



**39TACD2019**

**BETWEEN/**

**APPELLANT**

**Appellant**

**V**

**THE REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This appeal relates to the availability of relief from Vehicle Registration Tax ("VRT") in accordance with section 134(1)(a) of the Finance Act 1992, as amended and Statutory Instrument No. 59/1993 - Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993, hereafter referred to as '*transfer of residence relief*'. The application for exemption was refused by the Respondent. The appellant appealed the refusal to the Respondent, pursuant to section 145 of the Finance Act 2001. The refusal was upheld by the Respondent by letter dated 08 September 2017. The Appellant duly appealed the decision to the Tax Appeals Commission pursuant to section 146 of the Finance Act 2001.
2. This appeal is determined in accordance with section 949U Taxes Consolidation Act 1997.

## Background

3. The Appellant purchased the vehicle the subject of the appeal from a dealer in Northern Ireland in December 2016.
4. The Appellant submitted a completed 'Transfer of Residence' form to the Office of the Revenue Commissioners, signed and dated 08 June 2017, in order to claim relief from the VRT payable on the importation of the vehicle. The application was refused by the Respondent. The Appellant duly appealed to the Respondent and was notified by letter dated 08 September 2017 that insufficient evidence had been submitted to prove that he had owned and used the vehicle for six months before transferring his residence to the State and as a consequence his appeal was unsuccessful. In October 2017 the Appellant appealed this decision to the Tax Appeals Commission.
5. The vehicle was registered by the Appellant at the National Car Testing Service ("NCTS") on 10 July 2017. A VRT amount of €7,200 was charged on registration of the vehicle plus an additional VRT amount of €338 for late registration of the vehicle. The Appellant paid the full amount of €7,538. The Appellant seeks a repayment of the full VRT amount paid.
6. The Appellant submits that he resided in the UK until 29 May 2017, on which date he transferred his residence to the State. The Appellant further submits that as he resided in the UK for six months after he purchased the vehicle that he is entitled to claim relief from VRT on the importation of the vehicle when he permanently transferred his residence to the State. In support of his submission the Appellant furnished documentation including *inter alia*, copies of ferry boarding cards, a copy of an electricity bill, a copy of a bank statement summary, a copy of a letter from HM Revenue & Customs, copies of parking tickets and a copy of the certificate of motor insurance for the vehicle the subject of the appeal.
7. The Respondent submits that the Appellant purchased the vehicle on 18 November 2016 and applied for relief from VRT on 08 June 2017, stating in his application that he had transferred his residence to Ireland on 29 January 2016, some sixteen months earlier than submitted by the Appellant. The Respondent further submits that the application was refused on the basis that the Appellant was not in possession of the vehicle for six months prior to transferring his residence as required by S.I No. 59/1993.



8. The Respondent submits that a notice of appeal against this decision was received by the Respondent from the Appellant. The Respondent further submits that the Appellant in later correspondence contended that the date of transfer of residence on the application form was incorrect and that the correct date of transfer of residence was 29 May 2017. The Respondent submits that the Appellant failed to provide sufficient documentation to show that he resided in the UK for six months after he purchased the vehicle and consequently his appeal was refused.

### **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.*

*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*

...

#### *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*

*(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 the 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 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.*

... etc

#### **Submissions and Analysis**

9. The exemption pursuant to section 134(1)(a) of the Finance Act 1992, as amended, provides that a vehicle may be registered without payment of vehicle registration tax if the vehicle is brought permanently into the State by the individual and the vehicle *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 ceased to have his normal residence outside the State.* This appeal is concerned with the net issue of *when* the appellant transferred his normal residence and whether the Appellant had been in possession of the vehicle for



the requisite period prior to transferring his normal residence. The Appellant submitted that he transferred his normal residence to the State on 29 May 2017.

10. The Appellant has indicated in the 'Transfer of Residence' form that the date of registration of the vehicle in the Appellants name was 18 December 2016. The Appellant has furnished a copy of the order document in respect of the purchase of the vehicle. The order states that the date of order of the vehicle was 05 December 2016. Notwithstanding that the Respondent in their submission has stated that the vehicle was purchased on 18 November 2016, I accept the Appellants submission that the date of purchase of the vehicle for the purposes of this determination is 18 December 2016.
11. The Appellant contends that he returned to Ireland for visits on a number of occasions between January 2016 and May 2017 but that he did not permanently transfer his residence from the UK to the State until 29 May 2017. The Appellant further contends (per his transfer of residence application form) that he normally resided at an address in the UK before transferring his residence to the State.
12. In support of his assertion that he resided in the UK until 29 May 2017 the Appellant furnished a number of documents. A summary of the documentation furnished is as follows:
  - a. A copy of a ferry boarding card from Dublin to Holyhead dated 22 May 2017 and another from Holyhead to Dublin dated 26 January 2017.
  - b. A copy of a certificate of UK motor insurance for the vehicle the subject of the appeal, with a commencement date of 02 February 2017. The certificate does not show the address at which the vehicle was insured.
  - c. An electricity bill dated 22 July 2017 issued to him at an address in the UK.
  - d. A bank statement summary issued to the Appellant at his UK address in respect of the period 16 March 2016 to 15 April 2016.
  - e. A copy of a HM Revenue and Customs self-assessment statement dated 07 December 2015 issued to the Appellant at his UK address.
  - f. A copy of a HM Revenue and Customs demand letter dated 12 September 2017 issued to the Appellant at an address in Ireland.
  - g. Copies of parking tickets as follows: One for parking in London on 24 Jan 2017, one for parking near Holyhead on 24 May 2017 and one for parking at Dublin Port on 31 May 2017.



13. In addition, the Appellant has furnished a copy of the completed 'Transfer of Residence' form on which the Appellant has signed a declaration stating that he transferred his residence from the UK on 29 January 2016. This date is at odds with the Appellants assertion that he transferred his residence on 29 May 2017 and predates the purchase of the vehicle. The Appellant did not address this discrepancy in his submissions.
14. Having regard to the facts, submissions and legislation detailed above, it is clear that in order to succeed in his appeal, the Appellant must satisfy me that he resided in the UK for six months after he purchased the vehicle i.e. until the end of May 2017. It is my view that none of the documents submitted significantly assist the Appellant in this regard.

### **Conclusion**

15. 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".*

16. While the Appellant contended that the vehicle was in his possession for a period of at least six months outside of the State thereby entitling him to a VRT exemption, the Appellant failed to adduce sufficient evidence in support of this contention and thus failed to discharge the burden of proof.
17. For this reason 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.





This appeal is hereby determined in accordance with section 949AL Taxes Consolidation Act 1997.

**PAUL CUMMINS**

**APPEAL COMMISSIONER**

**25 September 2019**

