



62TACD2023

Between

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**Appellant**

and

**The Revenue Commissioners**

**Respondent**

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**Determination**

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**Introduction**

1. This is an appeal to the Tax Appeals Commission (“the Commission”) pursuant to and in accordance with the provisions of section 949I of the Taxes Consolidation Act 1997 (“the TCA 1997”) brought on behalf of ██████████ (“the Appellant”) against a decision of the Revenue Commissioners (“the Respondent”) to refuse relief from Vehicle Registration Tax (“VRT”), otherwise known as transfer of residence relief (“TOR”), in accordance with section 134(1)(a) of the Finance Act 1992 (“FA 1992”), as amended and Statutory Instrument No. 59/1993 - Vehicle Registration Tax (Permanent Reliefs) Regulations 1993 (“the VRT Regulations”).
2. This appeal also relates to the seizure of the Appellant’s vehicle on 27 September 2021, in accordance with section 141 of the Finance Act 2001 (“FA 2001”), whereby the Appellant seeks to appeal the compromise sum paid by him for the release and return of his vehicle. The Respondent argues that this is not a matter that falls within the statutory jurisdiction of the Commission.
3. The appeal proceeded by way of a remote hearing on 20 February 2023. The Commissioner heard sworn evidence and submissions from the Appellant and submissions from the Respondent, who was represented by Junior Counsel.

## Background

4. On 27 September 2021, a Customs Officer stopped the Appellant at a business premises in Dublin 15. The Appellant was interviewed under caution and the Appellant admitted owning the vehicle for a period in excess of 60 days, residing and working in the State. The Appellant resides in [REDACTED] with his wife and he is a PAYE employee in [REDACTED].
5. In light of the information provided, the Customs Officer was satisfied that the vehicle was liable to VRT and the vehicle was seized pursuant to section 141 FA 2001. The Appellant was provided with a Notice of Seizure and offered the option of paying a compromise sum of 10% of the Open Market Value of the vehicle, in lieu of forfeiture and legal proceedings. The Appellant agreed to pay the sum of €2,000 and the vehicle was released back to him. On 16 November 2021, the Appellant duly appealed to the Commission, the compromise sum imposed and paid by him ("the Seizure Appeal").
6. The vehicle the subject matter of this appeal is an [REDACTED] that bore UK registration number [REDACTED]. The vehicle now bears Irish registration number [REDACTED] ("the vehicle"). The vehicle was purchased by the Appellant on the 14 October 2020.
7. On 3 November 2021, the Appellant applied for, and was subsequently refused, TOR relief. An application form was submitted by the Appellant stating that the date of taking up normal residence in the State was 14 September 2019, the vehicle was purchased on 14 October 2020 and the date upon which the vehicle entered the State was 27 September 2021. It is the Appellant's contention that he normally resided in [REDACTED].
8. By correspondence dated the 30 November 2021, the Appellant was advised that his application for TOR relief was unsuccessful on the basis that:-

*"From the evidence submitted, it is clear that you were outside of this State from 14/10/2020 until 31/12/2020. From 31/12/2020 you were resident in this State as declared and as such, you did not have possession and actual use of the vehicle outside of the State for at least 6 months prior to your transfer of residence. Being unable to return to the North of Ireland with the vehicle does not change the requirement for the 6 months period needing to be met".*
9. The Respondent contends that the Appellant did not own the vehicle on the date of transfer of residence in his TOR form and thus, did not have use and possession of the vehicle for the required 6 months before he transferred his residence to the State. Further, the Respondent argues that as the Appellant was in full time employment in companies based

in [REDACTED] and he purchased a property in [REDACTED] [REDACTED] in September 2019, it is deemed that his personal and occupational ties are within the State.

10. By correspondence dated 24 December 2021, the Appellant made a first stage appeal to the Respondent, in respect of the decision of 30 November 2021 to refuse TOR relief. The Applicant enclosed a copy of his bank statements for October to December 2021, in addition to submitting a copy of S.I. No 701/2020 – Health 1947 (Section 31A – Temporary Restrictions) (Covid-19) (No. 10) Regulations 2020 in support of his appeal.

