



Ref: 173TACD2020

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 24 October 2019. A notice of appeal was received by the Tax Appeals Commission on 21 November 2019. The Appellant is seeking a repayment of the VRT amount of €13,365 paid, on the grounds that she believes that she 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 imported a vehicle into the State and claimed transfer of residence relief at the time that she transferred her normal residence from Northern Ireland to the State on 13 May 2019.
5. After some initial clarifications, the Respondent accepted that the Appellant had transferred her normal residence at that time but refused the transfer of residence relief on the vehicle REDACTED, on the basis that the Appellant had not provided the required evidence pertaining to the insurance of the vehicle, to prove that the vehicle had been in her possession and use outside the State for the required period of six months.
6. Section 4(3)(1)(b) of S.I. No 59/1993 – (Vehicle Registration Tax (Permanent Reliefs) Regulations 1993) provides that the proof “in relation to the possession of and use of the vehicle by the person concerned for the appropriate period aforesaid”, shall consist of “the vehicle registration document and insurance certificates for the vehicle”.
7. The insurance certificate provided by the Appellant as evidence is a ‘motor trade road risk policy’ and it states that the policyholder is her husband’s business, “REDACTED”. The policy covers “Any motor vehicle the property of the Policyholder or in his/her custody”. The Appellant’s husband, his parents and the Appellant are named drivers on the policy in respect of both ‘motor trade purposes and social, domestic and pleasure purposes’. The insurance certificate provided also indicates that the insurance cover is for the period from 6 May 2019 to 5 May 2020.
8. The Respondent refused the Appellant’s transfer of residence relief claim on the basis that (1) the insurance certificate indicates that the vehicle was under the custody and control of a trading entity and not the Appellant, (2) that this entails that the motor trader had at least some commercial interest in the vehicle, meaning that the property was not part of the Appellant’s personal property and (3) that the insurance certificate did not prove ownership and use outside the State for the required period of six months prior to transfer of residence.
9. On the basis of the above, after the first stage VRT appeal, on 24 October 2019, the Respondent reaffirmed its decision to refuse the transfer of residence relief “on the



grounds that you have not produced sufficient evidence pertaining to the insurance of the vehicle in accordance with S.I. No. 59/1993.”

10. The Appellant contends that the insurance certificate provided is evidence that the Appellant, her husband and her husband’s parents drive the vehicle and that S.I. No. 59/1993 does not require that the applicant must have exclusive use of the vehicle.
11. The Appellant submits that the registration documentation provided establishes that the Appellant had possession of the vehicle for the required period and therefore the condition set out in Section 4(1)(a) of S.I. No 59/1993 – Vehicle Registration Tax (Permanent Reliefs) Regulations 1993, in respect of possession and use outside the State before 13 May 2019 has been met by the Appellant in respect of this vehicle.
12. The insurance broker, who arranged the insurance policy, submitted a statement confirming that the vehicle, the subject matter of this appeal, was owned and insured under her husband’s motor trade policy and that the date of inception of this policy was 6 May 2015. On this basis, the Appellant submits that the insurance policy provides evidence of use outside the State for the required 6 months.

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. (emphasis added)

.....

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);



.....

“personal property” means property for the personal use of the person concerned and his household living with him outside the State but does not include property which by reason of its nature or quantity reflects any commercial interest or is intended to be used for any commercial purpose.(emphasis added)

.....

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 (emphasis added)*
- (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

(3) Proof shall be supplied to the Commissioners within one month of the date of the application for the relief aforesaid that the conditions specified in paragraph (1) of this Regulation have been compiled with. The proof shall consist of -

- (a) a sales invoice, receipt of purchase, or other similar document, which clearly establishes, where relevant, that any value-added tax, excise duty or*



other consumption tax payable on the vehicle concerned outside the State was paid and not refunded,

(b) in relation to the possession of and use of the vehicle by the person concerned for the appropriate period aforesaid, the vehicle registration document and insurance certificates for the vehicle, (emphasis added)

(c) in relation to normal residence outside the State, documents relating to the acquisition of property, or to employment or cessation of employment, or to other transactions carried out in the course of day-to-day living,

(d) in relation to the transfer of normal residence to a place in the State, documents relating to the disposal of property in the country of departure and the acquisition of property in the State or to employment (including statements in writing from the person's employer in the State), and

(e) evidence of the date on which the vehicle was brought into the State,

and, in addition to the foregoing or in substitution for it or any of it, any other documentary evidence the Commissioners require or accept.

