



Neutral Citation: [2024] UKFTT 00162 (TC)

Case Number: TC09088

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video

Appeal reference: TC/2023/07527

CUSTOMS DUTY AND IMPORT VAT – Transfer of residency relief – whether criteria for relief met by the Appellant – No – whether exceptional circumstances to enable criterion waiver – No – Appeal dismissed.

Heard on: 20 February 2024

Judgment date: 26 February 2024

Before

**TRIBUNAL JUDGE NEWSTEAD TAYLOR
MRS CELINE CORRIGAN**

Between

MR STEWART BOWMAN

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Stewart Bowman

For the Respondents: Mr James Abernethy of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs.

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was V (video) using the Tribunal video hearing system. A face-to-face hearing was not held because it was expedient not to do so. We were provided with two skeleton arguments, one from the Appellant and one from the Respondents, and a Hearing Bundle of 148 pages.

2. Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.

BACKGROUND

3. The Appellant (Mr Bowman) appeals the Respondents' decision ("the Decision"), dated 10 March 2023, refusing his application ("the Application"), dated 27 January 2023, for Transfer of Residence tax relief ("TofR Relief") on the grounds that the Appellant did not import his personal / household goods ("the Goods") into the UK from New Zealand within 12 months of becoming normally resident in the UK and that there are no exceptional circumstances. In consequence of the Decision, the Appellant is liable for import VAT and customs duty on the Goods, albeit the amount is presently unknown as the Goods remain in New Zealand.

4. The Appellant appeals the Decision on the following grounds:

(1) He disputes the criteria by which the Decision has been made, considering the criteria to be unfair, arbitrary, illogical and out of step with real people and common sense. He seeks a review, by which he means an amendment, of the applicable legislation.

(2) He was not resident in the UK until 30 January 2023, as he had no intention to permanently remain before that date. Accordingly, the 12-month window should run from the 30 January 2023.

(3) There are exceptional circumstances including, but not exclusively, that he only decided to become permanently resident in the UK in 2019, that he was unaware of the TofR relief criteria, that the Goods have little to no financial value, but huge sentimental value and that he would have faced difficulties (both financial and practical) in complying with the 12-month requirement.

5. At the outset of the hearing, we explained to the Appellant that it is the role of Parliament to legislate. It is our role to construe the law and apply it to the facts of this appeal. Accordingly, we have no remit to review the law, in the sense requested by the Appellant. Further, we do not have the power to remove a tax charge on the grounds that it is not fair, as confirmed, in the context of penalties, in the case of *HMRC v Hok Ltd* [2012] UKUT 363 (TCC) ("*Hok*"). It is our role to apply the law, not assess its fairness.

EVIDENCE AND FINDINGS OF FACT

6. In addition to the Hearing Bundle, we heard oral evidence from the Appellant and from Officer Begum, who has worked in the Respondents' Transfer of Residence Department for 4-years but was not the decision maker in this case. We were informed that the decision maker no longer worked for the Respondents. Officer Begum's witness statement was short, simply confirming that if she had been the decision maker she would have made the same decision. The Appellant answered our questions but was not cross-examined by Mr

Abernethy. Officer Begum was cross-examined by the Appellant and answered our questions. We are entirely satisfied that both witnesses were doing their best to assist the Tribunal.

7. On the basis of all of the evidence, we make the following findings of fact on the balance of probabilities.

8. Prior to 22 September 2012, the Appellant worked as a self-employed builder in New Zealand. He filed tax returns in New Zealand.

9. On 22 September 2012, the Appellant, his wife and their son moved to the UK, leaving family (parents, siblings, nephews and nieces) in New Zealand. The reason for the move was that the Appellant's son had been awarded a 3-year scholarship to study at a Performing Arts College in Epsom.

10. Initially, the family intended to reside in the UK for 3 years before returning to New Zealand. They rented out their 4-bed, 2-garage house in New Zealand ("the NZ House") via a Property Manager and rented a 2-bed apartment in the UK. They brought some of their personal possessions to the UK and stored the remainder in the garage and loft of the NZ House because they intended to return to New Zealand after 3 years.

11. On arrival in the UK, the Appellant stopped working in New Zealand and started to look for work in the UK. In or around December 2012, he was employed by an insurance company. He undertook maintenance and repair work. He worked for this company from approximately 12 months. Thereafter, he was employed, for a short period, by Paragon doing similar work for a Housing Corporation. In 2014, he obtained employment as a Facilities Manager for a Performing Arts College. He remains in this employment. Since 2012, the Appellant has paid UK tax on his earnings. Additionally, the Appellant continued to file tax returns in New Zealand. These tax returns dealt with the rental income received from the NZ House. On these tax returns, the Appellant listed himself as 'non-resident.'