11. By correspondence dated 12 January 2022, the Appellant was advised by the Respondent that *“following review, the application remained unsuccessful because the Appellant failed to satisfy two conditions namely:-*

(i) *The Appellant did not have possession and actual use of the vehicle outside the State for at least 6-months prior to transfer; and*

(ii) *The Appellant’s normal residence was deemed to be in the State”.*

12. On 31 January 2022, the Appellant duly appealed to the Commission, the decision of the Respondent to refuse TOR relief (‘the Transfer Relief Appeal’).

### **Legislation and Guidelines**

13. The legislation relevant to this appeal is as follows:-

14. Section 127 FA 2001, Notice of claim, *inter alia* provides:-

(1) *Where anything has, under any provision of excise law, been seized as liable to forfeiture, a person (referred to in this section as "the claimant") may –*

(a) *within one month of the date of the notice of seizure under section 142(1), or*

(b) *where no such notice has been given, within one month of the date of the seizure*

*give notice in writing to the Commissioners of a claim (referred to in this section as a "notice of claim") that the thing seized is not so liable.*

(2) *A notice of claim shall specify the full name and address of the claimant and the basis on which the claim is grounded and, where that address is outside the State, any documents relating to condemnation proceedings under section 128(1) may be served at that address by post.*

(3) *If, on the expiration of a period referred to in subsection (1), no notice of claim has been given, the thing seized shall be deemed to have been duly condemned as*

*forfeited, and the forfeiture shall apply from the date when the liability to forfeiture arose.*

*(4) Where a notice of claim has been given, the Commissioners shall, subject to subsections (2) and (3) of section 144, take court proceedings under section 128 for condemnation of the thing concerned.*

15. Section 128 FA 2001, Proceedings for condemnation by Court, *inter alia* provides:-

*(1) Proceedings for condemnation by the court in accordance with section 127(4) (in this section referred to as "condemnation proceedings") are civil proceedings, and such proceedings shall be commenced in the name of the Commissioners*

*(2) Where in any condemnation proceedings the court finds that the thing seized was, at the time of seizure, liable to forfeiture, the court shall condemn it as forfeited, and in any other case the court shall order its release*

*(3) Condemnation proceedings may be instituted in the High Court or, if in the opinion of the Commissioners the value of the thing seized (that is to be the subject of such proceedings) does not exceed –*

*(a)€75,000, the Circuit Court, or*

*(b)€15,000, the District Court.*

16. Section 141 FA 2001, Seizure of goods and vehicles, provides:-

*(1) Any goods or vehicles that are liable to forfeiture under the law relating to excise may be seized by an officer.*

*(2) Anything liable to forfeiture under section 78 of the Finance Act 2005 may be seized by a member of the Garda Síochána and shall be delivered to an officer.*

17. Section 144 FA 2001, Power to deal with seizures, before and after condemnation, *inter alia* provides:-

*(1) In this section "claimant has the same meaning as it has in section 27.*

*(2) The Commissioners may, in their discretion, restore anything seized as liable to forfeiture under the law relating to excise, and the Minister for Finance may order such restoration*

.....  
18. Section 145 FA 2001, Appeal to Commissioners, *inter alia* provides:-

.....

(3) *Any person who is the subject of a decision of the Commissioners in relation to any of the following matters and who is aggrieved by the decision may appeal to the Commissioners against that decision:*

(a) *the registration of a vehicle, or the amendment of an entry in the register referred to in section 131 of the Finance Act 1992;*

(b) *the determination of the open market selling price of a vehicle under section 133 of the Finance Act 1992;*

(c) *the granting, refusal or revocation by the Commissioners of an authorisation under section 136 of the Finance Act 1992, or the arrangements for payment of vehicle registration tax under that section;*

(d) *the liability to vehicle registration tax or the repayment of vehicle registration tax.*

(4) *An appeal under this section shall be made in writing and shall set out in detail the grounds of the appeal.*

.....

19. Section 134(1) FA 1992, Permanent reliefs, *inter alia* provides:-

(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, as amended (“the VRT Regulation”) inter alia provides:-*

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*

*A person who lives in a country primarily for the purposes of attending a school or university or other educational or vocational establishment shall not be regarded as having his normal residence in that country.*

#### *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.*

*.....*

*(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 complied 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.*

20. Section 139 FA 1992, Offences and penalties, inter alia provides:-

.....

*(3) It shall be an offence under this subsection for a person, in respect of a vehicle in the State—*

*(a) to be in possession of the vehicle if it is unregistered unless he is an authorised person or the vehicle is the subject of an exemption under section 135 for the time being in force and the vehicle is being used in accordance with any conditions, restrictions or limitations referred to in section 135,*

.....

