



40TACD2019

BETWEEN/

The Appellant

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) Regulations 1993), which is commonly referred to as '*transfer of residence relief*'.
2. The Appellant's application for transfer of residence relief was refused by the Respondent by letter dated 16 October 2018. A notice of appeal was received by the Tax Appeals Commission on 02 November 2018. The Appellant is seeking a repayment of the VRT amount of €3,500, which he has paid, on the grounds that he believes he should be 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. The Appellant had been living and working in the UK where his employer had provided him with a vehicle as part of the terms of his employment. In July 2018 the Appellant relocated to Ireland to take care of his elderly parents as his father had fallen ill and his health had deteriorated unexpectedly. On 27 June 2018, the Appellant, purchased a vehicle in the UK. The Appellant registered the vehicle in the UK in his own name on 30 June 2018.
5. The Appellant relocated to the State on 28 July 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 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 27 June 2018 and having relocated to the State on 28 July 2018, could not satisfy the requirements of the relief and was not entitled to avail of the relief.
7. The Respondent submitted that relief is permitted in extenuating circumstances under the 'Care and Management' provisions in the Finance legislation, where the vehicle has been in the possession of the applicant for a period of three months before transferring their residence. The Respondent further submitted that extenuating circumstances did not apply in the Appellant's case as the Appellant did not have possession of the vehicle for three months before he transferred his residence.
8. The Appellant contends for an element of leeway to be applied given the genuine circumstances of his appeal. He further contends that he did not have the vehicle in his possession for the requisite six months owing to the unforeseen nature of his father's diagnosis. He submits that if he had foreseen the requirement to relocate to the State he could have arranged to have purchased the vehicle at an earlier date.



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 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 accepts that the vehicle the subject matter of the appeal was not in his possession for six months prior to the transfer of residence.

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. The Appellant submits that due to the unforeseen nature of his relocation to the State that the VRT should be waived on a discretionary basis.

12. In short, the vehicle, the subject matter of the relief claim, has not been in the possession of the Appellant for a period of at least six months prior to the date 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.

13. The Respondent submitted that relief is permitted in extenuating circumstances under the 'Care and Management' provisions in the legislation, where the vehicle has been in the possession of the applicant for a period of three months before transferring their residence. The Respondent further submitted that extenuating circumstances did not apply in the Appellant's case as the Appellant did not have possession of the vehicle for three months before he transferred his residence. However, the Tax Appeals Commission does not have jurisdiction to adjudicate on the fairness of the refusal of the relief in certain extenuating circumstances and can only determine the matter in accordance with the legislation. The legislation as it is written is clear and unambiguous and does not afford any discretion on the availability of the relief where the vehicle was not in the possession of the person transferring residence for the requisite six-month period. Any discretion which may





be exercised under the 'Care and Management' provisions is a matter for Revenue Commissioners and is not a matter to be determined by the Tax Appeals Commission.

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.

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

PAUL CUMMINS

APPEAL COMMISSIONER

4 October 2019