12. Following his move to the UK, the Appellant took all necessary steps to establish his residence in the UK. Specifically, the Appellant registered with a Doctor and a Dentist, opened a UK bank account and registered to vote. The Appellant, whose parents were British, obtained a British passport before arriving in 2012. For completeness, his wife and his son obtained permanent leave to remain in the UK.

13. Since 2012, the Appellant and his family have spent at least 185 days per annum in the UK. Due to the distance and cost involved, the family was limited in how frequently they could return to New Zealand. Since 2012, the Appellant returned on four occasions. First, in 2014/15 for a holiday. Second, when the Appellant's mother became unwell. Third, when the Appellant's mother sadly passed away. Fourth, in November 2022 as detailed at paragraph 15 below. Until 2022, the NZ House remained rented to the same tenant and the Appellant had no access to the property.

14. Shortly following his graduation, the Appellant's son obtained work in the UK, including on the West End. He has, save for during the Covid 19 pandemic, worked continuously in the UK since. In 2019, as a result of their son's decision to stay permanently in the UK, the Appellant and his wife decided to remain permanently in the UK in order to be close to their only child.

15. Towards the end of November 2019, the Appellant and his wife decided to sell their home in New Zealand and bring the Goods stored in the garage and the loft to the UK. Unfortunately, their plans were delayed by the Covid 19 pandemic. Notably, New Zealand closed its borders, including to New Zealand citizens, until in or around August 2022.

16. On 18 November 2022, the Appellant and his wife returned to New Zealand in order to sort out their possessions, which they used during their stay, and undertake repairs to the NZ House, having given notice to their tenant, with the aim of selling the property. During their visit, they lived in the NZ House.

17. On 30 January 2023, the Appellant and his wife returned to the UK. The NZ House was on the market for approximately 3 months. No sale was forthcoming. In the circumstances, the Appellant and his wife decided to continue renting out the NZ House. However, by this stage the Goods had already been removed and were being stored by a removal company in New Zealand.

18. On 27 January 2023, the Appellant applied for TofR Relief, recently having become aware of the fact that import VAT and customs duty would be charged on importation of the Goods. He attached copies of his and his wife's passports, a TV Licence for his home in the UK, an energy bill for the NZ House and an inventory of the Goods. In the Application, the Appellant stated that he (and his family) moved to the UK on 22 September 2012. They intended to stay for 3 years, but this was repeatedly extended until they decided to make the move permanent. Whilst they were residing in the UK, their possessions were stored in the NZ House. In November 2022, they returned to New Zealand to sort out their possessions and repair and sell the NZ House for a permanent move to the UK.

19. On 3 February 2023, the Respondents wrote to the Appellant informing him that they were considering rejecting the Application but offering him a 'right to be heard.'

20. On 13 February 2023, the Appellant emailed the Respondents providing his consent to communicate via email.

21. On 15 February 2023, the Appellant emailed the Respondents. He confirmed that he and his family had lived in the UK for over 12 months. He stated that they had moved to the UK to support their son, who had received a 3-year performing arts scholarship. Whilst they initially brought some belongings, they retained and rented out the NZ House storing the bulk of their possessions in its garage and loft. Their return to New Zealand was delayed by their son, following graduation, being offered work in the UK. They had recently decided to stay in the UK permanently and had travelled to New Zealand to organise their belongings, mainly personal items more than 20 years old, and sell the NZ House to facilitate their purchase of property in the UK.

22. On 22 February 2023, the Respondents emailed the Appellant confirming that the exceptional circumstances criteria had not been met and that 10 years "*...is way beyond a timeframe that could be considered reasonable.*"

23. On 23 February 2023, the Appellant emailed the Respondents expressing his disappointment. He stated that the Goods, which had been in their possession for 20-30 years, were not, in the main, of any financial value, but that they had huge sentimental value, some of the items having been made by him by hand. He confirmed that it was not possible to import all of the Goods within 12 months and that there was no financial benefit to them in doing so at this stage. He also asked how the Respondents' determined how much to charge.

24. On 1 March 2023, the Respondents replied to the Appellant's email dated 23 February 2023 setting out the conditions for TofR Relief, providing a link to the relevant guidance and providing further links to enable the Appellant to calculate the customs value of the Goods.

25. On 4 March 2023, the Appellant emailed the Respondents contending that the move to the UK in 2012 was temporary, that their primary residence remained New Zealand, that they decided to relocate to the UK permanently at the end of 2019 and that, following their return

to New Zealand to pack up their belongings and sell the NZ House, they only moved to the UK on 30 January 2023, being the relevant date for the start of the 12-month period.

