AN COIMISIÚN UM ACHOMHAIRC CHÁNACH
TAX APPEALS COMMISSION

96TACD2023

Between

Paulene McCaul-Clarke

Appellant

and

The Revenue Commissioners

Respondent

Determination

Introduction

1. This is an appeal to the Tax Appeals Commission ("the Commission") pursuant to and in accordance with the provisions of the Taxes Consolidation Act 1997 ("the TCA 1997") brought on behalf of Paulene McCaul-Clarke ("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. The Appellant in this appeal chose to have her hearing in public, which is the statutory default position but is not often chosen by appellants. The Appellant also chose for the hearing to be heard via remote technology. Conversely, the Appellant then sought that despite the public hearing she did not intend to override the anonymity afforded to appellants. The Appellant was informed that that position was impossible. The Commission offered the Appellant the opportunity again to have a private hearing but confirmed that a public hearing means there is no anonymity for the Appellant. The Appellant was informed that all parties are named in an open hearing. The Appellant was aware that in her choice

of a public hearing, the publication would include her name and the details of the case. The Commission confirmed in writing that by opting for a public hearing, the Appellant confirmed that the determination is published with the name of the Appellant and any other party mentioned in the hearing. The Appellant chose to proceed on the basis of this understanding.

3. The Appellant resides in outside Dublin and so it was advantageous to her not to have to travel to the Commission's premises in Dublin. In addition, as the Appellant had requested a remote hearing, at the same time that it was held in public, the Appellant requested that the public could join in the proceedings. The Commission had not had such a request before in terms of a remote hearing and so a technological change was made to ensure that the public could join, as indicated by the Appellant's request.

4. As such, the Commission indicated on its website prior to the hearing that it was going to be held remotely and if any member of the public required to join the hearing, a link would be sent. No member of the public requested to join the public remote hearing. The Commission is satisfied that it has fulfilled the requests of the Appellant in this regard.

5. At the commencement of the hearing, the Commissioner confirmed that the public were entitled to join and had been informed of the hearing. The Commissioner confirmed that no member of the public had requested to join and no-one had joined. The Commissioner confirmed her role, as set out in *Lee v Revenue Commissioners* IECA 2021 18, was to determine if there was a charge to tax and if so, the amount to be payable. The Commissioner confirmed that her jurisdiction did not stray to Constitutional matters or matters of public law which would be ordinarily dealt with by a judicial review.

6. The Commissioner reminded the parties that the Commission is not addressing civil or criminal proceedings but derives its jurisdiction from statute and is a creature of statute. In addition, the parties were reminded that the burden of proof rests on the Appellant to prove that the tax charged is not payable. The Appellant was represented by her husband, who confirmed he was a retired solicitor who qualified and had practiced in the United Kingdom ("UK"). The Respondent was represented by Counsel and attended by an officer employed by the Respondent. The parties were prepared and well represented at the hearing.

7. The Commissioner confirmed that in the hearing that the Commission would ask the Appellant to establish the factual matters and then she would give the parties the opportunity to make their submissions. The Commission confirmed that the parties had the opportunity to exchange their respective Books of Documentation and that had taken place.

8. The Commissioner notes that there were three separate Books of documentation supplied by the Appellant and the Respondent totally over 500 printed pages for consideration.

9. A stenographer was provided by the Respondent to assist the Appellant and the Commission.

10. The Appellant resides in Donegal. The Appellant moved to Donegal from the UK in September 2020. As stated above, the Appellant was represented by her husband, who confirmed to the Commission that he was a retired solicitor who had qualified and practised in the UK before he relocated to Ireland with his wife. The hearing lasted a full day and the Appellant and her representative were afforded appropriate time to go through their submissions and evidence. The Books of documentation supplied by the parties comprised of the Appellant's Book of Documents, the Appellant's Book of Authorities and the Respondent's Book of Documents. The parties failed to reach agreement on a joint Book of Documents. The Book of Authorities ran to 316 pages. The Appellant's Book of Documents comprised 157 pages of documents.

11. The Commissioner does not intend to list out the documentation in the three Books of documentation but she has read the documentation provided. The transcript of the hearing ran to 218 pages.

12. The Appellant and her husband gave evidence at the hearing. The Respondent's officer, Mr O'Connor, gave evidence for the Respondent.

13. This appeal relates to the decision letter to the Appellant concerning the charge to VRT relating to a transfer in residence, in the sum as stated above of €5,345 plus €45 (€5390).

14. For background the Commissioner asked the Respondent for statistics on the number of cases where the Respondent exercised the discretionary role with respect to extenuating circumstances in relation to transfer of residence relief. The Respondent provided figures for a period of 5 years. Essentially, in 2018 there were 3 applications and 3 approved. In 2022, there were 6 applications with 4 approved. The highest number occurred in 2021 at 48 applications with 30 approved. The numbers collated by the Respondent for the Commission confirmed that over a 5 year period there were 76 applications with 55 approved. They are extremely small numbers. They confirm the rarity of the exception allowed by the Respondent under extenuating circumstances.

Background

15. The parties could not submit an agreed set of facts but after significant correspondence the parties submitted to the Commission a document entitled a *Statement of Agreed and Not Agreed Facts*. The Commission has replicated that document with some small revisions for grammatical reasons here. The parties agree the following facts:

16. After the Appellant graduated in 1985, she changed her residence from Ireland to the UK. That change did not occur in 1996 as the Revenue contends in its letter of 12 April 2021.

17. In 2020 the Appellant and her husband changed their residence from the UK, selling their house there, to Ireland. Unfortunately, at the time of relocation, their sole car, a Honda CR-V registered with number NL08 MMO under the Appellant's name as a private individual developed gearbox issues. They considered it an imperative that they had a safe and reliable car to facilitate that relocation and decided to replace it.

18. Again, as their sole car therefore, the Appellant purchased in the UK and in her name as a private individual a new Honda CR-V on 23 September 2020. The Appellant and her husband took up residence in Ireland on 30 September 2020. The Appellant recognised that the car had to be re-registered in Ireland but she was unable to start that process for some time as she wished to apply for the Transfer of Residence ('TOR') relief from Vehicle Registration Tax ('VRT') upon which decisions are made prior to the VRT inspection. The application form for that relief required a PPSN for her husband, which the authorities took some time to allocate.

19. The Appellant then applied for TOR relief and provided some of the supporting documents that were then available. As regards the latter, the TOR form provides:

    19.1. "Notes: • All of the documentation listed in the following section is not required. Please tick the appropriate boxes for documents you actually possess and can provide copies of. • An [sic] * indicates mandatory Documentary Evidence." [with added emphasis]

    19.2. The mandatory documentation was provided.

20. The Respondent by a letter dated 25 February 2021 advised that the application had not succeeded. This letter differed in content but not effect from a version posted on the myAccount access point the Appellant had with the Respondent. The Respondent by a letter dated 25 February 2021 advised that the application had not succeeded. This letter differed in content but not effect from a version posted on the myAccount access point the Appellant had with the Respondent.

21. The car with registration LJ70 XMP underwent its VRT inspection on 12 March 2021 and was given a new registration number of 202 DL 1135. The principal amount of VRT due was assessed at €5,390 with penalties for late registration of €878, together with VAT of €6,249, making a total of €12,517, which the Appellant and her husband paid.

22. By a letter dated 14 March 2021 the Appellant appealed to the Respondent both the refusal of TOR relief as regards the principal sum charged for VRT and the levying of penalties of €878 but not the VAT element of €6,249.

23. The Appellant received a further letter from the Respondent dated 24 March 2021, which in content was not identical to its letter of 25 February, again advising that her application for TOR relief had not succeeded.

24. The Appellant then received a letter from the Respondent dated 12 April 2021, which advised that her appeal against the refusal of TOR relief had not succeeded but the penalties for late registration of €878 would be refunded as they were.

25. By a Notice of Appeal with accompanying letter addressed to the Commission dated 19 April 2021 the Appellant appealed the Respondent's decision on her application for TOR relief.

26. The parties do not agree the following facts:

27. The Respondent maintain that by the letter of 25 February 2021 the Appellant's application for TOR relief was refused because she did not have use and possession of the vehicle outside the State for at least 6 months prior to transfer. The Appellant disagrees and contends no such reasoning was advanced in that letter (or the letter of 24 March 2021).

28. The Respondent maintains that the Appellant's reliance on extenuating circumstances only began on the first stage appeal. The Appellant disagrees, it being the basis of her original TOR application, which basis clearly was recognised by the Respondent given what was said in the letter of 25 February 2021.

29. The Respondent maintain that the reasons for the refusal of the Appellant's first stage appeal were outlined in its letter of 12 April 2021. The Appellant disagrees, that there was no or no adequate reasons in that letter (and its predecessors) as outlined in the Appellant's submissions.

Facts Established at the Hearing

30. In addition to the agreed facts set out above, the Commission spent a considerable time at the hearing establishing the surrounding facts and circumstances in relation to the appeal. The Commissioner established through examination of the Appellant that she resided in London since the mid 1980's. The Appellant could not recall with any further accuracy to the Commission but sometime in 2020 she and her husband decided to relocate. She believes that the final decision to sell their house was in May or June 2020 but she could not be more specific than those two months. There was a global pandemic at that time. The Appellant and her husband already owned a property in Donegal. The Appellant was

working remotely in the United Kingdom and even after settling in Donegal continued to work remotely for the same organisation.

31. In 2020 the Appellant and her husband placed their UK home on the market. The sale completed in September 2020. In 2020, the Appellant drove the car she owned at that time which was a Honda CRV (hereinafter termed the "Previous Aged Honda"). She had owned it from new. The Appellant recalled that she purchased it in or around 2008. It was registered in her name. So the Appellant had owned the Previous Aged Honda for 12 years. It had been serviced annually. The Commission notes that after 12 years any car could have mechanical issues. The Respondent had provided the Commission with the MOT details for this vehicle at Tab 6 of the Respondent's Book of Documents. This confirmed that the Previous Aged Honda CRV had been first registered in March 2008. It was a petrol vehicle and the colour bronze. The details on the UK government's website concurred with the Appellant's information that she had bought the car in 2008 and it was a 12 year old car in 2020. The information provided to the Commission confirmed that the date the last V5C (the logbook) was issued was 4 December 2020. The Commission can assume that the garage which took the Previous Aged Honda sold the car to a new owner who registered it in December 2020. The Respondent noted to the Commissioner that the Previous Aged Honda was still roadworthy and at the time of the hearing was taxed and insured by a new owner.

32. The Commission noted at the hearing that in 2020 there were significant travel restrictions in the UK and Ireland. The Appellant in UK was also under travel restrictions but the details of those travel restrictions are not relevant to this appeal. The Previous Aged Honda had been what the Appellant described as "*fabulously reliable*". But in 2020 the Appellant discovered that the Previous Aged Honda was leaking fluids. The Commissioner notes that this can happen with any vehicle and especially those of 12 year vintage.

33. As a result the Appellant took it to her local garage. The garage confirmed that they were able to do a temporary repair. The Appellant at this time was clearing her home in the UK and only doing what she described as short trips. She was undertaking short runs to the charity shops as part of her house clearance. But they were all short journeys.

