



56TACD2021

BETWEEN/

[REDACTED]

**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 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. A notice of appeal was received by the Tax Appeals Commission on [REDACTED]. The Appellant is seeking a repayment of the VRT amount of €2,895 paid, on the grounds that she believes she should be entitled to avail of the transfer of residence relief.
3. This appeal held an oral hearing by remote computer link on [REDACTED] in accordance with Chapter 4 Part 40A of the Taxes Consolidation Act 1997, as amended ('TCA 1997').

## Background

4. In 2017, the Appellant purchased the car, a [REDACTED], registration number [REDACTED], which is the subject of this appeal, in the UK. This car was first registered in the UK on 1 September 2017. The Appellant brought the vehicle into the State on 31 March 2019.
5. 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 31 March 2019. The transfer of residence relief application stated that the Appellant took up normal residence in the State on 31 March 2019. The application was refused by the Respondent on 13 May 2019.
6. The Respondent refused the Appellant's claim for the relief on the basis that the Appellant did not meet the conditions for the relief, specifically that the Appellant had property ties and occupational ties in the State at the time the vehicle was acquired and secondly she did not provide sufficient evidence to show that her normal residence was outside the State at the time she purchased the vehicle.
7. The Appellant contends that her "normal residence" was in Northern Ireland (UK) from 2014 to immediately before 31 March 2019, at which time her normal residence transferred to the State. The Appellant contends that the Respondent has disregarded her continued residency and personal ties in Northern Ireland prior to 31 March 2019.

## 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**

8. The Appellant contends that her "normal residence" was in Northern Ireland (UK) from 2014 to immediately before 31 March 2019, at which time her normal residence transferred to the State. The Appellant contends that the Respondent has disregarded her continued residency and personal ties in Northern Ireland prior to 31 March 2019.
9. The Appellant believed that the reason why the Respondent had refused her relief was because she had no proof in the form of utility bills from her period of residence in Northern Ireland in her parent's home; that she owned a property in the State; and that she had occupational ties in the State.



10. The Appellant argued that she had never denied that she had property in the State, which was bought in 2008. She argued that due to her own ill-health she could not live alone in [REDACTED] and had cared for her elderly and ill parents in her original home in Northern Ireland. At the time of the purchase of the vehicle and prior to moving back to the State, she explained that she didn't have to pay any rent or bills in Northern Ireland and as a result she could afford to pay the mortgage on the [REDACTED] property without it being let.
11. The Appellant queried the Respondent's assertion that in some way her residence after the date of purchase was pertinent to the transfer of residence relief. She felt that there were inconsistencies in the argument being put forward by the Respondent. She queried what was the test appropriate to being granted residence relief?
12. She felt the treatment afforded her by the Respondent was unfair and did not take account of her circumstances and her inability to provide evidence of residence in the form of utility bills in Northern Ireland. She argued that there must be other people who live in Northern Ireland who work in the Republic and vice versa. She felt there were plenty of other people who would be in a similar situation to her, due to an inability to supply utility bills.
13. As part of the evidence she presented medical letters indicating a Northern Ireland address in relation to those medical appointments. The car documentation (tax/insurance/servicing) all showed her parent's address.
14. She applied for TOR relief on the basis that she had used the vehicle outside the State for more than 6 months prior to her transfer of residence.

### **Respondent's Submissions**

15. The Respondent refused the Appellant's claim for the relief on the basis that the Appellant did not meet the conditions for the relief, specifically that the Appellant had property ties and occupational ties in the State at the time the vehicle was acquired and secondly she did not provide sufficient evidence to show that her "normal residence" was outside the State at the time she purchased the vehicle.



16. The Respondent argued that their approach to assessing the validity of the relief claim was not discriminatory because they are obliged by law to establish, by means of documentary evidence, whether a person had changed their residence. This is normally undertaken by requesting utility bills. However they asserted that they would also accept other documentation where utility bills are not available. This might include a rental agreement in relation to a property, contributions to utility bills, club membership etc.
17. The Respondent argued that, except for the medical appointments, all the evidence/documentation submitted was for the period before September 2017, when the vehicle was purchased.

