



80TACD2021

Between/



Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

A. Matter under Appeal

1. This appeal comes before the Tax Appeals Commission as an appeal against the Respondent's refusal to grant the Appellant relief from the imposition of Vehicle Registration Tax (hereinafter referred to as "**VRT**") pursuant to section 143(1)(a) of the Finance Act 1992 as amended and the Vehicle Registration Tax (Permanent Reliefs) Regulations 1993 (S.I. 59/1993), more commonly referred to as "transfer of residence relief" (hereinafter referred to as "**relief**").

B. Background to the Appeal

2. The Appellant, who is an Irish national, took up employment in Scotland at some time in 2008 and remained there for a number of years.
3. In or about 2013 or 2014, the Appellant was sent to work outside Scotland on a number of projects for his employer, including projects based in Counties Clare, Kerry and Dublin.
4. The Appellant purchased a motor vehicle in Scotland on the 7th of March 2014, bearing the registration number [REDACTED].
5. In April of 2014, the Appellant began a relationship with a Ms. [REDACTED]. They became engaged in [REDACTED] of 2015 and were ultimately married in [REDACTED] of 2016.
6. In or around August of 2015, Mr Thomas Stephenson, an Officer of the Respondent's Customs and Excise Division, received information which caused him to swear an Information on the 15th of September 2015 and to apply to the District Court on the same date for a search warrant of an address at [REDACTED], [REDACTED], Dublin [REDACTED], which was Ms. [REDACTED]'s address. The application was made on the basis that there were reasonable grounds to suspect that an unregistered vehicle bearing the registration number [REDACTED] was being kept at that address. A search warrant was granted by the District Court on the date of the application.
7. On the 22nd of September 2015, Mr Stephenson and a colleague attended at the [REDACTED] address where they spoke to Ms. [REDACTED], who stated that she was the



Appellant's girlfriend. Ms [REDACTED] informed Mr Stephenson that the Appellant stayed at that address sometimes and consequently left his car there, and also that the Appellant would leave his car there while using his company van for work.

8. Thereafter, the Appellant called Mr Stephenson's colleague and stated that he was originally from [REDACTED] but had left there in 2007/2008 and went to Scotland until 2013. The Appellant is also said to have stated that he lived at an address in [REDACTED], Co. Tyrone for approximately 13 months and that the car was insured there, and that from in or around [REDACTED] 2015 he was renting a room in [REDACTED], Co. Tyrone. The Appellant is said to have stated that he then worked in Glasgow, Kerry and at times in Northern Ireland.
9. By letter dated the 10th of November 2015, the Appellant, through his accountant, submitted to the Respondent a Transfer of Residence from within the EU Application and Declaration for Relief from VRT application (hereinafter referred to as "**TOR application**") in relation to his vehicle registration number [REDACTED]. The said application stated, *inter alia*, that:-
- (a) The vehicle was permanently brought in to the State on the 6th day of November 2015;
 - (b) The vehicle had occasionally, for the purposes of work, been in Ireland prior to the date of the Appellant taking up normal residence in the State;
 - (c) The Appellant's duration of normal residence outside the State was from the 3rd of October 2013 until the 5th of November 2015; and,
 - (d) That he had taken up residence in the State on the 6th day of November 2015 and his then current address in the State was at [REDACTED], [REDACTED], Dublin [REDACTED].



10. Submitted together with the TOR application was certain documentary evidence including:-

- (a)** An original signed tenancy agreement as evidence of the Appellant's normal residence;
- (b)** Insurance documents as evidence of the Appellant's normal residence;
- (c)** Payslips from an employer within the State;
- (d)** Letters from the Appellant's employers both outside and within the State;
- (e)** Bank statements and utility bills outside the State and bank statements within the State as evidence of the Appellant's day to day living; and,
- (f)** A vehicle registration certificate, insurance certificate, sales invoice and vehicle service records from outside the State as evidence of possession and use of the vehicle outside the State.

