



159TACD2020

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*' ('*relief*').
2. The Appellant's application for transfer of residence relief was refused by the Respondent by letter dated 26 July 2019. The vehicle was registered in Ireland on 2 September 2019, some 21 months after importation. The Appellant appealed this decision to the VRT appeals officer, pursuant to section 145 Finance Act 2001, and on 4 November 2019, the Appellant received notice from the appeals officer stating that his appeal was unsuccessful.
3. A notice of appeal was received by the Tax Appeals Commission on 21 November 2019. The Appellant is seeking a repayment of the VRT amount of €740 and late registration VRT of €526, both paid on registration, on the grounds that he believes

he should be entitled to avail of the relief as he has now provided the required documentation necessary to justify the relief claim.

4. This appeal is, by agreement between the parties, determined without a hearing in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

5. The Appellant moved from the REDACTED to Ireland on 11 October 2017 and brought his REDACTED vehicle, which is the subject of this appeal, into the State. The vehicle had been registered in the Appellant's name since 2 October 2013. The Appellant did not present the vehicle for registration in Ireland and did not apply for the relief at this time.
6. The Appellant applied for relief in accordance with section 134(1)(a) of the Finance Act 1992, as amended and Statutory Instrument no. 59/1993, with effect from 19 June 2019. The transfer of residence relief application stated that the Appellant took up normal residence in the State on 19 November 2017.
7. The Respondent refused the claim for the relief on 26 July 2019 on the basis that (i) the application for relief had been made outside the relevant time limit of within 7 days of bringing the vehicle into the State and (ii) the Appellant failed to submit the relevant documentation such as bank statements for the 6 month period prior to taking up residence in the State.
8. The Appellant appealed this decision to the VRT appeals officer on 21 October 2019, pursuant to section 145 Finance Act 2001, and his appeal was refused on 4 November 2019 on the basis that, (i) the original application for the relief was made outside of the time limit, (ii) the documentation supplied with the relief application was insufficient to allow the exemption and (iii) the appeal of the unsuccessful relief claim was lodged outside of the statutory time limit.
9. The Appellant is appealing the first stage VRT appeal decision to the Tax Appeals Commission on the grounds that, although he was late in applying for the relief, as he is now providing the evidence required to show that he met the other conditions of the relief, he should now be granted the relief.



Legislation

Section 132 Finance Act, 1992, as amended:

(1) Subject to the provisions of this Chapter and any regulations thereunder, with effect on and from the 1st day of January, 1993, a duty of excise, to be called vehicle registration tax, shall be charged, levied and paid at whichever of the rates specified in subsection (3) is appropriate on—

- (a) the registration of a vehicle, and*
- (b) a declaration under section 131(3).*

(2) Vehicle registration tax shall become due and be paid at the time of the registration of a vehicle or the making of the declaration under section 131(3), as may be appropriate, by—

- (a) an authorised person in accordance with section 136(5)(b),*
 - (b) the person who registers the vehicle,*
 - (c) the person who has converted the vehicle where the prescribed particulars in relation to the conversion have not been declared to the Commissioners in accordance with section 131(3),*
 - (d) the person who is in possession of the vehicle that is a converted vehicle which has not been declared to the Commissioners in accordance with section 131(4),*
- and where under paragraphs (a) to (d), more than one such person is, in any case, liable for the payment of a vehicle registration tax liability, then such persons shall be jointly and severally liable.*

(3) This subsection deals with rates of VRT and is not repeated here.

(3A) Notwithstanding subsection (3), where the Commissioners are of the opinion that a vehicle has not been registered at the time specified in Regulation 8 of the Vehicle Registration and Taxation Regulations 1992 (S.I. No. 318 of 1992), the amount of vehicle registration tax due and payable in accordance with subsection (3) shall be increased by an amount calculated in accordance with the following formula:

$$A \times P \times N$$



Where –

A is the amount of vehicle registration tax calculated in accordance with subsection (3),

P is 0.1 per cent, and

N is the number of days from the date the vehicle entered the State to the date of registration of the vehicle.

S.I No. 318/1992 – Vehicle Registration and Taxation Regulation, 1992, Regulation 8

(1) (a) A person not being an authorised person who manufactures or brings into the State a vehicle which is not exempt from registration under section 135 of the Act shall—

(i) make an appointment for a pre-registration examination with the competent person concerned not later than 7 days after the manufacture or arrival in the State of the vehicle, and

(ii) register the vehicle to the satisfaction of the Commissioners not later than 30 days after its manufacture or arrival in the State.

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



Appellant's Submissions

In his Notice of Appeal the Appellant stated:

I would like to appeal on the decision of my application for ToR my car with registration number REDACTED. I'm sorry but I didn't know that you need insurance records from last six months before I moved here to Ireland because on the website is "Certificate of Insurance" which I sent before as valid Green card.

I'm aware that it took me some time to answer with the first appeal but I was waiting until the car will be fully taxed and when it'll pass the NCT check which took some time because I had to go there two times.

I'm also aware that the time I missed to register my car here in Republic of Ireland is unacceptable but I was told by Revenue Commissioner that even in this situation will not be a problem to get my money for VTR back because I paid tax already in REDACTED and this will be double taxation. I will understand a fine for late registration but not the whole amount of €1291.