34. The Appellant provided to the Commission a copy of the receipt from the garage that had undertaken the repairs on the Previous Aged Honda. The garage was in Surrey. The registration number of the vehicle on the garage receipt is consistent with the Appellant's car at that time, namely the Previous Aged Honda. The invoice was for a total of £174.72. The receipt confirms that the car "*came in leaking fluid*". The garage was also tasked with investigating "PIPR RUSTED THROUGH FROM COOLER TO GEAR BOX". The receipt confirms it was a "TEMP REPAIR". The garage confirms that it cut the rusty pipe out and

replaced it with copper pipe. The garage also stated on the invoice in bold and capped letters "**WHEN CUSTOMER GETS TO IRELAND PLEASE TAKE CAR TO A GARAGE FOR A PROPER REPAIR".** The Commission noted this comment to the Appellant. The Commission has concluded that the garage were informed about the Appellant's move to Ireland in June 2020 when she left the car for repair. The garage were informing the Appellant that it was a temporary repair only. The garage must have been given the impression that the vehicle was going to make the journey to Ireland. Otherwise, this comment does not make sense. The Commissioner concludes that the Previous Aged Honda must have been roadworthy and sufficiently so as to make the journey to Ireland. Otherwise the garage would not have allowed it to be driven and would not have confirmed this comment on their invoice. The Commissioner notes that the Previous Aged Honda is still on the UK roads as evidenced by the Respondent's documentary evidence.

35. The Commission asked the Appellant about her vehicle buying history. The Appellant confirmed to the Commission that she usually replaced a new car with a new car. The Appellant gave details of the vehicles she had owned over many years but they are not relevant to this appeal. But the Commissioner can conclude that the Appellant owned cars from new and then changed them to another new car.

36. The Appellant sometime before 23 September 2020 must have visited a Honda dealer. The Appellant indeed bought a new Honda CRV Cosmic Blue Hybrid (the "New Honda") in a Honda dealership in Thames Ditton Surrey. The Appellant has provided the Commission with a copy of a document entitled New Honda Invoice. The invoice is addressed to the Appellant at her UK address. The registration date is 23 September 2020 and the delivery date is 30 September 2020. It appears that the Appellant took delivery before the 30 September. This was two days after the completion of the sale of the Appellant's UK home, as confirmed below. The Appellant traded in the Previous Aged Honda with her order for the New Honda. She was paid £3250 for her 12 year old vehicle (the Previous Aged Honda) as a trade-in value. The total invoice was £32,490 for the New Honda. The Appellant collected the new vehicle before the delivery date on the invoice of 30 September 2020 as it was driven on the ferry on 29 September 2020.

37. The Appellant confirmed to the Commission that their house exchanged in August 2020 and completed in September 2020. The Appellant provided the Commission with the letter from their solicitors in Kingston Surrey. Their solicitors confirmed that the sale completed on 28 September 2020.

38. The Commissioner is aware that with a new vehicle it is usual for the dealership to register the vehicle and the registration fee is included in the price of the vehicle in the UK. It is termed "first registration". The purchase of the first 12 months of the Road Fund Licence

fee is undertaken by the dealership as well. The invoice from the Honda dealer confirmed that included in the price was first registration and Road Fund Licence. So, the dealer had carried out these steps and charged the Appellant for them in the sum of £55 and £530 respectively.

39. The Commissioner noted that the V5C form (UK logbook) provided by the Appellant in the Appellant's Book of Documents (page 50) stated that her address was in Omagh, Northern Ireland. The Commission asked the Appellant about this address. The Appellant replied that she had provided a temporary address relating to her brother in Omagh. The Appellant was asked about the insurance on the vehicle and she confirmed it had been insured at the address in Omagh. The Appellant provided the Commission with a copy of her insurance in the Appellant's Book of Documents.

40. How the Omagh address came to be on the V5C is unclear from the Appellant's evidence but at some stage it must have been provided to the Honda dealer. From the New Honda's sale invoice and the costs itemised therein, it is clear that prior to the delivery of the vehicle the dealership was dealing with the registration of the vehicle with DVLA. The Appellant confirmed to the Commission that the Appellant and her representative did not research registration with DVLA. It was not their responsibility vis-à-vis the dealership, by whom they were being guided. It is therefore unknown whether it is possible to register a vehicle with DVLA under a foreign (non-UK) address but as this issue has now arisen, that is thought unlikely.

41. The Appellant confirmed to the Commission in writing that relating to the insurance of the subject vehicle, the Appellant has searched her devices for any emails exchanged with her then insurers, or evidence of any correspondence with them and found none. The Appellant's representative, however, has discovered an old Certificate of Motor Insurance for the policy year 2016-2017 for the Previous Aged Honda. That shows that the insurance cover for the Appellant's old vehicle was renewable annually on 25 November. The Appellant surmised that what probably happened is that when the Appellant took delivery of the subject vehicle on 23 September 2020, if not shortly before, she telephoned her insurance company and advised that she had replaced the Previous Aged Honda with the New Honda. The Appellant surmised that at some unknown time they may advised the insurance company of the Omagh registration address. When that policy came up for renewal on 25 November 2020, it was renewed as shown by the Certificate of Motor Insurance [Appellant's Bundle of Documents 54], as it not having been possible to apply for transfer of residence relief at that time.

42. The Commissioner notes that the UK insurance was renewed each November. The Appellant provided her insurance with her Insurers in 2016. The Commission notes that in

the Appellant's Book of Documents she provided her cover with her insurers from 25 November 2020. The Commission is not dealing with the Appellant's insurance cover but it was granted from a UK address prior to her leaving England and for a considerable period after she entered the State in September 2020. The Commissioner notes that the cover for Ireland and Irish insurance commenced in March 2021.

43. The Appellant's representative enquired as to why the Respondent had raised the issue at the hearing and why the Commissioner had asked for details of the Appellant's insurance. The Commissioner notes that the Appellant chose to include the UK Logbook showing an address in Omagh. The Appellant also chose to include the motor insurance with a UK provider in the Appellant's Bundle of Documents. The Commission sought to understand the rationale for purchasing a vehicle in Kingston-upon-Thames and then providing a Northern Ireland address on both the Logbook and the insurance details. The Appellant has confirmed that the address relates to her brother but she cannot provide any details other than that stated above. The appeal relates to a transfer of residence application and the Commissioner must establish the various residencies as part of the appeal. It was the Appellant who included details of an address in Omagh on both the logbook for the New Honda and the insurance. Therefore, the Commissioner is entitled to enquire as to why this unrelated address features on any official document. The Appellant has clarified the Omagh address.

44. The Appellant collected the New Honda from the garage. On 29 September 2020, following the completion of the sale of her house in the UK, she travelled via ferry to Ireland. The Appellant could not recollect when the booking was made for the ferry. In any event the Appellant took the ferry from Holyhead to Dublin on 29 September 2020 at 2.00 pm. The Appellant has included the booking form for the ferry in her Book of Documents at page 71. The Appellant confirmed that she stayed with her brother in Omagh for a night. There were extensive travel restrictions at that time due to the Covid-19 pandemic. The Appellant confirmed that on 30 September 2020 she arrived in Donegal. The new car was laden down with her and her husband's belongings.

45. The Appellant had acquired the property in Donegal in 2002 and had used it for trips in the Summer. She had never rented it out. It was now going to be their new permanent home. The Appellant provided the Commissioner voluntarily with copies of her bank account in Donegal. This confirmed that during October 2020 she was purchasing food and normal items in the local supermarkets in Donegal. The Appellant had filled their oil tank in December 2020. Nothing else needs to be noted from the bank account. The bank account confirms that the Appellant was residing in Donegal at this time.

46. The Appellant's husband applied for a PPSN. The details of same are not relevant to this appeal but as with the nature of such matters and in light of the Covid-19 pandemic, the PPSN took a period of time before it was issued to the Appellant's husband. The Appellant and her husband were asked by the Commissioner if they researched details of transfer of residency and VRT before they arrived in Ireland or on arriving in Ireland. The Appellant confirmed to the Commissioner that following her arrival in Donegal on 30 September 2020 internet research was done, probably by the Appellant's representative, as to what was required to import a car. The Appellant's representative confirmed that he had examined his computer in an attempt to ascertain more precisely when this was done including that he had downloaded the tax and duty manual on VRT on 28 October 2020. The Appellant's representative applied for a PPSN number on 1 November 2020.

47. On 17 February 2021, over 4 months from arrival in the State, the Appellant applied for a Transfer of Residence (TOR) on the requisite form. This TOR form confirmed that the Appellant had brought the vehicle into the State on 29 September 2020. The Appellant completed the form and stated that the vehicle had been registered in her name on 23 September 2020. The Appellant enclosed a document entitled VRT TOR – Supplementary Page at page 43 of the Appellant's Book of Documents. It stated as follows :-

48. *"Kindly note:*

    1. *The submission of this form was delayed by reason of having to await a PPSN number for my spouse at a time of high demand for this service.*

    Reason for transfer of residence into the State

    2. *As an Irish citizen I have owned a house (formerly occupied by my late parents) in Culdaff, Co. Donegal since 2002. Until recently this was used as a holiday home, my main residence being in England. It has always been my intention to move back to Ireland although this plan was accelerated by financial concerns (my spouse's lack of income) and Brexit. Our house in England has been sold.*

    Other information in support of this application

    3. I am unable to show ownership of the car I seek to register for the 6-month period prior to our transfer of residence. This is because my spouse and I had to replace our previous car at short notice (force majeure) because it had an automatic transmission fluid leak with associated gearbox problems. Given the car's age (2008 registration) repairs would have been uneconomical. Additionally, we were in the process of organising the disposal/removal of our house contents in England for which we needed a comparable, safe and reliable vehicle on a daily basis.

4. I have a VRT inspection date of 5 March 2021 and accordingly would be grateful to learn of the outcome of this application before then so that I may advise the NCTS if appropriate."

49. On 25 February 2021, the Respondent refused the Appellant's application for relief from VRT. The letter refusing the application for relief was on the basis that the vehicle should have been in possession and use by the Appellant for at least 3 months except in cases of hardship such as the replacement of a crashed/stolen vehicle (and not recovered) and the Appellant should provide conclusive proof that the transfer could not have been foreseen at the time the vehicle was acquired.

50. The Appellant sent a comprehensive letter of appeal dated 14 March 2021. It included details in relation to the penalty charged for late registration. This is not the subject of this appeal and so it is not addressed. But the essential grounds in respect of the VRT appealed on the grounds as set out and quoted in that letter are as follows:

    50.1. "*As I explained in the supplementary page to my TOR application, my husband and I were obliged to buy a comparable car to that we had because our car was in need of urgent repair (and which repairs for a 2008 registration car with a mileage in excess of 96000 arguably would represent money thrown away in as much as those repairs would exceed the expected lifetime of the car given its age and mileage). This was at a time when we were already committed to a transfer of our normal residence to Ireland, contracts for sale of our house by then had been exchanged with completion set for 28 September, 5 days after we bought the imported car. See the attached solicitors' letter, which confirms that completion took place on 28 September. Given that we were then in the process of organising the disposal/removal of our house contents with lengthy journeys to and from Ireland, it was essential to have immediate access (which would not have been the case if the vehicle had to be garaged for repair) to a safe and reliable car.*

    50.2. *Respectfully, and as I said in my application, this situation amounted to force majeure. This is not dissimilar to a situation where repairs would be required of a crashed vehicle, which is expressly permitted by §2.1.5 of VRT 2. 17. The decision continues: "… and the applicant should provide conclusive evidence that the transfer could not have been foreseen at the time the vehicle was acquired." [with added emphasis] 18. It is noted that Mr/Mrs/Ms Anderson uses the conjunction "and" whereas §2.1.5 of VRT 2 uses the conjunction "or": ➢ "the applicant should provide conclusive evidence that the transfer could not have been foreseen at the time the vehicle was acquired, or that the acquisition of the vehicle was because of force majeure." [emphasis per original]"*

51. The Appellant was appealing the VRT on the basis that she needed to acquire a safe and reliable car and it was a "*force majeure"* situation. The dictionary definition of force majeure is a French term meaning "greater force". It is usually in the context of what is known as an "Act of God" such as a hurricane or an extreme weather event or in human terms, an act outside parties control, such as armed conflict or seismic infrastructure failures. The very nature of the event is that it is beyond a party's control. The Respondent have a discretion in not charging VRT (when you are outside the normal exception of having owned a vehicle and lived outside the State for the previous 6 months) in their manual. It relates to what they term "extenuating circumstances". The Respondent confirmed in its letter dated 12 April 2021 that an exemption to pay VRT may be allowed in *extenuating circumstances*.

