

## PPR relief – Proving ‘residence’ (Lecture P1435 – 12.27 minutes)

The capital gains tax (CGT) principal private residence (PPR) relief legislation broadly states (at TCGA 1992, s 222(1)) that the relief applies to a gain on the disposal of, or of an interest in, all or part of a dwelling house which is, or was at any time in the individual’s period of ownership, their only or main residence.

*What does ‘residence’ mean?*

The meaning of ‘residence’ was considered well before PPR relief existed. In *Levene v IRC* [1928] AC 217, Viscount Cave L.C. stated: “... the word ‘reside’ is a familiar English word and is defined in the Oxford English Dictionary as meaning ‘to dwell permanently or for a considerable time, to have one’s settled or usual abode, to live in or at a particular place’.”

In a PPR relief context, a ‘residence’ has been simply described (in *Frost v Feltham* Ch D 1980, 55 TC 10) as “a place where someone lives”. Furthermore, five general principles drawn from the case *Goodwin v Curtis* [1998] STC 475 were highlighted in *Dutton Forshaw v HMRC* [2015] UKFTT 478 (TC):

- ‘(1) The word “reside” is an ordinary word of the English language.
- (2) It is necessary to look at the nature, quality, length and circumstances of a taxpayer’s occupation of a property in deciding whether it qualifies as a residence.
- (3) Temporary occupation at an address does not make a person resident there.
- (4) There must be some degree of continuity or some expectation of continuity to turn mere occupation into residence.
- (5) The question of when occupation becomes residence is one of fact and degree for the Tribunal to decide.’

*Quality over quantity*

HMRC states in its Capital Gains Manual (at CG64427) that there is no minimum period of occupation that would enable an individual to establish a residence.

In addition, a succession of cases have indicated that the *length* of occupation in a dwelling is not as important as the *quality* of occupation. For example:

- In *Dutton Forshaw* (see above), a dwelling was only occupied by the taxpayer for two months out of a total ownership period of 44 months, but that was still sufficient for the dwelling to be judged as the taxpayer’s only residence.
- However, in *Yechiel v HMRC* [2018] UKFTT 0683 (TC), four months of occupation was not considered sufficient to qualify for PPR relief. The tribunal stated that ‘quality’ of residence would include not only sleeping, but ‘living’ there (i.e., cooking, eating a meal, and generally spending leisure time there).
- Conversely, in *Bailey v HMRC* [2017] UKFTT 658 (TC), a PPR relief claim was allowed where the taxpayer had two relatively short periods of occupation, but there was a sufficient degree of permanence for the property to be his ‘residence’.

Other cases have shown that factors such as where the taxpayer’s pets lived, and the non-existence of adequate cooking facilities, were relevant to the question of residence.

### *'Remarkably little evidence'*

More recently, in *Patwary v Revenue and Customs* [2024] UKFTT 53 (TC), the taxpayer bought a property in April 2010. He stated that he lived at the property from April 2010 to October 2013 with his girlfriend. The couple married in 2012 but were later divorced. The property was also occupied by a tenant who shared the whole property with them. From October 2013, the property was occupied by a tenant, while the taxpayer went to live with his parents. The taxpayer made a gain when the property was sold in February 2016. HMRC opened an enquiry, and eventually issued a closure notice, refusing the taxpayer's PPR relief claim.

The First-tier Tribunal (FTT) noted that the taxpayer had provided "remarkably little evidence" of residence in the property over a three-year period. The period under review was April 2010 to October 2013. The tribunal accepted that after a period of time has elapsed, some documents may be difficult to obtain; however, it appeared unlikely that no documentation from that period would remain or could be obtained had the taxpayer tried. In addition, the tribunal noted that there was no supporting documentation such as statements from his lodger or his ex-wife. The tribunal had basically been presented with nothing but assertions by the taxpayer to back up his claim that he had lived at the property, and therefore the tribunal concluded that the taxpayer had not discharged the burden of proving that HMRC's assessment was incorrect.

### *Factors to consider*

The question of whether a dwelling constitutes a residence is very fact specific; each case has its own relevant factors. However, HMRC's Capital Gains Manual (at CG64545) includes a non-exhaustive list of factors which are commonly relevant when determining where a taxpayer resides. These factors are in the context of individuals with two or more residences, for the purposes of determining which property is occupied as the individual's main residence. However, they are also potentially helpful in identifying whether a property is a residence more generally:

- 'For each dwelling-house, what is the timeline of events from the date of acquisition until the date of disposal? When was the dwelling-house first used and last used as a residence? It may be necessary to look at periods before the first use or after the last use e.g. where the individual was living at someone else's property.
- If the individual is married or in a civil partnership, where did the family spend its time? Spouses or civil partners who are living together can only have one main residence between them.
- Are there any dwelling-houses owned solely by the spouse or civil partner that also need to be considered?
- Is the size and location of the dwelling-house suitable for it to be the main home of the family according to their size and lifestyle?
  - How many rooms are there?
  - How was it furnished?
  - If the individual has children, where did they go to school?
  - Where was the individual's place of work? Where was their spouse or civil partner's place of work?

- Where was the individual registered with a doctor / dentist?
- At which residence was the individual and their spouse, or civil partner, registered to vote?
- Which address was used for correspondence?
  - Banks & Building Societies
  - Credit cards
  - Utility bills
  - HMRC and other Government departments
- At which address was the individual's car registered and insured?
- Which address was the main residence for council tax? Were there any council tax exemptions in place, such as for the dwelling-house being uninhabitable or a second residence?
- Does the utility bill usage suggest that it was occupied as the main residence of the individual and their family?

Other potential factors can be gleaned from case law. For example;

- *Simpson v HMRC* [2019] UKFTT 704 (TC) - The tribunal held that the sparse furnishings in a taxpayer's flat was inconsistent with an intention to live there permanently;
- *Harte v HMRC* [2012] UKFTT 258 (TC) - No personal possessions were taken to the dwelling, no TV license or internet connection existed there, and no friends or family were entertained or stayed overnight there.
- *Lam v HMRC* [2018] UKFTT 310 (TC) - The tribunal considered there was an insufficient degree of permanence and expectation of continuity of occupation during a period when the dwelling was being renovated. The taxpayers slept at the dwelling in sleeping bags during the week and returned to their rented property at weekends.
- *Hussain v HMRC* [2022] UKFTT 13 (TC) - The taxpayer's occupation of a derelict hospital building for a year was insufficient to amount to 'living in' the old hospital, so it hadn't been a 'residence' for PPR relief purposes.

*Evidence is key*

The case law and HMRC's guidance highlight that it is not enough for someone merely to assert that the 'occupation' and 'residence' elements of the PPR relief requirements were present. Several tax cases have shown that taxpayers failed in their PPR relief claims due to insufficient evidence to demonstrate occupation as a residence.

*Contributed by Mark McLaughlin*