Appellant's Submissions

In her Notice of Appeal the Appellant, through her agent, submitted:

"Background

***THE APPELLANT** imported a vehicle into the State and claimed relief from VRT on the basis of transfer of residence in accordance with S 134 of Finance Act 1992.*

- This was challenged initially by Revenue on the basis that **THE APPELLANT** had either not changed residence or had changed residence at a date earlier than stated by her and was thus outside the time limit for relief. On review Revenue accepted that **THE APPELLANT** had changed residence within the correct time frame provided for in the relief*
- Revenue, on review, found that insufficient evidence of ownership of the vehicle had been produced. VRT was paid to enable an appeal to go ahead and the decision was referred to Revenue Appeal Officer by way of Appeal*
- The question possession and use and the adequacy of the Insurance Certificate was raised.*



- *The Appeal Officer decision, which is the subject of this appeal, was that the **APPELLANT** had not produced sufficient evidence “pertaining to the insurance of the vehicle”*

Grounds for Appeal

***THE APPELLANT** has provided Revenue with the insurance certificate for the vehicle which specifies the registration number, in accordance with the requirements of Para (4)(3)(b) of SI 59/1993. **THE APPELLANT** has also provided the registration document. No challenge to the certificate has been made in the Appeals Officers decision. In relation to the insurance we state that the requirement of the SI is that the applicant for relief establish possession and use of the vehicle “by the person concerned for the appropriate period aforesaid, the vehicle registration document and insurance certificates for the vehicle,”.*

***THE APPELLANT**, her husband and her husband’s parents are the persons insured to drive the vehicle, This is not unusual. At no point does the SI require that an applicant under S 134 of FA 1992 must have exclusive use of the vehicle.*

We submit that the registration document establishes possession of the vehicle under the terms of the SI.

*We submit that the fact that the insurance certificate names **THE APPELLANT** and identifies the vehicle establishes her use of the vehicle imported.*

We submit that there is no requirement for exclusive use of the vehicle by an applicant under the terms S 134 of FA 1992 or SI 59/1993

*We submit that **THE APPELLANT** is entitled to the relief as claimed and a refund of VRT paid.*

In her Statement of Case it was submitted:

“Single Point of Interpretation

A single issue on the interpretation of SSI 59/1993-Para(4)(3)(b) exists.

This is to substantiate a claim to relief from VRT on the importation of a vehicle on transferring residence to the State.

The Revenue position is that the appellant has not produced sufficient information pertaining to the insurance of the vehicle.

The SI provides the nature of evidence that is required to substantiate ownership and use of vehicle outside the State for a period of six months prior to ceasing to have normal residence outside the State, in accordance with the requirements of the SI.

The evidence of possession and use must be substantiated by registration document and insurance certificate.



Both are submitted together with evidence of purchase and confirmation from broker that the insurance policy covered the appellant to drive this vehicle from the date of purchase.

The legislation is not prescriptive on the type of insurance policy. All that is required is the insurance certificate for the vehicle. This is provided.

Confirmation from Insurance Broker

"To whom it may concern

*I wish to confirm that **THE APPELLANT'S** vehicle **REDACTED** (previously registered as **REDACTED**), owned by her and registered in her name, was covered from the date of purchase under policy number **REDACTED** (incepted 6th May 2015) to present date with **REDACTED** Insurance.*

***THE APPELLANT** has been named on this policy since its inception and is insured to drive this vehicle.*

The following questions were put to the Appellant by the Tax Appeals Commission.

1. Can the Appellant please set out the background to the Appellant insuring the vehicle under a car dealer's group policy which covers "Any motor vehicle the property of the policy holder or in his/her custody or control", while the vehicle was registered in the name of the Appellant?
2. Can the Appellant provide any additional evidence ('proof') of use of the vehicle that is in accordance with S.4(3)(b) SI No 59 of 1993.
3. The definition of "personal property" in S.3(1) SI No 59 of 1993 is as follows:

"personal property" means property for the personal use of the person concerned and his household living with him outside the State but does not include property which by reason of its nature or quantity reflects any commercial interest or is intended to be used for any commercial purpose.

The relief only applies to 'personal property' of the individual transferring his/her normal residence. In the context of the insurance policy arrangement in place for this vehicle prior to its transfer into the State, please submit your views on the effect of this definition in this appeal.



The Appellant responded as follows:

"I refer to direction of the 15th July 2020 and now respond.

Background

The appellant, REDACTED suffers from a REDACTED condition and was in receipt of a Personal Independence payment in Northern Ireland as she is unfit for full time work. Her son, REDACTED, was diagnosed with REDACTED. This is a rare disease and the consultant treating him is REDACTED, REDACTED Hospital, Dublin. His treatment is a weekly injection, a fortnightly injection and treatment for the other effects of the illness and side effects of the illness, medication required and painkillers. The treatment is done in REDACTED. In addition, the couple wanted their children educated at REDACTED school and the nearest school to REDACTED, is REDACTED.