*(6) A vehicle in respect of which an offence under subsection (3) or (5) was committed shall be liable to forfeiture.*

## **Submissions**

*Appellant*

21. The Appellant gave sworn evidence in respect of his appeals and the Commissioner sets out hereunder a summary of the evidence given by the Appellant:-

- (i) He stated that while his occupational ties are based in [REDACTED], his personal ties are located predominately in [REDACTED]. He said that he has not transferred his vital interests to [REDACTED]. He mentioned that he travels home very frequently to see family and to assist with his family's business. He relayed that he also returned home to live for long periods, during the various lockdowns over the last few years.
- (ii) He confirmed that in 2021, he and his wife purchased a property in [REDACTED], due to a culmination of factors, such as previously paying an exorbitant rent for a one-bedroom apartment, more than what he is currently paying for the mortgage on a three-bedroom house, and the location, as it is located in [REDACTED] with easy access to the [REDACTED] Motorway. He said that this was crucial due to how frequently he travels home to [REDACTED].
- (iii) He said that during the lockdown in 2020, at the end of May when it was safe to do so, he returned home to [REDACTED], for approximately five to six weeks. He confirmed that he then returned home again to [REDACTED] at various stages throughout July, August and September 2020. He stated that at the onset of the second lockdown period in October 2020, he returned home to [REDACTED] until December 2020 but that he returned to [REDACTED] on 31 December 2020, in order to visit the [REDACTED] Hospital with his wife.
- (iv) He made reference to the various documents submitted in support of his appeal and stated that his Polling Card from the elections in May 2022, shows that he is on the Polling Register in Northern Ireland. In addition, he stated that in September 2021, he received confirmation of a "decision in principle" for a mortgage application, as he and his wife were actively looking to move home.
- (v) He stated that since there is no clear definition of what constitutes personal ties, and it differs from person to person, common sense must prevail. During cross examination by Counsel for the Respondent he confirmed that he and his wife own the property in [REDACTED] together and are PAYE workers in the State. In addition, he confirmed that he has been working in the State since 2014. A number of questions were put to him in relation to the TOR application form and he said that whilst the date of 14 September 2019 was on the form as the date of taking up normal residence in the State, his personal ties are not here and he does not consider that he took up normal residence here.
- (vi) He said that he accepts that there are some discrepancies in the form but that he did not intend to mislead anyone.



*Respondent*

22. The Commissioner sets out hereunder a summary of the submissions made by Counsel on behalf of the Respondent:-

- (i) Reference was made to section 134(1) FA 1992 and that the test to be applied. The Commissioner has not received a degree of clarity about when the evidence was that the permanent transfer of normal residence into the State took place.
- (ii) Reference was made to the VRT Regulations and the definition of "normal residence". The Appellant's normal residence has been in the State for a considerable period of time and predates the time period set forth in the TOR form. However, that is neither here nor there, as the Appellant is not entitled to the TOR exemption from VRT on the basis of his own information. The contention that the Appellant has here, is that he took up his normal residence within the State and then over a year later acquired the vehicle. Clearly, whatever the test is, there is no test whereby that scenario allows for an exemption from VRT.
- (iii) On that basis alone, the Commissioner can consider the application form and dismiss the appeal. Further, there are significant gaps which have emerged between the evidence that the Appellant gave and which is provided in the application form for TOR relief.
- (iv) Reference was made to the onus of proof being on the Appellant in a tax appeal before the Commission.

**Material Facts**

23. Having read the documentation submitted, and having listened to the oral submissions at the hearing, the Commissioner makes the following findings of material fact:

- (i) The Appellant purchased the vehicle on 14 October 2020.
- (ii) Since 14 September 2019, the Appellant has owned property in the State, where he resides with his wife.
- (iii) Since 2014, the Appellant has been a PAYE employee in the State.
- (iv) The Appellant's wife is a PAYE employee in the State.
- (v) The Appellant's personal ties are in the State, in addition to his occupational ties.
- (vi) The Appellant transferred his normal residence to the State at the very latest, in September 2019.

