



THE ADMINISTRATIVE REVIEW TRIBUNAL

**MAGISTRATE DR.
GABRIELLA VELLA**

Sitting of the 1 st June, 2012

Rikors Number. 1/2010

**Carmen Azzopardi as mandatary for Matthew Green
and by a Note submitted on the 25th January 2011
Matthew Green assumed the records of the
proceedings instead of his mandatary Carmen
Azzopardi**

Vs

Ministry of Finance, the Economy and Investment

Today, 1st June 2012

The Tribunal,

After having considered the Application submitted by Carmen Azzopardi as mandatary for Matthew Green on the 24th August 2010, by means of which she requests the Tribunal to revoke the decision given by the Ministry of Finance, the Economy and Investment dated 4th August 2010 by means of which the demand by Matthew Green

for an exemption from payment of Vehicle Registration Tax in terms of Section 19(3) of Chapter 368 of the Laws of Malta on the vehicle Chrysler PT Cruiser having UK Registration Number X 835 EGK was rejected, and instead uphold his request for said exemption since he fully satisfies the requirements for eligibility to such an exemption as set out in Regulation 4 of Subsidiary Legislation 368.01; with costs against the Ministry of Finance, the Economy and Investment;

After having considered the documents submitted together the Application marked as Dok. "A", Dok. "B" and Dok. "C" a folio 7 to 9 of the records of the proceedings;

After having considered the Reply submitted by the Ministry of Finance, the Economy and Investment by means of which it objects to the Applicant's request and asks for the same to be rejected by the Tribunal, with costs against him, since contrary to that claimed by the Applicant, Matthew Green does not satisfy the requirements necessary for him to be eligible for an exemption from payment of Vehicle Registration Tax on the vehicle Chrysler PT Cruiser having UK Registration Number X 835 EGK, as set out in Section 19 of Chapter 368 of the Laws of Malta and Regulation 4 of Subsidiary Legislation 368.01;

After having considered the Note submitted by Matthew Green on the 25th January 2011¹, by means of which he assumed the records of these proceedings instead of his mandatary Carmen Azzopardi;

After having heard and considered evidence given by the Matthew Green², Patricia Helena Green³, William James Green⁴, Frederick Azzopardi⁵, Eucharistica Farrugia⁶ during the sitting held on the 11th February 2011, evidence given by Peter Hosier during the sitting held on

¹ Folio 15 of the records of the proceedings.

² Folio 25 to 27 of the records of the proceedings.

³ Folio 18 to 19 of the records of the proceedings.

⁴ Folio 20 of the records of the proceedings.

⁵ Folio 21 to 22 of the records of the proceedings.

⁶ Folio 23 to 24 of the records of the proceedings.

the 27th May 2011⁷, evidence given by Paul Mifsud during the sittings held on the 30th September 2011⁸ and on the 28th October 2011⁹;

After having considered documents submitted by Matthew Green during the sitting held on the 11th February 2011 marked as Doc. “MG1” to Doc. “MG6”¹⁰, by means of a Note filed on the 27th May 2011¹¹ marked as Dok. “MG1” to Dok. “MG28”¹² and by means of a further Note filed on the 12th September 2011¹³ marked Dok. “MG29” to Dok. “MG21”¹⁴, documents submitted by Paul Mifsud during the sitting held on the 30th September 2011 marked as Dok. “PM1” and Dok. “PM2” and documents submitted by the Ministry for Finance, the Economy and Investment by means of a Note filed on the 16th December 2011¹⁵;

After having heard oral submissions by the lawyers of the parties and after having considered further written submissions by the parties, namely the Note of Submissions by the Ministry of Finance, the Economy and Investment filed on the 4th May 2012 and the Reply to said Note of Submissions by Matthew Green filed on the 14th May 2012;

After having considered that the parties to the proceedings declared that all stages of these proceedings held in the Maltese Language are, in spite of a request by Matthew Green during the sitting held on the 11th February 2011 for the same to be held in the English Language, to be considered as valid;

After having considered a further request by Matthew Green during the sitting held on the 3rd February 2012, for these proceedings to be held in English, which request

⁷ Folio 158A to 158B of the records of the proceedings.

⁸ Folio 210 to 211 of the records of the proceedings.

⁹ Folio 215 to 217 of the records of the proceedings.

¹⁰ Folio 28 to 152 of the records of the proceedings.

¹¹ Folio 159 of the records of the proceedings.

¹² Folio 160 to 203 of the records of the proceedings.

¹³ Folio 204 of the records of the proceedings.

¹⁴ Folio 205 to 208 of the records of the proceedings.