52. The Respondent pointed out that the Appellant did not meet that criteria in that they must be in possession and have use of the vehicle in question for at least 3 months in this case. The Respondent confirmed that this minimum period of ownership can be shorter in cases of *hardship*. The Respondent confirmed that the Appellant's claim was based around the need to have a safe and reliable car. The Respondent stated that given the short period of ownership and the extent of the upgrading of the replacement vehicle, that the Appellant's claim does not fall within the circumstances for which discretion has been made available to the deciding officer.

53. The Appellant submits that the Respondent did not refer to the word "force majeure" in this response. That is correct but the Respondent did address the reason for the application for exemption namely the reason that a safe and reliable car had to be bought and the circumstances surrounding it. The Commissioner finds that the Respondent had addressed the circumstances claimed and made their decision based on those circumstances. The failure to refer to the term "force majeure" does not negate that decision. In any event, the Commissioner has the statutory role of determining if there is a charge to tax. The role of the Commission is not a judicial review of any previous decision. The Commissioner has reviewed its jurisdiction to address an appeal relating to "extenuating circumstances" below but in the first instance sets out the legislation in relation to VRT.

Legislation and Guidelines

54. Section 145 Finance Act 2001, Appeal to Commissioners, *inter alia* provides:-

…….

(1) 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.

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

……

55. Section 134(1) Finance Act 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,

56. Statutory Instrument No. 59/1993, Vehicle Registration Tax (Permanent Reliefs) Regulations 1993, as amended ("the VRT Regulations") 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 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.

57. Section 139 Finance Act 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.

58. The Appellant also cited Directive 2009/55/EC ("the 2009 Directive") which states :

Article 1 Scope

Every Member State shall, subject to the conditions and in the cases hereinafter set out, exempt personal property introduced permanently from another Member State by private individuals from consumption taxes which normally apply to such property …

Article 2 Conditions relating to property

The exemption for which Article 1 makes provision shall be granted for personal property: […]

(b) of which the person concerned has had the actual use before the change of residence is effected or the secondary residence established. In the case of motor-driven road vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft, Member States may require that the person concerned should have had the use of them for a period of at least six months before the change of residence …

The competent authorities shall demand proof that the conditions in paragraph 2 have been satisfied in the case of motor-driven road vehicles (including their trailers),

caravans, mobile homes, pleasure boats and private aircraft. In the case of other property, they shall demand such proof only where there are grave suspicions of fraud.

59. The Appellant also relied on the Respondent's Vehicle Registration Tax Section 2 Reliefs and Exemption Manual:

2.1.5 Extenuating Circumstances

Circumstances can arise where a transfer of residence is forced on an individual at a time when his/her vehicle will not have been in his/her possession and use for the required 6-month period. TOR relief in such cases may be allowed where evidence is available that a transfer of residence could not have foreseen by the applicant when the vehicle was acquired. In such cases, the following guidelines should be observed:

…..

the applicant should provide conclusive evidence that the transfer could not have been foreseen at the time the vehicle was acquired, or that the acquisition of the vehicle was because of force majeure. Some typical examples of this include:

*an unexpected offer of employment – the emphasis here should be placed on the **unexpected** nature of the offer, e.g. if negotiations for the position were underway at the time of the vehicle was acquired or an application for promotion was made, the application should be refused;*

loss of employment abroad;

deterioration in health;

family bereavement;

change in vehicle forced on an applicant because the original qualifying vehicle was crashed/stolen (and not recovered);

other special circumstances including clearly justified cases arising from political upheaval in the country of former residence.

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

Submissions

Appellant

60. The Appellant contended that the 2009 Directive did not apply to VRT. The Commissioner does not accept this submission as having any substance. The Appellant is entitled to appeal the Commission's legal interpretation to the High Court but the Commissioner is satisfied that the 2009 Directive covers VRT. The Commissioner notes that the recital to the 2009 Directive confirms that *"tax obstacles to the introduction by private individuals of personal property into one Member State are such as to hinder the free movement of persons within the Community. Therefore, these obstacles should be eliminated as far as possible by the introduction of tax exemptions"*. The Commissioner notes that the 2009 Directive is ensuring that Member States comply with one of the core rights of the European Union, namely free movement of persons with respect to the transfer of property. The European Union ensures that those who have had a vehicle for at least six months before the change of residence are to be exempt from consumption taxes on the vehicle. The tax in question in the State is VRT which is charged on all new vehicles. The State assists the free movement of persons by exempting those in possession of a vehicle of at least six months before their change of residence from a charge to VRT. The Commissioner is satisfied that VRT comes within the 2009 Directive and the State is in compliance with the 2009 Directive by virtue of section 134 of the Finance Act 1992 and the corresponding VRT Regulations.

61. The Appellant's submissions in relation to domestic legislation were lengthy and complex. In order to ensure they are all included, the Commission encloses the Submissions and Case Law relied on in Appendix 1 to this determination in the format provided to the Commission. The Appellant gave oral submissions at the hearing which lasted a considerable length of time. The Commissioner is satisfied that the Submissions set out in Appendix 1 capture the oral submissions. In any event, the Commissioner is satisfied that the Commission does not have jurisdiction to overturn the Respondent's decisions under Care and Management. Hence, if any legal points have been inadvertently not covered by the Commission, this does not affect the determination, as the Commission is satisfied it does not have the jurisdiction to consider the decision in any event. The Appellant could have brought a High Court action such as a judicial review with respect to the reasonableness of the Respondent's decision but did not do so.

Respondent

62. The Respondent submitted that the Appellant's circumstances were not deemed to be extenuating and in addition the Commission did not have jurisdiction to consider matters of

Care and Management. The Respondent submitted that the Appellant did not meet the requirements based in the legislation to qualify for transfer of residence relief.

63. The Respondent's further submissions are set out in Appendix 2 to this determination for completeness. There were several sets of submissions in response to the multitude of correspondence from the Appellant but the Commission has included only the latter submissions which it is satisfied are complete in any event. The Respondent's submissions are replicated in the form received by the Commission. In addition, the Commission is satisfied that it does not have jurisdiction to determine appeals with respect to the Respondent's Care and Management provisions.

Material Facts

64. The Commissioner accepts the agreed facts between the parties at page 104 of the Appellant's Book of Documents.

65. In addition, the Commissioner makes the following findings of material facts :

    65.1. The Appellant decided some time in 2020 to relocate to the State.

    65.2. According to the Appellant's evidence this was around the Summer of 2020.

    65.3. The Appellant had a history of buying vehicles from brand new.

    65.4. The Appellant had bought the Previous Aged Honda from new and it was 12 years old in 2020.

    65.5. The Appellant's Previous Aged Honda had mechanical issues which came to prominence at the latest in June 2020

    65.6. The Appellant took the Previous Aged Honda to a mechanic in June 2020. The vehicle underwent a temporary repair and was roadworthy for a trip to the State (as confirmed on the invoice).

    65.7. The Appellant drove the Previous Aged Vehicle for the next 3 months on short trips before it was part exchanged in September 2020.

    65.8. The Appellant part-exchanged that the Previous Aged Honda for £3250 with the Honda dealership.

    65.9. That Previous Aged Honda is still roadworthy at the date of the hearing and is taxed and insured by a new owner.

    65.10. The Appellant placed her UK property on the open market sometime in 2020.

    65.11. The Appellant's UK property sale completed on 28 September 2020.

65.12. The Appellant decided to buy a new vehicle and purchased the New Honda with an invoice confirming sale on 23 September 2020.

65.13. This vehicle was initially taxed and insured at an address in Omagh.

65.14. The Appellant did not apply for VRT until 2021.

65.15. The Appellant was charged a penalty for late registration but this was rescinded by the Respondent and is not the subject of the appeal.

65.16. The Appellant did not have the vehicle, the New Honda, for at least six months prior to arrival in the State.

65.17. The Appellant did not have the vehicle, the New Honda, for at least three months prior to arrival in the State to come within the extenuating circumstances relief as set out in paragraph 2.1.5 of the Respondent's Vehicle Registration Tax Manual.

65.18. The Appellant did not come within the exceptional circumstances that the transfer could not have been unforeseen at the time the vehicle, the New Honda, was acquired, as the Appellant had intended on transferring residency some months prior to the acquisition of the vehicle.

65.19. The Appellant claims that the acquisition of the vehicle was because of force majeure.

Analysis

Substantive issue

66. The appropriate starting point for the analysis of any appeal 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 v the Appeal Commissioners* 2010 IEHC 49 ("*Menolly Homes*"), 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".*

67. Charleton J. distinguished the taxation regime from other areas as follows (at para. 12 of his judgment):

> *"Revenue law has no equity. Taxation does not arise by virtue of civic responsibility but through legislation. Tax is not payable unless the circumstances of liability are*

defined, and the rate measured, by statute. To import into taxation legislation any notion of general obligation is to return from the modern concept of precise obligation pursuant to defined legal rules into an era when feudal ties governed the relationship of those who served a monarch or lord and were in turn entitled to protection. How tax becomes payable, what exceptions avoid general liability as and when these genuinely arise, when payment is due, what records have to be maintained by taxpayers, which levels of taxation are applicable to what transactions or events and how the power of the tax collector is both defined and circumscribed are all precisely defined by modern legislation. In a similar way, what remedy that taxpayer has against a taxation demand is not general but specific. It is cut from the cloth whereby the precise liability is set by statute law and tailored individually by the legislature in the way that suits their perception of how an income tax, a corporation tax, a capital gains or acquisitions tax or a value added tax appeal should be set up as to the scope of appeal, the procedure on that appeal and the remedies available to the appellate body."

68. In this case, even before consideration of *Menolly Homes*, the jurisdictional remit of the Commission must be considered. The scope of the jurisdiction of an Appeal Commissioner has been set out in a number of cases decided by the Courts, namely; *Lee v Revenue Commissioners* [IECA] 2021 18 (hereinafter "*Lee*")*, Stanley v The Revenue Commissioners* [2017] IECA 279*, The State (Whelan) v Smidic* [1938] 1 I.R. 626*, Menolly Homes Ltd. v The Appeal Commissioners* [2010] IEHC 49 *("Menolly Homes") and the State (Calcul International Ltd.) v The Appeal Commissioners* III ITR 577.

69. Most recently Murray J. in *Lee* held as follows:

"*From the definition of the appeal, to the grounds of appeal enabled by the Act, to the orders the Appeal Commissioners can make at the conclusion of the proceedings, and the powers vested in them to obtain their statutory objective, their jurisdiction is focussed on the assessment and the charge. The 'incidental questions' which the case law acknowledges as falling within the Commissioners' jurisdiction are questions that are 'incidental' to the determination of whether the assessment properly reflects the statutory charge to tax having regard to the relevant provisions of the TCA, not to the distinct issue of whether as a matter of public law or private law there are additional facts and/or other legal principles which preclude enforcement of that assessment.*"

70. In his judgment for the Court of Appeal in *Lee*, already referred to above, Murray J. stated (paras. 20):

"20. The Appeal Commissioners are a creature of statute, their functions are limited to those conferred by the TCA, and they enjoy neither an inherent power of any kind,

nor a general jurisdiction to enquire into the legal validity of any particular assessment. Insofar as they are said to enjoy any identified function, it must be either rooted in the express language of the TCA or must arise by necessary implication from the terms of that legislation.

