



**43TACD2019**

**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 December 2018, the Appellant's application for transfer of residence relief was refused by the Respondent, and the Appellant paid VRT of €20,250. In March 2019 the 1<sup>st</sup> Stage VRT appeal made by the Appellant was refused. On 9 April 2019, 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 and section 949AN of the Taxes Consolidation Act 1997 ('TCA 1997'), as amended.

## Background

4. The Appellant, an Irish national, lived and worked in Europe for 14 years before returning to Ireland to take up residence in the State on 17 November 2018. Whilst in Europe he was provided with a company car. In anticipation of moving home, on 11 May 2018 he bought a vehicle in the UK. The Appellant left this vehicle uninsured with a friend in the UK until 28 September 2018 when he took the vehicle to Europe. He insured the vehicle on 14 September 2018, prior to bringing the vehicle to Europe.
5. The Appellant brought the vehicle into the State on 19 December 2018 (7 months and 8 days after purchase). The Appellant asserted that he took up normal residence in the State on 17 November 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.
6. The Respondent accepted that the Appellant's '*normal residence*' for the purposes of the VRT legislation was outside Ireland 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 11 May 2018 and having relocated to Ireland on 17 November 2018, 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. The Respondent contended that the Appellant could only prove that he had use of the vehicle from 14 September 2018, when he had insured it.
7. The Respondent refused to repay the VRT charged of €20,250 after the 1<sup>st</sup> Stage VRT appeal. The Appellant duly appealed this decision to the Tax Appeals Commission.

## 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,”*

Section 134(5) of Finance Act 1992, as amended.

*“(5) Whenever the Minister so thinks proper, he may authorise the Commissioners to register a vehicle, subject to such conditions, limitations or restrictions (if any) as they may impose, either without payment of vehicle registration tax or on payment of the tax at less than the rate ordinarily chargeable or, where the said tax has been paid, to repay the tax in whole or in part.*

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**

8. The facts of this appeal are not in dispute.
9. The Respondent submitted that as the vehicle was not insured by the Appellant until 14 September 2018, it follows that the Appellant *“only had use of it from 14 September 2018”*.
10. The Appellant submitted that he qualified for transfer of residence relief when he presented the vehicle in December 2018 as he had owned the vehicle since May 2018 and *“it was made available by me to be driven by my friend, who occasionally drove the car under his motor insurance policy”*. The Appellant stated that the vehicle was used by him under his friend’s insurance policy when he visited his friend in the UK and that the vehicle was available for his use.
11. The Appellant also submitted that the Tax Appeals Commission should consider the applicability of *“Revenue’s discretionary power under S.134 (5) of Finance Act 1992.”*
12. 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]*

13. 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.'*

14. 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.
15. The Appellant in the within appeal submitted that his friend used the vehicle in the UK during the six-month statutory period whilst it was at his friend's house and under his friend's insurance policy. The Appellant also submitted that he used the vehicle when he visited his friend in the UK.
16. The vehicle, the subject matter of the relief claim, may have been used by the Appellant during the six months prior to his change of normal residence. However, given that the Appellant was working full time in Europe, had the use of a company car in Europe and the UK vehicle remained uninsured by him in the UK during this period, 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 (18 December 2018) on which he brought the vehicle into 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.

17. In relation to the Appellant's request that the Tax Appeals Commission should consider the applicability of "Revenue's discretionary power under S.134 (5) of Finance Act 1992", I determine that the Revenue Commissioners have no such discretionary powers in this instance under S.134 (5).
18. 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**

19. 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.
20. The appeal hereby is determined in accordance with section 949AL TCA 1997.

**PAUL CUMMINS**  
**APPEAL COMMISSIONER**  
**9 October 2019**

