



Neutral Citation: [2026] UKFTT 00652 (TC)

Case Number: TC 09868

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

By remote video hearing

Appeal reference: TC/2023/01263

INCOME TAX – Statutory Residence Test – appellant physically present in the UK for 100 midnights, seven of which are excluded – whether three further days are excluded under paragraph 22(3) of Schedule 45 of FA 2013 (Transfer Exception) – yes – whether one further day is excluded under paragraph 22(4) of that Schedule (Exceptional Circumstances Exception) – yes – appeal allowed

Heard on: 14 and 15 January 2025

Judgment date: 01 May 2026

Before

**TRIBUNAL JUDGE MICHAELA SNELDERS
SIMON BIRD**

Between

MICHAEL PARKER

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY’S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Ximena Montes Manzano and Siobhan Duncan of counsel, instructed by Alliotts LLP

For the Respondents: Sam Way of counsel, instructed by the General Counsel and Solicitor to HM Revenue and Customs

DECISION

INTRODUCTION

1. With the consent of the parties, the form of the hearing was by video using the Teams Platform. A face to face hearing was not held because it was considered more expedient and cost effective to conduct the hearing remotely. The documents to which we were referred are contained in a hearing bundle of 897 pages, an authorities bundle of 916 pages and 4 pages copied from the Shorter OED. We also had the benefit of both parties' skeleton arguments.

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

3. This is an appeal by the Appellant (MP) against a closure notice dated 31 October 2022 assessing him to tax of £64,945.65 for the 2019/20 tax year on the basis that he was UK resident in that tax year and therefore subject to UK tax on his earnings. MP had stated on his Self-Assessment Tax Return for the 2019/20 that he was not UK resident based on the Statutory Residence Test (SRT).

THE LEGISLATION AND ISSUES

4. The SRT is a set of rules for determining whether an individual is resident in the UK for certain tax purposes. The SRT rules are contained in Schedule 45 to the Finance Act 2013 (FA 2013). References to paragraph numbers in this decision are to paragraphs of Schedule 45 to the FA 2013 unless otherwise stated.

5. Section 218(1) of FA 2013 provides that:

“(1) Schedule 45 contains –

(a) Provision for determining whether individuals are resident in the United Kingdom for the purposes of income tax, capital gains tax and (where relevant) inheritance tax and corporation tax,”

6. Part 1 of Schedule 45 sets out the rules for determining whether an individual is resident in the UK and Part 2 of Schedule 45 defines key concepts used in the SRT rules.

7. The basic rule is at paragraphs 3 and 4:

“3. An individual (“P”) is resident in the UK for a tax year (“year X”) if –

(a) The automatic residence test is met for that year, or

(b) The sufficient ties test is met for that year.

4. If neither of those tests is met for that year, P is not resident in the UK for that year.”

8. Paragraph 5 goes on to describe the automatic residence test as:

“The automatic residence test is met for year X if P meets-

(a) at least one of the automatic UK tests, and

(b) none of the automatic overseas tests.”

9. It is common ground in this appeal that at least one of the automatic UK tests applies. MP asserts however that one of the automatic overseas tests applies, namely the third automatic overseas test at paragraph 14 which provides:

“(1) the third overseas test is that –

- (a) P works sufficient hours overseas, as assessed over year X,
- (b) during year X, there are no significant breaks from overseas work,
- (c) the number of days in year X on which P does more than 3 hours' work in the UK is less than 31, and
- (d) the number of days in year X falling within sub-paragraph (2) is less than 91.

(2) A day falls within this sub-paragraph if –

- (a) it is a day spent by P in the UK, but
- (b) it is not a day that is treated under paragraph 23(4) as a day spent by P in the UK.”

10. The parties agree that MP meets all the conditions in (a) – (c) of paragraph 14(1) but they disagree on the number of days that MP spent in the UK for the purpose of paragraph 14(1)(d).

11. What is meant by “a day spent” in the UK is set out in paragraph 22 as follows:

“(1) If P is present in the UK at the end of a day, that day counts as a day spent by P in the UK.

