

Principal private residence ancillary reliefs

(Lecture P1142 – 28.02 minutes)

The ancillary reliefs

On 1 April 2019, HMRC published a 23-page consultation document entitled 'Private Residence Relief: Changes To The Ancillary Reliefs'. This explains that the core private residence relief, which the Government are committed to retaining, is supplemented by various ancillary absence reliefs aimed at dealing with other situations where imposing a CGT charge would lead to what HMRC call 'undesired outcomes'.

The paper lists four ancillary reliefs which go under the headings of:

1. job-related accommodation;
2. final period exemption;
3. work-related and other absences; and
4. lettings relief.

The job-related accommodation relief (see S222(8) TCGA 1992) applies where an individual owns a property which they intend to occupy as their only or main residence, but for work reasons they are currently required to live elsewhere.

Where a property is, or has been, occupied as an individual's only or main residence, the final 18 months of their period of ownership always qualifies for private residence relief, regardless of the property's use during that period (see S223(1) TCGA 1992). This final period exemption is extended to 36 months by virtue of S225E TCGA 1992 for a property owner:

- who is in, or is moving into, a care home as a 'long-term resident'; or
- who is disabled.

Certain periods of absence can count as residential occupation where the property is occupied as an individual's only or main residence before and after the absence (see S223(3) TCGA 1992). These comprise:

1. absences for whatever reason, totalling no more than 36 months in all;
2. absences during which the individual (or their spouse or civil partner) is in employment and all their duties are carried on outside the UK;

3. absences totalling no more than 48 months in all when either:
 - the situation of their place of work prevents someone (this includes a spouse or civil partner) from living at home; or
 - an employer requires an individual (this also includes a spouse or civil partner) to live away from home for the effective performance of their duties.

The relief given for absences under (2) and (3) above is still available even if the individual cannot return to their home afterwards because the nature of their work requires them to continue to work away.

Where an individual lets out all or part of their main residence (or former main residence), a special lettings relief is available under S223(4) TCGA 1992. This relief, which is set against the gain on the disposal of the property, is the lowest of three alternative figures:

- the amount of the individual's private residence relief, i.e.. his exempt gain; or
- £40,000; or
- the amount of the individual's chargeable gain in relation to the letting.

The effect of private residence relief and the ancillary reliefs using the existing legislation is shown in Illustration 1 below.

Illustration 1

Jasper purchased a flat with a 99-year lease on 1 March 2000 for £250,000 and occupied it as his main residence until 1 March 2006 when he departed on the QE2's final two-year round-the-world cruise. During that time, Jasper's flat was left empty. He reoccupied the property on 1 March 2008.

Jasper subsequently bought 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).

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

Jasper had 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 13 years (156 months), was absent for two years (24 months) and rented it out for five years (60 months).

Jasper's gain is:

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

$156/240 \times £600,000 = £390,000$ is eligible for private residence relief and so this part of the gain is not liable to CGT.

$24/240 \times £600,000 = £60,000$ qualifies for absence relief and so this part of the gain is not liable to CGT.

Note that Jasper cannot claim an additional 12 months' worth of relief under S223(3)(a) TCGA 1992 since he never reoccupied the property after he moved into his new residence on 1 March 2015.

$18/240 \times £600,000 = £45,000$ qualifies for the final period exemption and so this part of the gain is not liable to CGT.

Jasper's tax position at this stage is:

	£	£
Gain		600,000
Less: Private residence relief	390,000	
Absence relief	60,000	
Final period exemption	<u>45,000</u>	
		<u>495,000</u>
		<u>£105,000</u>

His lettings relief is set against this figure and is the lowest of:

- (i) £495,000; or
- (ii) £40,000; or
- (iii) £105,000 (this is Jasper's chargeable gain which is attributable to the letting – note that the final period exemption has to be excluded here).

In other words, it is £40,000.

This leaves £65,000 and, once Jasper has claimed his annual CGT exemption of £12,000 for 2019/20, a gain of £53,000 is assessable to CGT. If Jasper is a higher (or additional) rate taxpayer, his CGT liability will be:

$$28\% \times 53,000 = £14,840$$

In order better to focus private residence relief on owner-occupiers, the Government intend, from 6 April 2020, to restrict two of the ancillary reliefs which are thought to be overgenerous. The two reliefs which are affected are:

1. final period exemption; and
2. lettings relief.

