



19TACD2019

BETWEEN/

NAME REDACTED

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to 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 April 2018, the Appellant's application for transfer of residence relief was refused by the Respondent, and the Appellant paid VRT of €2,584. On 20 April 2018, the Appellant appealed to the Tax Appeals Commission seeking a repayment of VRT on grounds that she 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, as amended ('TCA 1997').

Background

4. On 18 July 2017, the Appellant, a UK resident, purchased in the UK, a 2016 Honda Jazz, registration number, [REDACTED]. The Appellant relocated to the State on 8 September 2017. 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 and that the Appellant, having purchased the vehicle on 18 July 2017 and having relocated to the State on 8 September 2017, could not satisfy the requirements of the relief and was not entitled to avail of the relief.
6. On refusal of the relief the Appellant returned the vehicle to the UK, cancelled the vehicle's UK insurance and kept the vehicle off the road until 4 March 2018. During this period the Appellant resided in Ireland and purchased an alternative vehicle. On 4 March 2018, the Appellant brought the vehicle, the subject matter of this appeal, into the State and on 5 April 2018 the Appellant presented the vehicle for a second time at the VRT centre and applied for transfer of residence relief.
7. On this occasion, the relief was refused by the Respondent on the basis that paragraph 4(1)(a) of S.I. 59/1993 required that the vehicle be '*used by*' the Appellant outside the State for a period of at least six months prior to relocation and that as the Appellant had not used the vehicle during the requisite six month period, she was unable to satisfy the conditions of the relief and was thereby unable to avail of the relief.
8. At the time of presenting the vehicle on 5 April 2018, the Appellant was charged €80 late payment fee as well as VRT of €2,584 as she had failed to present the vehicle within 30 days of bringing it into the State. The Appellant appealed to the Respondent in respect of the VRT charge including the late payment fee. On 12 April 2018, the Respondent refunded the €80 late payment fee on the basis that the Appellant provided evidence that she had been delayed from presenting the vehicle on time due to adverse weather conditions including snow. However, the Respondent refused to repay the VRT of €2,584 on grounds that the Appellant was unable to demonstrate that she had complied with the requirements of the relief, in particular, the



requirement that the vehicle be 'used by' the taxpayer outside the State for a period of at least six months prior to relocation to the State. 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]¹ 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 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 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

9. The facts of this appeal are not in dispute. The Appellant submitted that she qualified for transfer of residence relief when she presented the vehicle on 5 April 2018 as she *'now had owned it for over 8 months'*. The Appellant submitted that while the vehicle was in the UK between September 2017 and March 2018 the Appellant cancelled UK insurance on the vehicle and the vehicle was kept off the road. Evidence furnished by the Appellant demonstrated that the UK insurance had been cancelled on 26 September 2017. The Appellant further submitted that she purchased an alternative vehicle in Ireland for use during this period.

10. 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]

11. 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.

12. 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.
13. The Appellant in the within appeal submitted that she did not use the vehicle during the six-month statutory period. The Appellant stated that she was not resident in the UK at this time and that the vehicle was not insured for driving. The Appellant submitted that she purchased a second vehicle for use in the State in respect of this period. In these circumstances, the question of the reasonableness of the amount of use of the vehicle outside the State during the six-month period, does not arise. As there has been no use of the vehicle during this period, the use requirement of section 4(1)(a) of S.I. 59/1993 has not been met.
14. In short, the vehicle, the subject matter of the relief claim, has not been 'used by' the Appellant outside the State for a period of at least six months prior to the date on which she ceased to have her 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. The issue of whether, in March 2018, the Appellant's normal residence remained in the UK, is irrelevant to the availability of the relief in circumstances where the Appellant is unable to satisfy the conditions of the relief on grounds of use.

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

COMMISSIONER LORNA GALLAGHER

March 2019

The parties to this appeal have not requested the Appeal Commissioner to state and sign a case for the opinion of the High Court

