03TACD2017

NAME REDACTED

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This Appeal relates to a claim for exemption in relation to Vehicle Registration Tax ('VRT') in accordance with section 135 of the Finance Act 1992 (hereafter 'FA 1992'), as amended by section 64 of the Finance (No. 2) Act 2008.

Background

2. The Appellant is employed as a community nurse by **NAME REDACTED** hospital authority ('the Hospital'), located in Northern Ireland. The Hospital provides health and social care services to approximately 300,000 people. The Appellant is resident in the State at **ADDRESS REDACTED**.

3. The Appellant commenced employment with the Hospital in November 2006. The Appellant's employment requires the Appellant to visit patients in their homes to provide them with nursing and chemotherapy care.

4. The Appellant submits that in accordance with the terms and conditions of his/her employment, (s)he availed of a leased vehicle, a Citroen C4 Grand Picasso (hereafter 'the vehicle) from his/her employer, for the purpose of carrying out the requisite

duties of the Appellant's employment. The Appellant stated that it would not have been possible to carry out these duties without having access to a vehicle.

5. The Appellant confirmed that leasing payments were deducted from his/her wages on a monthly basis and that the annual leasing payments totalled Stg£X,XXX. The Appellant was entitled to submit a mileage claim and thus figures for mileage were furnished. Pursuant to the lease (titled 'hire agreement') the Appellant had an option to purchase the vehicle at the end of the three-year lease period. The Appellant accepted that if (s)he availed of the option, (s)he would be required to register the vehicle in the State and pay VRT.

6. The Appellant in evidence stated that (s)he drives from home to his/her place of work at the Hospital base in Northern Ireland to collect patient files, and then from the Appellant's place of work to the patients' homes, where (s)he administers medicine, care and treatment. The Appellant stated that (s)he works 26 and ¼ hours over 5 days per week and that all duties of employment are carried out in Northern Ireland.

7. The Appellant contended that the vehicle was provided by his/her employer for the purpose of carrying out his/her duties of employment and that it was used principally for business use in Northern Ireland and thus the Appellant claimed an exemption in respect of the vehicle in accordance with section 135 FA 1992.

8. On **DATE REDACTED** 2015 the exemption was refused by the Respondent and on **DATE REDACTED** 2015 the Appellant appealed the refusal in accordance with section 146 of the Finance Act 2001.

Submissions in brief

Provision of vehicle as part of contract of employment (s.135(b)(i) FA 1992)

9. The Respondent was not satisfied that the vehicle was provided to the Appellant as part of his/her contract of employment and the Appellant was placed on full proof of this requirement.

Used principally for business use in another Member State (s.135(b) FA 1992)

10. In circumstances where the Appellant's mileage within the State exceeded business mileage in Northern Ireland, the Respondent submitted that the vehicle was not '*used principally for business use in another Member State'* as required by section 135(b) FA 1992.

11. The Appellant submitted that the availability of the exemption should not be determined based on mileage figures alone. The Appellant submitted that the term '*business use'* encompassed use during business hours based on criteria other than mileage. The Appellant submitted that private use of the vehicle, while significant in terms of the mileage involved, was the secondary or ancillary use. The Appellant submitted that the principal use of the vehicle was to carry out his/her functions as a community nurse in Northern Ireland and thus the Appellant submitted that (s)he complied with the exemption requirements.

Temporarily brought into the State (s.135 FA 1992)

12. The Respondent contended that the exemption provision did not apply as the vehicle was not temporarily brought into the State. The Appellant refuted this contention, submitting that a lease in relation to a vehicle, of three years or less in duration, meant that the vehicle was temporarily brought into the State and should not be treated as having been permanently brought into the State.

Legislation

Section 135 Finance Act 1992 (as amended by section 64 of the Finance (No. 2) Act 2008) – Temporary exemption from registration

135.— (1) A vehicle which is temporarily brought into the State may be exempted by the Commissioners from the requirement to be registered, in such manner and subject to such conditions, restrictions and limitations as the Minister may prescribe by regulations made under section 141(3) if the vehicle is—

(a) brought into the State by a person established outside the State for such person's private or business use,

(b) brought into the State by an individual established in the State for such individual's private or business use where such an individual—

> *(i) is employed by an employer established in another Member State who provides a vehicle as part of their contract of employment, where such vehicle is owned or leased by the employer, or*
>
> *(ii) is self-employed and has established a legally accountable undertaking in another Member State, whose business is carried on solely or principally in the other Member State,*

and where the vehicle is a category A vehicle or a motor-cycle, it is used principally for business use in another Member State,

Statutory Instrument No. 60/1993 – Temporary Exemption from Registration of Vehicles Regulations 1993.

