



[2022] UKFTT 85 (TC)

TC 08416

Appeal number: TC/2021/01188

*CUSTOMS DUTY AND IMPORT VAT – Transfer of Residency relief –
whether criteria for relief met by Appellant – no – whether exceptional
circumstances to enable criterion waiver – no – appeal dismissed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

ADRIAN BALL

Appellant

- and -

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

Respondents

TRIBUNAL: JUDGE JANE BAILEY

The Tribunal determined the appeal on 15 February 2022 without a hearing under the provisions of Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and with the agreement of both parties.

DECISION

Introduction

1. This appeal by Mr Ball is against HMRC's refusal of his application for Transfer of Residence relief, resulting in him becoming liable for import VAT and customs duty on household goods which he and his wife had brought into the UK from Spain for them, in January 2021.

Facts

2. On the basis of the documents before me, I find as follows:

a) On 22 February 2004, Mr and Mrs Ball left the UK and moved to Spain. Mr and Mrs Ball became resident in Spain and continued to live there until 6 May 2019.

b) On 7 May 2019, Mr and Mrs Ball returned to the UK, with the intention of living in the UK for the next 12 consecutive months (and beyond).

c) Mr and Mrs Ball did not have permanent accommodation in the UK available to them immediately upon their return in May 2019. Initially, Mr and Mrs Ball stayed with their son. The absence of a permanent home available to them upon their arrival in the UK meant that the household goods that Mr and Mrs Ball had had in their home in Spain would have to be put in storage. Mr Ball explained (in his email of 2 January 2021 to HMRC):

We decided to leave our goods in Spain because if we brought them back we would have to pay additional removal charges and the storage charges in Spain were only 100 euros per month.

Our goods in Spain represent our 53 years of marriage and our time in the Royal Air Force of 34 years. All of it has been purchased correctly with relevant taxes paid.

d) After staying with their son for an unknown period, Mr and Mrs Ball rented accommodation to live in, at first in Leominster and then in Abingdon.

e) In early 2020 the Covid-19 pandemic began to affect the UK. A first lockdown was announced for the UK on 23 March 2020 with legal effect from 26 March 2020. Mr and Mrs Ball had been waiting for a new build house in Banbury to be ready for them but, at some point during the pandemic, they were advised that their new build home would not be ready until March 2021. Mr and Mrs Ball cancelled their purchase of the house in Banbury. On an unknown date, Mr and Mrs Ball agreed to buy a new build house in Ledbury.

f) On 31 December 2020, the United Kingdom left the European Union.

g) I take judicial notice of the fact that on 6 January 2021, the UK entered its third lockdown due to the Covid-19 pandemic. A “stay at home” order was in place in the UK until 29 March 2021.

h) It seems, from the paperwork they supplied with their Transfer of Residence application, that Mr and Mrs Ball were still living in the rented home in Abingdon on 7 January 2021 (when Welsh Water wrote to them about their water supply for their new home). I find, on the balance of probabilities, that Mr and Mrs Ball were able to move into their new home in Ledbury on a date between 7 and 20 January 2021.

i) As part of their arrangements for moving into their home in Ledbury, Mr and Mrs Ball made arrangements for their household goods, still in storage in Spain, to be moved back to the UK. This removal was booked for 20 January 2021. As Mr Ball explained in his appeal to the Tribunal:

I was told 2 days before my removal company were due to leave Spain with our belongings that we had to get a TOR reference number which I did. Neither my wife nor myself had ever heard of TOR before.

k) On 18 January 2021 (the date the removal company contacted him), Mr Ball applied to HMRC for Transfer of Residence relief (“ToR relief”). I accept that neither Mr or Mrs Ball were aware of ToR relief until they were contacted by their removal company. I find also that, until that date, it had not occurred to Mr and Mrs Ball that there might be any impositions on bringing their belongings into the UK.

l) On 20 January 2021 (when Mr and Mrs Ball’s goods left Spain), HMRC wrote to Mr Ball stating that they were considering rejecting his claim for ToR relief because he was not importing his goods within 12 months of becoming normally resident in the UK. HMRC asked Mr Ball to send them any information he had which would make his case exceptional and so allow them to waive the 12 month rule.

m) Mr Ball replied to HMRC on 21 January 2021. Mr Ball explained that he had not previously heard of ToR relief or about bringing goods into the UK within 12 months, and that his house purchase had been delayed. Mr Ball concluded that he had no intention of not complying with the rules but:

