

Capital Gains Tax and Principal Private Residence Relief: Court of Appeal Decision in HMRC v Higgins [2019]

In November 2018 we published a commentary in our Briefing Note entitled [Recent Changes to Capital Gains Tax Rules on Principal Private Residence Relief](#) regarding the First Tier Tribunal (“FTT”) and Upper Tier Tribunal (“UTT”) decisions in the case of *HMRC v Higgins* and almost a year later the Court of Appeal have delivered their judgement following an appeal by the tax payer.

1. BACKGROUND

- 1.1 By way of a brief background (a more detailed breakdown can be found in our previous Briefing Note) the tax payer exchanged contracts on the purchase of an off-plan property in October 2006.
- 1.2 Due to delays with the development he was not able to complete on the purchase, or move into the property, until January 2010.
- 1.3 The property was his main residence from January 2010 until it was sold in January 2012 and he claimed Principal Private Residence (PPR) relief on the gain for his entire period of ownership. It was held that for the period of exchange to completion, the tax payer did not have a main residence.
- 1.4 However, HMRC argued that the taxpayer was not entitled to the PPR relief for the period before his occupation but that his period of ownership had begun when he exchanged contracts on the purchase of the flat in 2006 (which was the acquisition date for the purposes of Section 28 of the TCGA 1992) so he should be liable for gains in that period to the date he moved in.
- 1.5 The taxpayer disputed the assessment explaining that he had not been able to occupy the flat as his residence until the developers had given him access in January 2010.

1.6 The FTT agreed with the tax payer and held that the chargeable period of ownership can only have begun in January 2010 when the tax payer was able to move into the property.

1.7 HMRC appealed to the UTT and they reversed the decision of the FTT on the basis that the taxable gains began to accrue as soon as contracts were exchanged but that the PPR relief only applied when the tax payer began living in the property.

2. COURT OF APPEAL DECISION

2.1 The tax payer appealed to the Court of Appeal who have overturned the decision of the UTT and are in agreement with the original judgement of the FTT that the period of ownership for CGT purposes began only when the tax payer had right of ownership of the property, i.e. on completion.

2.2 The Court based its decision on the meaning of the words “period of ownership” under Section 223 TCGA 1992 which sets out the requirements for PPR relief, with no mention of Section 28 TCGA 1992. However, HMRC maintained that although the tax payer had not acquired the full legal ownership of the property at the time of exchange, he had acquired a beneficial ownership which should be considered as part of the “period”.

2.3 The Court could not agree with HMRC’s submission and held that it could not have been Parliament’s intention in drafting Section 223 TCGA 1992 to include the period between exchange and completion as part of the “period of ownership” because this would result in the majority of people purchasing properties being unable to apply PPR relief in full which clearly is not the case in practice.

2.4 The Court therefore cancelled the CGT charge imposed on the taxpayer and upheld the original decision of the FTT. This is a reassuring development since the FTT was broadly seen as a common sense result. We will watch with interest as to whether HMRC decide to appeal to the Supreme Court.

If you have any questions or concerns relating to how PPR might apply to you then please contact a member of the Wealth Planning team who would be happy to assist.



Karen Methold
Partner
Head of Wealth Planning
+44 (0)20 7689 7112
kmethold@rooksriders.co.uk



Christopher Cooke
Senior & Managing Partner
Corporate & Wealth Planning
+44 (0)20 7689 7110
ccooke@rooksriders.co.uk



Nicholas Jenkins
Deputy Managing Partner,
Finance Partner and COFA
Wealth Planning
+44 (0)20 7689 7161
njenkins@rooksriders.co.uk



Robert Drysdale
Associate
Wealth Planning
+44 (0)20 7689 7168
rdrysdale@rooksriders.co.uk



Toni Recchia
Solicitor
Wealth Planning
+44 (0)20 7689 7185
trecchia@rooksriders.co.uk



James John
Partner
Real Estate & Wealth Planning
+44 (0)20 7689 7152
jjohn@rooksriders.co.uk



Rooks Rider Solicitors LLP
CentralPoint
45 Beech Street ■ London ■ EC2Y 8AD

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