26. On 7 March 2023, the Respondents emailed the Appellant informing him that his application had been reviewed and that he did not meet any of the conditions for TofR Relief, which were set out, having been resident in the UK for 11 years. The Respondents confirmed that there were no exceptional circumstances and, consequently, that a rejection letter would follow.

27. On 10 March 2023, the Respondents made the Decision.

28. On 4 April 2023, the Appellant appealed to the First-tier Tax Tribunal.

29. On 27 June 2023, the Respondents provided their Statement of Case in response to the Appeal.

THE LAW

30. The relevant statutory provisions and authorities are not in dispute and, so far as relevant, are included as an Annex to this decision.

31. The Appellant bears the burden of proof. This means that he must show, on the balance of probabilities, that he satisfies the requirements for TofR Relief such that he is entitled to full or partial remission of import VAT and customs duty. Further or alternatively, if he does not satisfy the requirements for TofR Relief, the Appellant must show, also on the balance of probabilities, that there are exceptional circumstances that make it appropriate to waive the 12-month requirement imposed by Article 11(1) (e) (ii) of the Customs & Excise Duties (Personal Relief for Goods Permanently Imported) Order 1992 (“the 1992 Order”).

DECISION

32. We have decided that the Appellant does not satisfy the eligibility criteria for TofR Relief. In reaching this conclusion, we refer to and rely on the following principal points.

33. Article 11 (1) (a-e) (i-ii) of the 1992 Order sets out the eligibility criteria. As noted by Judge Bailey in the case of *Ball v The Commissioners for Her Majesty’s Revenue & Customs* [2022] UKFTT 85 (TCC) (“*Ball*”) at §11, two of those criteria relate to residence, two relate to property and one relates to the date of import

34. As to residence:

(1) The Respondents accept that before 22 September 2012 the Appellant had been normally resident in New Zealand for a continuous period of at least twelve months. Accordingly, Article 11 (1) (a) of the 1992 Order is satisfied.

(2) As to Article 11 (1) (b) of the 1992 Order, the Respondents argue that the Appellant intended to become normally resident in the UK on 22 September 2012. The Appellant disagrees. He states that he only intended to become normally resident in the UK on 30 January 2023. Article 3 (2) (a-c) of the 1992 Order defines normally resident. Specifically, it provides that a person is treated as being normally resident in the country where he usually lives for a period of, or periods together amounting to, at least 185 days in a 12-month period because of his occupational ties and because of his personal ties. Article 2 of the 1992 Order defines personal ties as “...*family or social ties to which a person devotes most of his time not devoted to occupational ties;...*” Finally, Article 4 (a-b) of the 1992 Order provide that a person becomes normally resident when, having given up his normal residence, he is in the UK for the purpose of intending to become normally resident in the UK as defined by Article 3 (2) (a-c) of the 1992 Order. We have decided that the Appellant became normally resident in the UK

on 22 September 2012 when he had given up residence in New Zealand and he was in the UK with the intention of becoming normally resident. Specifically, the Appellant intended to live in the UK for at least 185 days per annum because of his occupational ties (as detailed at paragraph 11 above) and because of his personal ties, specifically his wife and his son. For the avoidance of doubt, we note that it took the Appellant approximately 3 months to find work, obtaining employment in December 2012. It is our decision that the Appellant had the required occupational ties as he was seeking work from 22 September 2012 and employed in December 2012. However, if we are wrong on this and the Appellant did not have the requisite occupational ties, we are satisfied that his personal ties were sufficiently close, being his wife and his son, to come within Article 3 (3) of the 1992 Order such that the test for being normally resident is met. We have considered the Appellant's argument that he did not intend to become normally resident in the UK until 30 January 2023. We note that the test set out at Article 3 (2) (a-c) and 4 (a-b) of the 1992 Order does not require the person to intend to permanently relocate. Simply, it requires an intention to normally reside in the UK. That intention is established by living in the UK for at least 185 days because of occupational ties and/or personal ties. For the reasons set out above, this test is met. The fact that the Appellant did not intend to become normally resident until 30 January 2023 is not relevant.

35. As to the Goods, the Respondents accept that the Goods were in the Appellant's possession and used by him in New Zealand for a period of 6-months before importation and that the Goods are intended for personal or household use in the UK. Accordingly, Articles 11 (1) (c & d) of the 1992 Order are satisfied.