... it was just a set of unforeseen circumstances that delayed us obtaining our home and hence falling foul of TOR of which we had no knowledge of.

n) On 22 January 2021, HMRC emailed Mr Ball to inform him that it was still their intention to reject his application. Mr Ball was referred to HMRC’s guidance on ToR relief.

o) On an unknown date from 20 January 2021 onwards, the household goods of Mr and Mrs Ball arrived in the UK. As ToR relief had been refused, Mr and Mrs Ball became liable to import VAT and customs duty on the importation of their belongings into the UK. There is no evidence from either party as to what amount, if any, was charged or whether that amount has yet been paid.

p) On 22 February 2021, HMRC rejected Mr Ball's application for ToR relief. This rejection was on the basis that Mr Ball had not imported his goods within 12 months of becoming resident in the UK. HMRC explained that Mr Ball could seek a review of this decision or could appeal to a Tribunal that was independent of HMRC but that, in either case, he must act by 24 March 2021.

q) On 22 March 2021, the Tribunal received a letter from Mr Ball. Mr Ball explained why he was not able to provide a copy of the refusal letter from HMRC and explained (as set out above) that he had not heard of ToR relief until contacted by the removals company. Mr Ball continued:

The belongings that we have brought back from Spain have all been paid for with due taxes paid as applicable. Some in the UK, some in Spain and others where we have lived or been on holiday.

This is a despicable and disgraceful way to treat British people. I, like others, should have the right to do what they wish with their personal goods.

It is a stealth tax.

Finally, this TOR is the persecution of good people. If any of you have any common sense you will see what this tax is and ensure that neither my wife nor I should be so persecuted.

Chronology of this appeal

3. The Tribunal processed Mr Ball's appeal and notified it to HMRC. The appeal was allocated to the Standard category. On 17 April 2021, HMRC were directed to file and serve their Statement of Case.

4. On 2 June 2021, HMRC filed their Statement of Case in this appeal. The Tribunal subsequently issued case management directions for the preparation of this appeal, with the intention that it would proceed to an in-person hearing or a video hearing, where both parties would have the opportunity to make oral submissions.

5. However, on 30 September 2021, HMRC applied for this appeal to be heard as a paper hearing on the basis that neither party intended to rely upon witness evidence. Mr Ball had not supplied any documents to the Tribunal beyond his letter of appeal. The Tribunal asked Mr Ball if he agreed to the appeal being heard without an oral hearing at which he could make submissions. On 11 December 2021, Mr Ball agreed that the appeal should be heard as a paper hearing on the basis of the documents provided in the bundle prepared by HMRC.

Discussion and decision

6. Customs duties on the import of goods into England have been in place, at varying levels and on varying goods, since at least 1689. These duties provided the state with a source of revenue while also, to some extent, protecting domestic industries from the competition posed by imports of cheaper goods made in foreign states. In the modern

era, customs duties continue to exist but trade agreements between states remove or reduce duties on the import of specified goods or goods from certain countries. While the UK was a member of the EU, which required the free movement of goods within its borders, there were no customs duties on the import of goods from other EU countries into the UK. However, there were customs duties payable on the import into the UK of goods from countries outside the EU. Since 1973, VAT has also been chargeable on such imports. Upon the UK's departure from the EU at the end of 2020, a person importing goods into the UK from any EU country became liable to pay customs duties and import VAT on that import.

7. I have no doubt that Mr Ball, reading this, will think that none of this does or should apply to him because he is not a trader. He has no intention of selling his belongings. I agree that all Mr and Mrs Ball wished to do was to bring the personal items and household goods, that they had had in their old home in Spain, into the UK to have in their new home. Parliament has recognised that there are circumstances where people will wish to bring their personal and household items into the UK, and that it would be inappropriate to charge those people customs duties and import VAT on the import of those goods. ToR relief was created with the intention of helping people in Mr Ball's situation, by granting such people relief from having to pay import VAT and customs duties on the household goods they have brought into the UK when they have transferred their residence to the UK from another country. However, there are criteria to be met in order to be granted ToR relief, and HMRC have refused to grant Mr Ball relief because they say he does not meet all of the statutory criteria and that there are no exceptional circumstances in this case.

