TC01597

Appeal number: TC/2010/04240

Capital gains tax - s 2 TCGA 1992 - taxpayer left UK – evidence that he remained resident and retained links with the UK for at least part of the year of assessment – no close connection to country to which he moved - whether he remained resident or ordinarily resident in the UK during year of assessment - yes

FIRST-TIER TRIBUNAL

TAX

DR PAUL BROOME **Appellant**

- and -

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

TRIBUNAL: MICHAEL S CONNELL (TRIBUNAL JUDGE)
CAROLINE DE ALBUQUERQUE (MEMBER)

Sitting in public at 45 Bedford Square, London WC1 on 21 July 2011

The Appellant Dr Paul Broome in person

Mrs Karen Weare, Officer of HM Revenue and Customs, for the Respondents

DECISION

1. The Appellant, Dr Broome appeals an amendment to his Self Assessment for the year ended 5 April 2001. The amendment was made following an enquiry and the issue of a closure notice under s 28A Taxes Management Act 1970 (TMA 1970). The original self assessment showed tax due of £2,013.46. The additional tax charged by the amendment was £26,935.80. The total tax charged following the amendment is £28,949.26.

2. An enquiry was opened into Dr Broome's 2001 tax return under s 9A TMA 1970 on 9 January 2003. HMRC had information which indicated Dr Broome had made capital gains on the disposal of two properties in the year to 5 April 2001. No capital gains were shown on the tax return for this year. The properties were 37a Berks Hill, Chorleywood, Rickmansworth, Hertfordshire, sold on 30 May 2000 and 78 Knaveshire Crescent York, sold on 26 January 2001.

3. A jeopardy amendment to Dr Broome's self assessment for the year ended 5 April 2001 was raised under s 9C (2) Taxes Management Act 1970 on 6 May 2003. The amendment brought into charge £26,935.80 additional tax based on net capital gains of £77,542. Dr Broome's accountants appealed the amendment on 13 June 2003 stating that revised computations would be supplied to HMRC by 30 June 2003. In the absence of the computations promised, a closure notice was issued on 21 October 2003.

4. Dr Broome appealed against the closure notice on 18 November 2003. The grounds for his appeal were (inter alia) that he was exempt from capital gains tax, as at the date of the disposals he was non-resident in the UK

5. Based on figures provided by Dr Broome's accountants in January 2004 and after an extensive exchange of correspondence over a number of years, HMRC revised the gain brought into charge which is now £71,638.00, the additional tax based on that figure after allowances being £21,694.20.

Matters at Issue

6. a) Whether Dr Broome was resident in the United Kingdom at any time during the tax year ended 5 April 2001

   b) Whether Dr Broome is chargeable to capital gains tax on the disposal of two properties during the tax year ended 5 April 2001

The Evidence

7. The evidence included three document bundles. Oral evidence was given by Dr Broome on his own behalf. Oral evidence was also given by Mrs Karen Fowler Officer of HMRC on behalf of the Commissioners.

Relevant legislation

8. Section 2 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) states:

"… a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment during any part of which he is resident in the United Kingdom, or during which he is ordinarily resident in the United Kingdom."

Section 9 (TCGC 1992) states:

"*(1) in this act "resident" and "ordinarily resident" have the same meanings as in the Income Tax Acts*

(2) section 207 of the Taxes Act [ICTA 1988] (disputes as to domicile or ordinary residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section."

[sub-section (2) above provides the right of appeal in matters of residence or domicile to the Tribunal]

Background Facts

9. Dr Broome was born in England in 1949. He was resident in the UK until leaving in 1977 to work in Saudi Arabia for a temporary period. He subsequently also worked in Iran and Switzerland. He visited the UK intermittently during 1978 and 1979 before returning to live and work in the UK in September 1980. When applying for income tax allowances he stated that he expected to stay in UK for two years but that he would probably not remain permanently. During this time he became ordinarily resident.

10. Dr Broome married in 1989. All tax returns after 1992/93 show Dr Broome's address as being 125 Valley Road, Chorleywood, Rickmansworth, Herts being the home (and principal private residence for tax purposes) of Dr Broome, his wife and their children. On 1 June 1995 Dr Broome commenced work as a self-employed consultant and submitted accounts details on UK self assessment returns.

