



Ref: 152TACD2020

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 18 October **Year 1**. A notice of appeal was received by the Tax Appeals Commission on 15 November **Year 1**. The Appellant is seeking a repayment of the VRT amount of €9,529 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 without an oral hearing in accordance with section 949U of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

Background

4. The Appellant was born in the UK and holds dual nationality (British and Irish). The Appellant is a director of a UK company and has worked in the UK all his life. He was married in Ireland in **Year -2** to an Irish national. At the time of making the transfer of residence relief application, the Appellant stated that his spouse and marital home were in Dublin and that he returns there each week. This Dublin home is owned by his spouse. He rents a property in the UK for use while he is working in the UK.
5. Since his marriage in **Year -2** and his wife's retirement from her employment in **Ireland**, they spent their time residing in both the UK and Ireland, with the majority of his time up to and including **Year 0**, spent working in the UK and supporting his two daughters from a previous marriage, who both live in the UK. During the time, he never considered himself resident in the ROI. However, as a result of spending more time in Ireland, the decision was made to transfer his residence to Ireland on 22 August **Year 1**. Prior to this date, he regarded himself as a resident of the UK.
6. The Appellant acquired an Irish Public Service Card in January **Year 1**. He stated that this was in preparation for his transfer of residence.
7. On 12 December **Year 0** the Appellant purchased the car, a **REDACTED**, which is the subject of this appeal, in the UK. This car was first registered in the UK on 31 October **Year 0** as **REDACTED**. The Appellant brought the vehicle into the State on 22 August **Year 1** and it was registered in September **Year 1** as **REDACTED**.
8. 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 22 August **Year 1**. The transfer of residence relief application stated that the Appellant took up normal residence in the State on 22 August **Year 1**. The application was refused by the Respondent.
9. On the 18 October **Year 1** the Respondent refused the Appellant's appeal against the refusal of his 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 the UK to the Republic at the time that he brought the vehicle into the State, as required by section 134(1)(a) of the Finance Act 1992.



10. The Respondent claims that the Appellant's closest family and personal ties were in the State prior to August **Year 1** and therefore his normal residence, up to the time of bringing the vehicle into the State, was Ireland and not the UK.
11. The Appellant contends that his "normal" residence was in the UK immediately before 22 August **Year 1**, at which time his normal residence transferred to the State. The Appellant contends that the Respondent has disregarded his continued residency and personal ties in the UK since birth up to August **Year 1**.

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

12. In his letter setting out his Grounds for Appeal, the Appellant wrote:

"I owned a vehicle in the UK and lived there full time before I developed personal ties in the State."

13. In his first stage appeal letter from the Appellant to the VRT Appeals Officer, dated 6 October **Year 1** he wrote:

*"I have previously provided Revenue with my passport documentation which confirms I have dual nationality for the United Kingdom and for Ireland. I was born and have worked in the United Kingdom all my life and I still do. I have Irish nationality because my parents are Irish citizens. I have provided documentation confirming I still have a residence in England and I continue to work in London. I have provided documentation confirming I am a Director of the company I work for in the United Kingdom and documents confirming all my income to date is derived from that company and is paid to me in the United Kingdom. I have also provided documentation confirming that since **Year -4** I have been a Director of an Irish company based in Dublin but, to date, I have received no income from that company."*

*"The vehicle which I acquired in December **Year 0** was both owned and used by me in the United Kingdom for more than 8 months before I brought it into the state on 22nd August **Year 1**."*

*"I have provided Revenue with documentation confirming that I married in Ireland in September **Year -2**. The marriage certification confirms my address as being in the United Kingdom. Since before September **Year -2** and until **Year 1***



my wife and I spent time residing in both the United Kingdom and also in Ireland. My primary place of work and my only source of income continues to be in the United Kingdom as stated earlier. However, it became clear that I was beginning to spend more time in Ireland in Year 1 and I should therefore transfer my residence. In January Year 1, I obtained my Irish Public Service Card in preparation for my transfer of Residence. For the same reason, I also transferred my only personal vehicle to the State as this had become my place of residence. I consider I have complied in full with the requirements for Transfer of Residency and for relief from VRT."

"The refusal of my application for permanent relief from VRT does not take into consideration that I owned and used a vehicle as my personal property in the United Kingdom since at least Year-13 and my personal vehicle was brought into the State as my personal property when transferring my normal residence to the State"

14. In his Statement of Case the Appellant wrote:

"The Office of the Revenue Commissioners...disregarded my continued residency in the UK since birth, my ownership of a personal vehicle in the UK since at least Year -13 and my wife's and my continued use of residency in the UK when the vehicle was purchased and when it was brought into the State."

"I provided Revenue with documentation confirming that I married in Ireland in September Year -2. The marriage certificate confirms my address as being the UK in Year -2.