(2) But it does not do so in the following three cases.

(3) The first case is where –

- (a) P only arrives in the UK as a passenger on that day,
- (b) P leaves the UK the next day, and
- (c) between arrival and departure, P does not engage in activities that are to a substantial extent unrelated to P's passage through the UK.

(4) The second case is where –

(a) P would not be present in the UK at the end of that day but for exceptional circumstances beyond P's control that prevent P from leaving the UK, and

(b) P intends to leave the UK as soon as those circumstances permit.

(5) Examples of circumstances that may be “exceptional” are –

- (a) national or local emergencies such as war, civil unrest or natural disasters, and
- (b) a sudden or life-threatening illness or injury.

.....

(7) The third case is where –

- (a) that day falls within the period beginning with 1 March 2020 and ending with 1 June 2020,
- (b) on that day P is present in the UK for an applicable reason related to coronavirus disease, and
- (c) in the tax year in question, P is resident in a territory outside the UK (the overseas territory).”

12. Paragraph 23(4) is a deeming provision that treats days as spent in the UK, even though P was not in the UK at the end of the day. None of the days under consideration in this

appeal are deemed to be days spent by P in the UK pursuant to paragraph 23(4) so paragraph 14(2)(b) is not relevant to this appeal.

13. It is common ground that MP was present in the UK at the end of the day on 100 days in the 2019/20 tax year. MP claimed that 11 of those days did not count pursuant to paragraph 22(2) which would bring his UK day count down to 89. HMRC subsequently accepted that 7 of those days did not count as they were due to covid and came within the third case set out in sub-paragraph (7) of paragraph 22. HMRC therefore assert that MP was present in the UK at the end of the day on 93 days.

14. HMRC do not accept the Appellant's assertion that:

(1) Three of the days do not count on the basis that they come within the first case set out in sub-paragraph (3) of paragraph 22 (the Transit Exception) above; and

(2) One of the days does not count because it comes within the second case set out in sub-paragraph (4) of paragraph 22 (the Exceptional Circumstances Exception).

15. The sufficient ties test is defined in paragraph 17 as follows:

“(1) the sufficient ties test is met for year X if –

(a) P meets none of the automatic UK tests and none of the automatic overseas tests, but

(b) P has sufficient UK ties for that year.

(2) “UK ties” is defined in Part 2 of this Schedule.

(3) Whether P has “sufficient” UK ties for year X will depend on –

(a) whether P was resident in the UK for any of the previous 3 tax years, and

(b) the number of days that P spend in the UK in year X.

(4) the Tables in paragraph 18 and 19 show how many ties are sufficient in each case.

16. On MP's calculation he spent only 89 days in the UK within the meaning of paragraph 22 and therefore satisfies the third overseas test above. If this is correct then MP meets an automatic overseas test so will only be resident in the UK if he meets a sufficient ties test, which he doesn't because he meets an automatic overseas ties test (sub-paragraph (1)(a) of paragraph 17). It follows that MP would in those circumstances be non-resident in the relevant tax year pursuant to paragraph 4 because neither the automatic residence nor sufficient ties tests are met.

17. On HMRC's calculation MP spent 93 days in the UK so none of the automatic UK or overseas tests are met and his residence will be determined by reference to whether the sufficient ties test is met.

18. Because MP was tax resident in the UK within one of the previous three years and on HMRC's calculation he spent over 90 days but no more than 120 days in the UK, paragraph 18 provides that MP will meet the sufficient ties test if he has at least 2 UK ties. It is common ground that MP does have at least 2 UK ties. It follows that if MP spent 93 days in the UK in the 2019/20 tax year he is UK resident for that year.

19. How many days MP spent in the UK and whether this is more than 90 days is therefore determinative on the facts of this case of MP's UK tax residence status in the 2019/20 tax year.

20. The issues in dispute are:

(1) Transit days - Whether the Appellant is entitled to disregard three days (8 February, 17 February and 28 February 2020) under paragraph 22(3) of Schedule 45 to the Finance Act 2013 on the basis that he was in the UK solely in transit between two countries outside the UK and did not engage in activities substantially unrelated to his passage through the UK.

