

Recent Changes to Capital Gains Tax Rules on Principal Private Residence Relief

1. BUDGET 2018

It was announced in the Budget on 29th October 2018 that the government will introduce measures to restrict the following aspects of Principal Private Residence (“PPR”) Relief from Capital Gains Tax (“CGT”) on the disposal of an individual’s only or main residence as follows:

- 1.1 The automatic exemption for the final period of ownership will be reduced from 18 months to nine months; and
- 1.2 Lettings relief will apply only where the owner is in shared occupation with a tenant. Currently the relief applies to any property which has been the tax payer’s only or main home at any time and has been let without the owner being in occupation. In such circumstances relief is available at up to £40,000 of the gain.
- 1.3 The government will consult on these changes which are intended to take effect from 6 April 2020.

2. CASE LAW

- 2.1 A case heard in October 2018 at the Upper Tax Tribunal (“UTT”) has ruled that a homeowner who bought a flat “off-plan” (i.e. pre-construction) is liable for CGT from the date he signed the purchase contract, but can only claim PPR relief on the period after he moved in.

- 2.2 The case in question was HMRC v Higgins (2018 UKUT 280) and the background facts were as follows:

The taxpayer bought the flat at St Pancras Station in London from the developer in 2006, exchanging contracts on 2nd October, before the work had commenced. In the event he was not permitted to occupy it until 5 January 2010 when he completed the purchase. The owner sold the flat on 5 January 2012 and claimed PPR Relief on the gains for the full period of ownership, including the period from the date of exchange of contracts on 2 October 2006 to 5 January 2010 when he had bought it but not moved in. HMRC put forward, however, that the taxpayer was not entitled to the PPR Relief for the period before his occupation and argued 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. 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.

- 2.3 The taxpayer was initially successful in appealing this at the First Tier Tribunal (“**FTT**”) which held that the period of ownership for CGT purposes did not start until he had a right to occupy the property, i.e. at completion.
- 2.4 HMRC appealed and overturned the decision at the UTT which determined that taxable gains accrue as soon as contracts are exchanged but the PPR exemption only applied when the taxpayer is in residence. Before the construction was completed it was clearly not his main residence and therefore the relief could not be available for that period.
- 2.5 He was also unsuccessful in arguing that the extra statutory concession D49 applies. D49 sets out three circumstances in which relief may be allowed for a period between the acquisition of land, including land on which a dwelling stands and the beginning of residence in a dwelling on that site and the relevant circumstances include those where the delay in taking up residence is because a dwelling is being built on that land. The concession allows relief for a period of up to 12 months, although where there are good reasons for the period exceeding 12 months which were outside the individual’s control the period may be extended up to 2 years. The UTT judges decided that D49 could not be used where the delay occurred between exchange of contracts and completion.
- 2.6 The decision is disappointing for the taxpayer after the decision at the FTT which was broadly seen as a sensible result. “Off-plan” buyers should be wary of this decision which will be increasingly relevant as more off-plan properties are sold, especially in London.

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