My wife retired from employment REDACTED in Dublin when we married and so between September Year -2 and Year 1 we spent our time residing in both the UK and Ireland with the majority of my time spent in the UK for work purposes but also to support my two daughters from a previous marriage. Both live in the UK.

My primary place of work and my only source of income continues to be in the UK. But it became clear in Year 1 that my wife and I were starting to spend more time in the State and so the decision was therefore to transfer my residence. In January Year 1 I obtained my Irish public service card in preparation for my transfer of residence. For the same reason I transferred my personal vehicle from the UK to the State in August Year 1. Since Year 1 I



consider I have been living in two countries with my wife. My personal ties with my two daughters have remained in the UK and my wife and I have increased our time spent in the State to more than 185 days each year.”

*“In addition, the fact that my wife, my personal ties within the State, was retired and appending significant time outside of the State in the UK with me up until **Year 1** has been ignored. It is also relevant to consider that my two daughters were and remain, personal ties in the UK and they together with my place of work and only source of income were all based in the UK is the reason why my wife spent significant time in the UK until **Year 1**.”*

“Statutory Instrument 59/1993 provides a definition for normal residence and the definition has been incorrectly interpreted by the VRT appeals office in relation to my individual case.

*I was advised in 9th September **Year 1** that permanent tax relief was refused because I had personal ties in the state when I purchased the vehicle in December **Year 0**. Neither Section 134 nor Statutory Instrument 59/1993 mention the date when a vehicle is purchased is to be considered in conjunction with personal ties in the State.*

I brought it into the State. I consider the definition in Statutory Instrument 59/1993 does not consider or cover the circumstances in my case and it is clear my personal ties have been over simplified by the VRT appeals officer and my appeal has been refused as a result. Full consideration needs to be given to my circumstances and my appeal upheld.”

15. The Tax Appeals Commission wrote to the Appellant requesting additional background information as follows:

16. The Commission asked: Can you advise what date in **Year 1** you believe you transferred your normal residence to Ireland from the UK?

The Appellant replied:

*“I obtained my Irish Public Services Card in January **Year 1** in preparation for the transfer of my normal residence so that would be the earliest date that it could be considered to have taken place. The latest date I would consider to be November **Year 1** as I estimate I had spent 185 days in Ireland*



in Year 2 by that time. The single most obvious date would be when I transferred my vehicle from the UK to Ireland on 22nd August Year 1 with a boot full of personal items.”

17. The Commission asked: Can you advise as to what event or circumstance, if any, marks the transition of your normal residence from the UK to Ireland in Year 1?

The Appellant replied:

“Two key events mark the plans for the transition of my normal residence from UK to Ireland in Year 1.

In Year -1 I commenced the process of selling the UK company of which I am REDACTED of the shares. Agents were appointed to market the company in Year 0 and we progressed through interview stages with a number of potential purchasers with a view to the sale proceeding in Year 1.

...REDACTED. I obtained my Irish Public Services Card hoping the sale would continue and I would be able to live and work in Dublin.

In Year 0 my wife decided to extend her training in Ireland to qualify as REDACTED. My wife extended her REDACTED studies in REDACTED. This required my wife to spend more time in Ireland from September Year 1 until September Year 2 to REDACTED. All these activities were taking place in Dublin.

Unfortunately the impact of Brexit meant REDACTED further delayed any potential sale REDACTED. Therefore my wife spent the necessary time in Ireland to progress her studies as noted above and I spent more time in Ireland in Year 1 in order to be with her even though the sale of the UK business did not progress and I continued to manage the UK business.”

18. The Commission asked: What is your estimate of the number of days you and or your wife spent in Ireland and the UK in the years Year 0 and Year 1?

The Appellant replied:

“In Year 0 I estimate that I spent 170 days in Ireland and the remainder in the UK.



*In **Year 0** I estimate my wife spent 270 days in Ireland and the remainder with me in the UK.*

*In **Year 1** I estimate that I spent 217 days in Ireland and the remainder in the UK.*

*In **Year 1** I estimate my wife spent 315 days in Ireland and the remainder with me in the UK"*

Respondent's Submissions

19. The Respondent corresponded with the Appellant in the following terms:

"Statutory Instrument 59/1993 states "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 or 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 the place of his personal ties: Provided that such person returns to the place of his personal ties regularly."

