171TACD2020

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, made on 7 September 2019, was refused by the Respondent by letter dated 10 September 2019 due to insufficient information proving the Appellant's residence, use and possession of the vehicle. The Appellant appealed this decision and late registration charges to the VRT appeals officer on 19 October 2019, pursuant to section 145 Finance Act 2001, and after some additional correspondence between the parties, the Appellant received notice from the appeals officer, on 10 January 2020, stating that his appeal was unsuccessful.

3. A Notice of Appeal was received by the Tax Appeals Commission (TAC) on 28 January 2020, pursuant to Section 146 Finance Act 2001. The Appellant is seeking a repayment of the total amount of €13,829.81 paid. This amount is made up of three separate charges, being (i) VRT charge of €13,250, (ii) late registration charge of €556 and (iii) 'no show' fee of €23.81. The Appellant is appealing the total charge on the grounds that he believes he should be entitled to avail of the relief and that he was not responsible for the delays in registering the vehicle.

4. 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

5. The Appellant is an Irish national that had lived in REDACTED for a number of years before returning to live in Ireland in August 2019. On 31 August 2019, he imported the vehicle which is the subject of this appeal (REDACTED). The Appellant had purchased the vehicle in the UK and after purchasing it, the Appellant had left the vehicle at his wife's family's house in the UK, for use by him and his wife whilst visiting the UK. During this period the Appellant was a named driver on an insurance policy for the vehicle. The insurance policy was in the name of his wife's father. The Appellant submits that he was the registered owner of the vehicle but was unable to supply the original V5C (UK ownership logbook) as this was returned to the relevant UK authorities.

6. On 2 September 2019 the Appellant arranged an appointment for 16 September 2019 to register the vehicle with the NCTS.

7. 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 7 September June 2019.

8. The Respondent refused the claim for the relief on 10 September 2019 "due to insufficient documentation proving residence, use and possession of the vehicle" and noted that the vehicle must be registered immediately within 10 days of the 10 September 2019.

9. The Appellant submitted that he did not receive the refusal letter until after 16 September 2019 and as a result he did not have the Transfer of Residence relief letter when he attended the registration appointment on 16 September. He submitted that he was told at the NCTS that he could not be seen without the Transfer of Residence refusal

letter. The Appellant then booked the earliest available appointment date of 5 October 2019 and when he attended on this date, he was told that he would need to wait a number of days for the 'stats code', for the vehicle VRT amount to be calculated before the VRT could be calculated and paid.

10. At the time of paying the VRT on 12 October 2019, a late registration fee was charged on the basis that the vehicle had already been in the State 42 days. The Appellant submits that of these 42 days, 7 days passed whilst waiting for the VRT amount to be calculated and 18 days passed because he had not received the Transfer of Residence relief refusal letter by the time of his allocated appointment on 16 September 2019.

11. The Appellant appealed (1) the refusal of the Transfer of Residence relief decision and (2) the late registration charge to the VRT Appeals Officer on 19 October 2019, pursuant to section 145 Finance Act 2001. After some additional correspondence between the parties, his appeal was refused on 10 January 2020 on the basis that, (1) the Appellant did not have the necessary possession and usage of the vehicle for the requisite six months, (2) the refusal letter was not necessary to register the vehicle and therefore, other than the 7 days delay in retrieving the 'stats code', the Appellant was responsible for the delay in registering the vehicle.

12. In correspondence with the Appellant on 11 December 2019, the Respondent submitted that the Appellant did not attend the appointment on 16 September and that the Appellant contacted the NCTS on 17 September to make the new appointment. The Respondent accepted that the 7 day delay in retrieval of the 'stats code' should not be included in the late registration penalty and the Respondent sent a refund cheque in the amount of €93 to the Appellant but noted that the remainder of the additional charge stood.

13. The primary issue in this appeal to be adjudicated on, is the refusal by the Respondent to grant the Appellant Transfer of Residence relief. The Appellant is appealing this decision to the Tax Appeals Commission on the grounds that he meets all of the conditions set out in the relevant legislation pertaining to this relief and he submits that he has provided the necessary evidence showing that he did have the necessary possession and usage of the vehicle for the requisite six months.

14. In relation to the late registration charges, the Appellant is appealing those charges on the grounds that he was not responsible for the delays in registration.