36. As to the date of importation, the Respondents contend that the Goods were not declared for relief within the 12-months following 22 September 2012 as required by Article 11 (1) (e) (ii) of the 1992 Order. The Appellant accepts that this but argues that the 12-months runs from 30 January 2023. In light of our decision on Article 11 (1) (b) of the 1992 Order, we find that the Appellant became normally resident on 22 September 2012, not on 30 January 2023, and had 12-months following the 22 September 2012 to declare the Goods for relief. He did not do so. Accordingly, Article 11 (1) (e) (ii) is not satisfied.

37. We have also decided that there are no exceptional circumstances that make it appropriate to waive the 12-month requirement imposed by Article 11(1) (e) (ii) of the 1992 Order. In reaching this conclusion, we refer to and rely on the following main points.

38. Regulation 5 of the Customs (Relief from a liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 ("the 2020 Regulations") allows the Respondents to grant a claim for relief where an eligibility criterion is not met if two provisions are satisfied.

39. First, that the criterion is described in the relevant section of the UK Reliefs Documents as being subject to 'exceptional waiver.' Paragraph 1.5 of the UK Reliefs Document provides that "*the requirement that the goods must be discharged from the free circulation procedure within 12 months from the date the UK becomes the individual's new normal place of residence*" is subject to exceptional waiver or variation. Therefore, this provision is satisfied.

40. Second, if the Respondents consider, by reason of the circumstances described in the relevant section of the UK Reliefs Document, that it would be reasonable to waive the criterion. The Respondents do not consider that it is reasonable to waive the 12-month criterion because they do not consider that the Appellant's circumstances are exceptional. We agree.

41. The Appellant had been normally resident in the UK since 22 September 2012. At the date of the Application, he had had over 10 years in which to import the Goods, of which approximately 7 years preceded the Covid 19 pandemic. He elected not to do so. The Appellant argues that this was because he did not decide to permanently relocate until 2019. We do not accept that the Appellant's later decision to permanently relocate to the UK is an exceptional circumstance. We accept the Respondents' point that people do move country, initially, temporarily and then decide to stay permanently. This is not exceptional.

42. Nor do we consider it an exceptional circumstance that the Appellant's rented apartment in the UK was too small to store the belongings from the larger NZ House. As in *Brooks v Revenue & Customs Commissioners* [2021] UKFTT 449 (TC) ("*Brooks*"), §19 and *Ball* §24, the Appellant had various options in relation to the Goods, including importing them into the UK and storing them in the UK. Whilst this would have incurred a cost, which was avoided by leaving the Goods in New Zealand, it is an ordinary concomitant of relocating and not exceptional, Judge Manuell in *Brooks* §19.

43. Also, it is not an exceptional circumstance that the Goods are personal / household possessions circa 20-30 years old, with minimal financial value, but large sentimental value, albeit, as explained by Officer Begum in evidence, this may have a bearing on the amount of import tax and/or customs duty due.

44. Further, lack of knowledge of a potential liability to import VAT and customs duty and/or to the TofR Relief provisions is not an exceptional circumstance, as, at least impliedly, accepted in *Brooks* §12 and *Ball* §§2 & 26. We consider that the onus was on the Appellant, at the outset, to discover and understand the legal requirements of his move to the UK, including in respect of the importation of the Goods. He did not do so, assuming, perhaps understandably but in any event wrongly, that there would be no issue with or tax charged on the importation of second hand, personal items.

45. Therefore, whilst we have considerable sympathy for the Appellant in the situation he finds himself, for all of the reasons detailed above, this appeal is dismissed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

46. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**JENNIFER NEWSTEAD TAYLOR
TRIBUNAL JUDGE**

Release date: 26th FEBRUARY 2024

ANNEX
LEGISLATION

1. Article 2 of the Customs & Excise Duties (Personal Relief for Goods Permanently Imported) Order 1992 (“the 1992 Order”) provides the following definitions:

“occupational ties” shall not include attendance by a pupil or student at a school, college or university;

“personal ties” shall mean family or social ties to which a person devotes most of his time not devoted to occupational ties; ...”

2. Article 3 of the 1992 Order sets out the rules for determining where a person is normally resident as follows:

“3.— Rules for determining where a person is normally resident

(1) This article shall apply for the purpose of determining, in relation to this Order, where a person is normally resident.

(2) A person shall be treated as being normally resident in the country where he usually lives-

(a) for a period of, or periods together amounting to, at least 185 days in a period of twelve months;

(b) because of his occupational ties; and

(c) because of his personal ties.

