



[2021] UKFTT 0449 (TC)

TC 08333

CUSTOMS DUTY and VAT — Transfer of Residency Relief – Brexit – Covid 19 - Normal Residency – Date of change - Exceptional Circumstances/Waiver – Not proven – Appeal dismissed

Appeal number: TC/2021/00814 A/V

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MR JOHN ROGER BROOKS

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

**TRIBUNAL: JUDGE JOHN MANUELL
Mr JULIAN SIMS**

The hearing took place on 29 October 2021. The Tribunal heard the Appellant in person and Mr Rupert Davies, of HM Revenue and Customs' Solicitor's Office for the Respondents.

The form of the hearing was by remote video link using the Tribunal video platform. The Tribunal decided a remote hearing was appropriate in view of the continuing pandemic. The documents to which the Tribunal were referred consisted of the agreed bundle as prepared by HMRC in electronic form.

The hearing was held in public.

DECISION

Introduction

1. Had anyone suggested to Mr and Mrs Brooks, British Citizens returning to the United Kingdom after many years in France, that they would have to pay customs duty and VAT when bringing their household goods to the United Kingdom, they may well have felt that was surprising and possibly unfair. Mr and Mrs Brooks have paid an unexpected bill of £6,211.67 and they have appealed to the Tribunal. That charge, however, is a direct consequence of Brexit, and is the unhappy result in this Transfer of Residency Relief appeal.

2. Mr and Mrs Brooks moved to France in December 1991. Mr Brooks worked there for a multinational company and latterly was seconded to the Middle East. Despite living in France for so long, Mr and Mrs Brooks had acquired no right to state health care as the bulk of his salary was paid and taxed in the United Kingdom, the remainder being paid and taxed in the Middle East and not in France. Hence in July 2016 when Mr Brooks retired, Mr and Mrs Brooks decided to place their home on the market and they moved back to the United Kingdom. Their French home was until then their only residence. They rented a basement flat from their daughter in Bristol, registered with their local GP, placed themselves on the electoral roll and joined a bridge club.

3. As is far from unusual in France, the sale of their house was not swift. In order to make it presentable, they left the house furnished. (They would have had to pay for storage of their furniture in the United Kingdom otherwise.) They visited the house from time to time to maintain it and the garden, broadly splitting their time between the United Kingdom and France, until more recently when travel was not possible.

4. In November 2020 a binding sale of the French house was at last agreed. Because of the Covid-19 pandemic, it was not possible to arrange to ship their household effects back to the United Kingdom until after 31 December 2020, although they did not try to do so before the regulations referred to below were published. Brexit occurred on 31 December 2020. The United Kingdom had left the European Union and free movement of goods had ended. Mr and Mrs Brooks were informed by the haulage agent that customs duty and VAT were payable on the import of their own possessions (subject to any transfer of residency relief available). A significant proportion of their possessions had been purchased in the United Kingdom in the first place. Mr Brooks then applied for Transfer of Residency relief, which HMRC refused on 1 March 2021.

The central issues

5. The central issues are when Mr Brooks became resident in the United Kingdom and whether there are exceptional circumstances which would entitle Mr Brooks to relief.

The law

6. It is necessary to set out the law in some detail. Amendments to the *Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992 (SI 1992/3193)* came into force on 31 December 2020, transposing the provisions from being applicable to persons transferring their residence from Third Countries outside of the EU to persons transferring from (an)other country outside of the UK.

7. *The Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992 (SI 1992/3193)* provides:

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.

(4) Where a person has his occupational ties in one country and his personal ties in [a different] country, he shall be treated as being normally resident in the latter country provided that either—

a. his stay in the former country is in order to carry out a task of a definite duration, or

b. he returns regularly to the country where he has his personal ties.

(5) Notwithstanding paragraph (4) above, a United Kingdom citizen whose personal ties are in the United Kingdom but whose occupational ties are in [another country] may for the purposes of relief under this Order be treated as normally resident in the country of his occupational ties, provided he has lived there for a period of, or periods together amounting to, at least 185 days in a period of twelve months.

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.

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(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

12 Supplementary

Where the Commissioners are satisfied that a person has given up his normal residence in [another country] but is prevented by occupational ties from becoming normally resident in the United Kingdom immediately, they may allow property to be declared for relief earlier than as prescribed in article 11(1)(e)(i) above, subject to such conditions and restrictions as they think fit.

The Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 provide:

Granting claims for relief

4. 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.

Waiver of eligibility criteria

5. (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

(b) the criterion—

(i) is described in a section of the UK Reliefs document which is described as “Returned Goods Relief”; and

(ii) provides that the goods to which the section applies must be imported no more than 3 years after the date on which they were exported, and HMRC consider that by reason of circumstances described in the relevant section of the UK Reliefs document, it would be reasonable to allow the criterion to be waived.