¹⁵ Folio 219 to 237 of the records of the proceedings.

effectively leads to the judgement being pronounced in the English Language;

After having considered all other records of the case;

Considers:

By virtue of these proceedings the Applicant is contesting a decision by the Respondent Ministry dated 4th August 2010¹⁶, by means of which his request to be granted an exemption from payment of Vehicle Registration Tax on the vehicle Chrysler PT Cruiser having UK Registration Number X 835 EGK in terms of Section 19 of Chapter 368 of the Laws of Malta was rejected. The Respondent Ministry rejected the Applicant's request on the ground that *you have failed to provide proof that you have resided outside Malta for 24 consecutive months prior to your declared date of transfer of residence (29/07/09). Moreover, one of the documents submitted shows that you have received a discount from Watford Borough Council on your Council tax bill for the fact that between 27/09/08 to 31/03/09, the residence in question was not occupied.*

The Applicant claims that the Respondent Ministry was not correct in rejecting his request on the above-mentioned ground because: (i) the decision was founded on an incorrect evaluation of the documents submitted by him and thus the Ministry reached certain conclusions which were and still are not supported by the documentation so provided; and (ii) the Respondent Ministry did not request a clarification of the documents submitted by him with the consequence that the decision was founded on a *prima facie* analysis of the said documents which resulted in incorrect conclusions being drawn by the Ministry. In Reply to the Applicant's claims the Respondent Ministry states that its decision is correct and should therefore be confirmed since, contrary to that claimed by him, the Applicant does not satisfy the requirements set out in the law, namely in Section 19 of

¹⁶ Dok. "A" a folio 7 of the records of the proceedings.

Chapter 368 of the Laws of Malta and Regulation 4 of Subsidiary Legislation 368.01, for him to be eligible for an exemption from payment of Vehicle Registration Tax.

Section 19(2) and (3)(i) and (5) of Chapter 368 of the Laws of Malta as applicable at the time when the Applicant submitted his application to the Ministry for an exemption from payment of Vehicle Registration Tax on the vehicle Chrysler PT Cruiser having UK Registration Number X 835 EGK, provided that: *The Minister responsible for finance may, by order and subject to any conditions, restrictions or limitations, exempt any person from the payment of any tax or part of the tax or from any obligation imposed under this Act. Such exemption may be granted with retrospective effect. The Minister responsible for finance may revoke any order made under this article. Exemptions from the payment of registration tax and, in the case of vehicles supplied under subparagraphs (ii) to (vii) hereunder, also from the payment of circulation licence fees shall 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 a motor vehicle brought into Malta on or after the 1st July, 2008, by a person who has taken up his residence in Malta on or after the 3rd November 2008, shall qualify for an exemption from the payment of registration tax... The exemptions under subarticle (3) shall be granted under those conditions as the Minister may specify by regulations¹⁷.*

The Regulations in question are the Exemption from Motor Vehicles Registration Tax Rules, 2009, Subsidiary Legislation 368.01, introduced by Legal Notice 196 of 2009. Regulation 4 as applicable at the time when the Applicant submitted his application to the Respondent Ministry, provided that: *The exemption under sub-article (3)(i) of article 19 of the Act shall be granted to a motor vehicle which is the personal property of a private*

¹⁷ Act VI of 2009 and Act XI of 2010.

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 at 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 of the Act...

From the wording used by the Legislator in Regulation 4 of Subsidiary Legislation 368.01 it is evident that the requirements set out in the said Regulation for a person to be eligible for an exemption from payment of Vehicle Registration Tax, are cumulative and not alternative to each other, which effectively means that if an applicant does not satisfy at least one of the said requirements his request for an exemption cannot be upheld.

As already pointed out above the Respondent Ministry rejected the Applicant's request for an exemption from payment of Vehicle Registration Tax on the vehicle Chrysler PT Cruiser having UK Registration Number X 835 EGK on the ground that he did not provide sufficient proof that he resided outside Malta for a continuous period of more than twenty four months before his transfer of residence to Malta. From the application submitted by the Applicant¹⁸ it results that he declared the **29th July 2009** as the date when he took up residence in Malta and in support of this declaration he submitted, at application

¹⁸ Folio 220 of the records of the proceedings.

stage, a statement of account pertinent to his credit card dated 25th July 2009¹⁹, an assured shorthold tenancy agreement dated 2nd March 2009²⁰, an invoice dated 10th March 2009²¹, a Council Tax Bill for the period 1st April 2008 to 31st March 2009²², a declaration by Eucharistica Farrugia dated 10th September 2009²³, a Bank of Valletta Deposit slip dated 1st June 2009²⁴, a marriage certificate²⁵ and a limited liability company certificate of registration dated 24th April 2009²⁶. From the Council Tax Bill for the period 1st April 2008 to 31st March 2009 it results that during the period **27th September 2008 to the 31st March 2009**, the Applicant was not residing in the premises 6 Chatsworth Mews, Diamond Road, Watford, WD24 5HD, which at the time were his residential premises and the Respondent Ministry concluded that the Applicant was during that period not resident outside Malta and consequently that he was not resident outside Malta for a continuous period of twenty four months prior to his taking up residence in Malta.

