



51TACD2019

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 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 31 July 2018. A notice of appeal was received by the Tax Appeals Commission on 26 August 2018. The Appellant is seeking a repayment of the VRT amount of €4,219 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 moved to the United Kingdom ("UK") on 12 June 2016 for work purposes and continued to live and work there until 13 June 2018, when he returned to live in Ireland permanently. During his time working in the UK his wife and children resided in Ireland.
5. Prior to moving to the UK, the Appellant lived in the Far East and the Middle East. He returned to Ireland for a brief period before moving permanently to the UK in June 2016.
6. 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, on his return from the UK.
7. The Respondent refused the claim for the relief on the basis that the Appellant did not meet the conditions for the relief and specifically that the Appellant did not transfer his 'normal' residence as required by section 134(1)(a) of the Finance Act 1992.
8. The Respondent did not dispute that the Appellant lived and worked in the UK for the stated period, however the Respondent submitted that the Appellant's place of 'normal' residence for the purposes of VRT remained in Ireland on the basis that the Appellant's family (his wife and children) lived in Ireland, and the Appellant returned regularly to Ireland to visit his family during the period when his occupational ties were in the UK.
9. The Appellant contends that his normal residence was in the UK immediately before he moved back to Ireland permanently on 13 June 2018, at which time his normal residence transferred to Ireland.





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.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in 2 or more countries shall be regarded as being the place of his personal ties:

Provided that such person returns to the place of his personal ties regularly. This proviso shall not apply where the person is living in a country in order to carry out a task of a duration of less than one year

...etc

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

- (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.*

...etc

Article 6 of Council Directive 83/183/EEC

Article 6

General rules for determining residence

1. For the purposes of this Directive, "normal residence" means the place where a person usually lives, that is for at least 185 days in each calendar year, because of personal and occupational ties or, in the case of a person with no occupational ties, because of personal ties which show close links between that person and the place where he is living.

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in two or more Member States shall be regarded as being the place of his personal ties, provided that such person returns there regularly. This last condition need not be met where the person is living in a Member State in order to carry out a task of a definite duration. Attendance at a university or school shall not imply transfer of normal residence.





Submissions and Analysis

10. 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 Ireland by the individual '*when he is transferring his normal residence from a place outside the State to a place in the State;*' This appeal is concerned with the net issue of whether the Appellant's place of '*normal residence*' was outside of Ireland (for the purposes of S.I No. 59/1993) prior to him moving back to Ireland permanently in June 2018. The Appellant submitted that his place of normal residence during the stated period was the UK.

11. The Respondent submits that the vehicle the subject matter of the appeal was in the possession of and used by the Appellant in the UK, for the six-month statutory period required by paragraph 4(1)(a) of S.I. 59/1993

12. Normal residence is defined in statutory instrument No. 59/1993 as follows;

"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.

13. The meaning of the term '*normal residence*' as set out at paragraph 3 of S.I. 59/1993 specifically addresses a situation where a person may have personal ties and occupational ties in different jurisdictions. The regulation provides as follows;

However, the normal residence of a person whose occupational ties are in a different place from his personal ties and who consequently lives in turn in different places situated in 2 or more countries shall be regarded as being the place of his personal ties: Provided that such person returns to the place of his personal ties regularly...

Place of Personal Ties

14. The first issue to be determined is whether the Appellant falls into the category of a person whose occupational ties are in a different place from his personal ties. The





Appellant's occupational ties were in the UK and there is no dispute between the parties in this regard.