Legislation (see Appendix 1)

Section 146 of the Finance Act 2001;

Section 132 Finance Act, 1992, as amended;

S.I No. 318/1992 – Vehicle Registration and Taxation Regulation, 1992, Regulation 8;
Section 134(1)(a) of Finance Act 1992, as amended

Statutory Instrument No. 59/1993, Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993

Appellant's Submissions

15. In his Notice of Appeal the Appellant submitted correspondence with the Respondent dated 20 December 2019, as follows:

'In an effort to clarify exactly what you require, please allow me to take this opportunity to fill in the necessary blanks in compliance with SI No 59/1993.

- *Firstly, you are correct in assuming that I was resident in* REDACTED *(outside of the state). Both myself and my wife (who was resident in Ireland) frequently visit the UK, where my wife's family live. She is originally from the UK (birth cert and marriage cert provided as proof of same). Because my wife goes to the UK often, we decided to purchase a vehicle which would be left there for our use, which we both have had. The vehicle was insured at my wife's family home address (see supporting documents i.e. birth and marriage cert). The policy holder named on the insurance document is* REDACTED*, father of my wife. He was the policy holder of which myself and my wife were named drivers on the policy. The tax and duty manual describe a need for insurance, but it does not imply that the policy must be in the vehicle owners name, just that insurance is required and acceptable as evidence of possession. When I returned to the state on a permanent basis, we made a decision to bring the car into the state as opposed to selling it there and purchasing a new car, which I would need the use of when home.*

- *With regards to evidence of day to day living, I am not willing to provide anything other than the redacted bank statement already provided as there is no other information within that statement which pertains to this case. As you can see from various other documents within your possession, work was*

carried out on the car in the UK. You have not specified a minimum amount of proof of day to day living expenses, therefor I surmise that what was provided will in fact suffice. You have evidence that I was in REDACTED*, you have evidence that day to day living expenses did occur in the UK, which complies with SI No. 59/1993…*

In summary, in compliance with SI No. 59/1993, I have demonstrated that I was resident outside of the state and the car which was resident outside the state was in my possession and accessible and used by myself and my wife and family. I have also demonstrated that I have now returned to the state and have owned the vehicle for longer than six months which satisfies the VRT exemption and in view of this I expect a full and entire refund of both the VRT and the penalties…'

16. In his Notice of Appeal the Appellant made the following submission:

This appeal has two points which I will address in turn. First, the VRT appeal and secondly, the late registration penalties.

1. The VRT appeal

1.1 Possession

a) The VRT section 2, article 1.1.1.2 states that the applicant must have possession and actual use of the vehicle outside the state for at least six months prior to transfer. This has been demonstrated with purchase documents, insurance documents, vehicle servicing evidence, shipping receipts, bank statements. I have demonstrated ownership, day to day expenses, residency outside the state for an extended period of time and proof of return to the state.

b) It is my understanding that the legal definition of possession is 'to have control of' and that it does not extend to proximity. If it did, then I would not be in possession of my home as I was away for an extended period of time. This begs the question, under Irish law, what is the minimum use of movable property in order to determine possession? The continuous exercising of a claim, to the exclusive use of an object or a thing constitutes possession of the object. If a person has apparent control of an object and apparent power to exclude others from use of the object, then the person has possession. As only my wife and I have keys to the vehicle, there is evidence of possession due to control.

1.2 Usage

a) The revenue refused the appeal on the grounds that I have not had necessary possession and usage of the vehicle for the requisite six months, however the revenue agent acknowledges use in his words 'periodic use' (refer to letter VRT

#3). The legislation does not specify a minimum amount of usage, therefore how can I not meet the minimum amount?

b) *As my wife has had frequent use of the car in the UK, and we are jointly assessed as a marital unit, in the eyes of the revenue, we are a single entity, therefore surely, we are also in this case 'the individual'. How often did I need to use the car? Once, twice, every day? My bank statements provide evidence that I was in the UK often.*

c) *Mileage. The purchase documents show 7659 miles (12325km) on the 18/12/2018. The mileage upon import in October 2018 (later corrected to October 2019) was 28002km.*

d) *The below paragraph is an excerpt from our previous appeal letter (refer VRT appeal 20/12/19). We argued that there was no minimum usage outlined as proof of day to day expenses. It is my understanding based on the final correspondence that the revenue agent subsequently accepted this point as it was not raised as grounds for refusal in the final letter.*

With regards to evidence of day to day living, I am not willing to provide anything other than the redacted bank statement already provided as there is no other information within that statement which pertains to this case. As you can see from various other documents within your possession, work was carried out on the car in the UK. You have not specified a minimum amount of proof of day to day living expenses, therefor I surmise that what was provided will in fact suffice.

