the circumstances.*



Moreover, reasonable use will allow for reasonable absences. The concept of reasonable use of a vehicle in the context of paragraph 4 of S.I. 59/1993 is one which must account for differences in use across a spectrum of taxpayers and which should engage a common sense approach.

...

25. In my view, a literal interpretation of the wording contained in paragraph 4(a) of S.I. 59/1993, in particular the expression 'in the possession of and used by for a period of at least six months...' means that a vehicle owner who wishes to avail of the relief will be required to demonstrate reasonable use of his/her vehicle over the stipulated six-month period and in this regard absences will be permissible, if reasonable. It is not necessary to invoke section 5(2) of the Interpretation Act as paragraph 4(a) of the regulation is neither obscure nor ambiguous nor, on a literal interpretation does it fail to reflect the plain intention of the instrument as a whole.

26. I do not consider that the legislature intended to burden the Respondent with the Responsibility of scrutinising taxpayers' holidays to the extent contended for by the Respondent and in my view such an interpretation, if it were to be applied, would fail to reflect the plain intention of the instrument as a whole in the context of the enactment, thus permitting an adjudicator to invoke section 5(2) of the 2005 Act. If it were necessary to apply section 5(2) of the 2005 Act, I consider that the construction which would reflect the plain intention of the legislature is a construction which would require reasonable use of the vehicle during the six-month statutory period contained in paragraph 4 of S.I. 59/1993."

28. Adopting and applying the foregoing statements of principle, it is necessary for me to consider whether the Appellant's use of the vehicle during the 6 months prior to the 14th of December 2016 was reasonable in all the circumstances, making allowance for reasonable absences.

29. At first glance, the fact that the Appellant was absent from England for some 99 days out of the 185 days during that 6-month period, and consequently did not drive the vehicle on those days, might seem to be some way beyond what might be considered reasonable. However, I believe that regard can and should be had to the fact that the large majority of the Appellant's absence from England was caused by the fact that a

medical condition during her pregnancy meant that she could no longer travel backwards and forwards between the two countries. The Appellant therefore decided to have her child in Ireland, travelled to Ireland on the 31st of August 2016 and gave birth to her child the following month, before returning to England on the 19th of November. This resulted in her being in Ireland for a continuous period of 80 days. I believe that this absence from England was, having regard to the underlying reasons for same, a reasonable absence in all the circumstances.

30. I have also had regard to the fact that while the Appellant was in Ireland during that 6-month period, the vehicle was taxed and insured in the Appellant's name. It was kept behind a locked gate at the Appellant's parents' home and was not used by any other person while she was in Ireland. I also note the Appellant's uncontested evidence that during the time she was in England during those 6 months, she drove approximately 2,500 miles in the car.

31. Having carefully considered all of the relevant evidence and submissions, I am satisfied and find as a material fact that, notwithstanding the Appellant's presence in the State for a considerable portion of the relevant statutory period, the vehicle the subject matter of this appeal was in the possession of and used by the Appellant outside the State for a period of at least 6 months before the date on which she ceased to have her normal residence outside the State.

F. Conclusion

32. For the reasons outlined above, I find that:-

- (a)** The Appellant's place of normal residence, within the meaning and for the purposes of the Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993, was outside the State until the 14th of December 2016.
- (b)** The vehicle the subject matter of this appeal was in the possession of and used by the Appellant outside the State for a period of at least 6 months before the date on which she ceased to have her normal residence outside the State.
- (c)** Accordingly, the Appellant meets the criteria for relief set forth in Regulation 4(1) of the Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993.



(d) The Appellant is therefore entitled to avail of the transfer of residence exemption from Vehicle Registration Tax pursuant to section 134(1)(a) of the Finance Act 1992, as amended.

33. I therefore allow the Appellant's appeal and determine in accordance with section 949AL(1) of the Taxes Consolidation Act, 1997, as amended, that the decisions of the Respondent made on the 11th of January and the 7th of March 2017 should be varied so as to allow the Appellant exemption from Vehicle Registration Tax pursuant to section 134(1)(a) of the Finance Act 1992, as amended. The sum of €9,418 paid by the Appellant as VRT should in consequence be refunded to her.

MARK O'MAHONY
APPEAL COMMISSIONER
12 June 2019