



47TACD2022

Between

██████████

**Appellant**

and

**REVENUE COMMISSIONERS**

**Respondent**

---

**Determination**

---

**Introduction**

1. This is an appeal of the decision of the Revenue Commissioners (“the Respondent”) of 9 July 2021 refusing the Appellant’s application for an exemption from Vehicle Registration Tax (“VRT”) arising from his transfer of normal residence.
2. This appeal has been adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act 1997.
3. The amount of VRT at issue is €4,543.00.

**Background**

4. From a point in 2014 to October 2020 the Appellant lived and worked in the United Kingdom (UK), having lived before that time in the State.
5. In August 2020 the Appellant purchased a United Kingdom registered 2017 ██████████ (“the vehicle”) for the sum of £17,399.00. He says that this was his family’s second car, bought because the Covid-19 restrictions then in place meant that it was not possible to rely on public transport to the same extent as before.

6. On 27 October 2020, the Appellant returned to the State, bringing with him the vehicle purchased a little over two months previously. He states that he returned because his parents became seriously ill from Covid-19 and were being treated in intensive care.
7. The Appellant also states that it was not his intention to transfer his residence to the State because he planned to accept an offer of employment that would require him to be based in Northern Ireland. However, he maintains that after returning to the State, the terms of his employment changed unexpectedly such that it was possible to live in the State after all.
8. The Appellant applied for an exemption based on his transfer of normal residence on 18 February 2021. As the vehicle had been purchased less than 6 months before the move, the Respondent asked that he provide material that might establish the existence of extenuating circumstances that would permit it to make an exception from VRT under the care and management provision in section 253 of the Finance Act 1992, as amended. While the Appellant did not provide any supporting material along with this appeal relating to the illnesses suffered by his parents, he did furnish registration documents proving the purchase and ownership of the vehicle, tickets for his return by sea, proof of address in the State and the UK and a letter of 16 March 2021 from his employer, which states:-

*I am writing to confirm a few points on your new position, firstly may I apologise in the delay in issuing your start date. We are now correcting this and I will confirm this with you in the coming days.*

*Your new role will require you to be available to work throughout Southern Ireland to grow our business and it will also require at least 2 days per week in the [REDACTED] in Belfast. As you are aware there will be travel throughout the UK and further afield depending on the requirements for the business on a frequent basis also.*

*I trust this is not news to you knowing your previous experience, I will be in touch soon to discuss further."*

9. On 13 April 2021, the Respondent refused to make an exception to the requirement to charge VRT on the grounds that the supporting material submitted to the application was inadequate. This was appealed by the Appellant to the Respondent, which gave the decision that is now under appeal to the Commission on 9 July 2021. The reason given for refusal on this occasion was that the vehicle was purchased less than six months prior to the transfer of residence.

## Legislation and Guidelines

10. Under section 132 of the Finance Act 1992, as amended, the Respondent is required to charge VRT on the registration of a vehicle.

11. Section 134(1) of the Finance Act 1992, as amended, provides however that:-

*“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*

12. Regulation 3 of the Vehicle Registration Tax (Permanent Reliefs) Regulations 1993 (“the VRT Relief Regulations”) made by the Minister for Finance under the power given to him by section 141(3) of the Finance Act 1992, as amended, defines “normal residence” as:-

*“...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.”<sup>1</sup>*

13. Regulation 4(1) of the VRT Relief Regulations provides that the transfer of normal residence relief set out in section 134(1)(a):-

*“...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”*

14. Regulation 4(3) of the VRT Relief Regulations provides:-

*“Proof shall be supplied to the Commissioners within one month of the date of the application for the relief aforesaid that the conditions specified in paragraph (1) of this Regulation have been complied with. The proof shall consist of—*

*(a) a sales invoice, receipt of purchase, or other similar document, which clearly establishes, where relevant, that any value-added tax, excise duty or other*

---

<sup>1</sup> S.I. 59/1993

*consumption tax payable on the vehicle concerned outside the State was paid and not refunded,*

*(b) in relation to the possession of and use of the vehicle by the person concerned for the appropriate period aforesaid, the vehicle registration document and insurance certificates for the vehicle,*

*(c) in relation to normal residence outside the State, documents relating to the acquisition of property, or to employment or cessation of employment, or to other transactions carried out in the course of day-to-day living,*

*(d) in relation to the transfer of normal residence to a place in the State, documents relating to the disposal of property in the country of departure and the acquisition of property in the State or to employment (including statements in writing from the person's employer in the State), and*

*(e) evidence of the date on which the vehicle was brought into the State,*

*and, in addition to the foregoing or in substitution for it or any of it, any other documentary evidence the Commissioners require or accept.”*

15. Section 253 of the Finance Act 1992, amended, provides:-

*“All taxes and duties (except the excise duties on mechanically propelled vehicles imposed by section 163) imposed by this Act are hereby placed under the care and management of the Revenue Commissioners.”*

16. Paragraph 2.1.3 of the Respondent's “VRT Manual Section 02 – Reliefs and Exemption” (“the VRT Reliefs Manual”) is entitled “Proof of Eligibility for Transfer of Residence relief” and states:-

*“The onus of proof is always on the applicant claiming relief. Such proof must be of a written/documentary and original nature and must be supplied at the time an application claiming relief is made. Where considered necessary, additional documentation/evidence should be requested. However, this request should only be made after the application has been refused. The applicant should be informed that the vehicle should be registered and when the additional documentation is submitted, and the relief is granted any VRT paid will be refunded.”*

17. Paragraph 2.1.5 of the VRT Reliefs Manual is entitled “Extenuating Circumstances” and states:-

*“Circumstances can arise where a transfer of residence is forced on an individual at a time when his/her vehicle will not have been in his/her possession and use for the*