11. Whilst married, Dr Broome purchased a number of properties in his own name.

46 Quickly Lane Chorleywood	purchased	18.03.1997 - [sold 20.08.2003]
78 Knaveshire Crescent, York	purchased	10.10.1997 - [sold 26.01.2001]
37a Berks Hill Chorleywood	purchased	10.07.1998 - [sold 30.05.2000]

12. In February 1998, Dr Broome and Mrs Broome separated and on 12 July 1999 were divorced. Thereafter, Dr Broome continued to live at 125 Valley Road, Chorleywood.

13. Doctor Broome says that following the divorce he had difficulty securing satisfactory access arrangements to his children and that shortly after that he decided to live in southern France. He went there to find a property and agreed to

purchase 10 Chemin de Masseboeuf, Plasscassier Le Plan de Grasse, Provence in October 1999 committing himself to the transaction by payment of a €325,000 deposit on 1 November 1999. It was at this stage that he considers he left the UK permanently. Shortly after that he moved to Spain and then the United States and sometime later returned to France.

14. Dr Broome agreed a sale of the former matrimonial home 125 Valley Road, Chorleywood subject to contract and subject also to completing certain unfinished building works. He says that completion of the property in France was initially left open pending the sale of his property in the UK. In the event the UK sale did not proceed.

15. Dr Broome says that he went to France towards the end of March 2000 before the start of the 2000 tax year in order to prepare for legal completion of the French property. He also opened a French bank account on 24 March 2000, which he says required his physical presence in France. Eventually on 31 March 2000 completion of the French property was formally fixed for 12 April 2000.

16. Dr Broome's furniture and personal possessions at 125 Valley Road, Chorleywood were put into storage on 25 May 2001. On 1 June 2001 the property was let out to a tenant. Dr Broome says that 25 May 2001was the last time he stayed at the property when he was supervising the storage of his furniture. Rental income from 125 Valley Road and the other properties owned by Dr Broome was declared in his UK tax returns. He purchased a property at Sandy Lodge Road, Moorpark, Rickmansworth in August 2000 to enable him to spend time nearer to his children. Unfortunately, this did not assist matters and the property was subsequently sold. The property at 37a Berks Hill, Chorleywood was sold on 30 May 2000 and 78 Knaveshire Crescent York on 26 January 2001.

17. Dr Broome completed, signed and submitted a self assessment return for the tax year ended 5 April 2000 on 31 January 2001. In the reply to question nine of the return Dr Broome stated that he was not claiming non-resident status. Dr Broome's address was shown as that in France. He submitted his return for the tax year ended 5 April 2001 on 16 January 2002. The return showed his business address as a UK PO Box in Rickmansworth, Herts. The reply to question nine of the return again stated that Dr Broome was not claiming non-resident status. An additional page by way of amendment to the 2000/01 return claiming non-resident status was not received by HMRC until 13 September 2005.

18. Dr Broome sold his French property on 24 June 2005. The French revenue authorities say that Dr Broome, when declaring the gain on the disposal of his French property, declared that he considered himself to be a non-resident for the purposes of French regulations in force and that his primary residence was in England. The French Revenue authorities state that Dr Broome is unknown to them, and that he did not pay any income tax in France whilst resident there.

19. Dr Broome does not dispute that he returned to the UK on various short visits during the 2000/01 tax year. The records show that he left the UK on 29 March 2000 and returned on 27 April 2000 and that he left again on 29 April 2000. A schedule of his visits to the UK showed that in 2000/01 he spent a total of 19 whole days in the UK, compared to 103 whole days in the previous year from October 1999 until 5 April 2000. In the years that followed, Dr Broome spent 27 whole days in the fiscal year 2001/02, 41 whole days in each of 2002/03 and 2003/04 and 36 whole days in 2004/05. He therefore spent the greater part of his time out of the UK after April 2000.

HMRC's contentions.