## **Analysis**

24. The appropriate starting point for the analysis of the issues is to confirm that in an appeal before the Commission, the burden of proof rests on the Appellant, who must prove on the balance of probabilities that an assessment to tax is incorrect. This proposition is now well established by case law; for example in the High Court case of *Menolly Homes Ltd v Appeal Commissioners and another*, [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”.*

25. The Appellant’s appeals relate to two matters namely the seizure appeal and the transfer of residence appeal. The Respondent argues that the Commission does not have statutory jurisdiction to deal with the aspect of the appeal relating to the seizure of the Appellant’s vehicle. Therefore, the Commissioner considers it appropriate to consider her jurisdiction in terms of this matter initially, before then proceeding to consider the transfer of residence appeal.

### **The seizure appeal**

26. By way of correspondence dated 9 December 2021, entitled “*RE: Customs Appeal relating to issue of Notice of Seizure by Revenue*” the Respondent informed the Appellant that his appeal was not upheld. However, the Commissioner notes that the correspondence goes on to state that the Appellant, if dissatisfied with the decision of the Respondent, has a right of appeal to the Commission. The Commissioner has considered the testimony of the Appellant that it was on that basis, that he proceeded to appeal to the Commission, the Respondent’s decision in relation to the seizure of his vehicle.

27. The Respondent accepts that correspondence of this nature issued to the Appellant in relation to his right of appeal to the Commission, but notably now contends that it was an error on its part. The Respondent argues that the seizure of a vehicle is not a matter that falls within the statutory jurisdiction of the Commission.

28. The Commissioner has considered the statutory scheme applicable to address the seizure of a vehicle, namely condemnation proceedings. In particular, the Commissioner notes sections 127 and 128 FA 2001, which provide for condemnation proceedings to be taken before a Court, the jurisdiction being determined by the value of the goods seized.

29. Accordingly, the Commissioner is satisfied on that basis that this is not a matter that falls within the statutory jurisdiction of the Commission. The Commissioner therefore makes no determination in respect of the seizure of the Appellant's vehicle, as the Commissioner has no jurisdiction to determine the matter.

30. Nevertheless, the Commissioner considers that the Respondent should have been more careful in its correspondence with the Appellant, such that it was clearly an error on the Respondent's part to inform the Appellant that he had a right of appeal to the Commission, in circumstances where he did not, and there exists an entirely different legislative scheme to deal with such matters.

### **The transfer of residence appeal**

31. The Commissioner now considers that the crux of this appeal concerns the Respondent's decision to refuse TOR relief to the Appellant.

32. The Commissioner has considered the legislation applicable to the registration of motor vehicles in this jurisdiction and notes that it is an offence to be in possession of an unregistered vehicle in the State, unless the person found in possession of the vehicle, is a person whose normal residence is outside the State or the vehicle is the subject of an exemption.

33. The Commissioner notes the evidence of the Appellant, such that he purchased the vehicle in October 2020 and that he was out of the jurisdiction from 14 October to 31 December 2020. His evidence was that he had no choice but to return to the State with his wife on 31 December 2020, for an emergency hospital appointment and had it not been for the enactment of emergency legislation during the Covid-19 pandemic, restricting travel to within a 5 km radius of his address in [REDACTED], he would have remained outside of the State for the duration of the lockdown in the following year, 2021. He said that it was not feasible nor legal for him to return to [REDACTED], as he was bound by that legislation, namely to restrict his movements, to essential movements only. He further contends that in order to meet the 6 month period applicable, the Respondent was effectively requiring him to breach the law. He argues that the legislation allows for extenuating circumstances such as this and that he should have been afforded TOR relief.

34. Moreover, the Commissioner notes the testimony of the Appellant, such that in September 2019, he purchased a property with his wife in [REDACTED] and that he has worked as a PAYE employee in the State, since 2014. Notably, his wife is also an employee in the State. Nevertheless, he contends that his personal ties are not in the State, that the property purchased in 2019 was an economic decision due to a housing crisis in this

jurisdiction and that he resides in the State for purely occupational reasons. The evidence of the Appellant was that he regularly returns to [REDACTED] to help out in the family business, has longstanding friendships there and is a member of the GAA club.

35. The Commissioner notes the documentary evidence submitted by the Appellant such as fuel receipts, mechanic receipts to show work carried out, a marriage certificate where he states his usual address is listed as [REDACTED], bank statements which he states illustrate how often he is outside of the State and a signed statement from [REDACTED] confirming that he is required to return on a regular basis to help with family business.