(2) Exceptional Circumstance day - Whether the Appellant is entitled to disregard one day (29 February 2020) under paragraph 22(4) of Schedule 45 to the Finance Act 2013 on the basis that he was prevented from leaving the UK due to exceptional circumstances beyond his control, namely the cancellation of his flight to Dublin following adverse weather conditions associated with Storm Jorge.

21. The resolution of these issues determines whether the Appellant satisfies the conditions for the third automatic overseas test and is therefore non-resident for the 2019/20 tax year, or whether his residence status falls to be determined under the sufficient ties test.

BACKGROUND AND FACTS

22. In addition to the documents and correspondence contained in the hearing bundle, MP provided two written witness statements with exhibits, gave oral evidence at the hearing and was cross-examined by Mr Way.

23. Officer Dixon of HMRC provided a written witness statement with exhibits, gave oral evidence at the hearing and was cross-examined by Ms Duncan.

24. We were also provided with a written summary of the evidence by the Appellant's counsel on the morning of the second day of the appeal hearing.

25. From all the above we set out the background below and make the following findings of facts.

26. MP is a Chartered Engineer who worked overseas from July 2017 to June 2025 managing civil engineering and construction works in the Kurdistan Region of Iraq for RVF Limited with a contract to manage civil engineering and construction works for HKN Limited.

27. During the 2019/20 tax year MP was employed on a rotational basis.

28. MP's family home is in the United Kingdom and his employer arranged and paid for return flights between Iraq and London as part of his employment terms and conditions.

29. On 8 February 2020, the Appellant arrived at Heathrow Airport from Iraq via Istanbul and stayed overnight at a hotel near Heathrow Airport. On 9 February 2020, MP flew from Heathrow Airport to Naples for a holiday. On 17 February 2020, MP returned to Heathrow Airport from Naples and stayed overnight at a hotel near Heathrow Airport. On 18 February 2020, MP flew from Heathrow Airport to Tokyo for a holiday.

30. On 28 February 2020, MP returned to Heathrow Airport from Tokyo and stayed overnight at a hotel near Heathrow Airport.

31. On 29 February 2020, MP boarded a British Airways (BA) flight at Heathrow Airport that was due to depart for to Dublin at 1335hrs. However, after a number of hours sitting on the plane, waiting to take off, cabin crew informed the passengers that Dublin Airport had been closed due to Storm Jorge and consequently the flight was cancelled.

32. Due to Storm Jorge, no flights were able to land at Dublin Airport from 1420hrs to 1553hrs on 29 February 2020. During this time 20 flights had been scheduled to land at Dublin Airport. MP's flight was due to land at Dublin airport at 1455hrs. MP's BA flight was one of at least two flights from the UK to Dublin that had been cancelled as a result of

the disruption at Dublin Airport. At least two further flights from the UK to Dublin were diverted and at least 23 flights from the UK to Dublin were delayed.

33. From the above it is clear that there was severe disruption throughout the afternoon and evening for passengers travelling from the UK to Dublin on 29 February 2020 and a significant number of people who were scheduled to fly from the UK to Dublin on this day were unable to do so.

34. MP, together with the other 200 or so passengers on his flight, disembarked. The airline provided MP and the other passengers with a voucher for food and hotel accommodation near the airport. MP was told by BA that he would be booked onto a flight to Dublin the following day and that they would notify him of the details by email, which they did. MP's checked in luggage remained with BA overnight and was put on the rescheduled flight the next day.

35. On 1 March 2020 MP returned to Heathrow Airport and boarded his rescheduled BA flight to Dublin departing Heathrow Airport at 1045hrs and left the UK.

36. MP had a flight booked to return to Iraq from Heathrow Airport on 5 March 2020 but this was cancelled due to Covid and he travelled instead from Ireland to Belgium with the intention of returning to the UK on 6 April 2020, at the beginning of the 2020/21 tax year, for which he had a booked flight. However, the UK Government instructed all UK citizens to return to the UK and BA cancelled all flights out of Belgium from 1 April 2020, so MP took the last available flight back to the UK from Belgium on 30 March 2020. HMRC accept that the period that MP spent in the UK from 30 March 2020 to 5 April 2020 was due to Covid and does not therefore count towards his UK day count.