8. This appeal is about whether Mr Ball does satisfy the statutory requirements for ToR relief and, if he does not, whether there are exceptional circumstances that make it appropriate for a statutory requirement to be waived so Mr Ball can be granted ToR relief on his importation of his household goods.

The statutory requirements for ToR relief

9. The legislative starting point is the Customs and Excise Duties (Personal Reliefs for Goods Permanently Imported) Order 1992 (the "1992 Order"). The 1992 Order has been amended many times, most recently due to the UK's exit from the EU (so that what had previously been references to a person transferring their residence from a "third country", i.e., a country outside the EU, became references to a person transferring their residence from "another country" to the UK).

10. An incorrect version of the 1992 Order was provided in the bundle. Article 11 of the 1992 Order, as it applied on 18 January 2021, provides:

(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.

11. As can be seen, there are five requirements to meet in Article 11(1). Two of those requirements relate to residence and intention, two relate to the property and the final requirement relates to the date of the import.

12. Looking first at the property requirements, (c) and (d), the goods that Mr Ball declared in his ToR relief application are items such as bookcases, chairs and coffee tables. I am satisfied that they are items intended for Mr Ball’s personal or household use in the United Kingdom, and I am also satisfied that these goods were used for Mr Ball’s personal or household use for at least six months when he was living in Spain.

13. Criteria (a) and (b) relate to normal residence, which is to be decided in accordance with Articles 3 and 4 of the 1992 Order. These articles provide:

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.

14. There is no evidence of Mr and Mrs Ball's occupational or personal ties to Spain between 22 February 2004 and 6 May 2019, or how often they visited the UK during this period. Nevertheless, on the basis that Spain was where they usually lived, I am satisfied that Mr and Mrs Ball were normally resident in Spain from 22 February 2004

until 6 May 2019. I am also satisfied that Mr and Mrs Ball gave up their normal residence in Spain on 6 May 2019.

15. In his ToR relief application, Mr Ball stated that he would be living in the UK for 12 consecutive months (and indeed, he had already been living in the UK for longer than this by the time he made his application). I am satisfied that, when they returned to the UK on 7 May 2019, Mr and Mrs Ball had the intention of normally living in the UK for (at least) the next 12 months. Mr and Mrs Ball had personal ties to the UK due to the presence in the UK of their son, and having previously lived in the UK. Mr Ball has referred to 34 years of service in the Royal Air Force but it is unclear whether this period coincided with Mr and Mrs Ball's time in Spain or whether they had already retired by the time they moved in Spain in 2004 (when Mr Ball would have been 57). In the absence of any evidence of any occupational ties to either the UK or Spain, I rely upon the evidence of personal ties and intention. I conclude that Mr and Mrs Ball became normally resident in the UK on 7 May 2019. Therefore, Mr Ball meets requirements (a) and (b) because he was normally resident in Spain for at least 12 months and, when he moved back to the UK, he intended to live in the UK for at least 12 months.

16. The final criterion in Article 11(1) is that the goods to be imported are declared for relief within a period of 18 months. This period starts not earlier than six months before the date on which the applicant becomes normally resident in the UK, and ends not later than 12 months following the date on which the applicant becomes normally resident in the UK. In Mr Ball's case, the 18 month period began on 7 November 2018, and the period ended on 7 May 2020. Mr Ball's application was made on 18 January 2021. Therefore, the goods were not declared for relief within the timeframe required by Article 11(1)(e). I conclude that Mr Ball has not satisfied all the criteria of Article 11.

Can the Article 11(1)(e) requirement be waived?

17. The Customs (Reliefs from a Liability to Import Duty and Miscellaneous Amendments) (EU Exit) Regulations 2020 (the "2020 Regulations") provide that HMRC must grant relief to a person who applies for a relief set out in a certain document (described further below) and who meets all of the eligibility criteria. However, the 2020 Regulations also provide that relief may be granted if an eligibility criterion is not met but that criterion is one that can exceptionally be waived.

18. Regulation 5 of the 2020 Regulations provides:

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

(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).

19. Therefore, it is necessary to look at the “UK Reliefs document” to see if the criterion in Order 11(1)(e) is one that is described as being subject to exceptional waiver. Again, the version of the legislation provided in the bundle is out of date but, as at 18 January 2021 when Mr Ball made his application, Regulation 2 of the 2020 Regulations defined “UK Reliefs document” as

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.