Based on the principle that he accepted the argument of no minimum day to day expenses, surely the same rationale should apply to this item.

e) *The revenue agent points out in his letter that the criteria I fail to fulfil is laid out in regulation 4.1 of S.I. 59/1993.*
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.

This offers no clarity whatsoever as there is no criteria laid out indicating minimum use or definition of possession…

I have met all criteria laid out in VRT section 2 reliefs and exemptions in compliance with the Finance Act 1992. Where a decision is down to an agents discretion and there is ambiguity due to absence of tangible parameters, there is no way a person can achieve a fair and unbiased outcome. Whether we approach this matter in a literal or interpretational fashion, the fact remains that there is no minimum usage presented in the legislation.
We had not received the letter or indeed refusal letter, so when we told the NCTS agent we had applied for relief, she said she couldn't see us, and we would need to make a new appointment when we had received the letter…

17. The Appellant argued against the Respondent's Statement of Case (4.1.3 to 4.1.6 quoted below) on the meaning of 'possession and use' as follows:

'(i) TAC determination 51TACD2019 ascertained that the Appellant returned to Ireland 19 times in 20 months. This amounted to a ruling that he had regularly visited Ireland. This can be said to be the equivalent of approximately 4/5 visits over 5 months. In determining whether or not I meet the criteria for frequency of visits, one simply has to examine the bank statements provided which show clear clusters of transactions, demonstrating day to day living expenses in the UK 4 times in the 5 months prior to import. There are also transactions dating before that time. Using the same standard that the TAC employed to determine regularity, it can be reasonably considered that my personal circumstances meet the same criteria as TAC determination 51TACD2019.

(ii) At no point in the Act or subsequent manuals is there any requirement of continuous use.

(iii) VRT section 2, reliefs and exemptions 1.1.1.3 proof of eligibility states: the applicant must supply evidence of vehicle ownership and usage. Documents concerning the following may be accepted as evidence of possession and/or actual use.
- *Vehicle registration documentation*
- *Insurance documentation*
- *Vehicle servicing/fuelling*
- *Shipping/transportation/carriage etc.*

Multiple documents were submitted in support of the claim, at least one for each of the above points. I would also like to point out that the Act uses the word ownership and

the Respondent acknowledges ownership of the vehicle in this paragraph, and while ownership and possession are not mutually exclusive, both have been demonstrated…

TAC determination 43TACD2019 submitted an excerpt from determination 10TACD2019 which considers the meaning of the requirement of use, contained in section 4(1) of S.I. 59/1993. Said excerpt taken from paragraphs 20 and 25 provide as follows:

'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.' (emphasis added)

In my opinion, reasonable use given the circumstances has been demonstrated…

18. The Appellant argued against the Respondent's Statement of Case (4.1.7 quoted below) on the meaning of 'possession' as follows:

'(i) TAC determination 10TACD2019 concluded: 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.

It is my considered opinion that in the application of this principle it is beyond the Respondents burden of responsibility and therefore ultra vires to scrutinise my movements outside of the state and make assumptions which, if were to be applied, would fail to reflect the plain intention of the instrument and as such, a construction of the legislation would require the addition of the term 'reasonable use', and an indication of meaning therein.

I have provided documents which shows that I am in fact the registered owner and keeper of the vehicle and did not therefor require anybody's permission to drive my own car and to suggest otherwise is mere conjecture and has no basis in fact. The Respondent acknowledges ownership elsewhere in his case yet still contends that I required permission to use my own car. The documents provided prove ownership, at the same time, as myself and my wife were the only persons to possess the keys, I have demonstrated possession through the continued exercise of a claim to exclusive use and control of the vehicle. The insurance documents were submitted in order to demonstrate that the vehicle was insured.

