



Neutral Citation: [2023] UKFTT 914 (TC)

Case Number: TC08979

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2022/11326  
TC/2022/11433

*Procedure – Application for stay behind another appeal – Whether decision in other appeal will be of material assistance to Tribunal in resolving issues in present case – Whether expedient to direct a stay – Application dismissed*

**Heard on:** 26 October 2023  
**Judgment date:** 27 October 2023

**Before**

**TRIBUNAL JUDGE BROOKS**

**Between**

**NEWPORT CITY COUNCIL**

**Appellant**

**and**

**(1) WELSH REVENUE AUTHORITY**

**and**

**(2) THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS**

**Respondents**

**Representation:**

For the Appellant: Owain Thomas KC, instructed by PricewaterhouseCoopers LLP

For the Respondents: James Puzey of counsel, instructed by the Welsh Revenue Authority and the General Counsel and Solicitor to HM Revenue and Customs

## DECISION

### INTRODUCTION

1. Newport City Council (“Newport”) has appealed against decisions of the Welsh Revenue Authority (“WRA”) in relation to land disposal tax (“LDT”) and HM Revenue and Customs (“HMRC”) in relation to landfill tax (“LFT”). It has applied for a stay of its appeals behind the appeal of *Cardiff City Council v HMRC* TC/2020/03095 (“*Cardiff*”), essentially on the ground that the decision of the Tribunal in *Cardiff* will be of material assistance in resolving the issues before the Tribunal in Newport.

2. There is also an application to join the appeals of Newport against the WRA and HMRC. Unlike the stay application, this application is not contentious. I have therefore directed that the appeals be joined and heard together by the same Tribunal (see below).

3. Owain Thomas KC appeared for Newport and James Pewsey represented both the WRA and HMRC. I was very much assisted by their helpful written and oral submissions. However, as I explained at the hearing, although carefully considered and to avoid any further delay in this matter (as it was confirmed that a case management hearing would be listed to consider the stay application as long ago as 14 November 2022) I have not referred to those submissions in detail in this decision.

4. With the consent of the parties and given its nature the form of the hearing was V (video) using the Tribunal video hearing system. 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

5. Both the WRA and HMRC appeals concern the disposal by Newport of material at a landfill site at Newport Docks between 1 April 2018 to 31 March 2019 (WRA) and for periods 12/17 and 03/18 (HMRC). These disposals included material from Neals Soils Supplies Limited (“Neals”), a waste disposal business. Newport accounted for LDT and LFT at the lower rate which the WRA and HMRC say is wrong contending that the material has been incorrectly classified and the disposals should have been accounted for at the standard rate.

6. The appeal in *Cardiff* also concerns the disposal of material from Neals at a landfill site at Lamby Way, Cardiff, in respect of periods ending 31 January 2016 to 31 July 2017. HMRC contends that this material has been incorrectly classified and that LFT should be accounted for at the standard as opposed to the lower rate.

7. Although different legislative provisions apply in the Newport WRA and HMRC appeals, the Landfill Disposal Tax (Wales) Act 2017 (for LDT) and Finance Act 1996 (LFT), it is accepted that the Welsh provisions and what is now the English legislation (which before 1 April 2018 also applied to Wales) are materially the same for the purposes of the issues to be determined in the Newport appeals.

8. However, despite those similarities there are differences between the appeals in Newport and *Cardiff*.

9. For example, in *Cardiff* it is argued that the material it deposited at Lamby Way was not liable to LFT because it was used for preparing the site for closure and, as such, there was no disposal of the material as waste. There is also an argument in *Cardiff* regarding the validity of the third and fourth assessments in that case. Another issue in *Cardiff* concerns disposals of unprocessed material from Islwyn School and whether it is exempt colliery spoil. None of these issues are raised in the Newport appeals.

10. Issues raised in the Newport appeals but not in *Cardiff* include questions on the frequency of loss on ignition (“LOI”) testing and a series of public law arguments.

11. The Newport WRA appeal also concerns disposals of material from Woodstock Skip Hire and Recycling (“Woodstock”) which does not feature on *Cardiff*. However, it is apparent from the LDT in dispute, £2,950,704.70 attributable to the disposal of Neals material and £40,499.12, to Woodstock disposals that the majority of disposals in the Newport WRA appeal were of Neals material.

12. Also, while there is a time limit argument in relation to the issue of assessments in both *Cardiff* and the Newport HMRC appeal as this is clearly a very fact specific issue there can be no “read across” in the different appeals.

#### **PROCEDURAL POSITION OF APPEALS**

13. The proceedings in *Cardiff*, which has been listed for a nine day hearing between 12 – 22 July 2024, are at a much further advanced stage than Newport.