The consequence of REDACTED illness meaning hospital journeys and daily school round trips from REDACTED to REDACTED required multiple journeys per week between the two places. This required that the appellant spent a lot of time on the road. She had to have exclusive use of a vehicle for personal use to be able to manage the two commitments that is hospital and school.

If it is of any assistance, I can get back up statements from the school and the hospital consultant.

This level of travel from REDACTED to REDACTED prompted the decision to buy the car.

The later decision of the appellant to relocate with her children to REDACTED (within the State) was to reduce the stress on REDACTED and indeed the appellant whose own fragile health is also an issue.

Insurance

When the car was bought the appellant approached the insurance brokers, she was used to dealing with that is REDACTED Group, in REDACTED.

The principal of the firm, REDACTED advised her to simply insure through her husband's policy based on convenience.

The appellant did this, and I attach confirmation from REDACTED.

In terms of additional evidence that the car was used only by the appellant for domestic use, there is nothing I can produce other than outlining the facts of the position in relation to the medical and schooling needs of the children and the consequent requirement for full time access to a vehicle.

The vehicle was never used for commercial purposes and has always been kept by the appellant, at her home



Second Letter from Insurance Broker

"I can confirm that when you approached me to get insurance for vehicle REDACTED (formerly REDACTED). I advised you that there was no need for you to take out a separate policy for this vehicle. I suggested that we simply add this vehicle to your husband's policy as you were named a driver on his policy and you were able to use any vehicle on hi [sic] policy for social, domestic, pleasure and business purposes.

As he is a motor trader the insurance which he has is a motor trade insurance. There is no issue with you being a named driver on this type of policy. It does not mean that the car must be in the personal custody and control of the actual motor trader. A spouse is regarded as fulfilling that requirement.

Respondent's Submissions

The Respondent made the following submissions:

"Outline of relevant facts.

The application form (for exemption from VRT under The Transfer of Residence Regulations) shows the appellant was resident in Northern Ireland from 01 January 2009 until REDACTED when she transferred her residence.

She shows she purchased the vehicle on 09 September 2018.

Subject to paragraph 5, the relief, under Section 134 (1)(a) of the Act shall be granted for any vehicle

Which is the personal property of an individual transferring his normal residence to the State and which has been in possession and used by him outside of the State for a period of at least 6 months before the date on which he ceased to have his normal residence outside of the State.

S.I. 59 of 1993 states, inter alia:

(3) Proof shall be supplied to the Commissioners within one month of the date of the application for the relief aforesaid that the conditions specified in paragraph (1) of this Regulation have been complied with. The proof shall consist of – (inter alia) ...



(b) in relation to the possession of and use of the vehicle by the person concerned for the appropriate period aforesaid, the vehicle registration document and insurance certificates for the vehicle

The Insurance Certificate (attached) from REDACTED Insurance, was supplied by the appellant and is headed 'MTTR' which is an acronym for 'Motor Trade Road Risk'. This is a policy that is used for cover in the motor trade business. The policy holder is REDACTED (the appellant's husband) who is employed in the motor trade business.

Under the 'Description of Vehicle' the policy states: 'Any Motor Vehicle the property of the Policyholder or in his/her custody or control.'

The appellant hasn't explained how this vehicle was under the custody or control of REDACTED given that the appellant owned the vehicle from 09 September 2018.

The policy certificate shows the cover is from 06 May 2019 until 05 May 2020. This does not cover a 6-month period before transferring residence on REDACTED.

An email from REDACTED (Insurance broker) state that the appellant has been insured with REDACTED Group since 24 September 2011. However, no policy certificate was provided to show 6 months cover (of the vehicle registration number REDACTED) before the appellant transferred residence.

In summary Revenue believe that the appellant has not provided sufficient evidence to show that she had use of the vehicle for 6 months prior to transferring her residence. The onus of proof is on the appellant...

The following questions were put to the Respondent by the Tax Appeals Commission.

1. Can the Respondent please set out its views on whether the Insurance Broker's letter stating that the car dealer's insurance policy commenced on 06/05/15 is or is not evidence of insurance for at least a 6-month period?

The Respondent replied:

"The letter does say that the appellant was insured under the policy since 2015.

However, it does not explain the circumstances that she was insured given that the policy is for MTTR (Motor Trade Road Risk). While the policy allows social and domestic use the vehicle covered must be for 'motor trade purposes'

The policy stipulates that the vehicles covered must be in the custody and control of the policy holder. In this case the Policy holder is a commercial entity, and as the vehicle was owned by the appellant. how could it be in the control or custody of a commercial entity? "



2. Can the Respondent set out its reason(s) for not accepting that the Appellant's insurance of the vehicle on a car dealer's group policy does not suffice as evidence ('proof') of use as required by S.4(3)(b) SI No 59 of 1993.