(ii) TAC determination 43TACD2019 concluded that the Appellant did not meet the requirements for VRT relief due inter alia that the car was not insured and therefore could not have been used by the Appellant. This is a reasonable conclusion, but to deny my claim on the grounds that the car was insured, but under a separate policy holder (even though it's a fully comprehensive policy on which both I and my wife are named) is illogical. Plus, the Respondent is basing his argument on details outside of his remit.

I categorically did not require the insurance policyholder's permission to use my own vehicle and I refute the Respondents inference regarding such…'

19. The Appellant argued against the Respondent's Statement of Case (4.1.7 (ii) quoted below) on the meaning of 'use' as follows:

'The Respondent presumes that I did not use the car over a sustained period. I have provided all manner of evidence to the contrary including evidence of day to day expenses, work carried out on the car and a plethora of other documents...

Periodical use is still use. Repeated insistence that I could not have used the car due to proximity could be construed as arbitrary. There is no wording within the legislation pertaining to complete disposal…

I would like to refute the Respondents claims that I simply argued 'any use will do' or that I was unwilling to provide information. I have been wholly compliant in all requests for information. As previously discussed, when told I had not provided enough evidence of expenses, I argued that that there were no minimum expenses outlined, to which the Respondent dropped their argument, I simply pointed out that the same principle should be applied to usage as there was no minimum outlined. The Respondent is twisting my words and I would like to highlight that at no point was I asked the frequency of visits…

Usage was demonstrated in the period preceding the importation of the car into the state by the Appellant and notwithstanding this there is no minimum usage defined within the legislation. Respondent claims that use by any other parties is not relevant, but goes on in 3.19 to state that the car must have been primarily used by other parties. This is both contradictory and moot…

Again, it is my opinion that the Respondent has gone beyond the burden of responsibility in scrutinising the mileage. Who drove the car while outside the state is beyond the Respondents remit and while it would be considered impossible to impose a minimum limit of mileage within the legislation, there too can be no maximum imposed either. There is no universal or extraterritorial jurisdiction in this case. Mileage infers use and as previously mentioned my wife and myself both together and separately used the vehicle outside of the state. It is not atypical that spouses would use the same vehicle. Furthermore, the legislation does not provide minimum quantum's of use. The Respondent declares that the regulations clearly state that the vehicle must be used by the Applicant and only the Applicant. Does the Respondent mean to impose restrictions on whom may use the vehicle, a vehicle owned by me, in a different state, while fully insured and entirely legal? '

20. The Appellant argued against the Respondent's Statement of Case (4.2 quoted below) on the VRT additional charge of €556, as follows:

'I have already stated my position in the statement of case (shown below) which I stand by wholeheartedly. While this may not be a matter for the TAC, it must be taken into account as to omit would imply acceptance.

a) The car entered the state on the 31st August 2019. The appointment was made on 2/9/19 for the 16/9/19, but I did not have the TOR letter by the time I attended the appointment. I was told at the NCTS that I could not be seen without the TOR refusal letter. The letter was dated 10/9/19, but it was not received until after the 16/9/19. The next available appointment was 5/10/19, which again, I attended, where upon I was told to wait for the VRT amount. Thus, the vehicle was in the state for 42 days, of which 7 days were waiting for the amount to be provided, 18 days we were waiting for a new appointment from the NCTS because we had not received the TOR refusal letter.

b) The revenue agent argues that we did not need the TOR letter for the appointment and thus the penalty stands (less the €93 for the 7 days delay by revenue). However, under VRT Manual, section 1, article 5.3.3.1 (7), the exemption letter from revenue is

required when registering a vehicle where relief is claimed. We had not received the letter or indeed refusal letter, so when we told the NCTS agent we had applied for relief, she said she couldn't see us, and we would need to make a new appointment when we had received the letter…

21. The Appellant argued against the Respondent's Statement of Case (4.3 quoted below) on the 'no show' charge of €23.81, as follows:

'I'm sure the NCT have CCTV cameras which would prove my attendance at the appointment. And while this may not be a matter for TAC, again to omit would imply acceptance.'

Respondent's Submissions

22. The Respondent in its Statement of Case stated the following:

'2. Facts of Case

2.1 Appellant imported vehicle REDACTED *on 31/8/2019 and applied for VRT exemption under Transfer of Residence on 7/9/2019.*

2. 2 This VRT exemption application was refused on 10/9/2019 due to insufficient documentation proving residence, use and possession of the vehicle.

