



10TACD2019

BETWEEN/

[NAME REDACTED]

Appellant

V

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Introduction

1. This appeal relates to vehicle registration tax ('VRT') and in particular, relief pursuant to section 134(1)(a) of the Finance Act 1992, as amended and Statutory Instrument no. 59/1993 (Vehicle Registration Tax (Permanent Reliefs) Regulation 1993), known as '*transfer of residence relief*'. The application for exemption was made on 10 January 2018, was initially refused and was refused on appeal. The Appellant paid VRT of €12,550 and appealed to the Tax Appeals Commission on 20 February 2018.

Background

2. The Appellant was born in London, is a UK citizen and resident and is a school teacher by profession. Having worked in the UK for many years, the Appellant decided in 2017, to take up a teaching position in the State and to relocate to the State, which she did in September 2017.
3. On 15 March 2017, the Appellant purchased a Mercedes Benz sport **[model redacted]** in the UK. The Appellant took possession of the vehicle on 21 March 2017. The vehicle was registered in the Appellant's name and the Appellant paid tax and insurance thereon.

4. The Appellant, having ceased her employment in the UK, decided to take an extended holiday in August and September 2017 prior to relocating to the State. She travelled to Malaysia, Indonesia and Vietnam during this period.
5. The Appellant moved to Ireland on 29 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 Statutory Instrument no. 59/1993.
6. 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(a) of S.I. 59/1993 required actual and continuous use of the vehicle throughout the 6-month period prior to relocation and that based on her extended holiday, the Appellant could not satisfy the terms of the relief and would be unable to avail of the relief.

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)*

... etc

Section 5(2) of the Interpretation Act 2005 – Construing ambiguous or obscure provisions, etc.

(2) In construing a provision of a statutory instrument (other than a provision that relates to the imposition of a penal or other sanction) –

(a) That is obscure or ambiguous, or

(b) That on a literal interpretation would be absurd or would fail to reflect the plain intention of the instrument as a whole in the context of the enactment (including the Act) under which it was made,

The provision shall be given a construction that reflects the plain intention of the maker of the instrument where that intention can be ascertained from the instrument as a whole in the context of that enactment.

Submissions

7. The Respondent contended that paragraph 4(a) of S.I. no. 59/1993 required actual and continuous use of the vehicle throughout the stated 6-month period. The Respondent submitted that because the Appellant availed of an extended holiday, the Appellant could not satisfy the terms of the relief and would be unable to avail of the relief.
8. The Appellant submitted that the correct interpretation of paragraph 4(a) of S.I. no. 59/1993 was one which permitted normal use of the vehicle and which did not prohibit the taking of holidays. The Appellant submitted that paragraph 4(a) did not require actual use or continuous use throughout the six-month statutory period and that the regulation did not use the words '*actual use*' or '*continuous use*'.

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 being brought permanently into the State by the individual when he or she is transferring his/her normal residence from a place outside the State to a place in the State. It is a requirement of the legislation that the vehicle "*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]
10. The Respondent accepted that having lived and worked in the UK for many years, the Appellant's normal place of residence prior to relocation was the UK. The Respondent accepted that the Appellant, having purchased the vehicle on 15 February 2017, had possession of the vehicle in the UK for the prescribed 6-month statutory period prior to her relocation to Ireland on 24 September 2017. However, the Respondent contended that the Appellant's absence from the UK while on holiday disqualified her from availing of the relief.
11. Each party submitted that the expression used in paragraph 4 of S.I. 59/1993 *i.e.* that the vehicle has been '*in the possession of and used by* [the Appellant] *outside the State*

for a period of at least six months did not mean that daily use of the vehicle for the six-month period was required. I agree with and accept this submission. The regulation does not stipulate daily use and to interpret the expression in this manner would be erroneous.

12. After some discussion, Officials for the Respondent stated that they would allow transfer of residence relief notwithstanding a period of non-use of a vehicle, if there was a reasonable basis for such non-use, such as illness or holidays. However, the Respondent submitted that the Appellant's extended holiday of seven weeks was too long a period of absence from the UK for the relief to be allowed.
13. The Appellant submitted that as a schoolteacher, she would normally holiday in the months of August and September and that the terms of the relief required of the vehicle owner, a normal level of use in relation to the vehicle. The Appellant submitted that it could not have been contemplated by the legislature that the Respondent could dictate the length of a taxpayer's holidays for the purposes of the relief. The Appellant submitted that if the Respondent was correct, that it would be left to the Respondent to review and supervise taxpayers' holidays and that this would lead to legal uncertainty and would be contrary to the statutory scheme.
14. The Appellant stated that, based on the Respondent's submission, if she had holidayed in the UK or Europe for a shorter period, she would have been permitted by the Respondent to avail of the relief. In addition, the Appellant submitted that had she commuted to work, using her vehicle only at weekends, the Respondent would have taken the view that she qualified for the relief. The Appellant submitted that non-use for 5 days per week over a six-month period would be proportionately greater than non-use for a seven-week holiday period and that the Respondent's approach in relation to the relief was arbitrary and incorrect.
15. The Appellant stated that the letter she received from the Respondent refusing the relief dated 30 January 2018, referred to a requirement of *'actual use'* of the vehicle during the six-month period. She stated that paragraph 4(a) of S.I. 59/1993 does not contain the expression *'actual use'*. The Appellant contended that the correct interpretation of the requirement that the vehicle be *'used by'* the Appellant for the requisite six-month period, was one which recognised normal use of the vehicle by the owner. The Appellant contended that the Respondent was trying to import into



the legislation wording which was contained in the Respondent's manual but which was not contained in the regulation. The Respondent, in reply stated that in their interpretation, subject to certain allowable absences, actual and continuous use was required.