71. Murray J. concluded (para. 76):

> *"The jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the TCA in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933, 934 and 942) is limited to determining whether an assessment correctly charges the relevant taxpayer in accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry."*

72. The Respondent submits that relief from VRT can be permitted in extenuating circumstances. It is carried out under Care and Management provisions and is outside the statutory framework. The Commissioner notes on page 124 of the Appellant's Book of Documents and page 10 of the Vehicle Registration Tax Manual that *"Relief in the case of extenuating circumstances is permitted in order to give effect to the discretion available to the Commissioners under the care and management provisions in Finance legislation*".

73. The Commissioner in reviewing the legislation regarding VRT is satisfied that the relief with regard to extenuating circumstances is not set out in legislation but comes within the general Care and Management provisions afforded to the Respondent. The VRT regime in legislation allows that VRT is not payable if a person has lived outside the State and owned the vehicle for a period of six months. That exemption is the statutory exemption and the Commissioner is only afforded the statutory role in determining appeals relating to that exemption. The Appellant had only owned the New Honda for a matter of days before arriving in the State and so does not come with the relief afforded to VRT in the legislation.

74. The Commission does not have jurisdiction to adjudicate on matters of fairness in relation to the Care and Management provisions afforded to the Respondent. The Commission can only adjudicate on matters relating to matters in accordance with the legislation. It is a creature of statute as laid out very clearly in *Lee*. The VRT legislation as set out above in the section Legislation and Guidelines as it is written, is clear and unambiguous and does not afford any discretion on the availability of relief where the vehicles was not in possession of the person transferring residence for the requisite six-month period.

75. Any discretion under the Care and Management provisions is a matter for the Respondent alone. The Commissioner does not agree with the Appellant that it can determine matters relating to "Care and Management". The Commissioner is satisfied that the Commission's jurisdiction is clearly set out in *Lee*. This is binding of the Commission. The Appellant's may have a different view on the interpretation of *Lee* but the Commissioner is satisfied that her interpretation is correct. The Appellant can appeal this interpretation to the High Court.

76. As stated above, the Commissioner does not agree with the Appellant that the State has failed to correctly implement the 2009 Directive. The 2009 Directive prohibits consumption taxes with respect to personal property and its impact on the free movement of persons. However, Article 2 contains an exemption to Member States to charge consumption taxes with respect to road vehicles and states that the Member States may require the person concerned should have had the use of them for a period of at least six months before the change of residence. The State has complied with the 2009 Directive in this respect.

77. In any event, the Commissioner, despite not considering that she has the jurisdiction to address matters under Care and Management, has considered the matter with respect to the claim that it is a "force majeure" situation, if only as the Appellant and her representative undertook such significant work in relation to the appeal. The Commissioner, even if she had the jurisdiction, would not overturn the Respondent's decision. The Commissioner setting out her views in respect of the claim for force majeure should not be understood as an acknowledgement that the Commission has jurisdiction to address matters of the Respondent's Care and Management provisions. It is merely to confirm to the parties that even if it did have such a jurisdiction, it would not have overturned the Respondent's decision.

78. The Appellant must have known for some time that she was going to relocate from the UK to Ireland. That decision on her own evidence was made some time in 2020. She must have put her house up for sale some time prior to exchange in August 2020 and prior to completion of the sale in September 2020. In addition, the Previous Aged Honda was a 12 year old vehicle. It is not foreseen nor an "Act of God"/uncontrollable event that a 12 year old vehicle will have mechanical issues. In any event the Previous Aged Honda was taken to the garage in June 2020. This was 3 months prior to completion of their house sale. The Previous Aged Honda was road worthy and the garage confirmed that it was a temporary fix and the vehicle should be taken to a garage once in Ireland for a more permanent fix. There was no surprise that the vehicle had mechanical issues. It was a choice of the Appellant to buy a brand new replacement vehicle in the UK prior to travelling. The Previous Aged Honda was roadworthy and indeed the garage had confirmed same.

79. The Appellant had a history of buying new vehicles. So, the purchase of the Honda vehicle was consistent with this pattern. It is not an outside unforeseeable event that a 12 year old vehicle can be replaced by a new vehicle or indeed could have mechanical faults. The Appellant was not obliged to purchase a brand new vehicle as her car was in need of urgent repair. That is a fact of life and does not come within the definition of a *force majeure*. The Appellant made her own choices including the timing of the sale of her UK home, the decision to transfer to the State, the date of travel and the purchase of the New Honda. Indeed the Appellant was on notice in June 2020 that her vehicle had mechanical issues. She did not arrive in Ireland until late September 2020.

80. The argument that she needed to have access to a safe and reliable car does not make it a force majeure. Anyone with a 12 year old vehicle that was in need of repair could argue that it was a force majeure. It would open the floodgates on Care and Management extenuating circumstances relief, if individuals could claim that the reason they bought a new vehicle before arriving in the State was due to being in possession of an aged vehicle which needed repairs.

81. The situation presented to the Commissioner was in the control of the Appellant. There was no “greater force” as defined as a force majeure. The Appellant has argued that it is not dissimilar to a situation of someone with a crashed vehicle and their vehicle is not recovered. But it is entirely different. Someone who finds themselves just prior to transferring to Ireland and suffers a crash has to buy a vehicle at short notice in order to make the journey. The crash will have involved been circumstances outside their control. But a vehicle that is 12 years old and which goes in for repair in June is not outside the control of the parties. There is no greater force. The Appellant could have chosen to undertake a permanent repair to the vehicle in June 2020 but decided not to do so. That was her choice. The economics of repairing an aged vehicle are not a matter for either the Respondent or the Commission. That decision by the Appellant may have been for economic grounds but that is unrelated to the transfer of residency. The transfer of residency is coincidental to the Previous Aged Honda needing some repair. The Appellant in this case decided to buy a new vehicle, the New Honda. That was a conscious decision. It was not owned for the requisite 6 month period prior to entering the State. It was not a force majeure.

82. The Appellant would have been eligible to claim transfer of residency if she had resided in Omagh for 6 months prior to moving to the State. She had the Vehicle registered and insured at the Omagh address. If she had rented the property in Omagh, she may well have been eligible to claim transfer of residency. But that did not occur.

Determination

83. For the reasons set out above, the Commissioner determines that the Appellant has not satisfied the statutory conditions in respect of transfer of residence pursuant to section 134(1)(e) of the Finance Act 1992 and S.I. No 59/1993, the VRT Regulations. As a result, the Commissioner determines that the Appellant is not entitled to avail of the relief and is therefore not entitled to a repayment of the VRT.

84. For the avoidance of doubt, the Commissioner confirms that she does not have discretion to determine matters that come with the Respondent's Care and Management provisions. But in any event, if the Commissioner could determine the provisions in relation to "extenuating circumstances" under Care and Management provisions, she would agree with the Respondent that no extenuating circumstances arose and there was no force majeure to afford the exercise of the discretion in favour of the Appellant.

85. This Appeal is determined in accordance with the TCA 1997. This determination contains full findings of fact and reasons for the determination. Any party dissatisfied with the determination has a right of appeal on a point of law or points of law only to the High Court within 42 days of receipt in accordance with the provisions set out in the TCA 1997. The Commissioner appreciates that the Appellant may well be disappointed with this determination but she was correct to check her legal rights. The Appellant has the right to appeal on a point or points of law to the High Court and the Appellant will no doubt be aware that the High Court, unlike the Commission, can award costs against any party.

Marie-Claire Maney
Chairperson
Appeal Commissioner
Tax Appeals Commission
29 May 2023

The Commission has been requested to state and sign a case for the opinion of the High Court in respect of this determination, pursuant to the provisions of section 949 AP, Chapter 6 of Part 40A of the TCA 1997.

Appendix 1 – Appellant's Submissions

Paulene McCaul-Clarke – 560/21 Appellant v

Revenue Commissioners Statement of Case –

Supplementary pages

Documents provided with the Appellant's Statement of Case

These are chronologically tabulated below and have been attached and consecutively paginated following on from these supplementary pages.

In considering this appeal, the Appeal Commissioners may also like to have regard to section 2 of that part of the Revenue's Tax and Duty Manual which deals with Vehicle Registration Tax, which although not attached may be viewed at https://www.revenue.ie/en/tax-professionals/tdm/vehicle- registration-tax/vrt-manual-section-02.pdf

Outline of Relevant Facts

1. After I graduated in 1985 I changed my residence from Ireland to the UK. That change did not occur in 1996 as the Revenue contends in its letter of 12 April 2021.

2. In 2020 my husband and I changed our residence from the UK, selling our house there, to Ireland.

3. Unfortunately, at the time of relocation, our sole car, a Honda CR-V registered with number NL08 MMO under my name as a private individual developed gearbox issues. We considered it an imperative that we had a safe and reliable car to facilitate that relocation and decided to replace it.

4. Again, as our sole car therefore, I purchased in the UK and in my name as a private individual a new Honda CR-V on 23 September 2020.

5. We took up residence in Ireland on 30 September 2020.

6. I recognised that our car had to be re-registered in Ireland but I was unable to start that process for some time as I wished to apply for the Transfer of Residence ('TOR') relief from Vehicle Registration Tax ('VRT') upon which decisions are made prior to the VRT inspection. The application form for that relief required a PPSN for my husband, which the authorities took some time to allocate.

7. I then applied for TOR relief and provided some of the supporting documents that were then available. As regards the latter, the TOR form provides:

   "Notes:
   (1) All of the documentation listed in the following section is **not** required. Please tick the appropriate boxes for documents you actually possess and can provide copies of.
   (2) An [sic] * indicates mandatory Documentary Evidence." [with added **emphasis**] The mandatory documentation was provided.

8. The Revenue by a letter dated 25 February 2021 advised that my application had not succeeded. This letter differed in content but not effect from a version posted on the myAccount access point I had with the Revenue.

9. Our car with registration LJ70 XMP underwent its VRT inspection on 12 March 2021 and was given a new registration number of 202 DL 1135. The principal amount of VRT due was assessed at €5,390 with penalties for late registration of €878, together with VAT of €6,249, making a total of €12,517, which we paid.

10. By a letter dated 14 March 2021 I appealed to the Revenue Commissioners ('RC') both the refusal of TOR relief as regards the principal sum charged for VRT of €5,390 and the levying of penalties of €878 but not the VAT element of €6,249.

11. I received a further letter from the Revenue dated 24 March 2021, which in content was not identical to its letter of 25 February, again advising that my application for TOR relief had not succeeded.

12. I then received a letter from the Revenue dated 12 April 2021, which advised that my appeal against the refusal of TOR relief had not succeeded but the penalties for late registration of €878 would be refunded as they were.

13. By a Notice of Appeal with accompanying letter addressed to the Tax Appeals Commission ('TAC') dated 19 April 2021 I appealed the Revenue's decision on my application for TOR relief.

14. Although I have not been expressly informed of the acceptance of my appeal to the TAC, in view of §17 of the Rules of Procedure for the Processing of Appeals, that must follow from the Appeal Commissioners ('AC') advised directions of 14 July 2021 that the parties file and serve their Statements of Case.