37. The flights from Iraq to Heathrow Airport via Istanbul arriving at Heathrow Airport on 8 February 2020 and departing from Heathrow Airport on 5 March 2020 were booked and paid for by MP's employer. MP booked and paid for his return flights from Heathrow Airport to Naples and from Heathrow Airport to Tokyo.

38. The flights that MP planned to take for this holiday were therefore as follows:

Iraq – Istanbul - Heathrow Airport - Naples - Heathrow Airport - Tokyo - Heathrow Airport - Dublin – Heathrow Airport – Istanbul - Iraq.

39. The reason that MP booked return flights from Heathrow Airport rather than a round trip or single flights was that in his experience it is cheaper and logistically easier to do that. He did not make a comparison at the time but his subsequent research, of which he provided evidence to the Tribunal, supports this.

40. While in the UK on 8, 9, 17, 18, 28, 29 February 2020 and 1 March 2020, MP spent all of his time in Heathrow Airport, the hotel he was staying in near Heathrow Airport or travelling between the two. He took all his meals either in the hotel or at Heathrow Airport. MP did not fly out of the UK on the same day as he arrived on 8 February 2020, 17 February 2020 and 28 February 2020 because he was not able to book flights out on the same day to his next destination and therefore had to stay in a hotel at Heathrow Airport overnight on each occasion instead.

41. MP's wife stayed with him at the hotel on 8 February 2020 and 17 February 2020 because they were holidaying together in Italy and Japan respectively and were on the same flights the following day. MP's wife stayed with him at the hotel the night of 28 February 2020 because their flight had arrived into Heathrow Airport at 2215 on 28 February 2020. MP's wife left the hotel to go home on 29 February 2020 when MP left the hotel to go to Heathrow Airport to catch his flight to Dublin.

42. MP's stepdaughter (who was 33 at the time) was also joining them for their holiday in Japan and had booked to travel out to Tokyo on the same flight as MP and his wife on 17 February 2020. The stepdaughter met MP and his wife airside in the departure lounge of Heathrow Airport before getting on the flight.

43. Other than meeting his wife and stepdaughter as set out above, MP did not meet any other friends or family while in the UK on 8, 9, 17, 18, 28, 29 February 2020 and 1 March 2020 and did not take part in any activities other than eating, drinking, sleeping, watching TV, reading, surfing the internet and travelling between the hotel and Heathrow Airport.

44. MP submitted a self-assessment tax return for the 2019/20 tax year, claiming non-residence under the third automatic overseas test. He reported 100 days spent in the UK but that seven days are disregarded because of the covid exception, one day is disregarded on the basis of the Exceptional Circumstances Exception and three days are disregarded on the basis of the Transit Exception which brought his UK day count for tax purposes down to 89.

45. HMRC opened an enquiry into MP's 2019/20 tax return on 7 December 2020. Extensive correspondence followed, during which MP provided boarding passes, flight cancellation notices, hotel invoices and bank and credit card statements. HMRC accepted that MP was prevented from leaving the UK due to Covid for seven of the days but rejected that the cancellation of his flight from Heathrow Airport to Dublin on 29 February 2020 due to Storm Jorge was an exceptional circumstance and that the 8, 17 and 28 were transit days. This brought MP's UK day count up to 93.

46. An Alternative Dispute Resolution meeting took place on 6 May 2022 but did not resolve the matter. HMRC issued a closure notice on 31 October 2022 assessing tax of £64,945.65 for the 2019/20 tax year.

47. MP appealed to HMRC against the closure notice on 27 November 2022. HMRC's review upheld the decision on 21 February 2023.

