



BETWEEN/

85TACD2021

APPELLANT

Appellant

-and-

THE REVENUE COMMISSIONERS

Respondent

DETERMINATION

Appeal

1. This is an appeal to the Appeal Commissioners pursuant to section 134 (1) (c) of the Finance Act, 1992 and S.I. 59/93 against a determination made by the Revenue Commissioners. The appeal concerns the relief from Vehicle Registration Tax (VRT) available under the above legislation.
2. On agreement of the parties this appeal is adjudicated without a hearing in accordance with section 949U of the Taxes Consolidation Act, 1997.

Background and Agreed Facts

3. The vehicle, the subject matter of this appeal, is a Ford Mondeo Estate imported by the Appellant on 24 November 2018.
4. The Appellant registered the vehicle and paid VRT of €1,645 based on an open market selling price (OMSP) determined by the Revenue Commissioners.



5. The Appellant sought relief from VRT because he claimed that the vehicle was bequeathed to him in accordance with the wishes of his late brother-in-law. The Respondent refused to grant the relief as the bequest was not mentioned in the deceased's will.
6. The Appellant's deceased brother-in-law who died testate on [REDACTED] 2018 previously owned the vehicle.
7. The Appellant was aggrieved by the determination of the Revenue Commissioners and appealed to the Tax Appeal Commissioners (TAC) against the imposition of the VRT. The Tax Appeals Commission received a notice of appeal on 4 June 2019.
8. The Appellant sought a refund of VRT paid of €1,645 based on his assertion that he received the vehicle as a bequest from his Brother-in-law.

Legislation

9. Section 134 (1) (c) of the Finance Act, 1992 provides as follows;

(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 –

.....

(c) the personal property of a deceased person and is being brought permanently into the State by a person resident in the State, or a person or body of persons established in the State and engaged in a non-profit making activity, who either acquired by inheritance the ownership or beneficial ownership of such vehicle or is the personal representative resident in the State of the deceased person.

10. Statutory Instrument (S.I.) 59/93

6. (1) The relief under section 134 (1) (c) of the Act shall be granted for any vehicle—

(a) which was the personal property of the deceased person concerned and is brought into the State not later than 2 years, or such longer period as the Commissioners in their discretion may allow in any particular case, from the date



on which the vehicle entered into the possession of the person who acquired it by inheritance or the personal representative of the deceased person takes control of his property,

(b) in respect of which there is produced to the Commissioners by or on behalf of the person seeking the relief the evidence specified in paragraph (2) of this Regulation and the evidence satisfies the Commissioners that the vehicles qualifies for the relief,

(c) in respect of which an application for relief, in such form as may be specified by the Commissioners, is made to the Commissioners by a person who, in relation to the deceased person, is a person specified in the said section 134 (1) (c) not later than the next working day 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.

(2) The evidence referred to in paragraph (1) (b) of this Regulation shall be supplied to the Commissioners within one month of the date of application for relief and shall consist of—

(a) evidence of the death of the owner of the vehicle concerned, such as a death certificate or a copy thereof, and

(b) evidence that the person by or on whose behalf the application for the relief is made is either the person entitled to the ownership of the vehicle under the will or, as the case may be, on the intestacy, of the deceased person or is the personal representative of the deceased person, the evidence being a copy of the will together with proof that the will has been accepted by the appropriate authorities of the place where the deceased person died for the purposes of the administration of his estate or, if the deceased person was intestate as to the vehicle concerned, a declaration issued by a notary or other competent person in the place aforesaid or by a notary in the State that the vehicle was acquired by the person as the beneficiary under the intestacy or as the personal representative of the deceased person, and

(c) the vehicle registration document,

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



such document as aforesaid is in a language other than the English language or the Irish language, a translation thereof into the English language or the Irish language duly certified, to the satisfaction of the Commissioners, to be a true translation.