11. The TOR application further stated:

"From 2008, my employment had me based in the UK. From [REDACTED] 2013, employment duties were performed as site manager in [REDACTED], Co. Tyrone where I resided from that time. Occasionally, I performed duties as cover for site managers in Rep of Ireland on short terms, during that period (up to November 2015). The company have [sic] just been awarded a contract for [REDACTED] in Ireland. I will now be taking up normal residence here as I will be project manager for this contract."

12. On the 21st of November 2015, an officer of the Respondent wrote to the Appellant seeking copies of the following documents:-

- (a)** Proof of living abroad: Bank and/or credit card statements showing day to day transactions covering the 6 full months immediately prior to taking up residence in the State;



(b) Proof of Moving to Ireland: Acquisition of property e.g. rent agreements, mortgage documents, rent/mortgage payments, letter from solicitor/estate agents etc.; Utility bills after the date that residence was transferred; Band and/or credit card statements showing day to day transactions covering the period after taking up residence in the State;

(c) Proof of ownership and use of motor vehicle: evidence of the date the vehicle was brought into the State e.g. ferry ticket, e-flow etc

13. On the 7th of January 2016 the Respondent wrote to the Appellant to inform him that his TOR application had been unsuccessful as the documentation submitted with his application showed that the majority of his non-working days were based in the Republic of Ireland. The letter further stated that the Respondent considered that this would indicate that the Appellant's personal ties were established in the State and that he was therefore ineligible to apply for exemption under the Transfer of Residence Regulations. The letter advised the Appellant that if he wished to appeal the decision, the vehicle would have to be registered and the appropriate taxes paid before any appeal would be accepted.

14. On the 13th of February 2016, the Appellant applied to register his vehicle in the State by way of a VRT – Vehicle Purchase Details Form (hereinafter referred to as the “**VRTVPDA Form**”). The said form stated, *inter alia*, that the vehicle was purchased in Scotland on the 7th of March 2014 and that it entered the State on the 25th of January 2016.

15. By letter dated the 4th of March 2016, the Appellant wrote to the Respondent seeking to internally appeal the Respondent's decision to refuse his TOR application.



16. On the 16th of March 2016, Ms Anne Cassidy, Dublin Regions VRT Appeals Officer, wrote to the Appellant to inform him that his appeal had been refused on the basis that it was considered that the Appellant's personal ties were deemed to be within the State as he had returned regularly to be with his fiancé.
17. By Notice of Appeal dated the 8th of June 2016, the Appellant appealed against the said decision to the TAC.

C. Grounds of Appeal

18. The grounds of appeal advanced by the Appellant were that the place of his occupational and personal ties were in the United Kingdom until he decided to transfer to Ireland in November 2015.

D. Relevant Legislation

19. The primary and secondary legislation relevant to the within appeal is as follows. Firstly, section 132 of the Finance Act 1992, as amended, provides that:-

(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) The duty of excise imposed by subsection (1) shall be charged, levied and paid.

20.Section 134(1)(a) of Finance Act 1992, as amended provides that:-

(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...

21.Regulation 8(1)(a) of the Vehicle Registration and Taxation Regulations, 1992 as amended (S.I. 318/1992) provides that:-



(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.

22. The relevant provisions of the Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993 as amended (S.I. 59/1993) provide that:-

3. (1) In these Regulations-

...

"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...

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 the next working day after its release from customs control.*



...

(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,

(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.*

E. Evidence of the Appellant

23. The Appellant gave oral evidence at the hearing before me and was cross-examined on behalf of the Respondent.

24. The Appellant stated that he began working in Scotland in [REDACTED] and that in or about August of 2013 he was assigned to work in [REDACTED], Co. Tyrone, where he rented a house and where he remained working and living until in or around [REDACTED] 2015. He stated that following this he was assigned to jobs throughout Ireland and that he remained living in Northern Ireland but that he changed his address and moved in with a friend in Co. Tyrone, where he would stay when he was not working at other locations throughout Ireland.