#### **MATERIAL FINDINGS OF FACT**

18. Based on the credible sworn testimony of the Appellant given at the hearing held on [REDACTED], coupled with the documents and submissions presented before me by both the Appellant and the Respondent, I have established the following material findings of fact.
19. The Appellant was a resident in the Republic of Ireland prior to 2014. In February 2014 she received permission from her employer to work from home.
20. In March 2014 she moved to live with her parents in [REDACTED] in Northern Ireland to look after her mother who was in ill health. At that time, she was working for [REDACTED] in [REDACTED].
21. She rented out her [REDACTED] property from 19 September 2014 until approximately September 2015. After that the property remained largely unoccupied. In 2018 the Appellant made intermittent visits to this house at weekends with her sister to facilitate shopping visits to [REDACTED]. The Appellant indicated that her medication made her drowsy and occasionally she would stay there instead of returning to her parent's home.
22. In 2015 the Appellant herself became unwell and was in poor health and was off work for a period of time. She continued to live with her parents in Northern Ireland.



23. In 2016 the Appellant commenced physically working in [REDACTED] on a phased basis as recommended by her doctor. She continued to live with her parents.
24. In 2016/17 her mother's cancer reappeared and the Appellant had to feed her in the mornings and in the evenings. Her father was elderly and in fragile health. The Appellant was the primary carer for her parents and continued to live with her parents while working for and travelling to [REDACTED], her employer in [REDACTED].
25. In 2018 the Appellant continued with poor health. However, she came off her medication by the end of 2018 and decided to move back full-time to [REDACTED] at 31 March 2019.
26. During the period 2014 to March 2019 she had a bank account with [REDACTED] in the Republic of Ireland and a bank account with [REDACTED] in Northern Ireland. Because she was employed by an Irish company her salary was paid into the Irish bank account. She stated she had no utility bills because all of the utility bills were in the name of her father in the house in Northern Ireland.

### **ANALYSIS**

27. 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;*'
28. This appeal is primarily concerned with the 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 her applying for transfer of residence relief in respect of her first importation of the car into Ireland and whether she had been resident outside the State.
29. The Appellant submits that the vehicle, the subject matter of the appeal, was in the possession of and used by the her 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.
30. 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."*

31. 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..."*

32. In the within appeal, the Appellant has indicated that she returned, with a few exceptions, to her parent's house each evening in Northern Ireland, necessarily to attend the medical and care needs of her mother, while working in the Republic during the day.

### **Place of Personal Ties**

33. 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 she regarded herself as a resident of UK from 2014 until 31 March 2019. The Appellant's occupational ties were exclusively in the State and there is no dispute between the parties in this regard. So the Appellant is potentially a person whose occupational ties are in a different place from her personal ties. We must however first examine where the Appellant's personal ties lie in the period from the purchase of the car in August 2017 until 31 March 2019.
34. In *Georgios Alevizos v Ipourgos Ikonomikon (C-392/05)*, the concept of 'normal residence' in the context of Article 6 of Council Directive 83/183/EEC (which was transposed into Irish law by S.I. no. 59/1993) has been explored. The ECJ held that *"It is clear from the second subparagraph of Article 6(1) of Directive 83/183 that that provision gives priority to personal ties where the person concerned does not have personal and occupational ties concentrated in a single Member State"*.





35. 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*”.

36. 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”.*

37. Based on my material findings of fact cited above and based on the principles enunciated in the European cases cited above, it is my view that on the balance of probabilities the Appellant’s personal ties were in fact situated in Northern Ireland in the period from August 2017 until 31 March 2019. Since the Appellant had occupational ties in the State in this period, the provisions relating to ‘normal residence’ *“gives priority to personal ties where the person concerned does not have personal and occupational ties concentrated in a single Member State.”*

38. This means that for the period during her ownership of the car prior to 31 March 2019, the Appellant is treated for the purposes of the transfer of residence rule, as having her normal residence outside the State.

39. I am, however, sympathetic to the position the Respondent found itself in this case where it was difficult to find written evidence, such as utility bills, to support the Appellant’s case. I cannot fault them for their approach seeking to apply the law in this appeal.

## **Conclusion and Determination**





40. 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'*.
41. The question to be answered in this appeal is whether, between August 2017 and 31 March 2019, the Appellant's place of *'normal residence'* was continuously outside the State. I find that the Appellant has furnished sufficient information and documentation which allows me to conclude, on the balance of probabilities that the Appellant's normal place of residence was outside the State for this period.
42. 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 €2,895 paid.
43. The appeal hereby is determined in accordance with section 949AL TCA 1997.

**PAUL CUMMINS**  
**APPEAL COMMISSIONER**

*Designated Public Official*

**1 March 2021**