48. MP submitted his appeal against the closure notice to the tribunal on 21 March 2023.

DISCUSSION AND OUR VIEW

Transit Exception

49. The conditions that need to be met for this exception to apply are set out in paragraph 22(3) as follows:

(3) The first case is where –

(a) P only arrives in the UK as a passenger on that day,

(b) P leaves the UK the next day, and

(c) between arrival and departure, P does not engage in activities that are to a substantial extent unrelated to P's passage through the UK.

Arrives in the UK as a passenger

50. MP must therefore first establish that he arrived in the UK as a "passenger". Passenger is not defined for the purpose of the SRT. HMRC rely on the definition of passenger in the Court of Appeal decision in *Laroche v Spirit of Adventure (UK) Ltd* [2009] EWCA Civ 12 ("*Laroche*") which provides at [61] that:

"The term "passenger" is not defined by the 1967 Order or the Convention. As Buxton LJ said in *Disley* at [70], the rule of purposive construction requires the concept of "passenger" to be looked at in the context of the Convention as a whole. I do not think that it is disputed that, in the context of the convention as a whole, a "passenger" is someone (i) who is not

regarded as contributing to the carriage of himself or the other persons on board (see *Fellowes (or Herd) v Clyde Helicopters Ltd* [1997] 1 All ER 775 at 781 and 786–787, [1997] AC 534 at 542 and 548) and (ii) who is on the aircraft for the predominant purpose of being conveyed from one place to another (see *Disley v Levine* [2002] 1 WLR 785 at [67] and [70]–[74]). Obvious examples of persons who are carried on aircraft, but not as passengers, are trainee pilots (who are being carried for the purpose of receiving instruction) and pilots, stewards and other members of the crew (who are being carried for the purposes of carrying other persons).”

51. HMRC go on to submit that this definition supports their contention that if the UK is P’s final destination, P is not a passenger when P arrives in the UK because their journey is at an end and they are no longer in the process of being conveyed from place to place.

52. HMRC submit that each of MP’s journeys was a distinct journey so that when he arrived in the UK on each occasion, that was the end of his journey and he was no longer being conveyed and therefore no longer a passenger.

53. HMRC accept that if MP had been on a single ticket from Iraq to Naples, Naples to Tokyo or Tokyo to Dublin that had an overnight stopover at a hotel near Heathrow Airport, he would meet the definition of “passenger” because the UK would not be the end of his journey on each occasion. They submit however that because MP had separate tickets for each part of his journey into and out of the UK, he was not a passenger when he entered the UK.

54. We agree with counsel for MP that this distinction is arbitrary and not supported by the wording of the legislation. There is nothing in the legislation that provides that a person must be booked on a single ticket that includes transit through the UK in order to qualify as a “passenger” on entering the UK.

55. MP’s evidence was that he had bought return tickets for his holidays from Heathrow Airport because his employer bought and paid for his ticket to and from Heathrow Airport and his reasonable view, supported by evidence, was that it was cheaper and logistically easier to buy return tickets from Heathrow Airport rather than to buy single tickets or multi-stop tickets to travel to Naples, Tokyo and Dublin. Beyond this financial and logistical advantage, MP had no preference for travelling via Heathrow Airport or reason to stay at a hotel near Heathrow Airport. MP’s choice of ticket type does not prevent MP from being a passenger while in the UK.

56. Further the condition in paragraph 22(3)(a) is only that “P *arrives* in the UK as a passenger” (*italics added*). Even if the UK was MP’s final destination and that meant that he was no longer being “conveyed” from one place to another after he arrived in the UK, he would still have been “conveyed” to the UK and therefore arrived in the UK as a passenger.

57. HMRC read “only” in paragraph 22(3)(a) as meaning that being a passenger must have been P’s only purpose of being in the UK on the day in question. HMRC submit that MP does not meet this condition because being a passenger was not his only purpose in arriving in the UK, they submit that he also arrived to meet with family members (his wife on 8 February and his stepdaughter on 17 February) or drop off family members who lived in the UK (his wife and stepdaughter on 28 February).

58. We do not accept that MP did have this dual purpose in entering the UK, which we discuss further below.

59. We find therefore that MP arrived in the UK as a passenger on 8, 17 and 28 February 2020 and therefore meets the condition in sub-paragraph 22(3)(a) on each occasion.