20. HMRC say that none of the documents or other evidence produced by Dr Broome demonstrates that he was not resident in the United Kingdom after 5 April 2000. HMRC contends that on a balance of probabilities, he was resident in the United Kingdom during the year 5 April 2000 to 5 April 2001 and that accordingly capital gains tax is due and payable on the two properties, 37a Berks Hill Chorleywood, and 78 Knaveshire Crescent, York. HMRC in support of their contentions say that:

a) There is evidence that Dr Broome continued to be resident in the United Kingdom after 6 April 2000. Dr Broome appears on the UK voting register as resident at 125 Valley Road up to and including 2001. His property at 125 Valley Road was available as accommodation until it was let out on 1 June 2001.

b) Dr Broome's French bank account was opened with Credit du Nord on 24 March 2000 and closed on 30 April 2006. It refers to the *'holders address on 17 March 2001 place of residence 125 Valley Road, Chorleywood United Kingdom..'*

c) Although Dr Broome purchased the property in France on 12 April 2000, he was only able to provide copies of utility bills from May 2000 and a French television licence for the period 1 September 2000 to 31 August 2001.

d) Dr Broome provided evidence that he had been assessed to property tax in France (Taxe Fronciere) as the owner of 10 Chemin de Masseboeuf Plasscassier but the tax bill was addressed to Dr Broome at 125 Valley Road, Chorleywood, and the assessment did not include a declaration that the French property was Dr Broome's 'principal private residence allowance'.

e) There is no evidence which shows that Dr Broome applied to the French authorities to become resident in France. French taxation law states that a resident of France must file a tax return and pay tax on their worldwide income. However Dr Broome was unknown to the French Revenue. The French Revenue authorities state that *"Mr Broome is unknown to the French Revenue. He has not paid any income tax in France for the period from 05*

April 2001 to 06 April 2002 and has not paid any income tax for the years 2002 to 2005"

f) Further documentation obtained from the French authorities includes a 'Document Hypothecaire Normalise' (standardised mortgage document) dated 24 June 2005, which sets out details relating to Dr Broome's sale of the French property. The document refers to Dr Broome's residence as being 125 Valley Road, Chorleywood, England. The document also says '*with regard to the Seller. He considers himself non-resident in the sense of French regulations currently in force, his primary residence being in England'*

g) None of Dr Broome's post-2000 self assessment tax returns contained non-residency claims and claims for 2001 onwards were not made until March 2007 even though HMRC first wrote to Dr Broome regarding this matter in October 2004.

h) No capital loss claim has been made in respect of the French property.

i) There is no evidence which shows that Dr Broome became resident in Spain. Although Dr Broome also owned a property in Spain and spent a considerable amount of his time there between 2002 and 2005, he was not registered with the Spanish tax authorities

j) There is a lack of evidence to confirm any of the dates given by Dr Broome as the date he permanently left the UK.

k) No claim has been made for capital losses on the French property to off set any capital gains arising.

l) Dr Broome purchased a property at Sandy Lodge Road, Moorpark in August 2000 in order to be nearer to his children and clearly envisaged spending time in the UK during 2000/01.

Dr Broome's contentions

21. Dr Broome responds that:

a) He was non resident for the whole of the tax year ended 5 April 2001. He states that he left the UK permanently to reside abroad on or around 30 March 2000 severing social and family ties and that he should not be charged to capital gains tax on the sale of his properties.

b) From 30 March 2000 125 Valley Road was unoccupied and then let out from 1 June 2001 onwards, as declared in all subsequent tax returns.

c) 125 Valley Road had been his principal private residence from the date of its acquisition but that if he had been aware there would be any doubt regarding his decision to relinquish his UK residency, it would have been a relatively straightforward matter to nominate his principal private residence in the UK

as 37a Berks Hill Chorleywood which would have eliminated any capital gains tax issue on that property.

d) He avoided completing UK electoral register returns in order to elude 'targeting by all and sundry' and that any entry remaining in his name would have been a continuation from the time his ex-wife made returns until the tenants themselves made one, if indeed they did.

e) It is not necessary to own a foreign property in order to relinquish UK residency. He argues that it is unreasonable and unrealistic to expect him to be able to produce utility bills from the time he first took occupation of the French property some five or more years after the event. Utility accounts for the property would not in any event be switched into his name until the next complete month after its acquisition

f) The capital gains tax declaration from the sale of the French property in June 2005 was completed by the conveyancer in France in his absence and without reference to him on the point of residence. He says that he was in fact then non-resident in France as it was spending the majority of his time in Spain.

g) Should the gains be found to be chargeable then there are capital losses available to set against those gains. Dr Broome says that the French property required work to be done, including underpinning the pool, and that he had not claimed the costs or other expenses relating to the sale of this and the other UK properties as he had always assumed that there had been no chargeable gain.

