



52TACD2019

BETWEEN/

Appellant

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to the importation of a vehicle into the State by the Appellant and to the imposition of Vehicle Registration Tax ('VRT') and in particular, the availability of relief pursuant to section 134(1)(a) of the Finance Act 1992, as amended and paragraph 4 of Statutory Instrument no. 59/1993 (Vehicle Registration Tax (Permanent Reliefs) Regulation 1993), which relief is commonly referred to as '*transfer of residence relief*'.
2. In March 2018, the Appellant's application for transfer of residence relief was refused by the Respondent, and the Appellant paid VRT of €1,105. On 27 April 2018, the Appellant appealed to the Tax Appeals Commission seeking a repayment of VRT on grounds that he was entitled to avail of the transfer of residence relief.
3. This appeal is determined in accordance with section 949U of the Taxes Consolidation Act 1997 ('TCA 1997'), as amended.

Background

4. On 1 July 2017, the Appellant, a UK resident, purchased a car in the UK. The Appellant brought the vehicle into the State on 14 January 2018 (6 months and 13 days after purchase). The Appellant asserted that he took up normal residence in the State on 15 January 2018. The Appellant applied for transfer of residence relief in accordance with section 134(1)(a) of the Finance Act 1992, as amended and paragraph 4 of Statutory Instrument no. 59/1993.
5. The Respondent accepted that the Appellant's '*normal residence*' for the purposes of the VRT legislation was the UK but refused the transfer of residence relief on the basis that paragraph 4(1)(a) of S.I. 59/1993 required the vehicle to be in the possession of and used by the Appellant for a six-month period prior to relocation; that the Appellant, having purchased the vehicle on 1 July 2017 and having relocated to the State to begin employment in Ireland on 30 August 2017, the Appellant had not used the vehicle for the requisite six month period and therefore, could not satisfy the requirements of the relief and was not entitled to avail of the relief.
6. The Respondent refused to repay the VRT of €1,105. The Appellant duly appealed.

Legislation

Section 134(1)(a) of Finance Act 1992, as amended.

"(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,"

Statutory Instrument No. 59/1993, Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993

"3. (1) In these Regulations-



" the Act" means the Finance Act, 1992 (No. 9 of 1992);

"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"

...

Transfer of Residence

"4. (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 (emphasis added)

(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 any 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 seven days] 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 seven days after its release from customs control.

...

(3) 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 compiled 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



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.

(4) A vehicle in respect of which the relief aforesaid is claimed shall be produced to the Commissioners for examination."

....

Submissions and Analysis

7. The facts of this appeal are not in dispute.
8. The Appellant submitted that he qualified for transfer of residence relief when he presented the vehicle in March 2018 as he '*now had owned it for over 8 months*'. The Appellant submitted that the vehicle was in the UK between July 2017 and January 2018. The Appellant stated that the vehicle was used by him on return trips to the UK in that period.
9. Section 4(1)(a) of the Statutory Instrument No 59 of 1993 states that relief 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,” [emphasis added]

10. A recent determination of this Commission, determination 10TACD2019, considered the meaning of the requirement of use, contained in Section 4(1)(a) of S.I. 59/1993 above. An excerpt from that determination at paragraphs 20 and 25, provides as follows;

‘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.’

....

In my view, a literal interpretation of the wording contained in paragraph 4(1)(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.’

11. One of the conditions of transfer of residence relief is that the vehicle is ‘used by’ the taxpayer outside the State for a period of at least six months prior to the date on which the taxpayer ceases to have his/her normal residence outside the State.
12. The Appellant in the within appeal submitted that he used the vehicle in the UK during the six-month statutory period. The Appellant stated that his normal residence



continued to be in the UK until such time as he transferred his normal residence to Ireland on 15 January 2018. He also asserted that even though he moved to Ireland to take up employment on 30 August 2017, this employment was probationary until the time that he transferred his normal residence. Between 30 August 2017 and 15 January 2018, he maintained his interests in the UK, visited there regularly and used the car on his regular visits.

The Respondent stated in correspondence with the Appellant

“while you were the registered owner of the vehicle, you did not have use of it as you were not entirely resident in the UK for the six-month period prior to you transferring your residence to the state i.e. you began employment in the state 30/8/2017”.

13. The vehicle, the subject matter of the relief claim, had clearly been used during the six months prior to his change of normal residence. However, given that the Appellant was working full time in Ireland, albeit on a probationary contract, I do not accept that the Appellant has shown that the vehicle has been ‘used by’ the Appellant outside the State for a period of at least six months prior to the date (15 January 2018) on which he ceased to have his normal residence outside the State. As a result, the Appellant is unable to satisfy the conditions of the transfer of residence relief and is thus unable to avail of the relief.
14. 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 relevant tax is not payable. In *Menolly Homes Ltd v Appeal Commissioners and another*, [2010] IEHC 49, at para. 22, Charleton J. stated: *‘The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer.*

Conclusion

15. For the reasons set out above I determine that the Appellant has not satisfied the requisite statutory conditions in respect of transfer of residence relief pursuant to section 134(1)(a) of the Finance Act 1992 and S.I. No. 59/1993 and as a result, I





determine that the Appellant is not entitled to avail of the relief and is therefore not entitled to a repayment of VRT.

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

PAUL CUMMINS
APPEAL COMMISSIONER
31 October 2019