Leaves the UK the next day

60. It is not in dispute and we have found as a fact that with respect to 8 and 17 February 2020, MP left the UK on the next day so that the condition in paragraph 22(3)(b) is met. It is also agreed between the parties and we agree, that if 29 February 2020 is a day that does not count because it falls within paragraph 22(4), then the fact that MP did not actually leave the UK on 29 February does not prevent MP from meeting para 22(3)(b) for 28 February 2020 because MP left the UK on the next day which would otherwise fall to be counted.

Activities that are to a substantial extent unrelated to P's passage through the UK

61. Turning then to the condition in paragraph 22(3)(c), HMRC submit that MP has not given a comprehensive account of his activities in the UK on each of the 8 February, 17 February and 28 February 2020. They further submit that meeting with family members on 8 and 18 February 2020 so that they could travel to their destination together as part of a shared holiday and dropping off those same family members in the UK on 28 February 2020 constitutes activities that are to a substantial extent unrelated to MP's passage through the UK.

62. We find that MP has provided a comprehensive account of his activities while in the UK, with supporting documentary evidence. As stated in our findings of fact, he did very little while in the UK. Consequently there is little account that he can give of his activities. Further, what he did do was consistent with the activities of a passenger who is in transit. As HMRC acknowledge in their own guidance in RDRM11730:

“Merely taking dinner or breakfast at their hotel, in the normal course of events, would be related to their passage.”

63. MP did not travel into central London, return to his family home, or undertake any activity that could sensibly be characterised as an end in itself. The hotel accommodation, meals taken there or at the airport, and travel between the hotel and the terminal were all ancillary and functionally connected to onward international travel.

64. Meeting with his wife and stepdaughter because they were travelling with him on the next leg of his journey were not “activities that are to a substantial extent unrelated to his passage through the UK.” Had he met with friends or family for any reason other than onward travel with him that is likely to be an activity that is substantially unrelated to his passage through the UK. However, on the facts of this appeal, MP did not need to travel to the UK to see his wife or stepdaughter as he was spending his holiday with them outside of the UK. MP's evidence was that he did not need to escort his wife or 33 year old stepdaughter from or back to Heathrow Airport for their respective holidays and we have no reason to doubt this. MP met with his wife and stepdaughter because they were travelling out of the UK together, which is very much related to his passage through the UK.

65. We find therefore that MP meets the Transit Exception for 8 and 17 February 2020 and, subject to him meeting the Exceptional Circumstances Exception for 29 February 2020 which we address below, MP will meet the Transit Exception for 28 February 2020.

Exceptional Circumstances Exception

66. The conditions that need to be met for this exception to apply are set out in paragraph 22(4) as follows:

“(4) The second case is where –

- (a) P would not be present in the UK at the end of that day but for exceptional circumstances beyond P's control that prevent P from leaving the UK, and

(b) P intends to leave the UK as soon as those circumstances permit.

67. As set out by Nugee LJ at paragraph [40] of the decision in *A Taxpayer v HMRC* [2025] EWCA Civ 106 (“*A Taxpayer*”), five conditions must therefore be met for this exception to apply:

“4. On this wording, there are 5 conditions, all of which need to be fulfilled before para 22(4) applies. This has been common ground throughout (and accepted by the FTT and UT at FTT [134] and UT [50] respectively). The 5 conditions are as follows:

- (1) the circumstances are exceptional;
- (2) the circumstances are beyond P’s control;
- (3) P would not be present at the end of the day but for those circumstances;
- (4) the circumstances prevent P from leaving the UK; and
- (5) the person intends to leave the UK as soon as those circumstances permit.”

68. The circumstances that MP relies on are set out in paragraphs [30] to [35] above. HMRC do not accept that these circumstances meet conditions (1), (4) or (5).