h) He had been working on a research project for several years, although no income had been generated from it and he was effectively unemployed. Had he been UK resident he would have registered for UK benefits.

i) He did not wish to become fully resident in France because French taxation law states that a resident of France must pay tax on worldwide income. He had in any event, he says, decided to sell the French property shortly after its purchase.

j) It is only necessary to register with the Spanish authorities if one spends more than 182 days in Spain and therefore he held off making a final 'country of residence decision' until the outcome of this appeal was known

Summary

21. An individual is liable to capital gains tax only if he is resident in the UK in the year of assessment or any part of the year of assessment in which the chargeable gain accrues to him or if he is ordinarily resident in the UK during such year of assessment (TCGA 1992 s 2(1)). If an individual makes a disposal in a year of assessment in which he is neither resident nor ordinarily resident in the UK he is not liable to CGT in respect of that disposal.

22. In 1999 Dr Broome was ordinarily resident in the UK. The onus of proof is therefore with him to show that he left the UK and that he was resident outside the UK for the whole of the tax year ended 5 April 2001. The standard of proof is the ordinary Civil Standard of the balance of probabilities. The Tribunal does not therefore need to consider the question of 'ordinary residence'. The question is whether Dr Broome was resident during any part of the 2000/01 fiscal year because, if he was so resident, he remained ordinarily resident.

23. 'Residence' is not defined in the Taxes Acts and is determined by the facts of each case and the principles established in case law applied to those facts *[Commissioners of Inland Revenue v Zorab (1926 11 TC 289)]*. An individual who has been ordinarily resident in the UK and who leaves the UK permanently for a settled purpose will be treated as not resident and not ordinarily resident from the date of departure. The question before the Tribunal is whether Dr Broome was resident in the UK at any stage during the tax year commencing 5 April 2000.

24. Evidence of intention is required to support a claim for non-resident status. No particular period of absence or presence in the UK is prescribed by statute for the purpose of establishing actual residency and the regularity and frequency of return visits are facts to be taken into account, together with family and business ties, the nature of visits and connections with the UK in general. The availability of living accommodation in the UK is a factor but not a deciding factor to be borne in mind. Equally the fact that an individual has a home elsewhere is not conclusive evidence of residency as a person may have accommodation in more than one country *[Levine v IRC (1928) 13 TC 486]*.

25. Although it is not essential to show a distinct break, it will be difficult to show that UK residence has been lost unless a clear and definite change in the taxpayer's pattern of life has occurred in the process of leaving the UK. It is possible for there to be a set of circumstances where a tax payer gradually runs down his connections with and presence in the UK to the extent that ultimately he becomes non-resident without actually in one year or the next making a distinct break. The principle point is that an individual must show that his move abroad reflected and evidenced a settled intention to become non-resident. Connections to the country in which the individual claims to be resident must also be present.

26. HMRC in its submissions referred to IR20, which was the guidance provided by HMRC from December 1999 to residents and non-residents in respect of liability to tax in the United Kingdom. The guidance was replaced by HMRC6 in April 2009. IR20 therefore reflects the guidance in place at the time Dr Broome made arrangements to dispose of or let his UK properties and move to France in March/April 2000.

27. To establish that the individual has moved abroad permanently and is no longer resident or ordinarily resident he must provide evidence of his intentions in that regard. IR20 provides an example that an individual may acquire

accommodation abroad to live in permanently and if he continues to have property in the UK for his use, the reason for doing so must be consistent with his stated aim of living abroad indefinitely. IR20 says that any subsequent returns to the UK had to be no more than 'visits'.

28. IR20 also refers to the rule that an individual will remain resident and ordinarily resident unless any visits during the period of absence amount to less than 183 days and an average of 91 days per tax year over a period of four years - s336 ICTA 1988. The rule is however irrelevant in this case as it only applies once it has been established that the taxpayer has relinquished his UK residency. The rule is in place to determine whether an individual who has already divested himself of UK residency but who returns to the UK on visits nonetheless remains non resident.

29. If an individual leaves or arrives in the UK part way through the year, IR20 guidance states that strictly he is taxed as a UK resident for the whole of a tax year if he is resident in the UK for any part of it, but if he arrives or leaves part way through a tax year, the year may by concession (extra statutory concession A11) be split. However, the Tribunal has no jurisdiction over whether or not HMRC should apply the concession insofar as it relates to chargeable gains.