2. (1) In these Regulations –

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

'business use' means use in the direct exercise of an activity carried on for gain

'private use' means use other than business use

…

Section 131(4) of the Finance Act 1992 – Registration of vehicles by Revenue Commissioners

A person shall not have in his possession or charge after the 1st day of January 1993, an unregistered vehicle … unless the person is an authorised person or the vehicle is the subject of an exemption under section 135 in force for the time being.

Section 139 Finance Act 1992 (as amended by section 64 of the Finance (No. 2) Act 2008) – Temporary exemption from registration

(3) It shall be an offence under this subsection for a person, in respect of a vehicle in the State –

(a) to be in possession of the vehicle if it is unregistered unless he is an authorised person or the vehicle is the subject of an exemption under section 135 for the time being in force and the vehicle is being used in accordance with any conditions, restrictions or limitations referred to in section 135,

..etc

Section 146 of the Finance Act 2001 – Appeals to Commissioners

A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law.

ANALYSIS

Provision of vehicle as part of contract of employment

13. Section 135(b)(i) FA 1992, provides that the Appellant must demonstrate that the Appellant is employed by an employer established in another Member State, who provided the vehicle as part of the Appellant's contract of employment and that the vehicle is owned or leased by the employer.

14. The Appellant is employed by the Hospital, based in **ADDRESS REDACTED**, Northern Ireland. The Appellant furnished a copy of the hire agreement in respect of the vehicle, which provided for payment by the Appellant of a sum of Stg£XXX per month to the Hospital, for a term of three years. subject to default, in respect of the use of the vehicle.

15. The Appellant also submitted a letter from the Hospital confirming that the vehicle was provided to the Appellant by the Hospital, pursuant to the hire agreement and in accordance with the Appellant's contract of employment. The Appellant stated that the primary lease was between the Hospital and a vehicle leasing company and the Appellant was not a party to same.

16. While the Appellant was placed on full proof that the vehicle was provided as part of his/her contract of employment, the Respondent, having heard the evidence and submissions of the Appellant, accepted that the vehicle was leased by the Hospital and sub-leased to the Appellant in accordance with the terms and conditions of the Appellant's employment. Thus the Respondent accepted that the criterion per s.135(b)(i) of the exemption was satisfied.

Mileage

17. The Appellant contended that the vehicle was '*used principally for business use'* on the basis that it had been provided by the Appellant's employer in order for the Appellant to carry out his/her duties as a community nurse. The Appellant in evidence stated that his/her business miles can vary based on the geographical location of the patients to be treated. The Appellant recalled a time when (s)he visited one patient which involved a 12-mile round trip.

18. The Appellant stated that the principle use of the vehicle was to carry out his/her work as a community nurse in Northern Ireland and that (s)he was entitled to avail of a leased vehicle only because of the travel requirements of his/her work. The Appellant stated that one particular advantage was the assurance that if the vehicle broke down, the Appellant's employer would replace the vehicle, thus allowing the Appellant to continue working.

19. One might question why, if the vehicle was '*used principally for business use'* as contended by the Appellant, there is so little business mileage. The Appellant, during cross-examination, stated that the amount of hours spent administering care and

treatment to patients in their homes comprised approximately 80%- 90% of his/her working time. The Appellant stated that the amount of time spent driving the vehicle during hours of work, was comparatively minimal.

20. The Respondent submitted that the Appellant was not entitled to the exemption because the vehicle was not '*used principally for business use in another Member State*' as required by section 135(1) FA 1992.

21. In support of its submission the Respondent relied upon the Appellant's mileage statistics over a 15-month period; **DATE REDACTED** 2014 to **DATE REDACTED** 2015. Total mileage during this period was stated by the Respondent, to be 60,265. The Appellant submitted that this mileage figure, taken from the odometer, related, not to a 15-month period, but to a 29-month period.

22. The Appellant submitted that on an annual basis, his/her business miles in Northern Ireland amounted to approximately 3,155 and his/her private miles in Northern Ireland to 2,604 and based on a comparison of these figures alone, the vehicle was '*used principally for business use'* in Northern Ireland as required by section 135(1) FA 1992. I do not accept this submission. Section 135(1) FA 1992 permits the exemption to apply notwithstanding a measure of private or business use within the State, once the vehicle, *inter alia*, is '*used principally for business use in another Member State*'. The analysis to be undertaken requires a comparison of private or business use in the State i.e. State based use, as against business use in another Member State. In mileage terms, this means comparing State based mileage with business mileage in Northern Ireland.