*required 6- month period 5. TOR relief in such cases may be allowed where evidence is available that a transfer of residence could not have been foreseen by the applicant when the vehicle was acquired. In such cases, the following guidelines should be observed*

- *relief may only be allowed by an officer at the grade of Principal Officer or higher;*
- *the bona fides of the transfer of residence should be clearly established;*
- *the applicant should provide conclusive evidence that the transfer could not have been foreseen at the time the vehicle was acquired, or that the acquisition of the vehicle was because of force majeure. Some typical examples of this include:*
  - *an unexpected offer of employment - the emphasis here should be placed on the unexpected nature of the offer, e.g. if negotiations for the position were underway at the time the vehicle was acquired or an application for promotion was made, the application should be refused;*
  - *loss of employment abroad;*
  - *deterioration in health;*
  - *family bereavement;*
  - *change of vehicle forced on an applicant because the original qualifying vehicle was crashed/stolen (and not recovered);*
  - *other special circumstances including clearly justified cases arising from political upheaval in the country of former residence.”*

*However, the vehicle should have been in the possession and use of the applicant for at least 3 months, except in cases of hardship such as the replacement of a crashed/stolen vehicle. Relief in the case of extenuating circumstances is permitted in order to give effect to the discretion available to the Commissioners under the care and management provisions in Finance legislation. Where enquiries regarding the transfer of residence provisions are received, the information to be given is that set out in the legislation.*

*In dealing with applications, Principal Officers may take other considerations into account, as appropriate, e.g. the length of time a person has spent abroad, the extent of upgrading of the replacement vehicle etc, where considered relevant. Appropriate*

*documentation confirming the “exceptional circumstances” should be sought from the applicant”.*

## **MATERIAL FACTS FOUND**

18. The Commissioner having reviewed the documentation provided makes the following material findings of fact:-

- The Appellant moved from the State to reside in the United Kingdom on or about 2014.
- In August 2020, the Appellant purchased the vehicle in the United Kingdom.
- The Appellant returned to the State a little over two months later on or about 27 October 2021, bringing with him the vehicle.
- At some point around the time of the Appellant’s return he was offered a position with a Northern Ireland based company.
- The Appellant applied for a VRT exemption on 18 February 2021. This was initially refused by the Respondent on 13 April 2021. The Respondent affirmed this refusal on appeal on 9 July 2021. This is the decision under appeal.

## **Submissions and Analysis**

19. It is not in dispute that the Appellant purchased the vehicle a little over two months prior to his return from the UK, inside the six month period specified in the VRT Relief Regulations 1993 for the granting of relief. The Appellant maintains that the Respondent should have granted him an exception from the requirement to pay VRT because his return to the State was unforeseen at the time of purchase. Furthermore, when he did return to the State he intended to live in Northern Ireland as that was where his employment was based and where the bulk of his responsibilities would lie. It was only at a later point that it became clear to him that the nature of his work would permit him to have his normal residence in the State.

20. The Respondent’s submission is that because the vehicle was purchased less than six months prior to the transfer of residence it was incumbent on the Appellant to provide sufficient evidence of “extenuating circumstances” that would warrant the exercise of the discretion conferred on it by section 253 of the Finance Act 1992, as amended, to grant relief from VRT. The Respondent submits that the Appellant failed to do so.

21. Section 134(1)(a) of the Finance Act 1992, as amended, allows for the granting of relief from VRT where the vehicle in question is the personal property of the person transferring residence from a place outside the State to a place inside the State. This, however, is stated to be “...*subject to any conditions, restrictions or limitations prescribed by the Minister by regulations made by him under section 141*”.
22. In making Regulation 4 of the VRT Relief Regulations, the Minister chose to exercise his power to impose as a condition, limitation or restriction that, in order to depart from the normal rule that all vehicles must be charged VRT, a vehicle must be in the possession of a person for at least six months before the transfer of residence. Section 253 of the Finance Act 1992, as amended, however confers on the Respondent discretion to make an exception in the care and management of taxes and duties. As the Respondent stated in its Statement of Case, it is prepared normally to make an exception where evidence is provided that gives sufficient assurance that a transfer was forced on a person unexpectedly. This also is reflected in its VRT Relief Manual.
23. The burden of proof in this appeal rests with the Appellant, who must prove on the balance of probabilities that the disputed tax is not payable, as confirmed by Charleton J. in ***Menolly Homes Ltd –v- Appeal Commissioners [2010] IEHC 49***. The Commissioner finds that the evidence provided by the Appellant in support of its appeal does not show that a move was forced upon him less than six months before the purchase of the vehicle, nor that at the time he returned he did not intend to take up normal residence in the State. No supporting material has been provided concerning the illness suffered by the Appellant’s parents. In relation to the Appellant’s employment, it is not apparent from the letter furnished whether the job was offered before or after the Appellant’s return to the State. Moreover, there is nothing in it that makes clear that the original terms of his employment were such that he needed to base himself in Belfast, as claimed. Due to the absence of this information, the Commissioner accepts the Respondent’s submission that the Appellant has failed to show extenuating circumstances that would warrant departure from the usual six month rule prescribed by the Minister in Regulation 4 of the VRT Relief Regulations.

### **Determination**

24. The Commissioner having considered the information provided finds that the Appellant has not supported his application for an exemption to VRT. Hence, his appeal in this instance fails. The Commissioner appreciates that the Appellant may be disappointed with this decision but the Appellant was correct to seek confirmation of his legal rights.

25. This appeal is determined in accordance with section 949AL TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 21 days of receipt in accordance with the provisions set out in the TCA 1997.

A handwritten signature in black ink, appearing to read 'COHiggins', is positioned above the printed name.

Conor O'Higgins  
Appeal Commissioner  
Date 11<sup>th</sup> February 2022