I moved here to Ireland with my girlfriend and in that time we didn't know if we'll find an accommodation, job and if we'll be able to live here. When we came here we really didn't have that much money to register, tax and insure the car which will be around €5000. When we build our foundations here I decided to don't be here "illegally" with our car and I decided to registered it as I should do months before because I felt really bad and I knew that wouldn't be easy. I know that is not the reason why you should change the decision of your colleagues but I hope it might help a little bit."

The Appellant stated the following in his Statement of Case in this appeal:

"I moved to Ireland in 2017 and I didn't know how long I'll stay. It was hard start and I didn't have enough money to register the car because the insurance, tax etc. When I saved enough money I decided to do it a proper way and finally register my car as I should do long time ago. I was told on NCT that I don't have to pay VRT if I was owner of the car at least six months. So I paid the VRT, Motor Tax and Insurance and then I applied for ToR which was declined because my late submission and lack of information. I wish to give you all my documents you'll need to help me to solve this appeal in my favor.



I would like to say that from the time I moved into the Republic of Ireland my car was insured and within NCT from REDACTED. In this email I am sending you all evidence about my ownership of this vehicle from 02/Oct/2013.

I'm sending you Vehicle registration document (two types with datum 2/Oct/2013 where you can also find stamp (in circle) from NCT on 17/July/2017 to 17/July/2019), Certificate of insurance (green card + letter from insurance company), ferry ticket (which I'm not proud of) and bank statement from my Bank showing my expenses for my last year living in REDACTED.

I know that my registration was made after the time I supposed to do, but I was an owner of my car more than 4 years so according to information from Revenue.ie I think I should get exemption from VRT under ToR. "

Respondent's Submissions

The Respondent quoted from correspondence with Appellant on 26/07/19 as follows:

"I refer to your application for relief from Vehicle Registration Tax in relation to the vehicle identified above. I regret to inform you that your application has been unsuccessful (A) As your application has been made outside the relevant time limit which is within 7 days of bringing the vehicle into the State. (Your application was 21 months after bringing the vehicle into the State). (B) You have failed to submit the relevant documentation such as bank statements for the 6 month period prior to taking up residence in the State."

The Respondent quoted from correspondence dated 4 November 2019 with Appellant from the appeals officer stating that his appeal was unsuccessful as follows:

"The undersigned being an officer nominated under Section 145 Finance Act 2001 has determined that your appeal is refused on the following grounds:

- The original application was made outside of the time limit – it should have been made within 7 days of importation of the vehicle.*
- The documentation you supplied with your application was insufficient to allow the exemption e.g. six months insurance before you transferred your residence.*
- The appeal was lodged outside of the statutory time limit – you were refused on 26 July 2019 and your appeal letter is dated 21 October 2019."*



In the Statement of Case for this appeal, the Respondent stated:

“Outline of relevant facts.

The application form (for exemption from VRT under The Transfer of Residence Regulations) shows the appellant was resident in REDACTED from 07 June 1993 until 19 November 2017 when he transferred his residence to Ireland.

The application form also shows he registered the vehicle in his name on 02 October 2013.

He applied for exemption from VRT under the Transfer of Residence Regulations on 19 June 2019.

The application was refused on 26 July 2019 due to the delay in lodging the application (it should have been made within 7 days of importing the vehicle), and he did not have enough evidence to support his claim.

He appealed this decision on 21 October 2019 under Section 145 FA 2001.

The Section 145 appeal was refused as the appeal was not made within the statutory limit (60 days from 26 July 2019), and he had not provided enough evidence (e.g. He did not provide proof of Motor Insurance for at least 6 month period before transferring his residence)”

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 the State by the individual when he is transferring his normal residence from a place outside the State to a place in the State;’
11. This appeal is primarily concerned with the net issue of whether the Appellant is entitled to relief under section 134(1)(a), notwithstanding that he was late by circa 19 months in applying for the relief, having moved from REDACTED to Ireland on the 11 October 2017 and declaring that he changed normal residence to Ireland on 19 November 2017.



12. The Appellant submits that the vehicle, the subject matter of the appeal, was in the possession of and used by the Appellant in REDACTED, for the six-month statutory period required by paragraph 4(1)(a) of S.I. 59/1993. This fact is not contested by the Respondent.

13. 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.

14. In his submission, the Appellant's stated the following:

"I moved here to Ireland with my girlfriend and in that time we didn't know if we'll find an accommodation, job and if we'll be able to live here..." and

"I moved to Ireland in 2017 and I didn't know how long I'll stay. It was hard start and I didn't have enough money to register the car because the insurance, tax etc. When I saved enough money I decided to do it a proper way and finally register my car as I should do long time ago"

15. Notwithstanding that the Appellant imported the car on 11 October 2017, it appears that he "brought permanently into the State" his car when he transferred "his normal residence from a place outside the State to a place in the State" on 19 November 2017. However, The statutory time limit for claiming transfer of residence relief was missed by the Appellant, thereby causing him to lose his entitlement to that relief.

Based on the testimony presented, I am satisfied that the Appellant did move his car permanently into the State upon the transfer of his normal residence on the 19 November 2017. Therefore, his late registration VRT charge should be calculated from that date.

Conclusion

16. 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'*.

I determine, for the reasons set out above, that the Appellant is not entitled to transfer of residence relief under section 134(1)(a) of the Finance Act 1992 and therefore not entitled to a refund of the €740 VRT paid on registration.

I determine that the Appellant is not entitled to a refund of any of the late registration VRT of €526 paid.

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

PAUL CUMMINS

APPEAL COMMISSIONER

Designated Public Official

26 August 2020

