



**88TACD2021**

**BETWEEN/**

**APPELLANT**

**Appellant**

**AND**

**REVENUE COMMISSIONERS**

**Respondent**

**DETERMINATION**

**Introduction**

1. This is an appeal to the Appeal Commissioners pursuant to section 146 of the Finance Act, 2001 (as amended) against a determination made by the Revenue Commissioners.
2. The 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').
3. This appeal was adjudicated with a remote hearing on 25 February 2021.

**Background**

4. The vehicle, the subject matter of the appeal, is a Volvo V90 C-Country Pro D5 Estate now bearing the registration [REDACTED].
5. The Appellant's application for transfer of residence relief, made on 17 December 2019, was refused by the Respondent by letter dated 28 January 2020 due to the

failure of the Appellant to adequately display a sufficient length of possession of the vehicle to qualify for the relief sought.

6. The Appellant was aggrieved with the determination of the Revenue Commissioners and duly appealed to the Tax Appeal Commissioners against the determination. A notice of appeal was received by the Tax Appeals Commission on 18 February 2020.

### **Agreed Facts**

7. The Appellant resided in Northern Ireland from March 2019 until 19 December 2019.
8. The Appellant paid a deposit to purchase the vehicle on which the relief is sought on 1 October 2019, paid the balance of the purchase price on 25 October 2019 and took possession of the vehicle on 28 October 2019.
9. The Appellant commenced a new employment in the state on 13 January 2020.
10. The Appellant failed in his first stage appeal to the Respondent on the basis of his failure to satisfy the requirement of ownership for 3 months under extenuating circumstances per the Respondent's VRT Manual<sup>1</sup>.

### **Legislation**

11. See Appendix 1

Section 146 of the Finance Act 2001;

Section 134(1) (a) of Finance Act 1992, as amended

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

Regulations, 1993 Section 146 of the Finance Act 2001;

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<sup>1</sup> <https://www.revenue.ie/en/tax-professionals/tdm/vehicle-registration-tax/vrt-manual-section-02.pdf>



12. The Appellant submitted that according to the Revenue Tax and Duty Manual concerning reliefs and exemptions from VRT<sup>2</sup> he is entitled to relief from VRT on the importation of his vehicle in connection with his transfer of residence in the extenuating circumstances outlined by him in his application for relief.
13. He submitted that as he owned the vehicle for two and a half months before returning back to Ireland and as he lost his job (which he considered to be hardship) there is provision in the Tax and Duty manual for such a relief to be granted.
14. He submitted that his period of ownership commenced on the day he paid the deposit i.e. 1 October 2019.
15. He provided the following extract from the Respondent's Manual.

*"However, the vehicle should have been in the possession and use of the applicant for at least 3 months, except in cases of hardship such as the replacement of a crashed/stolen vehicle.".....*

*"Principal Officers may take other considerations into account, as appropriate, e.g. the length of time a person has spent abroad, the extent of upgrading of the replacement vehicle etc., where considered relevant."*
16. The Appellant submitted that he is aware that the timeline seems tight regarding when he took ownership of the vehicle and when he became aware or at least suspicious that he was losing his job but asserted that he acted in good faith throughout.
17. He further submitted that it was a very difficult time for him and his family as he had taken over what he described as a dream job in a [REDACTED] in Northern Ireland but it did not work out as planned because the [REDACTED] was closed and he was made redundant on 13 December 2019.
18. The Respondent submitted that the Appellant failed in his first stage appeal to the Respondent on the basis of his failure to satisfy the requirement of ownership for 3 months under extenuating circumstances per the Respondent's VRT Manual.

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<sup>2</sup> <https://www.revenue.ie/en/tax-professionals/tdm/vehicle-registration-tax/vrt-manual-section-02.pdf>



19. The Respondent submitted that the period of ownership amounted to 47 days only. This is the number of days from the date the vehicle was acquired and insured by the Appellant until he transferred residence to the state.
20. The Respondent submitted that the issue of late fees and NOX charges applied on the importation of the vehicle (not the subject of the instant appeal) would be addressed separately to the matters under appeal.

### **Analysis and Conclusion**

21. All vehicles are subject to VRT on first registration in the State. The rate of VRT is based solely on the level of CO2 emissions. There is no dispute in relation to the amount of VRT charged but the Appellant has sought relief from the VRT charge in accordance with the extenuating conditions laid down in the Respondent's manual in the matter.
22. The legislation in relation to reliefs from VRT in the circumstances of a person transferring residence is contained in section 134(1) (a) of the Finance Act 1992. This legislation 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”.*

23. The Respondent accepted that having lived and worked in Northern Ireland from March 2019, the Appellant's normal place of residence prior to relocation was outside the State.
24. The Respondent did not consider that the Appellant had purchased the vehicle more than six months prior to importation into Ireland. The Respondent in considering the



Appellant's extenuating circumstances as provided for under the care and management provisions afforded to the Respondent in legislation did not consider that the Appellant had the car in his possession even for three months. In fact even if the Respondent had accepted the Appellant's view in the matter of having acquired the vehicle on 1 October 2019, the period of three months would not be met prior to importation of the vehicle.

25. The Respondent did not consider the further exception in cases of hardship provided for in its own manual as sought by the Appellant and denied the relief in its first stage review and appeal decision.
26. 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.
27. 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.
28. The determinations that can be made by an Appeal Commissioner are those delineated in sections 949AK and 949AL of TCA 1997. Those provisions confine the Appeal Commissioners to making a determination in relation to the assessments, decisions, determinations or other matters which are the subject matter of the appeal actually before the Appeal Commissioners. The jurisdiction of the Appeal Commissioners is confined to interpreting tax legislation and ensuring that the Revenue Commissioners have complied with that legislation. The Appeal Commissioners do not have the jurisdiction to determine whether a legislative provision is discriminatory or unfair or otherwise unlawful; we are not empowered by statute to apply the principles of equity or to grant declaratory reliefs.
29. Accordingly, I am satisfied that it would be *ultra vires* for me to embark upon a consideration of, or to make a finding or determination in relation to, the issue of



whether I can consider the failure of the Respondent to extend the provisions contained in its Manual in relation to the extenuating circumstances of the Appellant, in circumstances where the literal interpretation of the legislative provision requiring possession of the vehicle for a period of six months, in advance of seeking the relief sought, is not met. I have no jurisdiction in the matter of the exercise of the care and management provisions afforded to the Respondent in legislation. I must therefore decline to consider this argument or to make any finding in relation thereto.

30. 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”*.
31. 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 Appellant’s interpretation of the availability of the relief sought is correct. As a result, I determine that the Appellant has not succeeded in discharging the burden of proof and has not succeeded in showing that he qualifies for any relief of the VRT paid.

### **Determination**

32. Based on a consideration of the evidence and submissions together with a review of the documentation, I determine that the Appellant is not entitled to Transfer of Residence relief.
33. This appeal is determined in accordance with section 949AL TCA 1997.

**CHARLIE PHELAN**  
**APPEAL COMMISSIONER**  
**31 MARCH 2021**



## **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 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.*