Statutory interpretation

16. The phrase '*in the possession of and used by for a period of at least 6 months...*' does not stipulate how regular or recurrent the use of the vehicle must be for the relief to be applicable. It does not stipulate whether use must be daily, weekly, monthly or bi-monthly. Taxpayers will vary significantly in terms of the use of their vehicles. Some will have a daily or weekly routine, others will have a less established or more irregular routine.
17. The Appellant was in the habit of taking holidays in August/September each year as her career as a school teacher was conducive to such arrangements. Any vehicle she owned would have been subject to this pattern of use. On this occasion, having made the decision to depart her employment in the UK, she decided to take an extended holiday prior to commencing new employment in the State. The Respondent accepted that the Appellant used the vehicle regularly over the six-month statutory period, with the exception of the time spent on her holiday. In addition, the Respondent accepted that the vehicle was in the possession of the Appellant for the requisite six-month period.
18. As is well established, the interpretative approach to be applied in relation to the interpretation of taxation statutes is a literal one in accordance with the relevant jurisprudence, including but not limited to; *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 and *Texaco (Ireland) Ltd v Murphy* [1991] 2 IR 449.
19. The expression '*in the possession of and used by for a period of at least 6 months...*' on its face, contains clear and unambiguous language and the words '*used by*' are words which have widespread and unambiguous currency.

20. 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.
21. The submission of the Respondent aligned with this interpretation insofar as officials for the Respondent submitted that they would allow the relief notwithstanding a period of non-use of the vehicle in the case of illness, or in relation to some types of holidays. However, the Respondent stated that the Appellant's extended holiday to Malaysia, Indonesia and Vietnam for a seven-week period was too significant a period of absence to allow her to qualify for transfer of residence relief.
22. The question which arises in this appeal is whether the Appellant's use of her vehicle over the statutory six-month period was reasonable. In my opinion, the Appellant's use during this period was reflective of her own established use pattern insofar as her career as a school teacher accommodated holidays in August/September. It was not unreasonable for her to take an extended holiday in August and September after ceasing her employment in the UK prior to commencing her new employment in the State. I do not accept the Respondent's submission that the Appellant's seven-week holiday disqualified her from claiming the relief. In my view, the vehicle was used in accordance with the Appellant's established routine and the level of use of the vehicle by the Appellant during the six-month period was reasonable.
23. While the Appellant submitted in the first instance that she complied with all qualifying conditions in relation to the transfer of residence relief, she contended that the interpretation applied by the Respondent in refusing the relief, if it were to be accepted, would defeat the clear intention of the legislature.
24. In this regard, I have considered section 5(2) of the Interpretation Act 2005, which provides;

(2) In construing a provision of a statutory instrument (other than a provision that relates to the imposition of a penal or other sanction) –

(a) That is obscure or ambiguous, or

(b) That on a literal interpretation would be absurd or would fail to reflect the plain intention of the instrument as a whole in the context of the enactment (including the Act) under which it was made,

The provision shall be given a construction that reflects the plain intention of the maker of the instrument where that intention can be ascertained from the instrument as a whole in the context of that enactment.

25. In my view, a literal interpretation of the wording contained in paragraph 4(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. It is not necessary to invoke section 5(2) of the Interpretation Act as paragraph 4(a) of the regulation is neither obscure nor ambiguous nor, on a literal interpretation does it fail to reflect the plain intention of the instrument as a whole.

26. I do not consider that the legislature intended to burden the Respondent with the Responsibility of scrutinising taxpayers' holidays to the extent contended for by the Respondent and in my view such an interpretation, if it were to be applied, would fail to reflect the plain intention of the instrument as a whole in the context of the enactment, thus permitting an adjudicator to invoke section 5(2) of the 2005 Act. If it were necessary to apply section 5(2) of the 2005 Act, I consider that the construction which would reflect the plain intention of the legislature is a construction which would require reasonable use of the vehicle during the six-month statutory period contained in paragraph 4 of S.I. 59/1993.

Conclusion

27. For the reasons set out above, I determine that the Appellant has satisfied the requisite statutory conditions and is entitled to avail of the transfer of residence relief in accordance with section 134(1)(a) of the Finance Act 1992 and S.I. No. 59/1993.



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

COMMISSIONER LORNA GALLAGHER

January 2019