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

The “UK Reliefs Document” is detailed in regulation 2, *ibid*, as:

Interpretation

2. (1) In these Regulations— “UK Reliefs document” means the document entitled “United Kingdom Customs Tariff: Reliefs from Import Duty”, version 1.1 dated 17th December 2020) which includes sections that describe—

(a) cases where a claim for relief may apply, expressed by reference to—

(i) the goods to which the section applies;

(ii) the persons who may be a claimant or consignee for the purposes of the section; and

(iii) the eligibility criteria which apply for the purposes of the section;

(b) any relief conditions which apply for the purposes of the section; and

(c) whether relief is full or partial relief in any case.

The “*United Kingdom Customs Tariff: Reliefs from Import Duty*”, version 1.1 dated 17th December 2020) gives relief for “Personal property belonging to individuals transferring their normal place of residence to the United Kingdom” in section 1.

The eligibility criteria and relief conditions are:

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: Additionally: o 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 o 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

Paragraph 1.5 of the above document allows for waiver of some of the eligibility criteria under exceptional circumstances:

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 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 – the claimant must provide clear evidence that it was their intention to reside outside the United Kingdom for 12 months, but this intention could not be fulfilled
- the requirement that the individual possessed or used the goods for six months before ceasing to be normally resident outside the United Kingdom
- 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

Where an individual becomes normally resident in the UK due to exceptional political circumstances (e.g. political asylum) the following eligibility criteria and relief conditions are subject to waiver:

- the requirement for the individual to have possessed or used the goods for six months before ceasing to be normally resident outside the UK
- the requirement for the individual's intended use of the personal property in the UK to be for the same purpose as the goods were used or intended to be used outside the UK
- the exclusion of commercial means of transport and articles for the exercise of a trade or profession
- the requirement that 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, without the approval of HMRC

Where a claimant considers that exceptional circumstances apply such that any of the above eligibility criteria or relief conditions should be waived or varied, they should make an application for approval and provide evidence to support their application to the address given in paragraph 1.6

The following guidance replaced the previously applicable Public Notice 5 and was published on 18 December 2020:

<https://www.gov.uk/guidance/transfer-of-residence-to-great-britain>

Exceptional circumstances

Where you're becoming resident in the UK due to exceptional political circumstances (for example, political asylum), you may be able to:

- have had possession and use of the goods for less than 6 months prior to moving
- use the goods for a different purpose than they were used for prior to moving
- use the relief for commercial vehicles and non-portable instruments of your trade or profession
- lend, hire out or transfer the goods prior to 12 months after moving

If circumstances beyond your control mean you cannot comply with the relief requirements, HMRC will also consider waiving the following conditions:

- being resident for at least 12 months outside the UK prior to moving – where you can show your intention to stay outside the UK for this period or longer
- having and using the goods for at least 6 months – where you can show a special case exists
- having no more than 12 months to bring all items into the UK – where exceptional circumstances have prevented you from bringing the items into the UK (a lack of funds or space in your new home is not considered an exceptional circumstance)

If you think exceptional circumstances apply, you should include evidence of why you think they apply within your TOR1 form.

The Appellant's case

8. Mr and Mrs Brooks contended in their Notice of Appeal dated 11 March 2021 that they had moved back to the United Kingdom in 2016 only in the technical sense, as their only home was still in France. They had moved because of concerns about Brexit and healthcare. They also wanted to re-establish themselves in a local community before they were too old. The sale of the French house had been protracted because the market was dead. Their circumstances were exceptional and relief should be granted to them.

The Respondent's case

9. HMRC contended in summary that Mr and Mrs Brooks had moved back to the United Kingdom in 2016, and become resident in the United Kingdom again then, so that their application for relief was too late. In any event there were no exceptional circumstances. The appeal should be dismissed on all grounds.

Burden and standard of proof

10. The burden of proof to show that they were entitled to a full or partial remission of the duty and VAT was on the Appellants. The standard of proof is the normal civil standard, the balance of probabilities.

Evidence

11. Ms Patricia Akotia (“Ms Akotia”), HMRC Officer, gave evidence in accordance with her witness statement dated 20 August 2021. There Ms Akotia explained how HMRC’s decision had been reached, after considering the evidence and representations made by Mr and Mrs Brooks. The goods had been imported long after Mr and Mrs Brooks had moved back to the United Kingdom from France, more than 12 months. They had spent six months in each of their homes from 2016. They had years to import their goods. The decision was fair. (The value of the goods imported had been provided by the shipping agent and had not been queried by HMRC.)