From further evidence submitted by the Applicant during the hearing of these proceedings it has however resulted that he effectively took up residence in Malta on or just after the **22nd September 2010** and not on the 29th July 2009 as declared in his application. During the sitting held on the 11th February 2011²⁷, the Applicant declared that *during the period June 2007 and August 2009 I lived at the following addresses: initially I used to live in the property No.6 Chatsworth Mews, Diamond Road, Watford, Hertfordshire WD245HD. In September or October 2008 I moved to my parents' house which is situated in 177, Exeter Road, Harrow, Middlesex, IA2 9PG. We lived over there until March 2010. During this period my wife and myself went back to live in our property until the 22nd September 2010 when we moved*

¹⁹ Folio 230 of the records of the proceedings.

²⁰ Folio 231 of the records of the proceedings.

²¹ Folio 232 of the records of the proceedings.

²² Folio 233 of the records of the proceedings.

²³ Folio 234 of the records of the proceedings.

²⁴ Folio 235 of the records of the proceedings.

²⁵ Folio 236 of the records of the proceedings.

²⁶ Folio 237 of the records of the proceedings.

²⁷ Folio 25 to 27 of the records of the proceedings.

here to Gozo²⁸. Currently my property in the United Kingdom is rented out again. We decided to move back to Gozo since it was my wife's wish to come back and I fully supported her in that. The difficulty that we had was to find employment here in Gozo, so to be able to save up money in order to move to Gozo, we decided to rent out our property and it was for that reason that we moved to my parents' house. Furthermore the Applicant submitted documentation which shows that up until the **16th August 2010** he was employed in the United Kingdom by Hertfordshire County Council²⁹ and his work manager Peter Hosier declared that *in the personal file of the applicant I have two mailing addresses, one in Chatsford on Watford and the other in Exeter Road in Harrow. The applicant's primary address is the Watford address, however between September 2008 and March 2010 any correspondence was sent to the applicant at Harrow. Between March and September 2010 correspondence was once again sent at his primary address. ... The official working hours were a forty hour week. Even though the applicant did work in excess, these were not more than forty nine hours per week. The applicant was granted leave of absence for a year unpaid from the **17th September 2010** and he did not officially terminate his employment with the council till the 31st December 2010*³⁰.

There are further witnesses summoned by the Applicant who also testified that the Applicant took up residence in Malta in September 2010. The Applicant's father, William James Green, stated that *my son worked in Hertfordshire in United Kingdom. He was a manager for the local government working with young people. My son worked for very long hours, having meetings with officials and counsellors to discuss matters concerning the said young people. This was during the period 2007 and 2010, when he left the United Kingdom to take up residence in Gozo.*

²⁸ Underlining by the Tribunal.

²⁹ Dok. "A" and Dok. "B" a folio 8 and 9 of the records of the proceedings, Doc. "MG1" at folio 28 to 144 of the records of the proceedings, .

³⁰ Evidence given during the sitting held on the 27th May 2011, folio 158A and 158B of the records of the proceedings. Emphasis by the Tribunal.

My son moved to Gozo in September 2010³¹. The Applicant's mother-in-law, Eucharistica Farrugia, also confirmed that her daughter and the Applicant took up residence in Malta in September 2010. During the sitting held on the 11th February 2010 Eucharistica Farrugia declared that *ir-rikorrent Matthew Green nafu peress li huwa ir-ragel tat-tifla tieghi. Jiena lil dan Matthew Green ilni nafu bejn wiehed u iehor seba' snin. It-tifla tieghi u r-rikorrent ilhom mizzewgin bejn wiehed u iehor seba' snin. Hekk kif izzewwgu, huma marru jghixu l-Ingilterra. Minn meta telqu l-Ingilterra t-tifla tieghi u r-ragel taghha, jigifieri r-rikorrent, dawn baqghu jghixu hemmhekk sa' Settembru 2010 meta gew lura Ghawdex³²*. Tul dan il-perijodu ta' zmien huma kienu jkunu hawnhekk biss fuq btala. Bejn wiehed u iehor tul iz-zmien kollu li ghamlu l-Ingilterra jiena tlajt ghandhom xi tliet darbiet. Ir-ragel tieghi tul dan il-perijodu tela' aktar ta' spiss biex imuru jara lit-tifla u lir-ragel taghha. Frederick Azzopardi, a family friend, also confirmed that the Applicant took up residence in Gozo around September 2010. In fact during the sitting held on the 11th February 2011 he declared that *over the years the applicant and his wife used to come to Gozo for a couple of days, however about six months ago they moved here permanently³³*.