2.3 Appellant appealed this decision to the VRT Appeals Officer on 19/10/2019.

2.4 On 27/11/2019, the VRT Appeals Officer sought additional information from appellant in support of his exemption claim.

2.5 On 2/12/2019, the appellant responded, providing some of the information sought.

2.6 On 11/12/2019, the VRT Appeals Officer wrote to appellant, clarifying the reasons for seeking the information initially sought and adjudicating on VRT additional charge claim.

2.7 On 20/12/2019, the appellant provided some additional information in support of his claim for VRT exemption and questioned the substantive refusal of the appeal relating to the VRT additional charge.

2.8 On 10/1/2020, the VRT Appeals Officer formally refused the appeal and notified the appellant…

3. Statutory Provisions…

4. Revenue Position

The appellant has indicated that he is appealing three different charges and for the purposes of this submission, they will be dealt with separately

4.1 VRT charge of €13,2550.
This is the primary issues under appeal and arises from Revenue's refusal to grant VRT exemption under Transfer of Residence.

4.1.1 The appellant resided in REDACTED *for a number of years.*

4.1.2 Whilst resident in REDACTED*, the appellant purchased the vehicle in question in the UK and left this vehicle at his wife's family's address, for the use of he and his wife when in the UK.*

4.1.3 The appellant has indicated that he considers the facts that he owned the vehicle, was a named driver on an insurance policy for the vehicle and that he and his wife used this vehicle when visiting the UK, as meeting the statutory criteria of possession and use outside the State for at least 6 months. The appellant, in both his letters to Revenue and in his TAC Appeal papers, further indicated that he does not consider it necessary to declare how frequently he used the vehicle in the UK as there is no minimum standard of possession and usage which must be met.

4.1.4 Revenue have refused the TOR exemption application on the grounds that the statutory requirements of possession and usage of the vehicle for at least 6 months have not been met.

4.1.5 Typically, cases involving TOR Exemption involve the appellant bringing back a vehicle they had in the country in which they resided. It is highly unusual for the exemption application to involve an applicant residing in one country bringing back a vehicle which was held in another country, some 5,000km distant.

4.1.6 Whilst the legislation does not specifically state that VRT TOR exemption is solely for a person bringing back a vehicle which they had in the same country in which they resided, it is considered that this is very much the legislative spirit and intent, to allow a person bring home materials which they both had and were using in the country in which they resided.

4.1.7 Regulation 4(1) of SI 59/93 states that VRT TOR exemption will be applied to a vehicle which has "been in the possession of and used by him (applicant) outside the State for a period of at least six months". In effect, the two criteria, both possession and

usage for at least 6 months, must be met. In considering these separately in the appellant's case:

(i) Possession – Whilst no definition of possession is provided in the legislation, it is generally taken to mean "have control of".
In the appellant's case, he was residing over 5,000km away from where the vehicle was located, the vehicle was insured in the name of a third party, and, although the appellant was a named driver on that policy, the policy indicates that he required the permission of the policy holder to use the vehicle. In those circumstances, it is considered that the appellant must be regarded as not having control of the vehicle in question and therefore cannot be regarded as having possession.

(ii) Usage for at least 6 months – whilst it is accepted that this provision does not necessitate usage of the vehicle by the applicant for a continuous period of 6 months, as has been determined in previous appeals, the provision does imply usage over a sustained period.

- *It is difficult to accept that the requirements of this provision are met by periodically travelling to another location, over 5,000km away, and using the vehicle at that location. Indeed, it can be viewed that not alone did the appellant not use the vehicle for the requisite period, but that the vehicle was never completely at his disposal to render it possible for him to use the vehicle for the minimum period required.*

- *In endeavouring to consider this requirement, Revenue sought details of the frequency of visits by the appellant to the UK, where the vehicle was located, but he was unwilling to provide this information, considering it unnecessary as he stated that no minimum level of usage is stated in the legislation and any usage will suffice. This position is not accepted, as the legislation very clearly states usage for at least 6 months, which at a minimum implies usage over a sustained period rather suggesting any usage is sufficient.*