20. In its Statement of Case, The Respondent wrote:

*"**APPELLANT** was born in the UK and holds dual nationality (British & Irish.) He is married to an Irish resident. On his TOR Application he clearly states that "I live both in the UK and Dublin, Ireland due to occupational and personal ties but my personal ties are in Dublin. My spouse and the marital home are in Dublin and I return there every week after working mid-week in London for my UK company. I work from the offices of my Irish Company at the beginning and end of the week and spend weekends in the marital home in Dublin with my spouse" (copy extract from TOR application attached). He states that the marital home in Dublin is owned by his spouse. He was renting the UK property. He further states that he has owned a vehicle in the UK since **Year -13**, however the vehicle in question was purchased on 18/12/**Year 0**.*

He was refused Exemption from VRT on Transfer of Residence quoting "I regret to inform you that your application has been unsuccessful as the documentation



submitted with your application and our records show you have personal ties in the State”.

“...

There is no dispute to the fact that the appellant has resided in the UK for a number of years, nor that he had possession and use of a vehicle for those years. In his application the appellant himself states that he is residing in both Ireland and the UK, in fact by his own calculation he appears to spend 4 days in Ireland and 3 days in the UK each week.

He himself states that he has business interests in both the UK and Ireland dividing his time between both places.

*It is Revenue’s case that as the appellant lives in turn in both countries, and in his application for TOR exemption gives the address of his closest relative (his wife) as **Dublin**, that the appellant does not qualify for Exemption from VRT on Transfer of Residence per Statutory Instrument 59/1993”.*

21. The Respondent quoted the following extract from the Appellants TOR Application:

“Reason for transfer of residence into the State

I live in both UK and Dublin, Ireland due to occupational and personal ties but my personal ties are in Dublin.

*My spouse and the marital home are in Dublin and I return there every week after working mid-week in London for my UK company. I work from the offices of my Irish company at the beginning and end of the week and spend weekends in the marital home in Dublin with my spouse. I rent a flat in the **UK** rather than book hotel rooms when working in London mid week. My flight details with Ryanair confirm I return to the marital home on a regular basis and I now spend at least 185 days each year in Ireland.”*

Submissions and Analysis



22. 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;’*
23. 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 in August **Year 1**.
24. 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. This fact is not contested by the Respondent.
25. 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.”*
26. 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...’*
27. In the within appeal, the Appellant has indicated that he spent more than 185 days in the UK in **Year 0** and prior years. In **Year 1**, the year the Appellant claims he transferred residence to the ROI, he spent 217 days in the State. Up to August **Year 1**, his occupational duties and ties were largely exercised in the UK.



28. He will be treated as having his normal residence in the UK if his personal ties and occupational ties are both in the UK. If he can establish that his personal ties are in UK during the 6-month period prior to importation, then his “normal residence” will be in the UK. If on the other hand it is shown that, notwithstanding that his occupational ties are in the UK, his personal ties are in the State during the 6 month period prior to importation, then his “normal residence” would be in the State and he will not be entitled to “Transfer of Residence” relief from VRT.

Place of Personal Ties

29. 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 UK prior to August **Year 1**. The Appellant’s occupational ties were primarily in the UK and there is no dispute between the parties in this regard.
30. In *Georgios Alevizos v Ipourgos Ikononikon* (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*”.
31. 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*”.
32. 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”.

33. In his application for transfer of residence relief, the Appellant admitted that he lives *“in both UK and Ireland due to occupational and personal ties but my personal ties are in Dublin.”*; that his *“spouse and the marital home are in Dublin and I return there every week after working mid-week in London for my UK company”*; that he works *“from the offices of my Irish company at the beginning and end of the week and spend weekends in the marital home in Dublin with my spouse. I rent a flat in **the UK** rather than book hotel rooms when working in London mid week. My flight details with Ryanair confirm I return to the marital home on a regular basis and I now spend at least 185 days each year in Ireland”*. This testimony suggests these arrangements were in place for a period before he imported the car, although it is unclear for how long.
34. His wife spent more than 70% of her time in the State in **Year 0** and an even greater time in **Year 1**. The Appellant’s background information strongly infers that her place of residence in **Year 0** and **Year 1** is in the State. Given that the Appellant spent 170 days in the State in **Year 0**, this fact, coupled with his other testimony, suggests that he visited Ireland “regularly” in **Year 0** as well as **Year 1** prior to his importation of the car.
35. Based on the principles enunciated in the European cases cited above; on the fact of his wife’s residence in the State in **Year 0**; on his regular visits to Ireland in **Year 0**; on the location of the marital home in the State; it seems to me that the Appellant’s personal ties on the balance of probabilities resided in the State from at least **Year 0**. This means that for the period during his ownership of the car, which is the subject of this appeal, the Appellant is treated for the purposes of the transfer of residence rule, to have his normal residence in the State.

Conclusion

36. 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'*.

37. The question to be answered in this appeal is whether, prior to August **Year 1**, 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 August **Year 1**, when importing his car.
38. 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 the VRT amount of €9,529 paid.
39. The appeal hereby is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

APPEAL COMMISSIONER

21 July 2020