23. Taking the Appellant's case at its height regarding the submission made in respect of the mileage figure of 60,265, a mileage figure reduced to a 15-month period on a pro rata basis amounts to 31,171. The Appellant submitted that the figure during this 15-month period relating to business miles in Northern Ireland was 4,076. Thus the balance, being private miles, amounted to 27,095. The Appellant estimated her private miles in Northern Ireland as 2,604 per annum and this figure on a 15-month basis amounts to 3,255 which reduces the figure to 23,840, representing mileage within the State. Based on these figures the following ratio can be extracted in respect of the stated 15-month period;

15-Month Period	State mileage	Non-State business miles
Mileage	23, 840	4,076
Ratio	**5.8**	**1**

24. The Appellant accepted that a substantial portion of his/her mileage related to private mileage taking place within the State however the Appellant refuted the position of the Respondent, namely, that the availability of the exemption was to be determined on the basis of mileage alone.

25. The Appellant submitted that his/her private use of the vehicle, while significant, comprised the secondary or ancillary use of the vehicle. The Appellant contended that the quantum of mileage was not the correct nor most appropriate means of determining whether the vehicle was '*used principally for business use in another Member State'* per section *135 FA 1992.*

Meaning of 'business use'

26. The Appellant submitted that that the meaning of the expression '*business use'* was not to be determined based on mileage figures exclusively.

27. In support of this submission the Appellant in evidence, stated that during his/her hours of employment the vehicle is used for the carriage of medicines for the treatment of patients. In evidence, the Appellant confirmed that while working, (s)he transports in the vehicle; blood monitoring equipment, blood pressure units, temperature equipment, dressing equipment, palliative care items, bloodletting equipment, acute therapy administration equipment and other items of a medical nature. While the Appellant is administering treatment, the vehicle is stationary

outside a patient's home. The Appellant submitted that (s)he takes medical items into a patient's home on a needs basis in respect of that patient, with the remainder stored in the vehicle.

28. The Appellant also pointed out that when working, (s)he is required to wear a uniform and the Appellant submitted that (s)he owes a duty not only to his/her designated patients, but to the community at large, to intervene and to provide care if circumstances call upon the Appellant to do so. The Appellant contended that the availability of the vehicle is crucial to being able to meet this duty.

29. The Respondent submitted that the meaning of the term '*business use*' was to be determined on the basis of the odometer and of the mileage figures and that the vehicle was not *'used principally for business use'* but was used principally for private use and thus the exemption was unavailable.

30. The Respondent contended that if '*business use*' was to be measured by hours including stationary hours, that similar stationary hours would qualify as private use. Thus the Respondent submitted that whether a car is parked outside one's home when one is sleeping or whether it is parked outside a patient's home during treatment, it is only in use when it is either occupied or when the engine is being used such that it gives rise to a reading on the odometer. I do not accept this submission. At some point on the gradient of use there is non-use and in my view, when a car is parked outside a person's home while they are sleeping, this is non-use for the purposes of s.135 FA 1992.

Statutory interpretation of 'business use'

31. The Respondent submits that '*use*' of a vehicle takes place when it is occupied or when the engine is being used such as to give an odometer reading. In effect, the Respondent submits that '*use*' equates to mileage and that '*business use*' equates to business mileage. However, s.135 FA 1992 does not use the words '*business mileage*'. It uses the words '*business use*'.

32. The relevant statutory instrument (S.I. No. 60/1993) provides as follows;

> *'2. (1) In these Regulations –*
>
> *'the Act' means the Finance Act, 1992 (No. 9 of 1992)*
>
> *'business use' means use in the direct exercise of an activity carried on for gain*
>
> *'private use' means use other than business use'*

33. As regards the question of whether the meaning of the expression '*business use'* and '*private use'* in section 135 FA 1992 bear the same meanings as set out in the statutory instrument, I refer to section 19 of the Interpretation Act 2005 which provides;

> *'A word or expression used in a statutory instrument has the same meaning in the statutory instrument as it has in the enactment under which the instrument is made'*.