Submissions

11. The Appellant submitted:

- a) That his sister and her late husband discussed the transfer of the vehicle to him during his illness.
- b) That the bequest was not overtly stated in his late brother-in-law's will as both the deceased and his wife felt that the Appellant's sister could execute the deceased's wishes on his demise.
- c) That such a bequest is very rare, is usually part of an estate and not specifically bequeathed.
- d) Evidence from his sister that it was her late husband's wish that his Ford Mondeo would be bequeathed to the Appellant.

12. The Respondent submitted:

- a) That the documentation produced to register the vehicle, showed that it was gifted to the Appellant by [REDACTED] – the Appellant's sister and husband of the deceased person.
- b) That the will of the Appellant's brother-in-law did not mention the Appellant as a beneficiary of his estate.
- c) Evidence in the form of a letter from the Appellant that included the following;

“As requested I can confirm that Ford Mondeo UK registration ..., was given to me by my sister, [REDACTED] of ... As part of the estate left by her husband ..., on his demise on ...”

- d) That the Respondent believes that the Appellant received the vehicle as a gift from his sister rather than an inheritance from his brother-in-law.

Analysis and findings

13. The questions to be answered in this appeal are;

- a) Did the Appellant receive the vehicle as a bequest from his brother-in-law?



b) If the answer to a) is in the affirmative, was the vehicle included in the will of the deceased?

14. The Respondent has supported its view of the matter as a gift based on the facts that the vehicle is not specifically mentioned in the will of the donor.
15. The Respondent has also suggested that the letter from the Appellant provided during the registration stage of the vehicle amounts to proof that the vehicle was a gift rather than a bequest.
16. The Appellant has provided evidence in the form of a letter from his sister confirming that it was the wish of her late husband to bequeath the vehicle to the Appellant.
17. I do not consider that the Appellant's letter provided in evidence by the Respondent amounts to a conclusion that the vehicle was a gift from the Appellant's sister rather than a bequest from her late husband.
18. I am satisfied that the evidence of the Appellant's sister in the matter of confirming her husband's wish to bequeath the vehicle to the Appellant is sufficient evidence that the Appellant in fact received an inheritance from his brother-in-law.
19. Having satisfied myself that the vehicle is a bequest from the Appellant's late brother-in-law there is a further test to be applied as set out in the S.I. outlined at paragraph 10 above. The test being whether or not the vehicle was included in the will of the deceased.
20. S.I. 59/93 sets out the evidence required by an applicant in seeking relief from VRT in the circumstances of the receipt of a bequest as in the instant appeal.
21. The evidence required is set out in paragraph 6 (2) (b) of the S.I. as follows:

(b) evidence that the person by or on whose behalf the application for the relief is made is either the person entitled to the ownership of the vehicle under the will or, as the case may be, on the intestacy, of the deceased person or is the personal representative of the deceased person, the evidence being a copy of the will together with proof that the will has been accepted by the appropriate authorities of the place where the



deceased person died for the purposes of the administration of his estate.
[emphasis added]

22. The Appellant's brother-in-law died testate but his will did not provide any evidence of the bequest of the vehicle to the Appellant.

23. Paragraph 6 (1) of the S.I. provides:

*The relief under section 134 (1) (c) of the Act **shall** be granted for any vehicle.* [emphasis added]

24. In my view, the use of the word '*shall*' per Paragraph 6 (1) of the S.I. 59/93 indicates an absence of discretion in the application of this provision. The wording of the provision does not provide for extenuating circumstances in which the required evidence from the will of the deceased person might be mitigated. In short, I do not consider that I have the authority or discretion to direct that the relief from VRT as sought by the Appellant can be granted.

25. 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 assessment to tax, raised by the Respondent is incorrect.

26. In the High Court case of *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. 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.*'

27. I find that the Appellant has not furnished sufficient information and documentation, which would allow me to conclude, on the balance of probabilities, that the relief from VRT sought by the Appellant should be granted.

28. As a result, I have determined that the Appellant is not entitled to the relief from VRT as sought.

Determination





29. In the circumstances, and 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 is not entitled to a refund of the VRT paid for €1,645.
30. The appeal hereby is determined in accordance with section 949AL TCA 1997.

CHARLIE PHELAN
APPEAL COMMISSIONER
30 MARCH 2021

