



## **THE ADMINISTRATIVE REVIEW TRIBUNAL**

**MAGISTRATE DR.  
GABRIELLA VELLA**

Sitting of the 28 th November, 2011

Rikors Number. 13/2010

**Adriene Galea (holder of British Passport No.  
463346158)**

**Vs**

**Ministry for Finance, the Economy and Investment**

**The Tribunal,**

**After having considered:**

The Application submitted by Adriene Galea (hereinafter referred to as the Applicant) on the 17<sup>th</sup> May 2010 by means of which she requests the Tribunal to: (i) declare, by way of review of the decision by the Ministry for Finance, the Economy and Investment, that the importation into Malta of the vehicle Ford Fiesta Freestyle, manufactured in 2002 and registered in England on the 9<sup>th</sup> October 2002 having foreign registration number LD52 OHV, does not subject her to payment of motor vehicle

registration tax; (ii) order the Ministry for Finance, the Economy and Investment to refrain from requesting payment of motor vehicle registration tax pertinent to the said vehicle; and (iii) to give any further orders it deems necessary, with costs against the Ministry for Finance, the Economy and Investment;

The Reply filed by the Ministry for Finance, the Economy and Investment (hereinafter referred to as the Respondent) by means of which the Applicant's demands are being contested and a request made for them to be rejected, with costs against the Applicant, on the grounds that from evidence submitted by the Applicant to the Respondent it results that she does not qualify for an exemption from the payment of motor vehicle registration tax in terms of Section 19 of Chapter 368 of the Laws of Malta and relevant subsidiary legislation;

The documents, marked as Doc. "A" to Doc. "G" submitted by the Applicant together with her Application;

Testimony given by Emanuel Galea and the Applicant during the sitting held on the 19<sup>th</sup> May 2011 and the testimony given by Joseph Crocker, an advisor to the Respondent, during the sitting held on the 24<sup>th</sup> October 2011 and after having considered the documents together marked as Doc. "JC1" submitted by Joseph Crocker during the said sitting of the 24<sup>th</sup> October 2011;

The remaining records of the case;

**Considers:**

By means of an application submitted on the 15<sup>th</sup> April 2010<sup>1</sup>, the Applicant applied for an exemption from payment of motor vehicle registration tax in terms of Section 19(3) of Chapter 368 of the Laws of Malta, on the vehicle model Ford Fiesta Freestyle having foreign registration number LD52 OHV imported into Malta on the 5<sup>th</sup> April 2010. By letter dated 26<sup>th</sup> April 2010<sup>2</sup>, the Respondent rejected the Applicant's request on the

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<sup>1</sup> Doc. "JC1" at folio 50 *et seq* of the records of the case.

<sup>2</sup> Dok. "G" at folio 25 of the records of the case.

ground that *following assessment of your application, it is regretted that this Ministry cannot accede to your request because you have declared in your application that you have transferred your residence in January, 2008. As a result your vehicle does not qualify for this exemption in accordance with Article 19 of the Motor Vehicle Registration and Licensing Act.*

In terms of Rule 4(6) of the Exemption from Motor Vehicles Registration Tax Rules – Subsidiary Legislation 368.01 – the Applicant filed an appeal before this Tribunal requesting a review and revision of the decision taken by the Respondent and communicated to her by letter dated 26<sup>th</sup> April 2010. The Applicant is founding her appeal on the grounds that: (a) in her application to the Respondent she erroneously indicated the date of her taking up residence in Malta as the 14<sup>th</sup> January 2008, which was the date when she together with her husband purchased property in Malta, and not as April 2010, which was the time when she actually took up residence in Malta; and that (b) the vehicle in question had been in England for more than the two years, being the period set out in the law.

Upon examining the documentation submitted by the Applicant to the Respondent together with her application and to the Tribunal together with her appeal, the Tribunal is of the opinion that contrary to that being claimed by the Applicant, she did not take up residence in Malta in April 2010 but much prior to that date.

Together with the documentation submitted to the Respondent, the Applicant submitted a photocopy of her Maltese Identity Card and from a note on the said photocopy it results that the Maltese Identity Card was issued on the 22<sup>nd</sup> January 2009. In terms of law a person can apply and is eligible for the issue of a Maltese Identity Card after having resided in Malta for a period of at least six months and temporary absences from Malta do not interrupt residence for this purpose<sup>3</sup>. This therefore

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<sup>3</sup> Section 3 of Chapter 258 of the Laws of Malta: every person over the age of fourteen years who – (a) has resided in Malta for not less than six months

means that not only was the applicant residing in Malta on the 22<sup>nd</sup> January 2009 – the date of issue of her Maltese Identity Card – but she was already residing in Malta prior to that date.

The fact that the Applicant was already residing in Malta on the 22<sup>nd</sup> January 2009 and was already residing in Malta prior to that date, leads the Tribunal to conclude that the Applicant is not eligible for an exemption from payment of motor vehicle registration tax in terms of Section 19(3)(i) of Chapter 368 of the Laws of Malta, on the vehicle Ford Fiesta Freestyle having foreign registration LD52 OHV brought into Malta on the 5<sup>th</sup> April 2010.