20. No copy of any version of the document entitled “United Kingdom Customs Tariff: Reliefs from Import Duty” has been provided in the bundle for the Tribunal. The current version of this document (version 1.3, published on 28 December 2021) is available online but the version relevant to this appeal (version 1.1) no longer appears to be available. I am indebted to the Tribunal panel in *Brooks v HMRC* [2021] UKFTT 0449 (“*Brooks*”) who published sufficient detail of Version 1.1 in their decision for me to be able to confirm that ToR relief was a relevant relief on the date Mr Ball made his application. In *Brooks* the Tribunal also set out the paragraphs of Version 1.1 of “United Kingdom Customs Tariff: Reliefs from Import Duty” that apply to ToR relief. Those paragraphs provide:

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

21. So, if Mr Ball can show that exceptional circumstances apply, the criterion in Article 11(1)(e) may be waived, and Mr Ball may be granted ToR relief. HMRC had invited Mr Ball to provide information about any exceptional circumstances in their letter of 20 January 2021. In his response of 21 January 2021, Mr Ball explained to HMRC that he and his wife chose to leave their goods in Spain while they identified a

house to buy in the UK, and that their purchase of a house was delayed by the effects of the pandemic.

22. The Tribunal in *Brooks* considered a similar situation to the position in which Mr and Mrs Ball now find themselves. Mr and Mrs Brooks moved from France to the UK in 2016 but had left their household goods in their house in France in order to make that house more saleable and to avoid UK storage fees. Mr and Mrs Brooks had not been able to sell their house in France until November 2020, and had not brought their household goods back to the UK until early 2021. HMRC had refused Mr and Mrs Brooks' application for ToR relief, and Mr and Mrs Brooks appealed to the Tribunal against that refusal.

23. The Tribunal in *Brooks* concluded that Mr and Mrs Brooks did not meet the requirement in Article 11(1)(e) because they had been resident in the UK for more than 12 months before their goods were brought into the UK. The Tribunal in *Brooks* went on to consider whether there were exceptional circumstances in that case:

19. This leaves the question of exceptional circumstances or exceptional waiver. Here the Tribunal finds that [HMRC's counsel'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.

24. Mr and Mrs Brooks moved back to the UK in 2016, whereas Mr and Mrs Ball did not move back to the UK until 2019. But there is otherwise little to distinguish the two cases. Mr and Mrs Ball could have brought their household goods into the UK in May 2019 and put them into storage in the UK. That would have been more expensive than putting the goods in storage in Spain but, as the Tribunal in *Brooks* has noted, there are costs involved in moving home. Although the pandemic affected Mr and Mrs Ball's progress in buying a house, it does not seem to have affected their ability to organise the removal of their goods from Spain. The removal was booked for 20 January 2021,

when the UK was in its third pandemic lockdown. Also, as the Tribunal concluded in *Brooks*, the pandemic was not exceptional because it affected almost everyone everywhere. I infer that Mr and Mrs Ball had not appreciated that the UK's departure from the EU would affect them in the way it did – if they had, they might have ensured their goods were in the UK, in storage, before 31 December 2020. However, the UK's departure from the EU affected people all across Europe and so also cannot be regarded as an exceptional circumstance.

25. I conclude that there are no exceptional circumstances in this case that would make it appropriate for Mr Ball to be granted exceptional waiver of the criteria in Article 11(1)(e).

26. Mr Ball has described the imposition of customs duties and import VAT as the persecution of British people and a stealth tax. I do not agree that the imposition of customs duties and import VAT constitutes persecution, and the UK's departure from the EU was far from stealthy, but I do feel a considerable amount of sympathy for Mr and Mrs Ball. It seems they had, understandably, not appreciated the full implications for them of the UK's departure from the EU. If they had realised how they would be affected, they could have put their goods into storage in the UK towards the end of 2020, and been saved both the stress of making an application for ToR relief at an already stressful time, and the cost of the import VAT and customs duties that have been imposed. Like Mr and Mrs Brooks, Mr and Mrs Ball were caught unaware by these changes; sadly, it seems unlikely that they will be the last people so affected.

Conclusion

27. For the reasons set out above, this appeal is dismissed.

28. 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.

JANE BAILEY

TRIBUNAL JUDGE

RELEASE DATE: 03 MARCH 2022