12. Mr and Mrs Brooks gave evidence which was combined with submissions. In summary they said that their move back to the United Kingdom in July 2016 was technical and in form only. They owned no home in the United Kingdom. Their daughter let them use her basement flat. All their possessions remained in France. They moved back and forth every two or three months to maintain the house and garden. What would happen under Brexit was unclear. There was no point in moving their possessions, as they would have had to pay for storage. Free movement still applied while they waited for a sale. A binding sale was finally agreed on 20 November 2020. By the time the updated HMRC guidance was issued it was too late for them to do anything. Covid-19 had struck and the ports were closed. Their possessions had mostly been bought in the United Kingdom. They were surprised that they had to pay duty. Their removal agents told them about Transfer of Residency Relief and they had applied immediately to HMRC.

13. Cross examined, Mr and Mrs Brooks confirmed the steps they had taken when they moved back to the United Kingdom in 2016, registering with a GP, joining the electoral roll and also a bridge club. Mr Brooks was paying United Kingdom tax and was no longer working abroad. The return to the United Kingdom was only technical. He had been in a strange position and had been unable to join the French medical system, hence they had to come to the United Kingdom. He had paid United Kingdom tax on his income. They had lived in the United Kingdom longer than they had lived in France. Over the past five years they had spent 177, 153, 27, 207 and

230 days each year in the United Kingdom. The French house had been their home for 30 years and there was nowhere else to keep their possessions.

Submissions

14. Mr Davies for HMRC relied on his skeleton argument. In summary he submitted that the evidence disclosed no exceptional circumstances or grounds for a waiver of duty and VAT. Mr and Mrs Brooks had been permanently resident in the United Kingdom since 2016. In effect the 1992 Regulations had been amended to reflect the departure from the EU. Parts of the regulations appeared to have been duplicated but that did not change their effect as they were saying the same thing, and the residency requirement was not affected. Brexit had been a possibility for a number of years and became a virtual certainty once the referendum result in favour of Brexit was known. The final departure from the EU date of 31 December 2020 was declared in advance. There had been various options available to the Appellants. The appeal could not succeed.

15. There was nothing specific Mr and Mrs Brooks wished to say in addition to the submissions they had already made and which are set out above. They felt it was unfair that they should have to pay duty and VAT on their own possessions.

Discussion

16. There was no dispute about the sequence of events. Mr and Mrs Brooks gave their evidence freely and frankly. The Tribunal has considerable sympathy for them, who (without an accurate crystal ball) could hardly have done more to deal with a difficult situation. No doubt there will be others in similar positions, as the full impact of Brexit is felt.

17. The Tribunal finds that the evidence shows that Mr and Mrs Brooks returned to the United Kingdom in 2016, with the intention of establishing their home in the United Kingdom again, after an absence of 30 years. They registered with a GP (access to NHS health care having been the decisive factor in their decision to return), and joined the electoral roll. They lived in a flat in their daughter's home, indicating close family or personal ties. Mr Brooks had retired and so no longer had occupational ties to France. The only reason that Mr and Mrs Brooks spent time in France after 2016 was to maintain the French house to enable it to be sold as well as possible. It was their clear and stated intention to become United Kingdom resident. When a sale of the French house would be achieved was a great unknown, but plainly they did all they could to advance a sale and visited the house from time to time to ensure that it was presentable. They believed that leaving their furniture behind in France helped in that, and also avoided storage charges until they had purchased a suitable property in the United Kingdom.

18. Mr Brooks submitted that the 2016 move was one of form only, however the residency tests are as set out in primarily in regulation 3 of *The Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992 (SI 1992/3193) as amended*. They are not met. Moreover, Mr Brooks frankly stated that they had spent 207 days and 230 days in the United Kingdom in 2019 and 2020, both of which exceed 185 days. Thus if only the two years immediately preceding 2021 are considered, a period exceeding 12 months still applies prior to the importation of their goods. The goods were imported too long after establishing residency in the United Kingdom.

19. This leaves the question of exceptional circumstances or exceptional waiver. Here the Tribunal finds that Mr Davies's submission must be right. Various possibilities were open to Mr and Mrs Brooks following their decision to return to the United Kingdom in 2016 and sell their home in France, e.g., to place their goods into storage in the United Kingdom, to sell their goods in France and to rent furniture in France or any combination of those steps. All such choices would have required some outlay or another, but they are all ordinary concomitants of selling up and moving home. All such steps are potentially stressful, yet nothing which can properly be described as being beyond Mr and Mrs Brooks's control or exceptional.

20. The changes in the law following Brexit were not exceptional, indeed they were the direct and foreseeable consequence of the United Kingdom's departure from the European Union and the ending of free movement. Mr and Mrs Brooks were well aware as they accepted that problems might lie ahead with Brexit pending after the referendum on 23 June 2016. The impact of the Covid-19 pandemic was not exceptional either, because almost everyone, everywhere was affected. In any event, as the Tribunal has found, Mr and Mrs Brooks had moved back to the United Kingdom long before the pandemic.

21. Taking all of these matters into account, it follows that the appeal must be dismissed.

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.

TRIBUNAL JUDGE MANUELL

RELEASE DATE: 03 December 2021