34. I note that section 2 of the Act of 2005 defines '*enactment'* as including either an Act or a statutory instrument or any portion thereof, while section 20 of the Act provides that the definition of an expression shall be applicable unless the contrary intention appears in the Act. I have not identified any contrary intention in the FA 1992 and thus I determine that section 2 of S.I. No. 60/1993 is of assistance in ascertaining the meaning of '*business use'*.

35. I am satisfied that there is no inherent ambiguity in the statutory wording used per section 135(b) FA 1992 and per section 2 of S.I. No. 60/1993 and thus the interpretative approach to be applied is a literal one taking into account the jurisprudence in respect of the interpretation of taxation statutes, based on a long line of authorities including *inter alia; Revenue Commissioners v Doorley [1933] IR 750, Inspector of Taxes v Kiernan [1982] ILRM 13, Cape Brandy Syndicate v Inland Revenue Commissioners [1921] 1 KB 64, Texaco (Ireland) Ltd v Murphy [1991] 2 IR 449*.

36. It is also relevant to consider the recent High Court case of *Prodanov v The Revenue Commissioners [2016] IEHC 268*, a case which related to VRT, in which Keane J. cited with approval, the following passage from the *Doorley* case;

> *'The duty of the court, as it appears to me, is to reject an a priori line of reasoning and to examine the text of the taxing Act in question and determine whether the tax in*

question is thereby imposed expressly and in clear and unambiguous terms, on the alleged subject of taxation, for no person or property is to be subjected to taxation unless brought within the letter of the taxing statute, i.e. within the letter of the statute as interpreted with the assistance of the ordinary canons of interpretation applicable to Acts of Parliament so far as they can be applied without violating the proper character of taxing Acts to which I have referred.'

37. Thus based on the above, the meaning of the term '*business use'* is informed by the expression '*use in the direct exercise of an activity carried on for gain'*. This undoubtedly includes business mileage and the question to be addressed is whether it may be broader than the concept of business mileage. I am persuaded by the Appellant's submission that to construe the term '*business use'* as meaning '*business mileage'* is to construe the words too narrowly. The legislative provision does not use the word '*mileage'* and the canons of construction support a plain meaning of the words, which does not confine the meaning of '*use'* to one of '*mileage'*. I determine that the expression '*business use'* is broad enough to include a form of use which is not based on mileage *if* the presence of such use can be established in a given case. I determine that non-mileage business use has been established in this case, based on the following;

    i. The Appellant, stated that the amount of hours spent administering care and treatment to patients in their homes comprised approximately 80%-90% of his/her working time and the amount of time spent driving the vehicle during working hours was minimal by comparison. The Appellant stated that the vehicle did not clock up mileage for most of the time it was in use during his/her working hours.

    ii. The Appellant stated that while working, (s)he transports in the vehicle; blood monitoring equipment, blood pressure units, temperature equipment, dressing equipment, palliative care items, bloodletting equipment, acute therapy administration equipment and other items of a medical nature.

    iii. The Appellant stated that while administering treatment, the Appellant takes into a patient's home, only those medical items which are required to treat the patient, while the remainder of the equipment is stored in the vehicle.

iv. The Appellant stated that when working, the Appellant is required to wear a uniform and the Appellant submitted that (s)he owes a duty, not only to his/her designated patients, but to the community at large, to intervene and to provide care if circumstances call upon the Appellant to do so. The Appellant contended that the availability of the vehicle is crucial to being able to meet this duty.

I note that all of the non-mileage business use took place in Northern Ireland.

Meaning of 'principally' for business use

38. Section 135(b) provides that the vehicle brought into the State, may be used '*for such individual's private or business use*' in the State and assuming all other qualifying criteria are met, the exemption will be available where the vehicle is '*used principally for business use in another Member State'.*

39. The analysis is focused on a comparison of private or business use within the State, as compared with business use taking place outside the State.

40. In ascertaining the ordinary and natural meaning of the statutory words in accordance with the relevant canons of construction, assistance may be drawn from dictionary meanings; see *Keane v An Board Pleanala [1997] 3 IR 200.*

41. The English Oxford Dictionary online defines '*principal'* as: '*first in order of importance; main'* while the Collins dictionary online definition is '*first in order of importance'*.

42. The Appellant submitted that the most important use of the vehicle, was to allow the Appellant carry out his/her role as community nurse. The Respondent submitted that while this may be the most important use of the vehicle from the Appellant's perspective, it was not the most important use of vehicle from the perspective of the Irish VRT legislation. I accept the Respondent's submission that the matter is one to be viewed objectively.