The Respondent replied:

"The requirement to provide an Insurance certificate is to show that the applicant used the vehicle while residing abroad. The Insurance Policy (presented as evidence of use) is to cover vehicles in the motor trade. (as per the Certificate) The policy would appear to cover a number of vehicles under the custody of the Policy holder . Revenue believe that the policy is not sufficient evidence of use of the vehicle, as the policy indicates that the vehicle could only be used for motor trade purposes."

3. The definition of "personal property" in S.3(1) SI No 59 of 1993 is as follows:

"personal property" means property for the personal use of the person concerned and his household living with him outside the State but does not include property which by reason of its nature or quantity reflects any commercial interest or is intended to be used for any commercial purpose.

The relief only applies to 'personal property' of the individual transferring his/her normal residence. In the context of the insurance policy arrangement in place for this vehicle prior to its transfer into the State, please submit your views on the effect of this definition in this appeal?

The Respondent replied:

"The insurance policy presented as evidence is headed MTRR (Motor Trade Road Risk) . the policy holder is ' REDACTED ' and it covers vehicles 'being used for Motor Trade Purposes'.

Under the 'Description of Vehicle' the policy states: 'Any Motor Vehicle the property of the Policyholder or in his/her custody or control

Given that the appellant owned the vehicle from 09 September 2018 why would it be still under the custody or control of a commercial entity?

If ,as the appellant says , this policy covers her vehicle then, in the opinion of Revenue, it must have been used for commercial purposes.

In short if the vehicle was covered by the insurance policy (presented as evidence of use) then it falls into a commercial category and as such is not part of the appellant's personal property. Even if it could be used for personal purposes it is insured by a Commercial entity and thus reflects at least some commercial interest.



Submissions and Analysis

13. 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;*' There is no dispute between the parties that the Appellant did transfer her normal residence to the State from **REDACTED**.
14. The dispute is whether the Appellant has provided sufficient evidence of use of the vehicle in Northern Ireland in the period prior to importation. The regulations say that you look for evidence of use by ownership documented in the registration documentation and by reference to insurance cover in that period.
15. The insurance certificate provided by the Appellant as evidence is a policy of insurance that is a 'Motor trade road risk policy' where the policyholder is her husband's business, "**REDACTED**". The policy covers "Any motor vehicle the property of the Policyholder or in his/her custody". The Appellant's husband, his parents and the Appellant are named drivers on the policy in respect of both 'motor trade purposes and social, domestic and pleasure purposes'. The insurance certificate provided also indicates that the insurance cover is for the period from 6 May 2019 to 5 May 2020.
16. The Respondent has identified inconsistencies between the terms of the insurance policy, dealing with its trade-related status coupled with the cover requirement that the policy is confined to vehicles owned or in the custody of the policyholder, compared with private use by the Appellant. In my view this is a very narrow interpretation of the insurance policy documents. The letter from the broker confirming that the insurance policy allows for his wife to drive for "social, domestic and pleasure purposes" coupled with her being a named driver, strongly infers that the requisite insurance was in place before importation.
17. This is further supported by the evidence submitted to the effect:



“When the car was bought the appellant approached the insurance brokers, she was used to dealing with that is REDACTED Group, in REDACTED. The principal of the firm, REDACTED advised her to simply insure through her husband’s policy based on convenience. The appellant did this, and I attach confirmation from REDACTED”.

18. Furthermore, the evidence of the insurance broker confirms that nothing should be inferred from the fact that the policy is primarily a car trade policy:

“As he is a motor trader the insurance which he has is a motor trade insurance. There is no issue with you being a named driver on this type of policy. It does not mean that the car must be in the personal custody and control of the actual motor trader. A spouse is regarded as fulfilling that requirement.”

19. The fact that the current insurance policy dated from a time less than six months before transfer of residence is more likely due to the annual renewal date than to any absence of insurance cover. Furthermore the broker has confirmed that the policy has been in existence for a number of years.
20. The evidence of the Appellant’s frequent travels from Northern Ireland to the State for medical support for her child, prior to changing residence further substantiates the usage of the vehicle in Northern Ireland for the period from purchase to the date of transfer of residence.

Conclusion

21. 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’.*
22. For the reasons set out above I determine that the Appellant has 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 entitled to avail of the relief and is therefore entitled to a repayment of the VRT amount of €13,365 paid.





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

APPEAL COMMISSIONER

PAUL CUMMINS

Designated Public Official

28 September 2020