During his testimony the Applicant did not give any explanation for the discrepancy between the date of taking up residence in Malta as declared by him in his application and the date of taking up residence in Malta as results from evidence submitted during the hearing of these proceedings. However, during oral submissions the Applicant submitted that this discrepancy was the result of a mistake on his part when completing the application in question. The Tribunal does not doubt that the Applicant indeed erroneously indicated the 29th July 2009 as the date of taking up residence in Malta in his application to the Respondent Ministry, since it is very clear that the

³¹ Evidence given during the sitting held on the 11th February 2011, folio 20 of the records of the proceedings.

³² Underlining by the Tribunal.

³³ Underlining by the Tribunal.

date or at least the period when he took up residence in Malta or rather Gozo, was September 2010.

From evidence submitted by the Applicant before this Tribunal, particularly documents pertinent to his employment in the United Kingdom – Dok. “B” and Dok. “C” at folio 8 and 9 of the records of the proceedings, Doc. “MG1” a folio 28 to 144 of the records of the proceedings and Doc. “MG6” a folio 149 to 152 of the records of the proceedings, since other documents cover only part of the twenty four month period provided for in the law - it results sufficiently proven that in terms of Regulation 4(1)(a) of Subsidiary Legislation 368.01 the Applicant effectively *resided outside Malta for a continuous period of more than twenty four months before his transfer of residence to Malta*. This therefore means that the decision by the Respondent Ministry dated 4th August 2010, means of which the Applicant’s request for an exemption from payment of Vehicle Registration Tax on the vehicle Chrysler PT Cruiser having UK Registration Number X835 EGK was rejected on the ground that *you have failed to provide proof that you have resided outside Malta for 24 consecutive months prior to your declared date of transfer of residence (29/07/09)*. Moreover, one of the documents submitted shows that you have received a discount from Watford Borough Council on your Council tax bill for the fact that between 27/09/08 to 31/03/09, the residence in question was not occupied, is factually incorrect and should therefore be revoked. However in spite of this conclusion, from details which emerged during the hearing of these proceedings there are sufficient reasons which in the opinion of the Tribunal warrant the re-consideration of the Applicant's application by the Respondent Ministry in the light of said details.

In his application to the Respondent Ministry the Applicant declared the expected date of arrival of the vehicle Chrysler PT Cruiser having UK Registration Number X 835 EGK as the **29th May 2010**, that is less than a year after his declared date of taking up of residence in Malta, which was a term that had to be observed in terms of Regulation 4(1)(e) of Subsidiary Legislation 368.01 as

applicable at the time of submission of the application with the Respondent Ministry. From documents submitted by the Applicant together with his application it however results that the vehicle in question was brought to Malta in **May 2009** and not in **May 2010** as declared by him in his application. From the document at folio 229 of the records of the proceedings it results that the vehicle departed from Catania on the 27th May 2009 at 23:59hrs and was expected to arrive in Malta on the **28th May 2009** at 7:00a.m. Furthermore from the insurance certificate submitted by the Applicant together with his application³⁴ it results that the vehicle in question was covered by insurance in Malta with effect from the **31st August 2009**, which therefore means that as from the **28th May 2009**, that is two months prior to his initially declared date of taking up residence in Malta and fourteen months prior to his proven date of taking up residence in Malta, the vehicle in question was in Malta or rather in Gozo and not in the United Kingdom and therefore not in the Applicant's possession and use.

Regulation 4(1)(b) of Subsidiary Legislation 368.01, as applicable at the time when the Applicant submitted his application to the Respondent Ministry, provided that for an applicant to be eligible for an exemption from payment of Vehicle Registration Tax the following requirement too had to be met: *the motor vehicle has been in his possession and used by him outside Malta for at least twenty four months before the date on which he ceased to have his residence outside Malta*³⁵. Even though from documentation submitted by the Applicant together with his application it was evidently clear that the vehicle in question was in Malta prior to the Applicant's declared date of taking up residence here, the Respondent Ministry did not consider this particular aspect when considering the Applicant's request, so much so that not mention in this regard was made in the decision of the 4th August 2010. The fact that the Respondent Ministry did not mention this aspect in its decision does not mean that it acknowledged that this particular requirement was met by

³⁴ Folio 223 of the records of the proceedings.