Statutory Provisions

These are numerically/chronologically listed below:

s.134 of the Finance Act 1992

§4 of the Vehicle Registration Tax (Permanent Reliefs) Regulations 1993 s.849(3) of the Taxes Consolidation Act 1997 'TCA')

s.949J(3) of the TCA

s.949AG of the TCA

s.949AL of the TCA

s. 955 of the TCA

ss. 2, 3 of the European Convention on Human Rights Act 2003 s.2(1) of the Value-Added Tax Consolidation Act 2010

s.55(d) of the Finance Act 2018

Case law

These are chronologically listed below:

Cityview Press v. An Comhairle Oiliúna [1980] IR 381

Motor Distributors Ltd. v. Revenue Commissioners [2001] IEHC 19 *Sheridan Senior & ors v Tax Appeals Commission & anor* [2019] IEHC 266 *Lee v The Revenue Commissioners*

Supplementary Information

For convenience and ease of reference, I set out below my arguments on the various issues that may arise on this appeal, continuing the numbering from the above factual synopsis. I use **bold** type or <u>underlining</u> as appropriate for emphasis.

The AC's jurisdiction

15. Since making this appeal I have become aware of what is said in the AC's determinations numbered 40TACD2019 and 88TACD2021 on TOR relief. Respectfully and for the reasons set out below, I disagree with what was said therein.

16. Both of those determinations recognise that the AC's jurisdiction as regards that relief derives from s.949AL of the TCA:

> "949AL. (1) In relation to an appeal against an appealable matter, other than—
>
> (a) an assessment, or
>
> (b) a matter referred to in section 949AK(3),
>
> the Appeal Commissioners shall, if they consider that the decision, determination or other matter, as the case may be, ought to be varied, determine that the decision, determination or other matter be varied, even if such variation is not to the advantage of the appellant; otherwise they shall determine that the decision, determination or other matter stand.
>
> (2) The Appeal Commissioners shall, if they consider that a Revenue officer was precluded from making the enquiry or taking the action, as the case may be, referred to in section 959AJ, determine that the officer was so precluded; otherwise they shall determine that the officer was not so precluded."

17. Clearly the focus, if not the extent, of the AC's jurisdiction under this provision is a "decision, determination or other matter". It is noteworthy that the Revenue in its letter of 12 April 2021 out of which this appeal arises describe it as a "decision", which is said to be appealable under Part 40A of the TCA.

18. Clearly by s.949AL the TCA places no limit on what parts of a "decision" may be considered by the AC. Had it been the intent of the legislature that only certain aspects of a decision fall within the AC's jurisdiction but not others, it could have said so. It did not. By analogy, the law requires **clear words** to exclude liability in exclusion clauses, which if absent do not curtail that liability. The same principle as to what might be excluded, in as much as words in statutes are to be construed by giving them their ordinary and natural meaning and no more, may be applied to statutes.

19. As it stands, therefore, the AC have jurisdiction to consider **all** aspects of a "decision", which for example, could include the exercise of a discretion by the Revenue if that forms part of or is incidental to the appealed "decision".

20. Support for this construction comes from consideration of s.949AG of the TCA:

> "949AG. Unless the Acts provide otherwise, in adjudicating on and determining an appeal, the Appeal Commissioners shall have regard to all matters to which the Revenue Commissioners may or were required by the Acts to have regard—
>
> (a) in making their decision or determination,
>
> (b) in making or amending an assessment,
> (c) in forming an opinion, or
>
> (d) in taking any other action,
>
> in relation to the matter under appeal."

21. This accords with what most, if not all, reasonably informed persons would think should be considered on an "**appeal**" i.e., everything that the below body had access to and considered, which may be supplemented by further new evidence on appeal if that is permissible. Put another way, the evidence/matters to be considered is **not less than** that considered by the below body. I emphasise the word "appeal", which generally is concerned with the merits of a decision, as opposed to **judicial review** where the evidence/matters to be considered may be much more constrained, being generally to do with the process of how a decision was reached.

22. It may be pointed out, however, that s.949AG was deleted from the TCA by s.55(d) of the Finance Act 2018 for the reason as recorded by its Explanatory Memorandum:

> "Paragraph (d) deletes section 949AG to ensure that its application does not have unintended consequences and impose an additional and inappropriate administrative burden on the Tax Appeals Commission and on Revenue."

It might be inferred from that deletion therefore that, in the context of an **appeal**, it is permissible for the AC **not** to have regard to everything considered by the RC. Were that inference to be drawn, I would say that would be wrong in law. By virtue of ss. 2, 3 of the European Convention on Human Rights Act 2003 ('ECHR Act'), Ireland applies the said Convention by which the AC as an "organ of the State" are bound. Article 6(1) of the Convention calls for fair process. The European Court of Human Rights ('ECtHR') has published a useful Guide on Article 6(1) (https://www.echr.coe.int/documents/guide_art_6_eng.pdf). At §161 and subsequently of that Guide it makes clear that for Article 6(1) not to be infringed a tribunal, particularly one whose determination may be final and conclusive as the AC's determinations can be, should have "full jurisdiction". This requirement would not be met if the AC could not consider everything to which the RC had had regard. Accordingly, despite the deletion of s.949AG of the TCA, I would maintain that it reflects what is the position under EU law in any event.

23. Further support for my construction of s.949AL above may be found in the decision of *Lee v The Revenue Commissioners* (Unapproved) [2021] IECA 18 (http://www.bailii.org/ie/cases/IECA/2021/2021IECA18.html). At §76 it was said:

> "The jurisdiction of the Appeal Commissioners and of the Circuit Court under those provisions of the TCA in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933,934 and 942) is limited to determining whether an assessment correctly charges the relevant taxpayer in

accordance with the relevant provisions of the TCA. That means that the Commissioners are restricted to inquiring into, and making findings as to, those issues of fact and law that are relevant to the statutory charge to tax. Their essential function is to look at the facts and statutes and see if the assessment has been properly prepared in accordance with those statutes. They may make findings of fact and law that are incidental to that inquiry."

24. Whilst I accept that this case was decided under the law as it stood prior to the insertion of Part 40A into the TCA, I submit that its principles are equally applicable to the current appeal in that what matters is whether the Revenue properly have assessed my liability to VRT. Inevitably that involves consideration of any reliefs and any discretions forming part of the same, which at the very least are "incidental" to that assessment if not a part thereof as recognised by the fact that ordinarily a taxpayer, if appropriate, will make and have had a decision on the TOR relief before presenting the vehicle and documents for inspection on which the tax is assessed. The relief (and the discretion as we shall see) is not an equitable remedy but arises from statute, whose construction is further addressed below.

25. Alternatively, the use by the Court of the words "… under those provisions of the TCA in force at the time of the events giving rise to these proceedings and relevant to this appeal (ss. 933,934 and 942) …" amounts to a tacit recognition that the position under the TCA as it now stands following the changes made by Part 40A would be different.

26. Incidentally, it is also clear from §§74-5 of that judgment that where necessary the AC may address issues of EU law if relevant as well as any procedural fairness issues that may arise. In relation thereto it is also clear from s.3(1) of the ECHR Act that the Convention's provisions and in particular the standards called for under Article 6(1) additionally will apply to the RC as an "organ of the State" to the extent that national law does not cover the same ground.

27. I should also address one further jurisdictional point should it be raised. I have spoken above about what is covered by a "decision" i.e., all aspects of it, but it also has to be a decision on an "appealable matter". As commented on in §17 above, the Revenue by its letter of 12 April arguably accepts that **all** of the issues raised by the letter were appealable, leastways no distinction is drawn between those that are and those that are not.

28. Per my comments in §14 above I would maintain that the AC must also have accepted that my appeal concerns a "decision" on an "appealable matter". Without prejudice to that, I appreciate that this decision can be reversed under s.949J(3) of the TCA but I would maintain that can **only** happen "as and when further facts and information become available to them". For now, it was or ought to have been clear from my appeal letter to the TAC of 19 April 2021 that it concerned the TOR relief and what is said in section 2 of Vehicle Registration Tax part of the Revenue's Tax and Duty Manual ('section 2') and therefore absent any further facts or information that would change that position, the AC are or ought to be bound by their implicit acceptance of my appeal. It may be further noted that the two previous determinations cover the same subject as this appeal, both of which were accepted to concern an "appealable matter".

Statutory construction

29. Section 134 of the Finance Act 1992 so far as material provides:

> "134.— (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,
>
> …
>
> (2) Effect may be given to the provisions of subsection (1) by means of a repayment of vehicle registration tax subject to any conditions the Commissioners see fit to impose.
>
> …
>
> (5) Whenever the Minister so thinks proper, he may authorise the Commissioners to register a vehicle, subject to such conditions, limitations or restrictions (if any) as they may impose, either without payment of vehicle registration tax or on payment of the tax at less than the rate ordinarily chargeable or, where the said tax has been paid, to repay the tax in whole or in part." [with added **emphasis**]

30. As regards the words "A vehicle …" I would say that as a starting point this means "**any** vehicle". Support for this construction can be gained from the use of these two latter words in §4 of the Vehicle Registration Tax (Permanent Reliefs) Regulations 1993 for which see below.

31. Additionally, by virtue of the word "may" when account is taken of its true and proper meaning, it is clear that in the **primary** legislation on this tax there is a **discretion** as to whether it is to be charged.

32. Incidentally, it is noted that in §2.1.5 of section 2 the Revenue maintain that:

> "Relief in the case of **extenuating circumstances** is permitted in order to give effect to the discretion available to the Commissioners under the care and management provisions in Finance legislation."

In view of the foregoing, I disagree with what is said to be the source of the RC's discretion.

33. Section 849(3) of the TCA (the care and management provision to which it is presumed reference is being had) so far as material provides:

> "The Revenue Commissioners may do all such acts as may be deemed necessary and expedient for raising, collecting, receiving and accounting for tax in the like and in as full and ample a manner as they are authorised to do in relation to any other duties under their care and management …"

34. It is trite law that statutes should be construed by giving words their ordinary and

natural meaning. In terms of the relevant acts spoken of by §2.1.5 of section 2 i.e., the giving of relief **from** VRT, can it be said that this comes within "raising, collecting, receiving and accounting for tax"? I do not think so. Those words individually and collectively address the recovery of tax, not any dispensations, which if full must mean no tax is "raised". If further support for that is required, in *Motor Distributors Ltd. v. Revenue Commissioners* [2001] IEHC 19 (http://www.bailii.org/ie/cases/IEHC/2001/19.html) at §46 it was said that taxation statutes should be strictly construed. In my view, therefore, the discretion that the Revenue has stems solely from s.134.

35. It also follows from s.134 that there will be vehicles which meet the requirements of sub- paragraph (1)(a), which taken together for present purposes will form a class of vehicles.

36. In contrast, §4 of the Vehicle Registration Tax (Permanent Reliefs) Regulations 1993 ('the 1993 Regulations') so far as material provides:

> "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," [with added **emphasis**]

37. Section 2(1) of the Value-Added Tax Consolidation Act 2010 provides:

> "'new means of transport' means motorised land vehicles with an engine cylinder capacity exceeding 48 cubic centimetres or a power exceeding 7.2 kilowatts … —
>
> (a) which are intended for the transport of persons or goods, and
>
> (b)(i) which … in the case of land vehicles were supplied 6 months or less after the date of first entry into service, or
>
> (ii) which have travelled 6,000 kilometres or less in the case of land vehicles … "

38. So without prejudice, it could be said that §4 of the 1993 Regulations, being **secondary** legislation, by excluding vehicles which have not been possessed and used by the taxpayer for a period of at least 6 months before the transfer of residence i.e., those that would meet the definition of a "new means of transport" effectively is seeking to exclude new cars from TOR relief.

39. I would argue, however, that this is not what is provided for by s.134, which starts from the premise that it applies to **any** vehicle. The **later** words in the section "conditions, restrictions or limitations" are to be applied to **any** vehicle, they do not define those words and cannot therefore be used to limit, as a starting point, the number of vehicles that fall into the class of vehicles to which the section applies. A fine distinction but a distinction nonetheless.

