



14TACD2020

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 13 November 2017. A notice of appeal was received by the Tax Appeals Commission on 7 December 2017. The Appellant is seeking a repayment of the VRT amount of €1,868 paid, on the grounds that he believes he should be entitled to avail of the transfer of residence relief.
3. This appeal is, by agreement between the parties, determined in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

4. During the period 2013-31 July 2017, the Appellant worked in Ireland for **Redacted**. His work was shift work, being 7 days on and 7 days off. He lived in rented accommodation in **Redacted (in the State)**. On his days off, he travelled to Northern Ireland (sometimes by car, sometimes by bus) and stayed in Northern Ireland with his parents. During that time, he never considered himself resident in the ROI. He purchased a property in the ROI, in which he now resides, on 1 August 2017 and regards himself as a resident in the ROI from that time. Prior to this date, he regarded himself as a resident of Northern Ireland (NI)
5. On 1 August 2016 the Appellant purchased the car, which is the subject of this appeal, in Northern Ireland.
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, with effect from 1 August 2017.
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 from Northern Ireland to the Republic as required by section 134(1)(a) of the Finance Act 1992.
8. The Respondent claims that the Appellant has been living and working in the State since 2013.
9. The Appellant contends that his "normal" residence was in the UK immediately before he moved back to Ireland permanently on 1 August 2017, at which time his normal residence transferred to the State.



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.



Appellant's Submissions

"I never considered myself a resident of Ireland until the purchase of a property that I now reside in was completed on 1st August 2017. Prior to the completion of purchase, I was working in Ireland and living in rented accommodation, and travelled back home to my parent's home in Northern Ireland on the vast majority of my days off. As I have worked shift hours (days and nights) for the previous 4 years, I only work 7 days every 14 days, providing me with plenty of opportunity to travel to Northern Ireland. This, prior to the purchase of my property, was my normal residence, which according to the Transfer of Residence Eligibility Criteria section 2.1.1.2 in the 'Vehicle Registration Tax, Section 2, Reliefs and Exemptions', is a valid criteria for Transfer of Residency.

As soon as the purchase of my property was completed I immediately started the process of the Transfer of Residency, as I now considered myself a resident of the state. I also submitted my car for VRT as soon as I found out the original decision, paid my vehicle tax in full the day after the VRT, and applied for the NCT as soon as I received the tax book..."

"...I purchased the vehicle in question on 1st August 2016, which, as I transfer my residency on 1st August 2017, means that I had ownership of the vehicle for over the minimum of the 6 months required prior to transfer.

I have calculated ... that as of 1st August 2017, out of the 10000 miles that I drove between purchasing the car and starting the process of transferring my residency (including 2 months worth of holidays in that time), roughly 3080 miles were to my place of work from the accommodation that I was renting last year, leaving me with 6920 miles to travel back to Northern Ireland during my days off. I have calculated that I drove roughly 24 journeys back to Northern Ireland during that time, plus numerous other journeys on buses as detailed below.

*I did sometimes stay in Ireland when I was working nights as I was left too tired to drive, so in these cases I got public transport to and from Northern Ireland, and in these cases I usually used **Redacted** Buses. I have enclosed a ticket with them as an example, but I unfortunately don't have more of these tickets as the driver retains the ticket on*



the return journey, and this ticket is from an instance that I didn't use the return journey.

When staying in Northern Ireland, I stayed at my parent's home in Northern Ireland. As I was staying at home, I was not allowed to contribute towards food or household bills, and had no bills under my name. I would also like to note that in my original application I included a signed note from my father confirming that I had no expenses while at home.

Some of my outgoings were to shopping services such as Redacted, which I always got delivered to Northern Ireland, as I was up there so frequently that I did not feel the need to get anything delivered to a rented address in Ireland. And all of my official documents from working in Ireland, such as P60, payslips and billing addresses were all for Northern Ireland.

Respondent's Submissions

TAC have asked for comment on the potential impact of Part 3 S.I.59/1993 on this appeal. This legislative provision defines normal residence, based on personal and occupational ties.

