



**The Upper Tribunal
(Administrative Appeals Chamber)**

UT NCN: [2025] UKUT 227 (AAC)

UT Case Number: UA-2024-001027-HRP

Summary: Presence and residence conditions – other (29.9) and Tax credits – other (33.7)

This case concerns JG's entitlement to tax credits in the 2021/2022 tax year. His partner had become ordinarily resident in Slovenia in 2019, where she was caring for her mother and the children of herself and JG. JG visited her from 1 June 2021 to 17 December 2021. This exceeded the permitted period of temporary absence under the Tax Credits (Residence) Regulations 2003. As a result, his award of tax credits was limited to the inclusive period from 6 April 2021 to 24 August 2021. No allowance could be made for the travel disruption caused by the pandemic. Following the United Kingdom's withdrawal from the EU, JG could not benefit from any provision of the Withdrawal Agreement. The First-tier Tribunal had no jurisdiction to deal with JG's complaints about information on the official website or advice given by the helpline.

Before

UPPER TRIBUNAL JUDGE JACOBS

Between

JG

Appellant

v

**Commissioners for His Majesty's Revenue and
Customs**

Respondent

Decided on 08 July 2025 without a hearing

Representatives

Claimant: Not represented

Commissioners: Rachel Dixon of the Commissioners' Solicitors' Office and Legal Services

DECISION OF UPPER TRIBUNAL

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Reference: SC303/23/00068

Decision date: 31 October 2023

Hearing: Telephone

The decision of the First-tier Tribunal did not involve the making of an error on a point of law under section 12 of the Tribunals, Courts and Enforcement Act 2007.

REASONS FOR DECISION

1. This case concerns JG's entitlement to child tax credit and working tax credit. It was registered on the Administrative Appeals Chamber's database with the HRP suffix, which signifies a Home Responsibilities Protection case. That was a mistake, but it has not affected the handling of the appeal or its outcome.

A. What happened

2. JG is a citizen of the United Kingdom. MP is his partner and a citizen of Slovenia. At the time with which this case is concerned, they were a couple and had three children. In approximately May 2018, MP returned to Slovenia to look after her mother and her younger siblings. This move became permanent in 2019, when the children moved to live with her. They were in school in Slovenia from September 2019. MP has never been employed or self-employed in Slovenia.

3. The appeal to the First-tier Tribunal was against a decision of the Commissioners in respect of JG's entitlement to tax credits in the 2021/2022 tax year. The Commissioners' submission to the First-tier Tribunal also explained their decision for the 2022/2023 tax year. As there was no appeal in respect of that year, this was simply for information.

4. The decision on the 2021/2022 tax year was that JG was entitled only in respect of the inclusive period from 6 April 2021 to 24 August 2021. The first date of that period was the start of the tax year. The last date of the period was the day on which JG had been absent from the United Kingdom for 12 weeks. The Commissioners decided that after that date JG was no longer entitled to tax credits. The precise date on which JG left this country was not clear. He had said in an interview that he left on 1 June 2021 and accepted that that was the best evidence he could give. The Commissioners and the tribunal proceeded on that basis. JG returned to the United Kingdom on 17 December 2021.

B. Domestic law

5. The relevant legislation is the Tax Credits Act 2002 and the Tax Credits (Residence) Regulations 2003 (SI No 654). In order to be entitled to tax credits, a person must be present in the United Kingdom: section 3(3) of the Act. Regulation 3(1), made under the authority of section 3(7), provides that the person must also be ordinarily resident in the United Kingdom. Taking section 3 and regulation 3(1) together has this effect: entitlement to tax credits depends on the person being both present and ordinarily resident in the United Kingdom.

6. I will deal with ordinary residence first. JG has always been ordinarily resident in the United Kingdom. MP ceased to be ordinarily resident when she moved permanently to Slovenia in 2019 and was, therefore, no longer entitled to tax credits. JG was, though, entitled to rely on EU law to claim tax credits in respect of them.

7. Now I come to presence, which is what this case is about. Regulation 4 provides that a person may be treated as present in the United Kingdom despite being absent. The maximum period is 52 weeks (see regulation 4(2)), which is another reason why MP was not entitled to tax credits after being in Slovenia for a year. Otherwise, the permitted period of absence depends on the circumstances (see regulation 4(1)). In JG's case, the Commissioners treated that as 12 weeks. The last day of that period was 24 August 2021, which the Commissioners treated as the last day of his entitlement to tax credits. As the Commissioners accepted in their responses to the appeals in the First-tier Tribunal and the Upper Tribunal, the permitted period of absence in JG's circumstances was 8 weeks, not 12. So, the award is more generous than it should have been.

C. Other matters

EU law

8. EU law is not relevant in this case. The effect of the United Kingdom's withdrawal from the EU is governed by the *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community*. The withdrawal took effect on 31 January 2020, but subject to a transitional period that ended on 30 December 2020. Until then, citizens of the United Kingdom, like JG, remained entitled to exercise their right of freedom of movement under EU law: see Article 10.1(b) of the Agreement. As I have said, this case is only concerned with the 2021/2022 tax year. In that year, JG only travelled to Slovenia in June 2021, five months after the end of the transitional period.

9. Article 1 is expressly subject to Title III of the Agreement. That Title deals with coordination of social security systems. Article 30.1 provides that some United Kingdom citizens can benefit from provisions that apply to Union citizens. Article 30.1(d) is one provision. It applies to United Kingdom citizens who resided in a Member State on 30 December 2020. Residence means, as it always does in EU law, habitual residence. This provision does not apply to JG as he was not residing in Slovenia at that date. The other provision is Article 30.1(e)(ii). It applies to United Kingdom citizens who were employed or self-employed in a Member State on 30 December 2020. This does not apply to JG as he was employed in the United Kingdom, although some of his duties could be undertaken while he was in Slovenia.

10. Accordingly EU law does not apply.

Official information and advice

11. JG has criticised the information provided on the Government's website and the advice given when he asked what the effect would be if MP were to go to Slovenia to look after her mother. The First-tier Tribunal and the Upper Tribunal have to apply the legislation that governs entitlement to tax credits. They have no jurisdiction to deal with the accuracy of information provided or advice given. Those are matters for the Commissioners, not for the tribunals. *If* the information or the advice was wrong, there may be compensation payable, but that is not a matter for the tribunals.

The effect of the pandemic

12. JG has also referred to difficulties returning to the United Kingdom during the pandemic. The First-tier Tribunal made findings on this at paragraphs [29]-[30] of its written reasons. Whatever the facts may be, what matters is the law. That was decided by Upper Tribunal Judge Buley KC in *GL v Her Majesty's Revenue and Customs* [2023] UKUT 100 (AAC). He decided that regulation 4 does not make any allowance for travel difficulties during the pandemic. He added that, even if the Commissioners had a discretion to make allowance for this, it was a matter for them and not for the tribunals.

Tax year 2023/2024

13. JG has referred to a First-tier Tribunal decision in respect of a different tax year under reference SC303/23/00721. I can only say that that case is not before me and, on the partial documents that I have seen, I cannot tell what significance it may or may not have for this case.

D. Conclusion

14. For the reasons I have given, the First-tier Tribunal did not make an error of law in applying domestic and EU law. As to the other matters raised by JG, these were outside the tribunal's jurisdiction. As a result, it had no authority to deal with them.

**Authorised for issue
on 08 July 2025**

**Edward Jacobs
Upper Tribunal Judge**