40. In any event, there is the further **separate** argument that by virtue of the word "shall" in §4 that the provision is couched in **mandatory** terms, i.e., there is now **no discretion at all**, which again contrasts unfavourably with the clear discretion provided for by the word "may" in s.134.

41. Accordingly, it may be said that the secondary legislation here is **not** consistent with the primary legislation and/or incorporates a whole new policy in as much as the relief is to be (i) applied to a more limited class of vehicles than originally envisaged and/or (ii) is no longer discretionary but mandatory.

42. In this respect, it is instructive to consider what was said on page 3 of an Oireachtas Library & Research Service Note on the Making and Scrutiny of Secondary Legislation dated 14 July 2020:

> "Source of authority
> Secondary legislation must be consistent with, and based on, the primary legislation that is the source of the delegated power, the Parent Act. The Parent Act delegates the power to make secondary legislation, defining the limits of that power. If either of these elements are missing, the legislation may be overturned by the courts (see Scrutiny by the Courts, below)."

And on page 7:

> "Scrutiny by the Courts
>
> …
>
> In *Cityview Press v AnCo*[12], the then Chief Justice of the Supreme Court, Tom O Higgins, outlined a test for the constitutional validity of secondary legislation. First, to be valid, delegated law may only fill in the details of a policy that is already contained in primary legislation – it cannot incorporate an entirely new policy."

43. In order to avoid the 1993 Regulations or relevant parts being held to be invalid, therefore, it may be asked is there any other construction which would reconcile them with s.134? I would argue that there is, in as much as the class of vehicles covered by §4 could be said to be a **sub- class** of the class of vehicles covered by s.134. In other words, under s.134 the Revenue retains a discretion as to TOR relief for those vehicles which fall into its provisions but which are outside of §4 where there is no discretion and in respect of which relief must be granted.

44. In saying that, I draw support from the Revenue's own position in section 2 which expressly recognises that **not all** vehicles need fulfil the six month requirement in §4(1)(a) to avail of the relief.

45. For the above reasons and in the circumstances of this appeal, I would therefore contend that the six month requirement in §4(1)(a) has no relevance **at all**.

46. In terms of how the exercise of the discretion provided for by s.134 should be adjudged, I submit that the AC can and should have recourse to what is said in section 2. I say that for the following reasons:

    a. If it is being contended that the AC cannot have recourse to the manual and the provisions set out therein are thereby unenforceable in law, reasonably it may be asked what is the point of them? Such a stance makes no sense.

       As a means of testing the sense of any argument, it is common to extrapolate

to an extreme. Adopting that approach here, is it being said that **all policies and procedures of public bodies** to the extent that they are not set out in full in any relevant legislation, are unenforceable as if it is, I would maintain that the logic of this is incomprehensible and demonstrates that this is not an argument that should prevail.

b. There is also a procedural fairness issue here, whether that arises by way of national and/or EU law. If the Revenue, as might be expected, contends that applications for the TOR relief have to be made in accordance with what is set out in section 2, it would be procedurally unfair for those applications not also to be handled in line with that same material.

What is being appealed?

47. The Revenue by its letter of 12 April maintained:

> "In your appeal you look for the refund of the €12,517 paid at registration, including the €878 paid in additional VRT due to late registration."

This is incorrect.

48. By my appeal letter I did **not** challenge the VAT charged of €6,249, only the VRT elements amounting collectively to €6,268 (amounting to a principal sum of €5,390 and penalties for late registration of €878) out of the total sum paid of €12,517. I do not seek to evade any responsibility for sums that lawfully and rightfully I am obliged to pay such as VAT and from which the Revenue has benefitted. Without resiling from the aforesaid, however, I would draw the AC's attention to what is said below about VAT and any comparator vehicle.

49. With reference to the €878 paid as penalties, the Revenue's application form for TOR relief required my husband's PPSN. As there was a considerable delay by the authorities in allocating a PPSN to my husband (the position no doubt having been exacerbated by Brexit and/or Covid measures) my application was forestalled to the extent that the said penalties were incurred. Upon the VRT inspection and assessment of the sums due, I made the point that the incurring of penalties was for a reason beyond my control to no avail. The penalties were still levied and had to be paid. The Revenue by its letter of 12 April, rightly in my view, conceded that my appeal as to them should succeed and those penalties have been refunded.

50. This appeal, therefore, concerns only the principal sum charged for VRT being €5,390. I note that my Notice of Appeal mistakenly refers to the figure of €5,345, which omits the €45 paid for NOX as part of the VRT assessment.

The Revenue's compliance with what is said in section 2 and its correspondence with me

51. In my appeal letter of 19 April 2021 I raised the issue of by whom:

    a. The decision(s) were taken on my application for TOR relief; **and**

    b. The letter(s) advising of its outcome

were signed, amongst other things.

52. In this respect and possibly mistakenly I was under the impression that refusal letters had to be signed by a Higher Executive Officer ('HEO') or higher given the words in §2.5.7.1 of section 2:

> "The letter of refusal should outline the reasons for the refusal and will issue from the eVRT Exemption System. **The refusal letter should be signed by a HEO or higher**. The contents of the letter should include:
>
> - a statement that an appeal against the decision may only be lodged when the tax has been paid on registration of the vehicle. They should be further informed that if they lose their appeal there are no facilities for the refund of VRT paid even if they then opt to remove the vehicle from the State;
> - the precise grounds for the refusal;
> - the options open to the applicant, e.g. payment of tax, removal of the vehicle from the State within a specified time limit, etc.;
> - a request for payment of tax within a specified period i.e. 10 working days within which the tax must be paid or no later than 30 days of the vehicle arriving in the State;
> - a link or reference to Appeals procedures." [with added **emphasis**]

Given the positioning of this wording in section 2, it is unclear whether it applies to the TOR relief as well as other reliefs to which it is more closely positioned.

53. Nevertheless, the Revenue by its letter of 12 April advised:

> "I note your observation regarding the signature on the refusal letter dated 25 February 2021. Although **all decisions in these matters** are made by the Higher Executive Officer (HEO), an error resulted in the letter not issuing in the HEO's name. An amended letter has now issued bearing the signature of Susan Harrington HEO. I apologise for this error." [with added **emphasis**]

54. A number of points arise from this:

a. The Revenue accepts that the original letter I received about my application was not signed as it should have been.

   Arguably this should have been determinative of my appeal without more, which appeal therefore should have succeeded in full entitling me to relief from the principal sum charged for VRT being €5,390.

   Incidentally they do not address by whom the decision was taken.

b. The Revenue went on to say that an amended letter had been issued i.e., the letter I received from Susan Harrington. I am not aware of any provision in the legislation which entitles them to do this.

   In this respect, for the reasons set out in §§33-34 above I do not think that the issuance of such amended letters can be said to come within the words in s849(3) of the TCA:

   > "… for raising, collecting, receiving and accounting for tax …"

   Or for that matter within provisions such as s955 of the TCA:

"… an inspector may at any time amend an assessment made on a chargeable person for a chargeable period by making such alterations in or additions to the assessment as he or she considers necessary …"

There being no chargeable period, nor did the issuance of the further letter refusing the relief in any way "amend" an assessment.

c. With respect to Mr O'Connor, I have seen no evidence that Ms Harrington is a HEO other than his word. Noticeably, Ms Harrington does not use that title herself in issuing/signing her letter.

d. Mr O'Connor's comment that "… all decisions in these matters are made by the Higher Executive Officer…" does not sit easily, if at all, with the seeming requirement in section 2 that applications for TOR relief should be handled by Principal Officers:

"2.1.5 Extenuating Circumstances

Circumstances can arise where a transfer of residence is forced on an individual at a time when his/her vehicle will not have been in his/her possession and use for the required 6- month period[5]. TOR relief in such cases may be allowed where evidence is available that a transfer of residence could not have been foreseen by the applicant when the vehicle was acquired. In such cases, the following guidelines should be observed:

- relief may only be allowed by an officer at the grade of Principal Officer or higher;
- the **bona fides** of the transfer of residence should be clearly established;
- the applicant should provide **conclusive** evidence that the transfer could not have been foreseen at the time the vehicle was acquired, or that the acquisition of the vehicle was because of **force majeure**. Some typical examples of this include:
  - an unexpected offer of employment - the emphasis here should be placed on the **unexpected** nature of the offer, e.g. if negotiations for the position were underway at the time the vehicle was acquired or an application for promotion was made, the application should be refused;
  - loss of employment abroad;
  - deterioration in health;
  - family bereavement;
  - change of vehicle forced on an applicant because the original **qualifying** vehicle was crashed/stolen (and not recovered);
  - other special circumstances including clearly justified cases arising from political upheaval in the country of former residence.

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.

Relief in the case of **extenuating circumstances** is permitted in order to

give effect to the discretion available to the Commissioners under the care and management provisions in Finance legislation. Where enquiries regarding the transfer of residence provisions are received, the information to be given is that set out in the legislation.

In dealing with applications, 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.

Appropriate documentation confirming the "exceptional circumstances" should be sought from the applicant." [with added emphasis]

55. The foregoing therefore should be sufficient to dispense with the legitimacy and therefore the need for further consideration by the AC of the letters I received from the Revenue dated 25 February and 24 March 2021, if not determine my appeal in my favour. This is said, however, strictly without prejudice to my other expressed concerns about the content, or not as the case may be, of those letters upon which reliance, to any necessary extent, is still had, being:

    As regards the letter of 25 February 2021:

    a. "… as the documentation submitted with your application is not sufficient to grant you relief under the Transfer of Residence Regulations."

        This wording does not explain why the documentation supplied with my application was inadequate if that be the case, and/or what documentation was expressly called for (made mandatory) by the application form and was missing.

        Given the wording of the TOR form (see §7 above) I believed that I had provided the documentation that was mandatory and that if other documentation was required, it would be requested.

        In this respect, it may be noted that under §2.5.1 of section 2 appropriate documentation should be sought if necessary.

        This wording also does not constitute any or a proper statement of the "**precise** grounds" [with added **emphasis**] for the refusal in accordance per §2.5.7.1 of section 2.

        The need for adequate reasons is made clear by *Sheridan Senior & ors v Tax Appeals Commission & anor* [2019] IEHC 266 (http://www.bailii.org/ie/cases/IEHC/2019/H266.html) and the cases cited therein. It also forms part of the standards under Article 6(1) of the ECHR in which respect see the ECtHR's Guide on that article (https://www.echr.coe.int/documents/guide_art_6_eng.pdf) at §386.

    b. "… **and** the applicant should provide conclusive proof that the transfer could not have been forseen [sic] at the time the vehicle was acquired." [with added **emphasis**]

The use of the conjunctive "and" does not accord with the wording of the 3rd bullet point under §2.1.5 which by its use of the word "or" indicates that this wording is one of two alternatives, either of which could be fulfilled.

c. There was no statement that if they lose their appeal there are no facilities for the refund of VRT paid even if they then opt to remove the vehicle from the State as required by §2.5.7.1 of section 2.

d. There was no link or reference to Appeals procedures as required by §2.5.7.1 of section 2.

As regards the letter of 24 March 2021:

e. The points made at a, c and d above are repeated.

56. Turning to the Revenue's letter of 12 April 2021, the following points may be made:

a. I have dealt with the six month period in §§29-45 above, which as a matter of statutory construction does **not** apply to the facts of my case. To recap briefly this interpretation must be right if the 1993 Regulations as secondary legislation are not to be considered inconsistent with the 1992 Act and thereby invalid.