1. Facts of Case

(i) Transfer of Residence VRT exemption application was made on 6/8/2017, claiming residency in Northern Ireland from 6/12/1989 – 1/8/2017. The only documentation provided in support of residency in Northern Ireland was:

- Unaddressed Certificate of Insurance*
- Bank Statements from Jan-July 2017, showing a total of 8 UK transactions*
- Unaddressed Vehicle Test Certificate dated 11 May 2017.*
- Letter dated May 2017 to NI address.*
- Dental Invoice dated 11/7/2017 to NI address.*

This scant information, together with the fact that the applicant had previously advised Revenue in 2013 that he was living in Redacted (in the State), resulted in the refusal of the application.

(ii) The applicant made a First Stage Appeal against this decision to Revenue on 11/10/2017. No additional documentation was provided in support of claim of NI



residency and on 13/11/2017 this appeal was refused for the same reasons as the refusal of initial application.

(iii) The applicant thereafter made a Second Stage Appeal to TAC on 7/12/2017.

(iv) In the applicant's Statement of Case subsequently submitted to TAC, he included some additional documentation, not previously supplied to Revenue:

- One P60, dated 6/2/17 to NI address (numerous other Revenue documents issued to address in **Redacted (in the State)**)*
- Electricity bills sent to applicant's father at address in NI*
- Application for Vehicle tax with NI address inserted*
- Bankletter dated 18/7/2017 to NI address*
- Letter from Irish Water to NI address dated 27/11/2017 (nearly three months after alleged Transfer of Residence to Ireland.*

2. Revenue position

None of the supporting documentation provided by applicant with his TOR application, or subsequently submitted to TAC with the applicant's Statement of Case, provides sufficient evidence to indicate that the applicant was resident in Northern Ireland for the period in question, or that he had possession and use of the vehicle in question in Northern Ireland for the requisite six months. TAC have previously indicated in earlier judgements on similar cases that the burden of proof rests with the applicant to demonstrate UK residency; this proof has not been provided in this case.

3. Impact of Part 3 S.I.59/1993 on this appeal

As the applicant has not provided sufficient evidence to suggest that he was residing in different places in two different countries, it is not considered that this legislative provision has any great application in this case. Whilst the applicant may have personal ties in Northern Ireland, he has not provided evidence to demonstrate that he was in any way residing there for the period in question.

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 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's place of '*normal residence*' was outside of Ireland (for the purposes of S.I No. 59/1993) prior



to him applying for transfer of residence relief in respect of his importation of the car into Ireland.

12. The Appellant 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

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. 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...'

15. In the within appeal the Appellant has indicated that he worked for **Redacted (in the State)** on a full-time basis in **Redacted (in the State)** and that he rented accommodation there until he purchased a house there in August 2017. The Appellant has provided no information on whether he spent more or less than 185 days in the ROI or the UK in a year. Given his submissions, and given that he works full time in **Redacted (in the State)** (albeit on shift work), it is reasonable to conclude that he spends more than 185 days in the ROI. He will be treated as having his normal residence in the ROI if his personal ties and occupational ties are in the ROI. However, if he can establish that his personal ties are in NI, during the period in question, then his "normal residence" would be there.

16. The Appellant was asked by this Commission to confirm where he considered his place of 'personal ties' to be located during the period of his living and working in the



ROI, 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. In the absence of such evidence we must examine this issue in the light of the evidence already submitted by the Appellant.

Place of Personal Ties

17. 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 has consistently argued that he regarded himself as a resident of NI prior to August 2017. The Appellant's occupational ties were in the State and there is no dispute between the parties in this regard.

18. 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*".

19. 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*".

20. 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".



21. Based on these European cases, it seems to me that the Appellant's permanent centre of interests is in the ROI for the period during his ownership, prior to 1 August 2017, of the vehicle, the subject of this appeal. The Appellant rented property as a residence in the ROI. His credit card transactions appear to be more related to ROI activity than NI activity. The submissions made by the Appellant indicate that he visited NI very regularly, but the evidence offered, shows little connection by the Appellant with NI public or social services. Furthermore, the submissions are moot on the location of the Appellant's tax residence from 2013 to 2017.

Conclusion

22. 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'*.

23. The question to be answered in this appeal is whether, prior to 1 August 2017, 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 1 August 2017.

24. 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.

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

PAUL CUMMINS
APPEAL COMMISSIONER
9th January 2020