14. By contrast no directions have been issued for the further progress in either of Newport’s appeals. Although the WRA provided its statement of case, pursuant to Rule 25 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, on 20 July 2022 there has been no exchange of evidence or provision of listing information in either the WRA or HMRC appeal.

#### **LAW**

15. It is clear that the Tribunal has the power, under Rule 5(3)(j) of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, to direct a stay of proceedings.

16. There was broad agreement that the proper approach to be adopted by the Tribunal in a stay application such as the present was that confirmed by Lord Osborne, delivering the opinion of the Court of Session (Inner House), in *HMRC v RBS Deutschland Holdings GmbH* [2007] STC 814 who said, at [22]:

“... As we would see it, a tribunal or court might sist [stay] proceedings against the wish of a party if it considered that a decision of another court would be of material assistance in resolving the issues before the tribunal or court in question and that it was expedient to do so.”

17. Such an approach has been adopted by this Tribunal eg in *Coast Telecom Ltd v HMRC* [2012] UKFTT 307 (TC) in which Judge Berner observed, at [21], that the “question is not whether the determination of another court **might** provide assistance, but whether it **will** provide material assistance” (emphasis added). Accordingly it is necessary to consider whether the decision in *Cardiff* will provide material assistance in resolving the issues in Newport and whether it is expedient to direct a stay.

18. In doing so, as when exercising any power under the Tribunal Procedure Rules, it is necessary to have regard to the overriding objective of the Rules (see Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009) to deal with the case “fairly and justly” which includes making directions which are proportionate to the importance of the case, the complexity of issues, the anticipated costs and resources of the parties and avoiding delay so far as compatible with the proper consideration of the issues.

#### **DISCUSSION AND CONCLUSION**

19. In essence Mr Thomas, for Newport, contends that as the vast majority of disposals in dispute relate to Neals material, which is the same material in dispute in *Cardiff*, it is in the interests of efficient administration of justice for the factual evidence to be determined once by the Tribunal. He also refers to legal issues common to both *Cardiff* and Newport appeals.

20. He also accepts that there are some aspects of all appeals with no direct correlation to the other appeals but contends that this is to be expected and says that there does not have to be a complete overlap before there can be a proper basis for a stay.
21. Mr Puzey emphasises the differences between *Cardiff* and the Newport appeals. While he accepts that the majority of disposals were of Neals materials he makes the point that Neals, which operates a waste disposal business, is not the source of the waste and that although the material was processed by Neals because *Cardiff* concerns earlier periods than the Newport appeals the source of the waste will not necessarily be the same.
22. Having carefully considered the written and oral submissions made by Mr Thomas and Mr Pewsey, I have come to the conclusion that while the decision of the Tribunal in *Cardiff* might provide assistance in resolving the issues in the Newport appeals, given the differences between them I am unable to conclude that *Cardiff* will provide material assistance in doing so.
23. Even if that were not the case, I would have some difficulty in deciding that it was expedient to direct that the Newport appeals be stayed. This is because of the respective procedural stages of the Newport appeals when compared to *Cardiff*. Assuming that the Newport appeals will require a hearing of similar length to *Cardiff* (and it is possible a longer hearing window will be required) it is unlikely that it will be possible to list the Newport appeals before the end of 2024. By which time I would expect *Cardiff* to have been determined and the decision in that case to be available for the Tribunal to consider in the Newport appeals.
24. Therefore, having regard, as I must, to the overriding objective and for the reasons above the application for a stay in the Newport appeals is dismissed.
25. I also make the following directions for the further progress of the Newport appeals

### DIRECTIONS

It is directed that:

- (1) The appeals of the Appellant, Newport City Council, against the decisions of the Welsh Revenue Authority (WRA) under reference TC/2022/11326 and its appeals against the decisions of HM Revenue and Customs (HMRC) under reference TC/2022/11433 to be joined, case managed and heard together by the same Tribunal
- (2) The Respondents in the appeal under reference TC/2022/11433 (ie HMRC) shall send or deliver a statement of case to the Tribunal, the Appellant and the WRA within 60 days
- (3) The parties shall liaise and use their best endeavours to agree directions for the further progress of the appeals and, not later than 56 days receipt of the statement of case, provided in accordance with direction (2) above **either** provide their joint proposed directions **or**, if agreement not possible that party's proposed directions for the further progress of the appeals to a hearing.
- (4) Any party may apply for these Directions to be amended, suspended or set aside or for further Directions.

Shortly after the expiry of the time for the provision of proposed directions in direction (3) the Tribunal will, having considered proposed directions (either joint or those of a party) will issue further directions for the progress of these appeals

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

26. 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.

**JOHN BROOKS  
TRIBUNAL JUDGE**

**Release date: 27<sup>th</sup> OCTOBER 2023**