69. Nugee LJ goes on in *A Taxpayer* to set out the test that the FTT must apply in order establish whether the conditions have been met. With respect to whether MP was ‘prevented’ from leaving the UK Nugee LJ states:

“[53] I agree that Parliament can scarcely have intended P to benefit from para 22(4) simply because they could honestly say they considered themselves (subjectively) compelled to stay if the circumstances would not (objectively) be generally regarded as compelling..... If there is a dispute between P and HMRC whether para 22(4) applies, it is (as is common ground) for P to establish that it does; and in practice this requires P to make out his or her case to the satisfaction of the FTT. The FTT can be expected not only to judge the credibility of P’s account, but to assess whether the facts as found by them do amount to circumstances that really prevented P from leaving. Accepting that moral obligations can be relevant to this question does not to my mind mean that the FTT is required to accept P’s own view as to whether the circumstances were truly compelling.

[54] It seems to me therefore that the position is this. The FTT is ultimately required, having found the primary facts, to make an assessment whether the circumstances prevented P from leaving the UK. That to my mind requires them to identify whether the circumstances were objectively compelling such as to prevent P from leaving. Those circumstances can include the reaction of P to such matters as the illness of a close relative, and other moral obligations operating on P in the circumstances, but the assessment whether such circumstances are really sufficiently cogent to amount to prevention is a value-judgement for the FTT, and can take into account such matters as whether P’s reaction is reasonable and in accordance with ordinary societal expectations, or is unreasonable and idiosyncratic.”

70. At paragraph [61] Nugee LJ states:

“What I consider it therefore requires the FTT to do (in a contested case) is (i) find as a fact what the circumstances are; (ii) decide whether those circumstances prevented P from leaving the UK; and (iii) decide whether they were exceptional. That to my mind requires the FTT to look at all the relevant circumstances, and ask whether those circumstances taken as a

whole prevented P from leaving, and whether those circumstances taken as a whole were exceptional.”

71. Further at paragraph [71] he states:

“(1) The meaning of “exceptional” as an ordinary English word is a question of fact. In *R v Kelly (Edward)* [2000] QB 198, a case which concerned the meaning of “exceptional circumstances” in s. 2 of the Crime (Sentences) Act 1997, Lord Bingham of Cornhill CJ said at 208C:

“We must construe “exceptional” as an ordinary, familiar English adjective, and not as a term of art. It describes a circumstance that is such as to form an exception, which is out of the ordinary course, or unusual, or special, or uncommon. To be exceptional a circumstance need not be unique, or unprecedented, or very rare; but it cannot be one that is regularly, or routinely, or normally encountered.”

No issue has been taken with that – nor do I think any could reasonably be – as an explanation of what “exceptional” (or “exceptional circumstances”) means as a matter of ordinary English.”

72. We turn then to the question of whether the circumstances were in fact exceptional.

73. HMRC submit that adverse weather conditions and flight cancellations are not exceptional and therefore the fact that MP’s flight to Dublin was cancelled due to adverse weather conditions is not exceptional.

74. MP submits that while adverse weather conditions are not exceptional, flight cancellations as a result of adverse weather conditions are very rare. MP analysed CAA data for all flights from 27 UK airports, including all major hubs, for the period from 2018 to 2024. This analysis established that the overall flight cancellation rate in this period is 1.53% and if one takes out the Covid affected periods this reduces further to 1.39%. The CAA data does not provide the reason for the cancellation so it is not possible to establish from this data how many of the cancellations were due to adverse weather. Other possible reasons for cancellation outside of covid put forward by MP are as follows:

- “Industrial action either in the UK or at the flight destination (baggage handlers, ground staff, air crew etc).
- Staff shortages (pilots, air crew, ground staff)
- Aircraft technical problems
- Air traffic control system failures (IT/software)
- Non-arrival of the incoming aircraft
- Civil unrest or military disruption at the destination
- Other outside factors (recent high-profile examples in the UK include fire at a Heathrow substation and drone flying near Gatwick)”

75. We recognise that the statistical evidence relied upon by the Appellant relating to flight cancellation rates is necessarily general in nature. We therefore do not treat the figures as determinative in isolation.

76. However, the evidence is nonetheless informative. It provides an empirical context showing that flight cancellations, viewed across UK aviation as a whole, are uncommon rather than routine and further that only a subset of these cancellations will be due to adverse weather conditions.