- *The legal provision very clearly states that the vehicle must be used by the appellant themselves ("by him") for this minimum period of 6 months, usage by any other parties is not relevant. The appellant's contention that the usage of the vehicle by his wife plays a part in meeting the required usage, has no statutory basis and cannot be considered in any way relevant to his eligibility to TOR exemption.*

- *The appellant, in further support of his claim of usage, puts forward the fact that the mileage on the vehicle increased from 7659 miles (12325km) when purchased to 28002km at time of import. As before, the regulations clearly state that it must be the applicant themselves who uses the vehicle for at least six months to qualify for exemption, and there is nothing to indicate that this increased mileage was*

from his usage. Indeed, given his residence over 5,000km from where the vehicle was located, the increased mileage could be perceived as indicating that the vehicle was being primarily used by other parties and not the appellant themselves.

4.1.8 In summary, neither of the required statutory criteria, for possession and usage of the vehicle for the requisite 6 months, have been demonstrated by the appellant, rendering him ineligible for VRT relief under TOR exemption.

4.2 VRT additional charge of €556

4.2.1 An appeal for a late-penalty fine/charge is not an appealable matter by the Tax Appeals Commission in accordance with sections 949N and 949J of the Taxes Consolidation Act 1997, as amended. This position has been affirmed by previous appeal determinations.

4.2.2 Notwithstanding this, the applicant could have registered the vehicle within the requisite 30 days as he brought the vehicle into the State on 31/8/2019; TOR application was made, subsequently refused and notified to the appellant on 10/9/2019. At this point the applicant had an NCT appointment for 16/9/2019, at which he could have registered the vehicle, but which he chose not to attend. The sole part of the subsequent delay in registration attributable to Revenue was 7 days to retrieve a statistical code for the vehicle, for which refund in the amount of €93 has already been given to the appellant; the additional charge for the remaining 35 days, €463, stands.

4.3 No show fee of €23.81

This is not a Revenue charge and should play no part in any appeal.

<u>5. Summary</u>

Whilst it is questionable in the first instance if the relevant legislation in this area is intended to provide for a situation where a person transferring their residence seeks to import a vehicle which was located in another jurisdiction some 5.000km distant from their foreign residence, the fact remains that the criteria for VRT TOR exemption, in terms of possession and use by the applicant for at least 6 months before transferring residence, have not been demonstrated and there is no basis for VRT exemption in this case.
In terms of the VRT additional charge, whilst it is not regarded as appealable matter, the appellant could have registered the vehicle within the 30 day timeframe before the charge became applicable and Revenue have already granted a refund for that period which was a result of delay on their part; there is no basis for refund of the residual charge.'

Analysis

23. 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".*

24. The Respondent accepted that having lived and worked in REDACTED for a number of years, the Appellant's normal place of residence prior to relocation was outside the State, notwithstanding that his wife resided in Ireland. The Respondent accepted that the Appellant purchased the vehicle more than six months prior to importation into Ireland. However, the Respondent disputed that the Appellant had the necessary possession and usage of the vehicle in the six months prior to importation into the State to qualify for transfer of residence relief.

Statutory interpretation

25. 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'* 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 or periodic. 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.

26. The Appellant states:

> *"I was resident in* REDACTED *(outside of the state). Both myself and my wife (who was resident in Ireland) frequently visit the UK, where my wife's family live. She is originally from the UK (birth cert and marriage cert provided as proof of same). Because my wife goes to the UK often, we decided to purchase a vehicle which would be left there for our use, which we both have had..".*

27. I have noted the Appellant's citing of a number of cases relating to statutory interpretation, including, Salomon v. Salomon & Co. Ltd. (1887) Chemical Bank v McCormack (1983) Inspector of Taxes v Kiernan[1981] IR 117 Harris v Quigley[2006] 1 I.R. 165.

28. It is well established, the interpretative approach to be applied in relation to the interpretation of unambiguous 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, Dunne Stores v The Revenue Commissioners (SCR No.2012/66, 2019),

29. 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.