25. The Appellant stated that in or around [REDACTED] 2015 he was assigned to a job in Listowel for approximately one month and that thereafter he returned to Northern Ireland to work, where he remained for approximately two months. He stated that



from then on he was working to assist his boss with tenders and that in or around October or November 2015 he was assigned to a job in [REDACTED], Co. Clare. He stated that prior to being assigned to [REDACTED], he had discussed the future with his then fiancée and that they had considered returning to the UK to live and work but when he got his assignment they decided to remain in Ireland.

26. He stated that while living in Northern Ireland, his vehicle would normally be parked where he lived as he used a company van for the purposes of travelling for work around the State, and that his then fiancée would travel by bus to visit him in Northern Ireland. He testified that he would sometimes drive his vehicle to his fiancée's house in [REDACTED] where they would spend the weekends together.

27. When asked by his Counsel why his vehicle might be parked at his fiancée's house, the Appellant stated that in the event that they were going away for a weekend in Ireland, he would arrange for his vehicle to be at his fiancée's house so that he could collect it at the end of a working week and they could then go on their trip. He stated that his principal mode of transport in 2014 and 2015 was the company van, while his car was used for going away for a weekend. He estimated that he used the company van 80% of the time and his vehicle 20% of the time. He could not remember where precisely the car had been based for the months of October and November 2015.

28. In cross-examination, it was put to the Appellant that his direct evidence was at odds with the information which was provided by him in his TOR application, wherein he stated that he had brought his vehicle into the State prior to the date of taking up normal residence in the State for the "*...purpose of work occasionally*". It was put to the Appellant that his vehicle had been in the State on a far more regular basis than he had stated in his TOR form, and that the reason it had been in the State was for personal reasons. The Appellant stated that he did not totally agree with this and that the vehicle would have been in the State depending on the circumstances or depending



on where he was going or what he was doing for a weekend. When pressed to clarify the seeming dichotomy between the answer on the TOR form and his oral answer, the Appellant stated that he did not feel that his answer on the TOR form was misleading and that he thought it was factually correct.

29. It was further put to the Appellant that on the TOR form he had stated that the vehicle's date of entry into the State had been the 6th of November 2015, whereas on the VRTVPDA form he had stated that the vehicle had entered the State on the 25th of January 2016. In response, the Appellant stated that as there had been an issue with the receipt of the Respondent's letter refusing relief, he had asked a representative of the Respondent what date he should put on the VRTVPDA form, and had been advised to put the 25th of January 2016. The Appellant was unable to identify which member of staff of the Respondent had advised him to do this. When pressed, the Appellant stated that he had based the date of entry to the State in the VRTVPDA form as being 30 days from the Respondent's refusal of his TOR application. He denied that he had chosen this date to avoid the imposition of any penalty for the late registration of the vehicle.

30. In relation to the bank statements which the Appellant had submitted in support of his TOR application, it was put to him there were a total of 146 physical banking transactions in his bank statements between January 2015 and October 2015 which had required the use of a bank card by him. It was further put to the Appellant that of those 146 physical transactions, 78 took place either in Dublin or Donegal, which equated to 53% of the transactions. In response the Appellant stated that he normally would not have taken the vehicle to Dublin and that he would have taken the company van to Dublin. It was put to the Appellant that these transactions mostly took place on weekends or days surrounding weekends. The Appellant agreed with this.