36. The Commissioner has considered that in accordance with the provisions of section 134(1) FA 1992, individuals transferring normal residence permanently to the State from abroad, may apply for TOR relief, which may exempt payment of VRT on a vehicle. Paragraph 3 of the VRT Regulations defines the term "normal residence". Therefrom, the Commissioner is satisfied that the eligibility criteria for the said TOR relief is provided for in section 4 of the VRT Regulation and as highlighted by the Respondent in its Outline of Argument, are as follows:-

- (i) the applicant had his or her normal residence outside the State (i.e. normal residence is the place where a person usually lives for at least 185 days in each calendar year);
- (ii) the applicant has transferred his/her residence permanently to the State;
- (iii) the applicant has had possession and actual use of the vehicle outside the State for at least 6 months prior to the date of transfer;
- (iv) the applicant has not been a person who was living abroad in order to carry out a task of definite duration of less than one year; and
- (v) the applicant's vehicle must have arrived in the State within one year of the date of transfer of residence.

37. In addition, the Commissioner has considered the Respondent's Vehicle Registration Tax Manual, Manual Section 2, Reliefs and Exemptions ('the VRT Manual'). The Appellant relies on this document in terms of supporting his claim that extenuating circumstances existed, such that he should be afforded TOR relief. The Commissioner does not consider that the document assists the Appellant in that regard, because the Appellant has stated on his form for TOR relief that he took up normal residence in Ireland on 14 September 2019. The Commissioner does not accept the Appellant's evidence as credible that this is

merely the date upon which he received the keys to the property he purchased. The Commissioner notes that the Appellant remained steadfast in his argument that simply because he purchased a property and is employed in the State, does not mean that he is normally resident in the State. This is despite the TOR relief form entitled “Transfer of Residence from within the EU application and declaration for relief from Vehicle Registration Tax (VRT)” reflecting the date of 14 September 2019, as being the date of taking up normal residence in Ireland and the declaration made on the form that the information given in the form is true and accurate.

38. In fact, the Commissioner has considered in detail, the Appellant’s application form for TOR relief and the evidence of the Appellant in respect of the aforesaid form. In particular, the Commissioner notes the evidence given on cross examination in relation to a number of entries on the form. The Appellant ascribed 27 September 2021 as the date the vehicle was brought into the State but he accepted that this was, in fact, the date upon which the vehicle was seized and that the date of taking up normal residence in Ireland namely, 14 September 2019, was the date the property in [REDACTED] was purchased.
39. Moreover, on cross examination he accepted that he could not have satisfied the criteria in respect of the vehicle, having regard to the answers on the form. The simple reason being is that the form suggests that he took up normal residence in September 2019, but that the vehicle was not purchased until October 2020. It is for these reasons that the Commissioner is satisfied that the Appellant’s appeal fails.
40. For completeness, notwithstanding the fact that the Appellant may have worked from home in [REDACTED] from October 2020 to December 2020, having regard to the definition of “normal residence” as provided for in the VRT Regulation, the Commissioner is satisfied that the Appellant’s normal residence was in the State, in [REDACTED], where his property is located, where he resides with his wife and where his PAYE employment is. The Commissioner finds as a material fact that the Appellant transferred his normal residence to the State at the very latest, in September 2019.
41. Accordingly, having considered the evidence, documents and submissions in respect of this appeal, in addition to the legal test to be applied, the Commissioner is satisfied that the Appellant has not shown on balance that he is entitled to TOR relief nor that the Respondent was incorrect to refuse the relief sought.

### **Determination**

42. As such and for the reasons set out above, the Commissioner determines that the Appellant has failed in his appeal. The Commissioner is satisfied that the Appellant has

not succeeded in establishing that he transferred his normal residence from a place outside the State to a place within the State, in accordance with the requirements of TOR relief pursuant to section 134(1)(a) FA 1993, as amended and the VRT Regulation.

43. The Commissioner appreciates this decision will be disappointing for the Appellant. However, the Commissioner is charged with ensuring that the Appellant pays the correct tax and duties.

44. This appeal is hereby determined in accordance with Part 40A of the TCA1997 and in particular, section 949 thereof. This determination contains full findings of fact and reason for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law only within 42 days of receipt in accordance with the provisions set out in the TCA 1997.



Claire Millrine  
Appeal Commissioner  
10 March 2023