30. The Appellant indicated that his wife resided in Ireland while he worked and resided in REDACTED. The Tax Appeals Commission (TAC) asked him to indicate his best estimate of the number, frequency and approximate duration of his visits to Ireland, to his wife's home and to his wife's family home in the UK, during the year 2018 and the period up to August 2019 when he imported the car. The Appellant replied in the following terms:

> *"In 2018 I visited Ireland twice. Once in the spring for a week, and once at Christmas for approximately a week. During this time I visited the UK approximately four times. In 2019 up to August when the car was imported I visited Ireland once in April for a week, I also visited the UK five times for various durations, I can't recall the exact durations.*
>
> *In 2017, a close family member of my wife became ill. The situation meant that my family were required to spend more time at the family home in the UK. As the situation progressed and my wife took every available opportunity to help with the family issues, we took the decision to purchase a vehicle for our use in the UK. During this time most of my visits were to the UK as this is where my family were. Because of this situation we had arranged to meet there.*
>
> *In summary, for the period in question, that is 2018 and up to August 2019, I resided outside of the state and I returned to the state on three occasions over twenty months amounting to less than thirty days in total. Due to family circumstances I visited the UK nine times in twenty months, where my family ties were."*

31. The Appellant was asked by the TAC to provide his best estimate of the % proportion of UK mileage attributable to his driving, his wife's driving and others driving the vehicle.

    The Appellant replied in the following terms:

    "It would be very difficult for me to give a percentage on this point. Sometimes I drove the car while my wife was a passenger and vice versa. Sometimes I drove alone, sometimes she drove alone, there were numerous hospital appointments, sometimes my wife drove to other family and friends homes, some quite distant. I myself drove on occasion to my brother's home in REDACTED*. We did not keep records of who drove the car, or when, or to where. As my wife and myself were the only persons to possess the keys, 100% of the driving was attributed to myself and my wife. It is impossible to estimate a division of percentages with any certainty. As my wife spent more time in the UK than I did, it is reasonable to assume that she may have done more driving than I, however I cannot be certain in this answer. Given the serious nature of the family circumstances and the elevated levels of stress and duress at that time, it is very difficult to give a more detailed and clear answer."*

32. The Appellant was asked by the TAC to confirm that August 2019 was the month he took up residence on a permanent basis in Ireland following completion of his employment in REDACTED and also to indicate when his employment in REDACTED ceased. The Appellant replied in the following terms:

    "I arrived back into Ireland in the first week of September 2019. This was the month I took up permanent residency in Ireland following completion of my employment in REDACTED*. My employment in* REDACTED *began in February 2015 and concluded at the end of August 2019. There were no interim steps in my transition back to permanent residency in Ireland, upon ceasing my employment in* REDACTED*."*

33. The Respondent argued that the legislation very clearly states that the vehicle must be "used by" the Appellant himself ("by him") for a minimum period of 6 months and that usage by any other parties is not relevant. With regard to 'used by', it should be noted that it does not necessarily mean "driven by". It is clear from the testimony provided by the Appellant that his wife was the main driver of the car in the UK and that considerable mileage was clocked up between the date of purchase and its export from the UK. I am satisfied that because the Appellant has arranged for the car to be available within his family circle on a consistent basis, throughout the six months prior to import, (sometimes in the absence of the Appellant, sometimes with the Appellant as a passenger, sometimes with the Appellant as the driver) it can be said that the car has been used by him, while in his possession for a period of at least 6 months. Furthermore the Appellant's credible

testimony indicated that he personally drove the vehicle while on his regular visits to the UK.

34. With regard to the Respondent's argument that:

> *"Typically, cases involving TOR Exemption involve the appellant bringing back a vehicle they had in the country in which they resided. It is highly unusual for the exemption application to involve an applicant residing in one country bringing back a vehicle which was held in another country, some 5,000km distant.*
>
> *Whilst the legislation does not specifically state that VRT TOR exemption is solely for a person bringing back a vehicle which they had in the same country in which they resided, it is considered that this is very much the legislative spirit and intent, to allow a person bring home materials which they both had and were using in the country in which they resided."*

I find no basis in the legislation for this view.