Conclusions

30. In or around October 1999 Dr Broome made a decision to leave the UK and live in France. He found a property in to purchase, which he completed on 12 April 2000. He also made arrangements to either sell or let out the properties, which he owned in the UK. The precise date when Dr Broome took occupation of the property in France is unclear. However he was clearly making preparations to physically leave the UK before the beginning of the tax year commencing 5 April 2000.

31. The schedule of Dr Broome's visits to the UK after April 2000 show that he visited the UK on a total of 19 days in 2000/01, 27 days in 2001/02, 41 days in 2002/03, 41 days in 2003/04 and 36 days in 2004/05. Dr Broome argues that he had formed a settled intention to relinquish his UK residency during the fiscal year 1999/2000, that the evidence confirms he had become non resident by 4 April 2001, and that he remained so, despite occasional visits to the UK, for at least the following four or more years.

32. There is therefore a significant amount of evidence to show that Dr Broome intended to leave the UK for an indefinite period. The issue is however whether he intended to, and did in fact relinquish his UK residency before the start of the 2000/01 fiscal year. In that respect it is necessary for Dr Broome not only to have loosened his ties with the UK but also to have a settled intention in that regard *[Levine v Commissions of Inland Revenue]* and to have established a real and closer connection to his new country of residence *[Goodwin v Curtis (1998) 70TC 478,510]*.

33. The fact that, having left the UK, Dr Broome gave 125 Valley Road, Chorleywood as his postal address in post-2000 tax returns, in his French property tax declaration, for his French bank account and for other purposes is persuasive but not conclusive evidence that he had not severed ties with the UK. However, in his tax returns he did not include a declaration, as he could have done, that the French property was his principal private residence. Similarly, there is no evidence that Dr Broome became, or ever intended to declare to the French authorities that he had become, resident in France. He says that to do so would have resulted in him paying tax on his worldwide income, and that in any event he had decided to sell the French property not long after buying it.

34. Significantly, none of Dr Broome's post-2000 self assessment tax returns contained any non-residency claims. In particular, in answer to the question 9 "*Are you claiming that you were not resident or not ordinarily resident or not domiciled in the UK or dual resident in the UK and another country for all or part of the year?*" Dr Broome answered "*No*". Also, Dr Broome did not submit a completed form P85 ('Income Tax Claim when leaving the UK') until 14 July 2003.

35. Dr Broome was unknown to the French Revenue authorities. He did not pay any income tax in France during his stay there. There is also no evidence that he became resident in Spain or registered with the Spanish tax authorities. If an individual is not resident in France he has no right to join the French healthcare system. To join the French healthcare system involves an open declaration of residency in France. The double taxation treaty between the UK and France (*UK/France Convention for the Avoidance of Double Taxation on Taxes on Income* - which came into force on 29 October 1969), effectively recognises that if an individual is resident in France, he is also domiciled there and consequently it would have been a relatively straightforward process for Dr Broome to relinquish his UK status had he wished to do so.

36. Physical presence in a particular place does not necessarily amount to residence *[Goodwin v Curtis]*. Taking into account the amount of time Dr Broome spent in France, the nature of his presence there - unconnected with any contract of employment and that there appeared to be no expectation of continuity, *[Commissioners of Inland Revenue v Zorab]* these facts together indicate that although living in France, he remained resident in the UK.

37. On a balance of probabilities there is no evidence that there was a settled purpose to the period of time Dr Broome spent in France and taking all the evidence into account it was no more than a period of transition during which for at least part of the tax year ended 4 April 2001 he remained resident in the UK.

38. The Tribunal therefore finds that Dr Broome was resident in the United Kingdom at some stage during the tax year ended 5 April 2000 and is by virtue of s 2 TCGA 1992 assessable to capital gains tax on the disposal of the

properties, 37a Berks Hill, Chorleywood, Rickmansworth, Hertfordshire sold on 30 May 2000 and 78 Knaveshire Crescent, York sold on 26 January 2001.

39. The appeal is accordingly dismissed.

40. 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.

MICHAEL S CONNELL

TRIBUNAL JUDGE
RELEASE DATE: 24 November 2011