- 31.** It was also put to the Appellant that his bank statements for the Christmas and New Year period 2014/2015 showed various transactions in shops in Dublin and that throughout the month of January 2015 transactions were seen in Dublin on each weekend, with further transactions in Listowel during the week. The Appellant did not accept this proposition, stating that he would not always return to Dublin to visit his fiancée and that he would pass through Dublin on his way from Listowel to [REDACTED] or Tyrone.
- 32.** It was put to the Appellant that it was irrelevant as to whether his vehicle was in or outside the State, and that what was relevant was where his personal ties were, and that his banking transactions suggested that he effectively spent most of his free time in the State. In response, the Appellant stated that he did not necessarily agree with that because his fiancée would quite often have visited him in Northern Ireland. He stated that he did not come to Dublin every weekend.
- 33.** It was put to the Appellant that Mr Stephenson had received information from a work colleague that the Appellant's vehicle had been observed at his fiancée's address since at least January of 2015, and that Mr Stephenson had himself seen the vehicle at his fiancée's address. It was further put to the Appellant that Mr Stephenson had spoken to his fiancée, who had stated that the Appellant would stay in her home and that he would also use the company van from that address while his vehicle remained parked at her address. In response, the Appellant stated that the vehicle was left at his fiancée's address occasionally.
- 34.** It was put to the Appellant that the reason he made the TOR application was because, as a result of Mr Stephenson's conversation with his fiancée, he knew that the Respondent was taking steps in relation to the non-registration of his vehicle. In response, the Appellant stated that his decision to make the TOR application was not



solely based on that and that at the time of the TOR application he had received information that he was to receive permanent employment in the State.

35. It was put to the Appellant that between January 2015 and October 2015, his strongest personal ties were within the State. In response the Appellant stated that *“I would say probably my strongest personal ties were with my fiancée, I would definitely agree with that.”* He added that it was not necessarily the case that he would spend all his time in Dublin and that his fiancée would quite often have gone to Tyrone.

F. Submissions of the Appellant

36. It was submitted on behalf of the Appellant that his normal place of residence up until November 2015 was outside of the State. It was accepted that a large portion of the Appellant’s occupational ties were within the State from mid-2014 to late 2015, but it was not accepted that his personal ties during that time were within the State. The core of the Appellant’s case was that his personal ties were outside the State until November of 2015, when he decided to accept a permanent position in the State and he and his fiancée decided that they would live in the State.

37. It was submitted that the Respondent had acted unreasonably and/or unlawfully by denying the Appellant his statutory entitlement to relief pursuant to section 132 of the Finance Act 1992.

38. It was further submitted in the Appellant’s written submissions that the Respondent acted unreasonably and/or unlawfully interfered with the Appellant’s rights pursuant to the Treaty on the Functioning of the European Union, particularly his rights to free



movement and free movement of his goods. However, this aspect of the Appellant's case was not pursued at the hearing before me.

39. It was also submitted on behalf of the Appellant that the time limits prescribed by the Minister in the Regulations and/or applied by the Respondent were unreasonably short, and that the strict application of those short time limits amount to an unjustifiable and unlawful attack on the Appellant's property rights and his rights to fair and reasonable procedures. However, Counsel for the Appellant accepted at the hearing before me that arguments of that nature fell outside the jurisdiction of the TAC.

G. Submissions of the Respondent

40. In its response, the Respondent emphasised S.I. 59/1993 and in particular the definition of "normal residence" contained therein, which states that:-

"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.”

- 41.** It was accepted on behalf of the Respondent that the Appellant worked and lived in Scotland from [REDACTED] until 2013, when he returned to work in Northern Ireland. It was submitted that thereafter his work altered in scope and he began working within the State.
- 42.** The Respondent further submitted that in 2014 the Appellant entered into a relationship with a person who was living within the State. It was submitted that it was clear from the Appellant’s bank statements that the Appellant had spent significant time in the State and that it was clear from them that his personal ties at the time that he imported his vehicle were within the State.
- 43.** It was further submitted that the Appellant had admitted in cross-examination that his personal ties were with a person who resided in the State. It was further submitted that the Appellant’s vehicle had been observed by Mr Stephenson parked outside his fiancée’s house and that on foot of that a search warrant was obtained from the District Court.
- 44.** In relation to the Appellant’s banking transactions, it was submitted that 53% of the physical transactions between January and October 2015, excluding transactions relating to work, took place within the State and it was submitted that his bank statements were quite telling in terms of how the Appellant carried on his lifestyle and that they reflected the fact that his personal ties were within the State.