43. In considering the word '*principally'* in its context in s.135(b) FA 1992, I am of the view that its meaning is based on identifying a discrepancy between two different

uses. The first use is State-based use of the vehicle (be it private or business) and the second use is non-State, EU based, business use. Thus either dictionary meaning may be adopted in interpreting the word '*principally*' and the outcome will be the same. Essentially, the question posed by the exemption provision is – which use is dominant?

State use v Business use in Northern Ireland

44. Over the course of a 15-month period, the Appellant submitted that business miles in Northern Ireland amounted to 4,076 and State mileage to 23,840. Thus, on the basis of the mileage figures alone, the Appellant would not be in a position to demonstrate that the vehicle was '*used principally for business use in another Member State*' and thus would not be entitled to avail of the exemption.

45. However, I have determined above that the meaning of the term '*business use*' may encompass a form of business use which is not based on mileage. In this case I have determined that such use exists. Thus in determining whether the vehicle is '*used principally for business use*' in Northern Ireland one must consider not only the mileage figures, but also, business use which is not mileage based.

46. Of course a question arises as to the weight to be attached to the business use which is not based on mileage. I am of the view that in a case where the quantum of business miles in another Member State is equal to the quantum of State based mileage, it is likely that the non-mileage business use (assuming same is established) will tip the balance in favour of satisfaction of the test, namely, that the vehicle was '*used principally for business use in another Member State'.*

47. Few cases will present a balanced ratio however and a question arises as to the weight to be attached to non-mileage business use where the mileage figures do not equate. Where the quantum of non-State business mileage is less than State based mileage, will the non-mileage business use be considerable enough to tip the balance towards a determination that the legal test is satisfied? The answer to this will depend on the strength of the non-mileage business use and on the facts and circumstances of a given case. I confess however, that it is difficult to envisage a situation where the presence of non-mileage business use, could tip the balance in favour of satisfaction

of the test, in circumstances where there is significantly more State based mileage than non-State business mileage.

48. The question which arises in this case is whether it can be said that the vehicle was '*used principally for business use*' in Northern Ireland where State based mileage substantially exceeded non-State business mileage. The ratio in this case is 5.8:1 in favour of State based mileage. Based on this ratio, I cannot see a means of concluding that legal test is satisfied. While, in the Appellant's favour, weight must be accorded to the non-mileage business use established by the Appellant, the difference between State based mileage as compared with non-State business mileage, at 5.8:1, is simply too great to allow me to conclude that the vehicle was '*used principally for business use*' in Northern Ireland. Thus I determine that the Appellant has not satisfied the requirements of the legal test and will be unable to avail of the exemption per section 135(b) FA 1992.

'Temporarily brought into the State'

49. In submitting that the vehicle was not entitled to the exemption in the first instance, the respondent cited section 131 of the Finance Act 1992 which provides that '*that a person shall not have, in their possession, an unregistered vehicle within the state.*' The Respondent submitted that this case involved a resident of the State with a vehicle which was used predominantly for private use within the State and that VRT was payable accordingly. The Respondent contended that there was no basis for suggesting that the vehicle was temporarily brought into the State.

50. The Appellant contended that the vehicle was not permanently brought into the State but, to the extent that it was present in the State, the Appellant submitted it was present in accordance with a three-year lease, the terms and conditions of which are contained in the hire agreement. Pursuant to clause 8 of the hire agreement, the Appellant's employer may terminate the lease during the three-year period, on the occurrence of various default events and thus, in a given case, a lease may be shorter than three years. The Appellant submitted that for the period of the lease, the vehicle was in the State temporarily and not permanently.

51. In construing section 135(b) FA 1992 in accordance with the established principles of statutory interpretation as they apply to taxation statutes, I have determined that the vehicle in this case was not '*used principally for business use'* in Northern Ireland thus the Appellant is not in a position to avail of the exemption per section 135(b) FA 1992.

52. The matter of leased vehicles in the context of VRT is a matter which has been the subject of litigation before the Court of Justice of the European Union (CJEU) in Case *C-552/15, European Commission v Ireland,* in which the Advocate General opinion was recently published.

Conclusion

53. For the reasons set out above, I determine that the vehicle was not '*used principally for business use in another Member State*' as required by s.135(b) FA 1992 and that the exemption is thereby unavailable to the Appellant.

54. Accordingly, the appeal is determined in accordance with section 949AL TCA 1997.

APPEAL COMMISSIONER

March 2017