15. In *Georgios Alevizos v Ipourgos Ikonomikon* (C-392/05), the concept of 'normal residence' in the context of Article 6 of Council Directive 83/183/EEC (which was transposed into Irish law by S.I. no. 59/1993) has been explored. The ECJ held that "*It is clear from the second subparagraph of Article 6(1) of Directive 83/183 that that provision gives priority to personal ties where the person concerned does not have personal and occupational ties concentrated in a single Member State*".
16. In *Rigsadvokaten v Nicolai Christian Ryborg* (C-297/89) the ECJ held that "*Normal residence must, according to consistent decisions of the Court in other spheres of Community law, be regarded as the place where a person has established his permanent centre of interests*".
17. In *Paraskevas Loloudakis v Elliniko Dimosio* (C-262/99), the ECJ held that "*all of the relevant facts must be taken into consideration in determining normal residence as the permanent centre of interest of the person concerned, namely in particular, the actual presence of the person concerned and of the members of his family, the availability of accommodation, the place where the children actually attend school, the place where business is conducted, the place where property interests are situated, that of administrative links to public services and social services, inasmuch as those factors express the intention of that person to confer a certain stability on the place of connection, by reason of the continuity arising from a way of life and the development of normal social and occupational relationships*".
18. In the within appeal the Appellant has indicated that his wife and children resided in Ireland during the period in which he lived and worked in the UK.
19. The Appellant was asked by this office to confirm where he considered his place of 'personal ties' to be located during the period of his residence on the UK, but he did not provide the requested information. The Appellant did not furnish any further relevant information in relation to the location of his place of personal ties.
20. The only relevant information provided by the Appellant to be taken into consideration is the location of the Appellant's family. I am satisfied that as the





Appellant's wife and children resided in Ireland while the Appellant was working in the UK, that the Appellant's personal ties were in Ireland.

Whether the Appellant Returned Regularly to his Place of Personal Ties

21. Having determined that the Appellant's place of personal ties was in Ireland during the stated period, it then falls to be determined if the Appellant returned 'regularly', for the purposes of paragraph 3 of S.I. 59/1993, to the place of his personal ties during the time that he lived and worked in the UK.
22. The Respondent contends that the Appellant's normal residence was in Ireland for the period spent in the UK as his family resided in Ireland and he returned to visit them regularly.
23. The Appellant disputes the contention of the Respondent that he returned 'regularly' to Ireland and submits that while he did return on several occasions to visit his family, there was no pattern or structure to the visits.
24. In support of his appeal, the Appellant has furnished details of his visits to Ireland during the period September 2016 to May 2018. The Appellant flew from the UK to Ireland on the following dates: 16 September 2016, 30 September 2016, 20 October 2016, 18 November 2016, 08 December 2016, 22 December 2016, 20 January 2017, 18 August 2017, 08 September 2017, 22 September 2017, 13 October 2017, 27 October 2017, 01 December 2017, 20 December 2017, 15 February 2018, 23 March 2018, 13 April 2018, 02 May 2018, 24 May 2018.
25. The Appellant returned to Ireland on 19 occasions during the 20-month period between September 2016 and May 2018.
26. The word '*regularly*' is not defined in the Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993. I am satisfied that it is appropriate to apply a literal interpretation in respect of the word '*regularly*' and that the word should be afforded its ordinary and natural meaning. The interpretative approach to be applied is a literal one taking into account the jurisprudence in relation to the interpretation of taxation statutes based on a long line of authorities including *inter alia*, *Revenue Commissioners v Doorley* [1993] IR 750 and *The Inspector of Taxes v Kiernan* [1982] ILRM 13. A stipulation in relation to the number of occasions that the person returns





to their place of personal ties in order to be considered 'regular' is notably absent from the regulation.

27. This matter has been previously considered by the Tax Appeals Commission in determination 26TACD2018 which states:

"The ordinary and natural meaning of the word 'regularly' in my view connotes; frequently, habitually, or on a regular basis. While the Appellant argued that his trips home were irregular as opposed to regular, I do not consider 'regularly' in the context of the regulation to require periods of time between trips to be divided by uniform intervals. The spaces between trips may differ and fluctuate and need not be orderly or systematic".

28. Having carefully considered all of the relevant evidence and submissions, I am satisfied that 19 trips to Ireland in a 20-month period should be considered as 'regular' or "regularly" for the purposes of paragraph 3 of S.I. 59/1993.

29. As the place of the Appellant's occupational ties during this period was in the UK, his place of personal ties was in Ireland, and the Appellant returned to his place of personal ties on a regular basis, it follows inexorably that the Appellant's normal residence prior to the 13 June 2018, for the purposes of S.I. 59/1993, was in Ireland.

Conclusion

30. 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*'.

31. The question to be answered in this appeal is whether, prior to 13 June 2018, the Appellant's place of '*normal residence*' was outside the State. I find that the Appellant has not furnished sufficient information and documentation which would allow me to conclude, on the balance of probabilities, that the Appellant's normal place of residence was outside the State prior to 13 June 2018.





32. 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.

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

PAUL CUMMINS
APPEAL COMMISSIONER

31st OCTOBER 2019