H. Analysis and Findings

45. The burden of proof in this appeal rests with the Appellant, who must prove on the balance of probabilities that the disputed tax is not payable, as confirmed by Charleton J. in *Menolly Homes Ltd -v- Appeal Commissioners* [2010] IEHC 49.
46. Having carefully considered all of the evidence and submissions made on behalf of the Appellant, the cross-examination of the Appellant and the submissions made on behalf of the Respondent, I am satisfied that from mid-2014 onwards, the Appellant's occupational ties were primarily in this jurisdiction. I note that this was expressly accepted by the Appellant in his written submissions and was supported by the evidence given at the hearing of the appeal. I believe that the fact that the Appellant did work on occasion in Northern Ireland, the fact that the Appellant's employer was based in Scotland, and that the Appellant was required to travel to his employer's headquarters from time to time does not alter the position in this regard.
47. However, even if I was to accept that the Appellant's occupational ties were not in this jurisdiction during the relevant period, I still have to consider the question of where his personal ties were located.
48. I accept as correct the Appellant's evidence that from about August of 2013 until [REDACTED] of 2015, he rented a house in Northern Ireland and that from [REDACTED] of 2015 the Appellant rented a room from a friend in [REDACTED] in County Tyrone. I further accept that the Appellant and his then fiancée did from time to time spend weekends in Northern Ireland, and that the Appellant did not spend every weekend visiting his fiancée in Dublin.



49. However, it is clear that the Appellant did spend a significant time in this jurisdiction, outside of the times when he was required to be present in the State for work purposes, visiting his fiancée. I note in this regard that 53% of his physical banking transactions, excluding transactions relating to work, took place within the State between January and October of 2015. I have also had regard to the fact that the Appellant gave uncontroverted evidence that he sometimes spent the weekend visiting his parents in County [REDACTED].

50. My own analysis of the Appellant's bank records suggests to me that the Appellant spent little time in Northern Ireland from the beginning of 2015 onwards. The number of 'in person' banking transactions carried out by the Appellant in Northern Ireland during that period were as follows:-

January 2015	1
February 2015	8
March 2015	13
April 2015	8
May 2015	1
June 2015	1
July 2015	0
August 2015	0
September 2015	3
October 2015	0
November 2015	0

51. I believe the most telling piece of evidence was that given by the Appellant in cross-examination, when he fairly accepted that *"I would say probably my strongest personal ties were with my fiancée, I would definitely agree with that."* It was not in dispute that the Appellant's fiancée resided in Dublin throughout 2015, notwithstanding that she



and the Appellant may have on occasion spent the weekend in Northern Ireland or elsewhere in the State.

52. Having regard to the totality of the evidence, I am satisfied and find as a material fact that the Appellant's personal ties were in the State from January of 2015 onwards. I am further satisfied and find as a material fact that the Appellant returned to the place of those personal ties regularly.

53. Regulation 3 of SI 59/1993 provides that:

"...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."

54. By reason of the foregoing findings of fact, I find that the place of the Appellant's normal residence within the meaning of S.I. 59/1993 from at least January 2015 onwards was the State.

55. I am further satisfied on the evidence available to me that the Appellant was regularly using the vehicle the subject matter of this appeal in the State from at least January 2015 onwards, and I therefore find as a material fact that its arrival in the State within the meaning of S.I. 59/1993 was in January 2015.

56. As the Appellant did not apply for Transfer of Residence relief within seven days of the vehicle's arrival in the State, I find that he did not comply with Regulation 4(1)(c) of



S.I. 59/1993 and I therefore find that he is not entitled to Transfer of Residence relief pursuant to section 134(1)(a) of the Finance Act 1992, as amended.

I. Conclusion

57. For the reasons set out above, I determine that the Appellant is not entitled to a refund of the VRT paid on registration of his said vehicle.

58. I therefore refuse this appeal and determine pursuant to section 949AL(1) of the Taxes Consolidation Act 1997 as amended that the decision of the Respondent dated the 16th of March 2016 stand.

MARK O'MAHONY

Appeal Commissioner

3 March 2021

