

## CGT lettings relief (Lecture P1358 – 25.28 minutes)

CGT lettings relief was introduced in FA 1980 to ensure that property owners could rent out spare rooms within their house or flat without losing the advantage of main residence relief. However, in practice, the regime extended somewhat further than the original policy intention and benefited those who let out an entire property which had previously been their main residence.

This relief has, however, been subject to an important restriction in FA 2020 which took effect on 6 April 2020, and which seems to have been overlooked by significant numbers of tax advisers. There is little doubt that one of the main causes for this oversight was the start of the COVID-19 pandemic which hit the UK in March 2020.

### *The position prior to 2020/21*

Where an individual had let out all or part of his main residence (or former main residence), a special relief was available under what used to be S223(4) TCGA 1992. This relief, which was set against the gain on the disposal of the property, was the lowest of three alternative figures:

1. the amount of the individual's main residence relief, i.e. his exempt gain; or
2. £40,000 per individual; or
3. the amount of the individual's chargeable gain in relation to the letting.

If a property was jointly owned by, say, a married couple, the maximum relief was £80,000. The effect of the original form of lettings relief is shown in the Illustration below.

### *Illustration*

Jason purchased a flat in London with a 99-year lease on 1 March 2000 for £250,000 and occupied it as his main residence until 28 February 2015. He then acquired a new property which he used as his main residence from 1 March 2015 onwards. He made the requisite nomination under S222(5) TCGA 1992.

Jason rented out his old flat for five years until 1 March 2020 when he sold the long lease for £850,000.

Jason owned the flat which he sold on 1 March 2020 for a period of 20 years (240 months). During that time, he occupied the flat as his main residence for 15 years (180 months) and rented it out for five years (60 months).

Jason's overall gain was:

	£
Sale proceeds	850,000
Less: Cost	<u>250,000</u>
	<u>£600,000</u>

£450,000 (180/240 x £600,000) was eligible for main residence relief and so this part of his gain was not liable to CGT.

In addition, £45,000 ( $18/240 \times £600,000$ ) qualified for what was then the final period of exemption under S223(1) TCGA 1992.

This part of the gain was also not liable to CGT.

Jason's CGT position at this stage was:

		£
Overall gain	600,000	
Less:		
Main residence relief	450,000	
Final period exemption	<u>45,000</u>	
		<u>495,000</u>
		<u>£105,000</u>

Jason's lettings relief would have been set against this figure and was the lowest of:

1. £495,000; or
2. £40,000; or
3. £105,000 (this was Jason's chargeable gain which was attributable to the letting).

In other words, his lettings relief amounted to £40,000.

In order for lettings relief to apply in 2019/20 and earlier years, it was only necessary for the residential property to have been the taxpayer's main residence within the terms of S222 TCGA 1992 at some time during the ownership period. As one commentator has pointed out:

'This meant that former homes (which) were let out after occupation would qualify, as would buy-to-let properties (which) were occupied by the owner as their main home before sale.'

#### *The position for 2020/21 onwards*

The FA 2020 change, which was originally announced on 29 October 2018, restricts the availability of lettings relief to those who share occupation of their property with a tenant (S223B TCGA 1992). As mentioned above, this revised rule applies for disposals made on or after 6 April 2020. In this context, HMRC have stated:

'Shared occupation is considered to apply where the owner is residing in the same dwelling with the tenant and continues to occupy that dwelling as his/her only or main home throughout the period of the letting.'

It is important to bear in mind that, where the property disposal takes place in 2020/21 or a later tax year, the sharing requirement operates throughout the letting process (including any period which predates 6 April 2020). In cases where the letting began before 2020/21, the FA 2020 amendment erases all the potential lettings relief built up in earlier tax years when the property was let. However, the calculation of the lettings relief itself has not changed.

#### *HMRC's stance*

HMRC are known to be challenging CGT calculations which include lettings relief on a regular basis. Where there is a disposal of a let residential property, there is no box in the CGT pages to confirm that the landlord was in occupation of the property at the same time as his tenant. The only information required to be provided is the three-letter code 'LET' which has to be inserted in Box 8 of SA 108 to notify HMRC that a rental property has been disposed of. Consequently, taxpayers need to confirm that the current CGT rules have been satisfied in the white space elsewhere in the tax return. However, as someone has pointed out, 'there is no guarantee that this part of the tax return will be read by a human before a letter is dispatched by the HMRC computer'.

One of the problems for taxpayers (and their advisers) is that, at present, the Capital Gains Manual contains no updated examples of lettings relief following FA 2020. The only examples – found in Para CG64737 – are illustrations relating to the period prior to 6 April 2020.

Of course, in practice, lettings relief is now rarely relevant for a gain on residential property. Where a landlord and his tenant are occupying the home as one household (and there is no exclusive use by the tenant), lettings relief is inapplicable since the entire gain for the dual occupation period will be covered by main residence relief (see Para CG64702 which expands on Statement of Practice SP 14/80). The only situation where lettings relief may be available for 2020/21 onwards is if part of the property is occupied separately by a tenant (eg. an annex or a granny flat). But this assumes that the let area is not self-contained. If it is, it may be regarded as a different dwelling.

#### *Conclusion*

The modern maxim is to double-check that the legislative requirements have been satisfied before making a claim for lettings relief.

*Contributed by Robert Jamieson*