



Between

██████████

Appellant

and

THE REVENUE COMMISSIONERS

Respondent

Determination

Introduction

1. This appeal comes before the Tax Appeals Commission (“the Commission”) as an appeal against the Revenue Commissioners (“the Respondent”) and their 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 Statutory Instrument 59/1993 (Vehicle Registration Tax (Permanent Reliefs) Regulations 1993), more commonly referred to as “transfer of residence relief” [hereinafter referred to as “relief”].
2. The Appellant’s application for relief was refused by the Respondent by way of letter dated 24th March, 2021. A Notice of Appeal dated 11th May 2021 was received by the Commission. The Appellant is seeking repayment of VRT in the amount of €16,128.00 which was paid by him on 8^h April, 2021 on the grounds that he believes that he should be entitled to avail of relief.
3. This appeal has been determined, by agreement of the Parties, without an oral hearing pursuant to section 949U of the Taxes Consolidation Act 1997 [hereinafter the “TCA 1997”].

Background

4. The Appellant purchased a [REDACTED] [hereinafter the “motor vehicle”] from a car dealership in the UK on 29th February 2020 which was subsequently registered in the Appellant’s name with the UK authorities on the 3rd March 2020.
5. The Appellant completed a “Transfer of Residence from within the EU Application and Declaration for Relief from Vehicle Registration Tax” application form [hereinafter a “TOR”] on 12th February, 2021 which was received by the Respondent on 18th February, 2021. The said TOR stated:
 - a. That the motor vehicle was registered in the Appellant’s name 3rd March 2020;
 - b. That the motor vehicle was brought into the State on 4th March 2020;
 - c. That the Appellant took up residence in the State on the 30th May 2020.
6. Appendix 1 of the TOR provides an applicant for relief the facility to indicate what documentary evidence they possess, and can provide copies of, in support of their application for relief in the following categories:
 - a. Evidence of Normal Residence outside and inside the State;
 - b. Evidence of Day-to-Day Living outside and inside the State;
 - c. Evidence of Possession and Use of Vehicle outside the State.
7. The Appellant did not indicate that he possessed any documentation to evidence his normal residence whether outside or inside the State.
8. The Appellant did not indicate that he possessed any documentation to evidence his day-to-day living outside the State and indicated that he possessed bank/credit card statements to evidence his day-to-day living within the State. The Appellant did not submit this documentation to the Commission.
9. The Appellant indicated that he possessed the following documentary evidence of possession and use of the motor vehicle outside the State:
 - a. Vehicle Registration Certificate / Certificate of Permanent Export which the Appellant has not submitted to the Commission. The Appellant has however submitted a Vehicle Import Receipt from the National Car Testing Service to the Commission which shows that the first date of registration of the motor vehicle in the UK was on the 12th January 2018 and that the date of registration in the State was on 8th April 2021;

- b. Certificates of insurance for the vehicle showing his name and covering at least a 6 month period prior to transfer of residence which the Appellant has not submitted to the Commission;
- c. Sales invoice / receipt of purchase which the Appellant has submitted to the Commission which shows that the motor vehicle was purchased by the Appellant in the United Kingdom (UK) on 29^h February, 2020;
- d. Sailing ticket / ferry booking reference which the Appellant has submitted to the Commission which indicates dates of travel from the State to the UK on the 2nd March 2020 and returned from the UK to the State on the 4th March, 2020. This document appears, on its face, to show that this booking was made on 8th February, 2020.

10. The Appellant further stated the following in the submitted TOR;

“I own a holiday home at [REDACTED] and was there on Holidays when I travelled to [REDACTED] to purchase [REDACTED] in March 2020 I returned to Ireland for a further few weeks but with Lockdown and ongoing covid restrictions and advise [sic] from my doctor I was unable to return to United Kingdom and have since decided to stay permantely [sic] at this address in [REDACTED].”

11. On 24th March, 2021 the Respondent wrote to the Appellant informing him that his TOR application was unsuccessful as the documentation submitted with the TOR was not sufficient to grant him relief under the Transfer of Residence Regulations.

12. The Appellant subsequently wrote to the Appellant by letter dated 26th March 2021 stating the following:

“I returned to Ireland on the 4th of March and intended to go back on the end of that month to my home in [REDACTED]. I asked at [REDACTED] Garda Barracks if I could travel and they said that the state says no. I then decided to register my car in Ireland but as the Revenue office in [REDACTED] was closed I was told on the 17/02/2021 to send all my details of my car to the [REDACTED] Office. After at least 10 calls only I eventually got through to the Manager [REDACTED] on the 24/03/2021. He informed me that they could not register my Car.”

13. On 8th April 2021 the Appellant paid fees to the National Car Testing Service in relation to the importation of the motor vehicle to the State totalling €16,128.00 that being comprised of:

- a. VRT due at the time of Registration: €11,475.00

- b. VRT due from the Date of entry into the State: € 4,608.00
- c. VRT due from NOx emissions: € 45.00

14. On the same date, 8th April, 2021, the Appellant spoke with the Respondent by telephone requesting a refund of monies paid.