By delaying these changes until 6 April 2020 (and the relevant legislation will therefore be included in FA 2020), HM Treasury say:

‘This timetable will give people sufficient time to rearrange their affairs (i.e.. by selling their property) under the current rules, should they wish to do so.’

Final period exemption

As mentioned above, the final period exemption ensures that no gain is taxable if it relates to the last 18 months of ownership of a property which is, or has been, an individual’s main residence. The intention of this exemption is to give people a CGT-free period in which to sell their property after leaving it.

However, the longer this final exemption period, the greater the relief which can be accrued on two dwellings simultaneously (i.e.. an unsold old one and a new one). This, say HM Treasury, ‘is out of line with the intention of the exemption’.

The final period exemption is therefore being reduced from 18 months to nine months for disposals taking place on or after 6 April 2020. It is estimated that this is still twice the length of the average property transaction. The special provision in S225E TCGA 1992 which gives the property owners in (d) above 36 months of exemption is being retained.

Lettings relief

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

The change announced on 29 October 2018 will restrict the availability of lettings relief, which remains at a maximum of £40,000 per individual or £80,000 per couple, to those who share occupation of their property with a tenant. This revised rule will apply for all disposals made on or after 6 April 2020. HMRC state:

‘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 envisaged that, where the property disposal takes place in 2020/21 or later, the sharing requirement will operate throughout the letting process (including any period which predates 6 April 2020).

In these circumstances, it may of course be possible for an owner, when he or she moves out, to take advantage of the absence relief in S223(3) TCGA 1992.

Extra-statutory concessions

In addition to the reforms discussed above, the Government intend to legislate two extra-statutory concessions which are of relevance to private residence relief, namely:

1. ESC D21 – late claims in dual residence cases; and
2. ESC D49 – short delay by owner-occupier in taking up residence.

It is assumed that this will be dealt with in FA 2020.

Inter-spouse transfers

Inter-spouse transfers of chargeable assets fall outside the scope of CGT. However, inter-spouse transfers of an only or main residence are subject to a special set of rules found in S222 TCGA 1992.

The basic CGT provision is that an inter-spouse transfer takes place on an automatic no gain no loss basis under S58 TCGA 1992. The transferee spouse acquires their interest in the asset on the date of the transaction, but at the transferor spouse's base cost.

Where there is an inter-spouse transfer of an interest in an only or main residence, the principle outlined in (s) above applies, but with an added twist. By virtue of S222(7) TCGA 1992, the recipient spouse's period of ownership is deemed to commence not at the date of the transfer but instead at the date of the transferor spouse's original acquisition. Furthermore, any period during which the property was the only or main residence of the transferor spouse will also be deemed to be that of the transferee spouse. Put simply, the transferee spouse stands in the shoes of their other half (i.e.. the transaction is backdated).

However, in order for the backdating regime to apply, there are two conditions which have to be satisfied. At the date of the transfer of the interest in the property the:

1. spouses must be married and living together; and
2. property in which the interest is being transferred must be the couple's only or main residence.

In the absence of either of these conditions, S222(7) TCGA 1992 does not apply and the general rule set out above holds sway. With a little careful planning, it is possible to turn this situation to a couple's advantage.

Illustration 2

Godfrey purchased a buy-to-let property in March 2009. Seven years later, he married Sally.

The couple decided to live in Godfrey's buy-to-let as their main home (the tenant had just left) and so Godfrey transferred his entire interest in the property to Sally shortly before they moved in. This was of course a no gain no loss disposal.

However, because the property was not the couple's main residence at the time of the inter-spouse transfer, it is treated as having been acquired by Sally at the time of the gift from Godfrey (i.e.. in March 2016, and not in March 2009).

Sally sold the property in March 2020 and, as it had been her main residence throughout her period of ownership, full private residence relief is available and no part of the gain is chargeable, despite the fact that the property was rented out for a seven-year period. In other words, Godfrey's gain is washed out by his judiciously timed inter-spouse gift.

The Government have indicated that they are thinking of amending this outcome by ensuring that a recipient spouse will always inherit the transferor spouse's period of ownership and use to which the property was put, even if it is not a main residence at the time of the transfer.

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