

Finance Bill - Changes to PPR relief and other CGT changes

(Lecture P1200 – 13.58 minutes)

Private residence relief

Various amendments are made to the private residence relief rules by Clause 23. All of these have been consulted on and will apply for disposals on or after 6 April 2020.

PPR nominations – homes of negligible value

The first amendment is legislating of ESC D21. Where an individual has more than one residence, they can nominate which should be treated as their main residence and have a time limit of two years to make such an election.

ESC D21 has allowed an extension to the statutory time limit where an individual has had more than one residence but all but one of them has been of negligible capital value.

For example, someone has a shorthold tenancy on a flat as well as a freehold and has not appreciated that the tenancy is sufficient to mean that an election should have been made.

The new legislation (which will be at s222(5A) TCGA 1992) just states that the election 'may be given more than 2 years from the beginning of the period' if the conditions are met. So there is no time limit in these types of cases.

Transfers between spouses

All transfers between spouses are made on a no gain/no loss basis. Currently the question as to when the date of ownership begins for private residence purposes, and whether the transferee spouse inherits the transferor spouse's private residence history depends on whether the property is the only or main residence at the time of the transfer.

The legislation at s222(7) TCGA 1992 is changed so that the ownership history and previous use of property will always be transferred to the spouse regardless of the current status of the property.

Example

A married couple live in a large house in Oxford which has been their main residence since they married.

The husband also owns a property in London in which he lived before he married but which has been rented out for the last 20 years. Out of a total of 25 years' ownership, he has 3 years' occupation. The property is standing at a gain of £2m.

If he sold the property now, the chargeable gain would be £1,600,000 assuming a final period exemption of 18 months and lettings relief of £40,000. This will increase after 5 April 2020 when the final period exemption reduces to 9 months and lettings relief changes mean that he will not be able to claim any relief (see below).

If he transferred the property to his wife on 1 April 2020, her period of ownership would not commence until that date as the property is not their main residence when it is transferred.

If they were to sell their Oxford house in June 2020 and go and live in the London property for three years (long enough that HMRC cannot argue it is not their residence), the whole of the gain would be covered by private residence relief.

If the transfer took place on 6 April 2020 (or later), the wife would be treated as owning the property for the entire period that the husband has owned it and the planning no longer works.

Job-related accommodation

Someone who is in job-related accommodation can have a property treated as their main residence even if they are not living there, as long as there is an intention for them to live in the property once they no longer occupy the job-related accommodation.

An amendment is made to s222(8A) TCGA 1992 so that members of the armed forces who are required to work away from home and receive an armed forces accommodation allowance instead of being required to live in forces accommodation are still treated as being in job-related accommodation. Armed forces accommodation allowance is an allowance which is exempt from income tax under s297D ITEPA 2003.

Final exemption period

An individual who has a property which has been their only or main residence at some point during the period of occupation is treated as occupying the property for a final period before sale. This is reduced from 18 months to 9 months. No change is made to the provisions in s225E which allow the final period to be 36 months where an individual disposes of a previous residence and either they or their spouse is disabled, or is a long-term resident in a care home. The impact on the provision will depend on how long the property has been owned and how long it has been lived in as the main residence.

Lettings relief

S.223(4) TCGA 1992 is removed and therefore abolished lettings relief in its current form.

A new s223B is introduced which allows lettings relief to be given where the owner of the property shares occupancy with a tenant. This would be where they are letting out part of their main residence to another individual who has no interest in the residence and where this would result in a gain becoming subject to CGT. Relief is the smaller of the gain remaining after PPR relief and £40,000. Such relief would also be transferred to a spouse if the house was transferred in accordance with the change to inter-spouse transfers covered above.

This new relief is only going to apply in very limited circumstances. For example, where rent-a-room relief is due on co-occupation as a lodger, it is commonly assumed that this would not prejudice the private residence relief. There is no indication that HMRC have changed their view on that point.

Residency delayed by certain events

ESC D49 will be enacted. This applies where an individual acquires land on which they build a dwelling which they intend to occupy as their main residence or purchase an existing dwelling where occupation is delayed due to work being done on the property (or until they complete the disposal of their previous residence).

As long as the property is occupied within two years of the ownership beginning, then the property will be treated as their main residence for private residence relief purposes throughout the period when they are not actually living there. It can only apply if no other person has used it as their residence during that time.

It is important to note that this only applies where there is a delay in moving in due to works being done or a delay in the disposal of the previous property. A general delay in moving in for any other reason would not be sufficient.

Loans to traders

When an individual makes a loan to a trader (who uses it for the purposes of that trade) and the loan become irrecoverable, a capital loss can be claimed under s253 TCGA 1992.

The legislation previously applied only where the borrower was resident in the UK but this did not comply with the EU Treaty and so the legislation is amended (Clause 26) so that it applies to loans where the borrower is not resident in the UK. This change is backdated for loans made on or after 24 January 2019.

Of course, it may still be problematic as the lender has to show that the money was used wholly for the purposes of the trade, profession or vocation of the borrower and that the loan is genuinely irrecoverable which may be harder if the borrower is not in the UK.

Share loss relief

Along similar lines to the above change, the share loss relief provisions (s131 ITA 2007) which allows an allowable loss for capital gains purposes to be offset against income where the loss arises on a disposal of shares in a qualifying trading company (broadly where the shares are unquoted and the taxpayer acquired them from the company), are also amended (Clause 37).

Previously the company had to have conducted their business wholly or mainly within the UK to qualify for this relief. For disposals on or after 24 January 2019, this requirement is removed.