³⁵ Underlining by the Tribunal.

the Applicant or that it waived its right to consider it, particularly since the requirements set out under Regulation 4 of Subsidiary Legislation 368.01 are cumulative and not alternative to each other.

Furthermore, in view of the fact that the actual date of taking up residence in Malta by the Applicant has been established only during the hearing of these proceedings and therefore only now has it transpired that the vehicle in question was in Malta fourteen months prior to his taking up residence here, the Tribunal is of the opinion that once the decision of the 4th August 2010 is to be revoked on the ground that the Applicant satisfies the requirement set out under Regulation 4(1)(a) as applicable at the time of submission of his application, the Respondent Ministry must now re-consider his application in the light of the particular aspect concerning the date of arrival of the vehicle vis-à-vis the proven date of taking up of taking residence in Malta by the Applicant, and consequently determine whether or not he is in actual fact eligible to be granted an exemption from payment of Vehicle Registration Tax.

During oral submissions the Applicant submitted that the Tribunal cannot substitute its discretion to that of the Respondent Ministry and clearly implied that it does not have the necessary authority to raise this particular issue once the contested decision was founded on a separate matter. Whilst agreeing that Chapter 368 of the Laws of Malta and relative Subsidiary Legislation, do not allow for the Tribunal to substitute its discretion to that of the Respondent Ministry, it is however undoubtedly clear that the Tribunal cannot and must not allow a situation potentially contrary to the Law and/or relative Subsidiary Legislation to pass unnoticed and proceed, notwithstanding, to uphold the Applicant's request. In fact, in terms of Section 7 of Chapter 490 of the Laws of Malta *the Administrative Review Tribunal shall be competent to review administrative acts of the public administration on points of law and points of fact*³⁶...

³⁶ Underlining and emphasis by the Tribunal.

Therefore, in the circumstances the Tribunal must revoke the decision by the Respondent Ministry dated 4th August 2010 since it is factually incorrect but then direct the Ministry to re-consider the application submitted by the Applicant in the light of the facts which have emerged during the hearing of these proceedings.

The Tribunal feels that it must however make the following observation: during his evidence Paul Mifsud³⁷, a representative for the Respondent Ministry, pointed out that the Applicant did not submit his application within seven days from the date of arrival of the vehicle in Malta as provided for in Regulation 4(4) of Subsidiary Legislation 368.01 as applicable at the time of submission of the application. The Tribunal is of the opinion that the Respondent Ministry cannot now, or during the re-consideration of the Applicant's application following this judgement, raise this particular point against the Applicant since, unlike the issue concerning the requirements for eligibility which are issues pertinent to the merits of the case, failure to mention this particular procedural point in the decision of the 4th August 2010 effectively means that the Respondent Ministry waived its right to reject the Applicant's request on grounds of late submission of the application.

Even though it has emerged that the vehicle arrived in Malta on the 28th May 2009 and not as originally declared by the Applicant on the 29th May 2010, from the Application itself it results that it was received by the Respondent Ministry, and therefore presumably submitted by the Applicant, on the 9th July 2010, thus in any case more than seven days after the then declared date of arrival of the vehicle in Malta. In giving the decision dated 4th August 2010 and rejecting the Applicant's request on the merits of the case and not on the ground of late submission of the application, the Respondent Ministry clearly opted to ignore this fact and proceed, notwithstanding, to consider the Applicant's application on

³⁷ Evidence given during the sitting held on the 30th September 2011, folio 210 to 211 of the records of the proceedings.

the merits. Therefore, the Respondent Ministry cannot now, or during the re-consideration process following this judgement, refuse to consider and thus reject the Applicant's request on the ground that the original application was submitted late. Thus, in its re-consideration of the application by the Applicant the Respondent Ministry is bound to limit itself once again to the factual merits of the case which were not originally considered and not raise procedural issues which were voluntarily and clearly waived by the Ministry in favour of the Applicant.

In the light of all of the above reasons, the Tribunal upholds the Applicant's Appeal in part and whilst revoking the decision by the Respondent Ministry dated 4th August 2010, directs the Respondent Ministry to re-consider the Applicant's request for an exemption from payment of Vehicle Registration Tax on the vehicle Chrysler PT Cruiser having UK Registration Number E 835 EGK, in the light of facts regarding the date of arrival of the vehicle in Malta vis-à-vis the date of taking up residence in Malta by the Applicant as they have emerged during the hearing of these proceedings.

In the particular circumstances of the case, each party is to bear his judicial costs.

< Final Judgement >

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