It is further noteworthy that neither Mr/Ms Anderson and Ms Harrington in making their assessments referred to the six month period, indicating that no reliance was had on the same and its importance in the scheme of things.

b. The Revenue refer to:

> "… the first criteria for extenuating circumstances …"

If by that it is contended that the 3 month period is a pre-requisite to avail of the extenuating circumstances referred to in §2.1.5 of section 2, that is denied. The word "except" clearly indicating that there is an **alternative** i.e., for cases of hardship, on which I based my application and appeals.

c. The Revenue go on to say:

> "In making my decision I have considered a number of factors, as the manual states I should, e.g. the length of time a person has spent abroad, the extent of upgrading of the replacement vehicle etc., where considered relevant."

Two points may be drawn from this:

i. **Importantly** in considering any factors at all, tacitly the Revenue must be accepting that as a matter of fact I suffered a **force majeure** event (i.e., the gearbox issues with my old car causing me serious concern as to whether I had a safe and reliable vehicle whilst in the process of relocating to Ireland) as without that event there would be no need to consider **any** factors.

ii. Mention is made of "a number of factors" of which only **examples** as

indicated by the abbreviation “e.g.” are given. Not knowing whether other factors were
considered and what was their import means that this must be another example of inadequate reasoning as commented on in §55a above.

d. The Revenue continue:

> “I acknowledge that you have not been resident in the State since 1996. However, given the short period of ownership then to my mind the more critical factor is the extent of the upgrading of the replacement vehicle. You replaced a 2008 vehicle with a new vehicle on which the total VRT plus VAT amounted to €12,517.”

The 1996 date is wrong as set out in the factual synopsis.

For the reasons set out in my appeal letter and which are repeated below, I would deny that there has been any upgrading:

i. As shown by the V5C for my 2008 car and the Irish registration certificate for the car in question, I replaced a Honda CR-V with another Honda CR-V. The petrol engine (an important factor) in both cars being 2 litres and they are of a similar body size. I did not purchase a more premium and therefore more expensive brand of large SUV such as a top of the range BMW or Volvo to name but two.

ii. I presume that Mr O’Connor by his comments is not saying that I should have replaced an aged car in need of repair ‘like for like’ as there would clearly be no point to that and accordingly some improvement will be inevitable. It must be true to say that almost all buyers of cars look to better the vehicle which they have in terms of its age and may be, as I was, are replacing and in doing so, will spend as much as they can afford.

iii. It should also be noted that a major purpose of the VRT scheme as constituted is to encourage the use of more modern, less polluting cars. With that in mind, I purchased a hybrid CR-V but it may be that this alleged upgrade is being used against me in assessing my liability to VRT which must be unjust and unfair.

e. Without prejudice to that argument, if which is denied there was any upgrading, it is further denied that its extent is shown by the figure €12,517 which is inclusive of VAT and penalties for late registration, neither of which have any bearing on the extent of any upgrade as regards the calculation of VRT.

f. As Mr O’Connor says:

> “… the more critical factor is the extent of the upgrading of the replacement vehicle.”

Of necessity and to draw any comparison, there must be a comparator vehicle,

the details of which are absent from Mr O'Connor's assessment. You cannot assess an alleged upgrade solely by reference to the thing itself. It being implicit from what Mr O'Connor said that if the extent of the alleged upgrade was not as large as he maintains it was, he would have allowed my application for this relief. This necessitates a comparison with whatever that vehicle may have been, bearing in mind the accepted force majeure event.

For example and for ease of comparison, say, a used 2/3 year old Honda CR-V. Purchasers of cars, if not buying new, commonly go for 'nearly new' cars. The VRT for this example can be calculated and deducted from the principal VRT charged on my current car to more properly reflect any upgrade, if indeed in view of my previous comments there was any at all, a more premium brand vehicle not being purchased.

Of course, whilst I do not appeal the VAT levied by the Revenue, in this scenario it should be noted that as this comparator vehicle (e.g., a used 2/3 year old Honda CR-V) would be more than 6 months old and likely as not have more than 6,000 km on the odometer, VAT would not be chargeable thereon and from which the Revenue have benefitted in this instance.

Concluding remarks

57. In conclusion and for the reasons given above, I submit that my application for Transfer of Residence relief should have been granted such that I should not have paid the calculated principal sum for VRT of €5,390 in whole or part and I claim an appropriate refund together with any applicable interest.

58. I am at the AC's disposal for any queries they may have.

Paulene McCaul-Clarke 20 July 2021

SUPPLEMENTAL SUBMISSION OF THE REVENUE COMMISSIONERS

INTRODUCTION

1. This supplemental submission is provided in ease of the Appellant and by way of a response to her specific request for clarification in relation to some additional authorities, including Directive 2009/55/EC ("the 2009 Directive"), upon which the Respondent relies.

SUMMARY BACKGROUND

2. The Appellant appeals against her assessment for €5,345 VRT in respect of a Honda CR-V motor vehicle that she purchased in the U.K. on 23rd September, 2020 and that she brought into the State on 30th September, 2020, when she transferred her normal residence. She states that her previous car, a 2008 Honda, had an automatic transmission fuel leak and associated gearbox problems, and, because it was uneconomical to repair, she needed to replace it at short notice with the new CR-V and that this should be regarded as *force majeure.*

THE LAW

3. **COUNCIL DIRECTIVE 2009/55/EC** of 25 May 2009 on tax exemptions applicable to the permanent introduction from a Member State of the personal property of individuals, ["the Directive"] is now included in the Book of Authorities. It provides -

> *Article 1*
>
> *Scope*
>
> *Every Member State shall, subject to the conditions and in the cases hereinafter set out, exempt personal property introduced permanently from another Member State by private individuals from consumption taxes which normally apply to such property …*
>
> *Article 2*
>
> *Conditions relating to property*
>
> *The exemption for which Article 1 makes provision shall be granted for*

personal property:

[…]

(b) of which the person concerned has had the actual use before the change of residence is effected or the secondary residence established. In the case of motor-driven road vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft, Member States may require that the person concerned should have had the use of them for a period of at least six months before the change of residence …

The competent authorities shall demand proof that the conditions in paragraph 2 have been satisfied in the case of motor-driven road vehicles (including their trailers), caravans, mobile homes, pleasure boats and private aircraft. In the case of other property, they shall demand such proof only where there are grave suspicions of fraud.

4. The domestic legislation that is engaged in the within appeal is section *134 of the Finance Act 1992,* as amended, and the *Vehicle Tax (Permanent Reliefs) Regulations 1993* ["The Regulations"]. As the TAC determination in *Mitchell –v- Revenue Commissioners* 1063/19 of 1st November, 2021, confirms, the Regulations emanate from the Directive and the wording in the Regulations almost mirrors the Directive. TAC also observed therein that it must, ensure that the effectiveness of EU law is maintained.

5. **Section 134(1)(a) of Finance Act 1992,** as amended, provides, inter alia;-

(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,*

6. **The Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993**
S.I. No. 59/1993 ["the Regulations"] are expressly made pursuant to section 141 of the Finance Act, 1992, and, as heretofore outlined, are a by-product of Directive 2009/55EC. Regulation 4, the contents of which are cited in the Respondents' Statement of Case and

Outline of Argument, concerns the Transfer of Residence and provides *inter alia:-*

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 compiled with

…

9. The Respondents contend that the Appellant has not fulfilled the statutory pre-requisite for relief and in that regard also rely on the TAC Determination in 40TAC2019, (and have so included it with the authorities). The facts and circumstances of that case mirror the contentions of the Appellant herein and the TAC determination in that case reflects the submission that the Respondents are making in the within appeal, and that determination is respectfully adopted herein, viz -

12. In short, the vehicle, the subject matter of the relief claim, has not been in the possession of the Appellant for a period of at least six months prior to the date on which he ceased to have his normal residence outside the State. As a result, the Appellant is unable to satisfy the conditions of the transfer of residence relief and is thus unable to avail of the relief.

10. As TAC also noted in that case -

14. 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 relevant tax is not payable. In 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.

11. In all of the circumstances, the Respondent respectfully submits that the facts of the Appellant's case, herein, should be determined in the same manner and lead to the same outcome as 40TACD19, namely;-

5. For the reasons set out above, I determine that the Appellant has not satisfied the requisite statutory conditions in respect of transfer of residence relief pursuant to section 134(1)(a) of the Finance Act 1992 and S.I. No. 59/1993 and as a result, I determine that the Appellant is not entitled to avail of the relief and is therefore not entitled to a repayment of VRT.

FURTHER WRITTEN SUBMISSION OF THE REVENUE COMMISSIONERS

Introduction

1 At the hearing of the within appeal before the Chairperson of the Tax Appeals Commission, Commissioner Maney, on 29th March, 2022, counsel on behalf of the Revenue Commissioners made three tranches of oral submissions in response to the Appellant's case. As per the TAC direction, the said oral submissions are outlined herein.

First Submission

2. There is a simple answer to the Appellant's case insofar as [from the garage invoice at Tab 9, page 70 of Appellant's bundle] it appears that the vehicle in issue; the Appellant's CRV [now registered as 202-DL-1135] was purchased on 23rd September, 2020 and (although the garage documentation for some reason indicates otherwise) it appears that the Appellant took possession of it on that same date i.e. no more than seven days before she settled in Culdaff, Co. Donegal, on 30th September, 2020, if that is taken as the relevant date.

3. Therefore, notwithstanding that the Appellant takes issue with a "six month rule", Revenue submit that the relevant regulation [*Regulation 4 of the Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993*] allows for relief from VRT in

circumstances where persons who transfer residence had the relevant vehicle in their possession and use for at least six months prior to the change of residence. That is an essential criterion, and it is not satisfied by a person, [such as the Appellant herein] who, in the knowledge that she was in the process of moving residence to Ireland, purchased a car shortly before she departed, in order to and bring it with her. (The Appellant and her husband had been aware of their pending move to Donegal for at least three months prior to the purchase of the car).

4. From the foregoing perspective, the Transfer of Residence ["TOR"] application for relief for VRT, submitted by Ms. McCaul-Clarke [consistent with the 2013 Regulations] required evidence of her possession of the relevant CRV for six months prior to her transfer of residence. However, the reference to the evidence that would support that fact was excised or crossed out on her TOR relief application form. [TAB 1(iii) pages 36 – 55 of Book of Documents]. She explained in a supplemental addendum to her application that her claim for TOR relief was predicated upon *force majeure.*

5. Ms. McCaul-Clarke has maintained her claim about a *force majeure,* notwithstanding [as the evidence disclosed] that it was her intention to move residence from June 2020, and indeed, she may have formed that intention as early as March, 2020. She had retained her employment in London, and, after her move to Donegal she continued to work remotely from there. She has now moved into a semi-retirement situation but is still engaged in that same employment. [There was nothing sudden or forced in relation to her move]. She ultimately registered the car to an address in Omagh, but, in any event, the main criteria that she was required to satisfy was the six months possession. She didn't satisfy this requirement.

6. The Appellant indicated in her application for TOR relief that there was a *force majeure* element to her claim, namely, that she felt compelled to purchase a new car because she needed a car for "running around" particularly with regard to the removal of items from her house and bringing them to various locations. She felt that she needed to buy a new car, and, it appears to be her contention that her existing car [the 2008 CRV] was uneconomical to repair (although there was no independent basis for this view)

7. However, for the *force majeure* provisions, applied by Revenue from their Tax and Duty Manual [in accordance with the "Care and Maintenance" provisions], ordinarily, a person one would need to have the vehicle for three months. Again that isn't met by somebody who only had the car for a week.

8. In terms of the Appellant's [perceived] necessity for a new car and any purported *force majeure,* whilst somebody might fall out of love with a car or maybe begin to dislike a

car if there are problems with oil [leaking] etc., all that has been advanced to support the Appellant's contention in that regard is a visit to her local garage (for the first time, not the main dealer with whom they normally dealt), where the garage expended £140 of work, including labour and parts, to insert a copper replacement for the existing pipe advised the Appellant to do a more complete job when she was in Ireland.