15. On 9^h April 2021 the Respondent wrote to the Appellant indicating that the fees paid by the Appellant to the National Car Testing Service were correctly calculated in line with VRT Regulations and indicating that if the Appellant was dissatisfied with this decision he could appeal the decision to the Commission.

16. The Appellant submitted a Notice of Appeal to the Commission dated 11th May 2021.

Legislation and Guidelines

17. The legislation relevant to this appeal is as follows:

Section 132 Finance Act 1992, as amended:

(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.

...

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

(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,

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

...

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

...

(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.”

Submissions

Appellant's Submissions

18. The Appellant in his Notice of Appeal, submitted by his agent, made the following submissions:

“The Appellant is a UK tax resident and over the past number of years has travelled to Ireland intermittently to visit family and friends. Mr ██████ would usually spend a maximum of 3-4 months in Ireland each year. The Appellant is not an Irish tax resident nor has he been for quite some time.

The Appellant travelled to Ireland by car ferry from the UK on 4th March 2020 and was due to return to the UK at the end of March 2020.

Due to the Covid-19 pandemic, stringent measures were put in place in the middle of March, the advice being not to travel unless it was absolutely necessary. The Appellant adhered to public health guidelines and did not return to the UK as planned.

The Appellant's car tax and insurance were due to expire in February 2021. In an effort to renew, the Appellant sought permission from An Garda Siochana to return to UK. He attended ██████ Garda station, but his request was rejected given the strict government guidelines in place at the time.

As the Appellant was unable to return to the UK, he began the process of insuring the car with an Irish insurance provider. After many inquiries, it became clear the Irish insurance providers would not insure a UK registered vehicle and thus the only way to insure the vehicle with an Irish provider was to first register the vehicle in Ireland.

The Appellant was not familiar with the registration process but got in touch with the relevant authorities as advised by the insurance provider. The Appellant was eventually issued with a VRT assessment which included penalties.

The Appellant was quite upset with the assessment issued but paid in any event so that he was not left without a mode of transportation. As the Appellant did not have the required funds, he had to obtain finance in order to pay the liability due.

Given these announcements, the Appellant's age and precarious Covid-19 situation in the UK, the Appellant has not yet returned to the UK. It is the Appellant's intention to return to the UK as soon as it is permitted to do so.

Revenue have confirmed that where a departure from the State is prevented due to Covid-19, Revenue will consider this "force majeure" for the purpose of establishing an individual's tax residence position. While our Client's situation does not relate to his residency status, it is very much the same principle in that he was unable to leave and this should not have been issued with a VRT assessment."

19. In the Appellant's Statement of Case submitted by his agent on 3rd November 2021 the following additional submissions were made:

"At no time did the Appellant relinquish his residence in the UK and his residence in Ireland was at all times temporary, restricted and forced as a result of Covid-19.

The Appellant has not, or does not intend to transfer his residence from the UK to the Republic of Ireland. The fact that the personal property was being used by the Appellant within the State for the said period does not take into account the mitigating circumstances as reflected in our original Notice of Appeal. The Appellant's temporary residence in the State was due to Covid-19. It is the Appellant's intention to resume his residence in the UK."

20. In addition, the Appellant submitted the following in his Statement of Case:

“Per Revenue guidance [34.0.7] in respect to Tax Residence Rules and section 819 of the Taxes Consolidation Act 1997, where an individual is prevented from leaving the State on his or her intended day of departure because of extraordinary natural occurrences or an exceptional third party failure or action – none of which could reasonably have been foreseen and avoided – the individual will not be regarded as being present in the State for tax residence purposes for the day after the intended day of departure provided the individual is unavoidably present in the State on that day due only to “force majeure” circumstances.

On 23 March 2020, Revenue updated the existing guidance on “force majeure” circumstances as it pertains to the residence rules for individuals. This formed part of the immediate response to the unprecedented situation facing individuals as a result of the COVID-19 pandemic. To assist individuals who were prevented in an intended departure from the State due to a range of difficulties caused by the impact of the COVID-19 pandemic, and in the context of the exiting force majeure concession, Revenue confirmed, where a departure from the State is prevented due to COVID-19, this will be considered a force majeure circumstance for the purpose of establishing an individual’s tax residence position.

Revenue guidance also outlines that an individual who had a planned departure from the State that was prevented due to circumstances such as border controls or entry restrictions in a home country of that individual.”

Respondent’s Submissions

21. The Respondent relies on the provision of section 134 of the Finance Act 1992 as set out above.
22. In addition in its submissions the Respondent stated the following:

“An application form was submitted 18/02/2021, dated 12/02/2021, by Mr [REDACTED] which states his date of taking up normal residence in the state as 30/05/2020.

The vehicle in question, [REDACTED], was purchased on 29/02/2020. The vehicle was imported into the State 04/03/2020.

These dates mean that Mr [REDACTED] did not have possession or use of the vehicle for the required 6 months before transferring his residence to the state.

The Appellant was in the State when he arranged to purchase the vehicle. A ferry ticket, Ireland to the UK return, was purchased on 08/02/2020.

Having reviewed the application and supporting documentation provided by Mr [REDACTED], Revenue's position remains that the relief is not due as the required 6 months use and possession outside the State was not fulfilled in this case."