(3) In the case of a person with no occupational ties, paragraph (2) above shall apply with the omission of sub-paragraph (b), provided his personal ties show close links with that country... ”

3. Article 4 of the 1992 Order sets out the following supplementary provisions:

“4. Supplementary

For the purposes of this Order-

(a) any reference to a person who has been normally resident in [another country] and who intends to become normally resident in the United Kingdom shall be taken as a reference to a person who intends to comply with the requirements of paragraphs (2), (3) or (4) of article 3 above, as the case may be, for being treated as normally resident in the United Kingdom;

(b) the date on which a person becomes normally resident in the United Kingdom shall be the date when having given up his normal residence in [another country] he is in the United Kingdom for the purpose of fulfilling such intention as is mentioned in paragraph (a) above.”

4. Article 11 of the 1992 Order sets out the criteria for TofR Relief:

“11.—

(1) Subject to the provisions of this Part, a person entering the United Kingdom shall not be required to pay any duty or tax chargeable in respect of property imported into the United Kingdom on condition that-

(a) he has been normally resident in [another country] for a continuous period of at least twelve months;

(b) he intends to become normally resident in the United Kingdom;

(c) the property has been in his possession and used by him in the country where he has been normally resident, for a period of at least six months before its importation;

(d) the property is intended for his personal or household use in the United Kingdom; and

(e) the property is declared for relief-

(i) not earlier than six months before the date on which he becomes normally resident in the United Kingdom, and

(ii) not later than twelve months following that date.

(2) A person shall not be afforded relief under this Part unless the Commissioners are satisfied that the goods have borne, in their country of origin or exportation, the customs or other duties and taxes to which goods of that class or description are normally liable and that such goods have not, by reason of their exportation, been subject to any exemption from, or refund of, such duties and taxes as aforesaid, or any turnover tax, excise duty or other consumption tax.

(3) For the purposes of this Part, “property” shall not include-

(a) beverages containing alcohol;

(b) tobacco products;

(c) any motor road vehicle which by its type of construction and equipment is designed for and capable of transporting more than nine persons including the driver, or goods, or any special purpose vehicle or mobile workshop; and

(d) articles for use in the exercise of a trade or profession, other than portable instruments of the applied or liberal arts.”

5. Regulations 4 and 5 of the Customs (Relief from a liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (“the 2020 Regulations”) provide for the waiver of certain eligibility criteria in exceptional circumstances:

“4. Granting claims for relief

A claim for relief must be granted by HMRC if—

(a) the claim is made by reference to a case described in a section of the UK Reliefs document;

(b) the goods to which the claim relates are of a type which fall within the description of goods given in the section;

(c) the person making the claim falls within the description of claimant given in the section;

(d) where applicable, the claimant is not also the consignee of the goods and the consignee falls within the description of consignee given in the section; and

(e) subject to regulation 5, the eligibility criteria of the section are met.

5.— Waiver of eligibility criteria

(1) HMRC may grant a claim for relief even where an eligibility criterion is not met if

(a) the criterion is described in the section of the UK Reliefs document as being subject to "exceptional waiver"; or...

(2) A claimant may apply to HMRC for approval of a waiver in accordance with paragraph (1).”

6. The UK Relief Document (version 1.5), in force from 10 July 2022, summarises the eligibility criteria at paragraph 1.3 and at paragraph 1.5 provides that the eligibility criterion specified at Article 11 (1) (e) (ii) is subject to exceptional waiver or variation.

“1.3 Eligibility criteria and relief conditions

1.3.1 Standard case

The following criteria must be satisfied for an individual to be eligible for this relief:

- the individual must have been normally resident outside the United Kingdom for at least 12 consecutive months prior to the date the United Kingdom becomes the individual’s new normal place of residence*

- *relief is only available for personal property of the individual where the intended use in the United Kingdom is for the same purpose as the goods were used or intended to be used outside the United Kingdom.*

- *for consumable goods, the individual must have possessed those goods for at least six months prior to the date they ceased to be normally resident outside the United Kingdom*

- *for non-consumable goods, the individual must have possessed and used those goods for at least six months prior to the date they ceased to be normally resident outside the United Kingdom*

Goods may be imported in multiple consignments. All goods must be declared for free circulation within 12 months from the date of establishment, by the person concerned, of their normal place of residence in the UK.

Any personal property for which this relief has been granted may not be lent, used as security, hired out or transferred, whether free of charge or for money or money's worth, within 12 months of the date the goods were imported HMRC without the approval of HMRC.

Granting the relief may be conditional upon property having borne fiscal charges in the county of departure.

1.5 Eligibility criteria subject to exceptional waiver and relief conditions subject to exceptional waiver or variation

The following eligibility criteria and relief conditions are subject to exceptional waiver or variation:..

- *the requirement that the goods must be discharged from the free circulation procedure within 12 months from the date the UK becomes the individual's new normal place of residence... ”*