9. It seems that it may have been the intention of the Appellant to bring her previous car to Ireland and, while it remained unclear [from her testimony], it may be that that car that they repaired had been included on the manifest to come on the car ferry [on 29th September, 2020] but that vehicle was changed in the last week [before the sailing]. There is nothing to suggest that *force majeure* has any application in this case.

10. There was no forced or compelled change of residence of any sort. Ms. McCaul-Clarke indicated in her application for TOR relief that she was resident in London, England since 1996, but it appears [she misinterpreted the question and] that assertion related to a particular address in London and she has, in fact, been in England since her graduation from Trinity, some ten years previously. She [and her husband, Paul] made a plan to come to Ireland and having arranged it between themselves, they knew for some time that they were coming here. There was no sudden change, and nothing unusual happened to cause them to come to that view. They had a house in Culdaff, Co. Donegal for many years previously, and the Appellant had a brother living in Omagh. She [made a considered decision] to come and the relevant car was purchased on the week of their destined journey to Ireland. From that perspective, having considered her application from the perspective of the legislation and under the care and management provisions in terms of the *force majeure* application that she made, Revenue decided that the VRT was applicable and that Ms. McCaul-Clarke didn't bring herself within the exceptions and exemptions which apply in the legislation.

11. There was no *force majeure* element and her application could not be granted under those provisions. The simple position of Revenue is that Ms. McCaul-Clarke, as the Applicant for TOR relief, did not satisfy the requirements for TOR relief and the refusal was in accordance with the law.

Second Submission

12. Firstly, this appeal concerns the CRV, hybrid electric/petrol, cosmic blue in colour with black leather seats that cost £32,490 that was purchased on the 23rd September 2020. That was transported to Ireland on board the ferry on the 29th September 2020, and some time thereafter, be it that same day or on the following day, it ended up in Culdaff,

County Donegal, and, it was the subject of an application for TOR relief. That is what is in issue here.

13. Whereas there were three sets of correspondence sent to the Appellant, it is understood from Mr. Clarke, on behalf of the Appellant, that she is not contesting the first two letters and the only issue before the TAC today is the response of Mr. O'Connor, [to the application for relief on the basis of *force majeure*] in relation to which Mr. Clarke has had the benefit of asking him questions and of probing his decision and ascertaining what it was about. The Revenue letter of 12th April, 2020, in that regard, is at page 79 to 80 of the Bundle and is agreed by the parties.

14. What this appeal is not about then is whether a Statutory Instrument impermissibly exceeds the jurisdiction that was given to the Minister and whether or not it is outside the ambit of the governing statute? That is not a matter for TAC.

15. The Revenue Commissioners' submissions are quite condensed (i.e. net). First of all they point to *Directive 2009/55/EC* [TAB 1, page 1 of the Respondents' Book of Documents]. As the Chairperson has ruled in *the Mitchell* case ref. no. 134 TACD, that Directive is designed effectively to safeguard the free movement of workers and free movement of goods.

16. Then there is the legislation which flows from the Directive. *Article 2* thereof makes provision for domestic legislation to make allowance for a six month rule. It says:

"Members states may require that a person concerned should have had the use of them for a period of at least six months before the change of residence".

So that's what the Directive permits the legislature here to do and it is what our legislature has done that in terms of the 2013 Regulations. It is a requirement of the legislation that to qualify for TOR relief from VRT, one must have had the vehicle for six months.

17. From that perspective, if one goes back to the initial application for TOR relief, Ms. McCaul-Clarke concedes that she doesn't meet that requirement because [at page 3 of the VRT TOR form, page 38 of Book of Documents], she crossed out the reference to that and she pointed to a schedule to her application whereby she says "Look, I can't meet the six months requirement but please allow me rely on *force majeure*, and that particular request for *force majeure* is on the basis that the car had a fuel leak with

consequential problems in terms of the gears and that rendered it uneconomic to repair." That was the essence of the plea that she made.

18. Without unduly getting immersed in relevant case law, *Menolly Homes* is one of the cases that indicate that the onus is on an appellant in every case. So, Revenue respectfully submit that it is up to the Appellant, Ms. McCaul-Clarke, to discharge the burden that she bears in order to show that she was entitled to the relief and that she has been impermissibly denied it.

19. However, in her evidence the Appellant has been unclear as to what the problem was with her previous car. She and her husband parked it in different parts of London and on occasions they saw marks underneath the car. They brought it to a garage in the context of a plan to go to Ireland. In June 2020 her local garage repaired the part of the pipe that appeared to have been corroded with a temporary replacement and indicated that it should be looked at again for a more permanent repair in Ireland. That was in June of 2020, and July, August and September passed during which the car was used to go from A to B to C. Furthermore, whilst it may or may not be relevant, we know that that car was still going. It was bought for £3,500 (as part of a trade-in) by the garage who sold the new CRV to the Appellant. Her previous car is currently insured and it is still in use in the UK. So it is not a case of a car that was on "its last legs", by any means. And, as to the suggestion that it was uneconomical to repair clearly it was economical for somebody to repair it, because it is still in use. That is the relevant background to that.

20. In relation to the question raised by Mr. Clarke, in his submissions on behalf of the Appellant, about the existence of the discretion that the Revenue Commissioners exercise and if it should be statutorily based? It appears that the statutory position is that a person who doesn't have a car for six months doesn't qualify, but Revenue, as part of their care and management responsibilities, looked at the situation and realised that there may be exceptional situations. Somebody who has to leave their home in a hurry where they can't envisage it at a particular time. Today, somebody fleeing from the Ukraine, might be such an example. As Mr. O'Connor stated [in his evidence], every care is given, every reasonable consideration is given and in the circumstances appropriate decisions can be made.

21. In terms of the suggestion by Mr. Clarke that there is something wrong with the comparable model or that Mr. O'Connor was looking for something that was not obtainable or somehow flew in the face of reason and common sense, Mr. O'Connor made it quite clear, first of all, that what he was considering, as the Principal Officer,

was an exception to the rule. Despite the statutory mandate, he was looking to see whether the particular situation deserved to have some special treatment afforded to it because of particular reasons. The legislature has laid down the markers in the form of a six months rule but the legislature has also vested in Revenue the care and management of the provisions, and that permits some "wriggle room" in appropriate situations. That is what Mr. O'Connor looked at. One of the criteria in the Revenue guidelines is the three month requirement. In other words, if an applicant for TOR relief doesn't meet the six month rule, then if she meets the three month requirement and/or other considerations apply, Revenue may be able to exercise some discretion in that regard. However, the car in this case was only one week old.

22. In relation to Mr. O'Connor's evidence that the new 2020 CRV wasn't comparable, the context is key. Mr. Clarke suggests that it is unreasonable to deny TOR relief to a brand new £35,000, cosmic blue CRV, [because it replaced another CRV], however, as Mr. O'Connor highlighted, if somebody already has a qualifying vehicle, that crashes, say within a week of a move, that may be different to somebody who has a 2008 CRV and a week before they are due to make a long planned move, they buy a brand new car out of the forecourt. That is a different consideration and it would be regarded as, as an upgrade on a 2008 existing model.

23. Therefore, in terms of, in terms of the issues that are before the Chairperson of the TAC for determination in the instant case, as Mr. O'Connor stated in evidence, when queried on the issue, the Revenue Commissioners respectfully submit that, in line with the other determinations such as 40 TACD 2019 and 88 TACD 2021, [Tabs 2 and 3 of Respondent's Book of Documents] the real function and role of the TAC in this case is to ascertain if the Revenue Commissioners have complied with the legislative scheme; have they adhered to the Statute?, have they adhered to the Regulations? and, more to the point, has the Appellant [discharged the burden] and persuaded the Chairperson that Revenue have not adhered to the Statute and not adhered to the Regulations? It is respectfully submitted that she has not.

24. It is implicit from the Appellant's submission that the first two questions aren't really in issue that the legislative scheme has been complied with in its entirety. Therefore, what the TAC is being asked to do here, is to, usurp [the function of Revenue] and/or to put on Mr. O'Connor's Principal Officer's hat and to make a decision that is befitting of a Senior Revenue Officer. The *Lee* decision [2021] IECA 18 [TAB 25 of Booklet of Authorities] and, in particular, the passage opened by Mr. Clarke, endorses the TAC determinations cited above, or the latter certainly reflect the Lee decision insofar as

the care and management provisions aren't matters really for the Tax Appeals Commission.

25. It is respectfully submitted that the real function of TAC in this case is to look to see if the law been complied with or, [more pertinently], has the Appellant persuaded TAC otherwise?

26. In the respectful submission of the Revenue Commissioners, where the motor vehicle was purchased by the Appellant with a week to go in circumstances where she had a clear intention to come to Ireland for some months previously, there was nothing urgent, there was nothing forced, and certainly in terms of hardship provisions, the evidence is that the purchase occurred before the sales money came through from her house sale, so there was no financial hardship issue either so far as it was possible to buy this car without access to the funds that came from the house. That is another factor "in the mix".

27. It is respectfully submitted that nothing has been advanced to suggest that there was any hardship which wasn't considered, but, even if there was (which is denied) that is not a matter for the TAC. The legislation both in terms of the primary legislation and the secondary legislation have been complied with, and if it is the Appellant's submission that there is some difficulty in how the Statutory Instrument has come to pass or its breadth vis-à-vis the Statute that that's not a matter really for TAC, that's a matter to be challenged elsewhere.

28. In terms of the reasons [for the decision], Mr. Clarke submitted on the Appellant's behalf that his fundamental issue with Mr. O Connor's letter of 12th April was his view that it could have been more expansive in the reasoning that he gave. However, Mr. O'Connor has explained that in detail. The Chairperson gave the floor to Mr. Clarke to ask whatever questions he wished concerning the motivation for the decision, the underlying rationale for the decision and he asked those questions and he can be in no doubt now as to what was considered, if he ever was in doubt about what informed that decision.

29. The Statute complies with the Directive and it has been applied to the letter and in terms of the care and management provisions that are not within the remit of TAC, they were exercised reasonably and carefully by Mr. O'Connor.

30. In all of the circumstances, in the respectful submission of Revenue, the onus which the Appellant bears has not been discharged.

Third Submission

31. Mr. Clarke's objection to the reference in the Revenue letter of 12th April, 2020, to *"the section as amended"*, is unfounded. The letter reflects that the Act was amended and there was reference made to this section of the Finance Act, as amended.

32. In terms of the law it is submitted:-

(I) *Section 132 of the Finance Act, 2002* is the norm [TAB 3. Page 7 of BOA]

132: "*In addition to any other duty which may be chargeable, subject to the provisions of this Chapter and any regulations thereunder … a duty of excise, to be called a registration tax, shall be charged, levied and paid at whichever rates are specified ….* " (emphasis added)

(II) *Section 134 of the Finance Act, 2002*, allows for alleviation of the foregoing, *subject to* certain conditions [TAB 4. Page 6 of BOA]

134: *"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 the payment of vehicle registration tax if the vehicle is-*

(a) The personal property of a private individual … " (emphasis added)

(III) The prescribed conditions, restrictions and limitations are as per

The Vehicle Registration Tax (Permanent Reliefs) Regulations, 1993 [S.I. No. 59/1993] [TAB 6. Page 9 of BOA]

Regulation 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. (emphasis added)

33. Counsel also highlighted, but did not open, TAC determination 844/21 on VRT in a similar type of context to that of the Appellant's case herein.

34. In all of the circumstances, the Revenue Commissioners respectfully submit that their decision to refuse the Appellant TOR relief from VRT, is entirely consistent with the legislative scheme and there are no contradictions inherent or otherwise, as alleged or at all, and the decision should stand.