Material Facts

23. The Appellant submits the following material facts are at issue in the within appeal:

- a. The motor vehicle was purchased by the Appellant on 29th February, 2020 and was brought into the State on the 4th March 2020;
- b. The Appellant's normal place of residence was the UK at the time the motor vehicle was brought into the State;
- c. The Appellant planned to leave the State at the end of March 2020;
- d. The Appellant was prevented from leaving the State due to the Covid-19 restrictions in place between March 2020 and April 2021 when he registered the motor vehicle in the State.

24. The Commissioner has examined each of those material facts at issue.

The motor vehicle was purchased by the Appellant on 29th February, 2020 and was brought into the State on 4th March, 2020:

25. It is accepted by both Parties that the motor vehicle was purchased by the Appellant on the 29^h February, 2020 and was brought into the State on the 4th March, 2020. The Commissioner also accepts these as material facts.

The Appellant's normal place of residence was the UK at the time the motor vehicle was brought into the State:

26. The Appellant claims in his TOR that he was resident in the UK from 1st September 1957 until 30th May 2020. As with any taxation appeal, the burden of proof rests with the Appellant who must prove on the balance of probabilities that the disputed tax is not payable as set out by Charleton J. in *Menolly Homes Ltd v Appeal Commissioners and another [2010] IEHC 49*. The Appellant has not provided any documentary evidence to the Commissioner to support his claim that his normal place of residence was the UK prior to the motor vehicle being brought into the State.

27. The Commissioner finds that it is reasonable to expect that an individual who claims that they were resident in the UK would be able to submit and produce documentation which would support such a claim. The TOR sets out several examples of such documentation which would tend to provide evidence of residency including, but not limited to: registration for taxation; tax returns; accounts and bills; evidence of State Welfare or Benefit payments.

The Appellant has not submitted any documentation in this regard and hence there is an absence in this regard.

28. The Commissioner finds that the Appellant has not met the burden of proof to establish that his normal place of residence was the UK prior to the motor vehicle being brought into the State. Therefore this material fact is not accepted.

The Appellant planned to leave the State at the end of March 2020:

29. The Appellant has claimed both in his Notice of Appeal and in his submissions that, prior to the COVID-19 restrictions being put in place in March 2020, it had been his intention to leave the State at the end of March 2020. The Appellant has not submitted any evidence to the Commissioner which would tend to support this claim.
30. The Commissioner notes that the ferry ticket which the Appellant used to bring the [REDACTED] motor vehicle into the State on 4th March, 2020 was purchased on 8th February 2020 almost one month prior to the travel date.
31. The Appellant has not submitted any travel ticket or any other document such as an email or appointment which would tend to show that the Appellant planned to leave the State at the end of March 2020.
32. The Commissioner finds that the Appellant has not met the burden of proof to establish that he planned to leave the State at the end of March 2020. Therefore this material fact is not accepted.

The Appellant was prevented from leaving the State due to the Covid-19 restrictions in place between March 2020 and April 2021 when he registered the motor vehicle in the State:

33. The Commissioner has already found that the Appellant has not established that his normal place of residence at the time at which the motor vehicle was brought into the State and also that he has not established that he planned to leave the State at the end of March 2020. Similarly the Appellant has not provided any evidence that he was prevented from leaving the State due to the Covid-19 restrictions in place between March 2020 and April 2021. The Appellant in his submissions has stated that he approached An Garda Síochána in relation to travelling to the UK during this period and he has also stated that he could not travel on foot of medical advice. The Appellant has not provided any documentary evidence in this regard.
34. The Commissioner finds that the Appellant has not met the burden of proof to establish that was prevented from leaving the State due to the Covid-19 restrictions in place between

March 2020 and April 2021 when he registered the motor vehicle in the State. Therefore this material fact is not accepted.

35. Therefore the following are the material facts which the Commissioner has accepted:

- a. The motor vehicle was purchased by the Appellant on 29th February, 2020 and was brought into the State on 4th March, 2020.

Analysis

36. The motor vehicle was purchased by the Appellant on 29th February, 2020 and was brought into the State on 4th March, 2020.

37. Section 134(1)(a) of the Finance Act 1992 provides that relief 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 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.

38. The Commissioner has not accepted that the Appellant was a UK resident at the time the motor vehicle was brought into the State. In addition the Appellant purchased the motor vehicle on 29th February, 2020 and brought the motor vehicle into the State on the 4th March 2020. The timing of the purchase of the motor vehicle means that it was not possible for the Appellant to comply with the provisions of section 134(1)(a) of the Finance Act 1992 in order to qualify for relief from VRT.

Determination

39. For the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal and is not entitled to Transfer of Residence Relief pursuant to section 134(1) of the Finance Act, 1992 and is therefore not entitled to a refund of the VRT paid on registration of his said vehicle.

40. It is understandable that the Appellant might be disappointed with the outcome of his appeal. The Appellant was correct to check to see whether his legal rights were correctly applied.

41. This appeal is determined pursuant to section 949U of the Taxes Consolidation Act 1997.



Clare O'Driscoll
Appeal Commissioner
4TH February 2022