35. The Respondent argued that while no definition of possession is provided in the legislation, it is generally taken to mean "have control of". The Respondent argued:

> *"In the appellant's case, he was residing over 5,000km away from where the vehicle was located, the vehicle was insured in the name of a third party, and, although the appellant was a named driver on that policy, the policy indicates that he required the permission of the policy holder to use the vehicle. In those circumstances, it is considered that the appellant must be regarded as not having control of the vehicle in question and therefore cannot be regarded as having possession.*

36. 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 are words which have widespread and unambiguous currency. With regard to 'possession', it is clear that the Appellant had ownership of the vehicle and located it in the UK for the use of him and his wife while visiting there. It is clear that he had possession of the vehicle as he had ownership, had a right to drive it by being insured and had control of its usage by also having his wife insured on the vehicle. The Appellant incurred expenses in the UK in relation to the vehicle. In my view, his presence in REDACTED, for a good portion of that six month period does not interfere, as argued by the Respondent, with the Appellant's possession.

Late-penalty Fine

37. The TAC queried the Respondent's submission relating to the no-show fee where it stated:

'This is not a Revenue charge and should play no part in any appeal'

38. The TAC asked what is a 'Revenue charge' and what is the legislative basis, if any, for levying a no-show fee, such as the one levied on the Appellant? It asked whether or not an applicant needs the TOR letter issued in response to his application for relief before he / she may have an appointment for vehicle registration at the NCTS?

39. The TAC also asked whether the Respondent was disputing the testimony of the Appellant that he did physically attend the pre-arranged appointment at the NCTS on 16 September 2019 but was refused an appointment.

40. The Respondent' replied in the following terms:

> *"*REDACTED *operate the NCT service and carry out a range of registration functions on behalf of Revenue. The no-show fee is a fee they apply when a customer does not attend their pre-arranged appointment and is part of their terms and conditions. This fee is not a Revenue charge and, if a customer has an issue with the application of the charge, it should be taken up with* REDACTED.
>
> *A customer may make an appointment for vehicle registration at the NCTS and attend such appointment without having a TOR exemption letter. The absence of the letter will mean that VRT will have to be paid and thereafter reclaimed if the exemption is subsequently granted, and this frequently happens, as it ultimately did for* REDACTED*. However, the absence of the TOR exemption letter in no way precludes registration of a vehicle.*
>
> *The appellants' appointment of 16/9/2019 would not have involved a Revenue official, as he would have attended the NCT centre and dealt with staff from* REDACTED*. The company cannot definitively state whether the appellant presented the vehicle on this date or not, but can confirm that the appointment did not proceed, hence the no-show fee. The company have also confirmed that from their perspective registration could proceed without the TOR Exemption letter. "*

41. It seems curious that the Appellant appears to have no redress against a fee levied by Revenue on behalf of an agent acting on behalf of the Revenue. However, based on the Respondent's reply, I am satisfied that the jurisdiction of the Tax Appeals Commission does not extend to adjudicating on the merits of the no-show fee of €23.81.

Determination

42. In appeals before the Appeal Commissioners, the burden of proof rests on the Appellant who must prove on the balance of probabilities that the relevant tax is not payable. In the

High Court judgment of *Menolly Homes Limited -v- The Appeal Commissioners and The Revenue Commissioners* [2010] IEHC 49 (at paragraph 22) Charleton J. stated:

> "*The burden of proof in this appeal process is, as in all taxation appeals, on the taxpayer. This is not a plenary civil hearing. It is an enquiry by the Appeal Commissioners as to whether the taxpayer has shown that the relevant tax is not payable*".

43. Based on a review of the facts and a consideration of the submissions, material and evidence provided by both parties, I am satisfied that the Appellant has proved that the relevant VRT is not payable. I determine that the Appellant is entitled to Transfer of Residence relief. Accordingly the VRT already paid by him, in the amount of €13,250 and €556(late registration) should be refunded to him.

44. I determine that jurisdiction of the Tax Appeals Commission does not extend to adjudicating on the merits of the no-show fee of €23.81.

45. This appeal is determined in accordance with section 949AL TCA 1997.

PAUL CUMMINS

TAX APPEALS COMMISSIONER

(Designated Public Official)

14 September 2020

APPENDIX 1

Legislation

Section 146 of the Finance Act 2001

"A person who is aggrieved by a determination of the Commissioners under section 145 may, in accordance with this section, appeal to the Appeal Commissioners against such determination and the appeal is to be heard and determined by the Appeal Commissioners whose determination is final and conclusive unless a case is required to be stated in relation to it for the opinion of the High Court on a point of law."

Legislation pertaining to Late Registration charge

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 × P × 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.

Legislation pertaining to Transfer of Residence Relief

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