77. When that general context is considered together with the specific facts of this case — namely the closure of a major international airport due to a named storm event, resulting in widespread operational disruption — we are satisfied that the circumstances encountered by MP were out of the ordinary course, unusual, and not regularly or normally encountered by international travellers.

78. Accordingly, looking at all the relevant circumstances as required by *A Taxpayer*, and applying the ordinary meaning of “exceptional” as explained by Lord Bingham and followed by Nugee LJ, we find that the circumstances taken as a whole were exceptional.

79. HMRC further submits that MP was not actually prevented from leaving the UK on the 29 February 2020 and he did not intend to leave the UK as soon as circumstances permitted because he did not take any steps to depart the UK as soon as the adverse weather conditions had sufficiently abated for Dublin Airport to reopen. MP did not try to secure an alternative flight to Dublin on 29 February 2020 or to secure a flight or alternative means of transport out of the UK to any other destination that day. Instead MP's intention was to depart the UK only in accordance with arrangements made by BA, which were not until the next day, some time after the adverse weather conditions had prevented flights from landing in Dublin.

80. In determining whether the exceptional circumstances prevented MP from leaving the UK that day and whether he intended to leave the UK as soon as those circumstances permitted, we approach the question by reference to practical reality rather than abstract possibility. The test is not whether, with the benefit of hindsight, it was theoretically possible for MP to attempt to leave the UK by some alternative means or to a different destination, but whether the circumstances as they presented themselves at the time reasonably permitted departure.

81. MP's destination was Dublin. His scheduled flight was cancelled after boarding due to the closure of Dublin Airport because of Storm Jorje. These circumstances did prevent him from leaving the UK as planned. At that point there was widespread disruption, cancellations, diversions and delays, and no information available to MP to suggest that alternative flights to Dublin later that day were realistically obtainable. MP's checked in luggage remained with the airline; the airline arranged overnight accommodation and expressly informed him that it would rebook him on a flight to Dublin the following day, which it did.

82. In those circumstances, we find that MP's acceptance of the airline's arrangements, and his departure on the rebooked flight the following morning, constituted leaving the UK as soon as circumstances permitted. The fact that weather conditions may have improved later that day does not, of itself, mean that the circumstances then permitted departure in any meaningful or practical sense. Ordinary societal expectations do not require a passenger, in the midst of significant disruption, to disregard airline arrangements, abandon checked in luggage, or attempt speculative alternative travel in order to demonstrate an intention to leave the UK “as soon as those circumstances permit”.

83. It follows that as a result of MP's BA flight to Dublin being cancelled and BA being unable to book him onto another flight to Dublin that day, MP was prevented from leaving the UK on 29 February 2020 and therefore met Nugee LJ's condition 4. Further he left the UK the next day on the next flight offered to him by BA and this meets condition 5.

84. HMRC did not explicitly concede that the circumstances were beyond P's control (condition 2) or that P would not have been present at the end of the day but for those circumstances (condition 3) but they also did not put forward any submissions that MP did not meet these conditions.

85. For completeness we find that MP does meet both of these conditions. Clearly he had no control over Storm Jorge or BA's decision to cancel his flight to Dublin and as he was sitting on the plane waiting to leave the UK when it was cancelled it is equally evident that had the flight not been cancelled and Storm Jorge had not caused travel disruption he would not have been present in the UK at the end of that day.

CONCLUSION

86. For all the reasons set out above we find that:

(1) 8 February 2020, 17 February 2020 and 28 February 2020 do not count towards MP's UK day count for SRT purposes because of the Transit Exception;

(2) 29 February 2020 does not count towards MP's UK day count for SRT purposes because of the Exceptional Circumstances Exception;

87. Consequently MP's day count in the UK in the tax year 2019/20 for SRT purposes is 89 days. It follows that MP meets the third overseas test in paragraph 14(1) and so is not resident in the UK for that year.

88. The appeal is therefore allowed.

RIGHT TO APPLY FOR PERMISSION TO APPEAL

89. 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.

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