In terms of Section 19(3)(i) of Chapter 368 of the Laws of Malta *exemptions from the payment of registration tax and, in the case of vehicles supplied under subparagraphs (ii) to (vi), also from the payment of circulation licence fees shall – amongst others – be applicable where the motor vehicle – (i) is the personal property of a private individual and is being brought permanently into Malta by that individual when he is transferring his residence from a place outside Malta to a place in Malta: Provided that the vehicle has been registered in the name of that person or in the name of his or her spouse for at least twenty four consecutive months at the time of transfer of residence to Malta and that person has been residing outside Malta for a continuous period of at least twenty four months at the time of transfer of residence to Malta: Provided further that where a motor vehicle is brought or imported into Malta not more than six months before the time of transfer*

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immediately before the coming into force of this article and continues so to reside for one month thereafter; or (b) at any time resides in Malta for a period of six months ending after the expiration of one month after the coming into force of this article, shall, not later than two months after the coming into force of this article in the case of a person mentioned in paragraph (a), or not later than six weeks after he shall have resided in Malta for six months in the case of a person mentioned in paragraph (b), be in possession of a valid identity card, and shall thereafter at all times during which he resides in Malta be in possession of a valid identity card; and for this purpose he shall make application therefore in accordance with the provisions of this Act not later than one month after the commencement of the applicable period of two months or six weeks aforesaid. (2) For the purposes of this Act temporary absences from Malta shall not interrupt residence.

*of residence by the person transferring his residence, that vehicle shall qualify for the exemption of both the said vehicle and the person transferring his residence meet the conditions prescribed in regulations made under this Act: Provided further that that person shall not have been granted an exemption from registration tax in respect of another motor vehicle in the previous eight years, and in terms of subsection (5) of the said article the exemptions under subarticle (3) shall be granted under those conditions as the Minister may specify by regulations.*

The Regulations being referred to in the Principal Act are the Exemption from Motor Vehicles Registration Tax Rules – Subsidiary Legislation 368.01 – which under Rule 4(1) provide that *the exemption under article 19(3)(i) of the Act shall be granted to a motor vehicle which is the personal property of a private individual and is being brought or imported permanently into Malta by the individual when he is transferring his residence from a place outside Malta to a place in Malta: Provided that: (a) that person has been residing outside Malta for a continuous period of more than twenty four months before his transfer of residence to Malta; (b) the motor vehicle has been in his possession and used by him outside Malta for a least twenty four months before the date on which he ceased to have his residence outside Malta; (c) the vehicle is registered in his name or in the name of his or her spouse where applicable; (d) that person holds a valid driving licence; (e) the vehicle shall be imported or brought into Malta within twelve months of the individual's transfer of residence; (f) the motor vehicle shall not be sold, given away, disposed of, hired out or lent following its importation or its bringing into Malta unless the vehicle registration tax to which the exemption aforesaid relates is paid thereon in accordance with the provisions of the First or Second Schedule to the Act.*

These requirements were duly brought to the attention of the Applicant in the application which she submitted to the Respondent, namely under the Section entitled *Information on Applicability*.

On the basis of the fact that the Applicant took up residence in Malta on a date prior to the 22<sup>nd</sup> June 2009 and the fact that the vehicle in question was brought into Malta on the 5<sup>th</sup> April 2010, it is clearly evident that the Applicant does not satisfy all the requirements set out in the law for her to be eligible for an exemption from payment of motor vehicle registration tax in terms of Section 19(3)(i) of Chapter 368 of the Laws of Malta and relevant subsidiary legislation. The requirement which the Applicant clearly does not satisfy is that set out in Rule 4(1)(e) of Subsidiary Legislation 368.01, that is that *the vehicle shall be imported or brought into Malta within twelve months of the individual's transfer of residence*<sup>4</sup>.

The requirements set out in the law for a person to be eligible for an exemption from payment of motor vehicle tax registration in terms of Section 19(3)(i) of Chapter 368 of the Laws of Malta are clearly cumulative in nature and are not alternative one to the other. This essentially means that failure to satisfy **even one** of the requirements set out in the law, disqualifies a person from being eligible for such an exemption.

Once it has been firmly established that the Applicant does not satisfy all the requirements set out in the law for her to be eligible for an exemption from payment of motor vehicle registration tax in terms of Section 19(3)(i) of Chapter 368 of the Laws of Malta, on the vehicle Ford Fiesta Freestyle having foreign registration number LD52 OHV, brought into Malta on the 5<sup>th</sup> April 2010, since the said vehicle was not brought into Malta within twelve months of the Applicant's transfer of residence to Malta, the Tribunal finds no reason to delve into the second ground on which the Applicant founds her appeal, that is on the ground that the said vehicle had been in England for a period of two years as set out in the Law.

On the basis of the above-mentioned reasons the Tribunal rejects the appeal submitted by the Applicant on the 17<sup>th</sup>

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<sup>4</sup> Underlining by the Tribunal.

Informal Copy of Judgement

May 2010. The costs of these proceedings are to be borne by the Applicant.

**< Final Judgement >**

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