

PPR: Demolished and rebuilt dwellings (Lecture P1403 – 11.19 minutes)

Background

Principal private residence (PPR) relief broadly applies to gains accruing to individuals on the disposal of (or of an interest in) all or part of a dwelling house which has (or has at any time during their period of ownership) been their only or main residence (s.222(1) TCGA 1992).

No part of a gain to which PPR relief applies is a chargeable gain if the dwelling house has been the individual's only or main residence throughout their period of ownership, or throughout their period of ownership except for all or any part of the last nine months (s.223(1) TCGA 1992).

Period of ownership

Establishing an individual's 'period of ownership' for PPR relief purposes can be problematic.

For example, suppose that someone buys a dwelling house, has it demolished, and builds a new dwelling house on the same land as the old one. For PPR relief purposes, does the 'period of ownership' relate to the land on which both houses were built, or to the period during which the new house existed? This distinction can be very important when calculating the amount of PPR relief:

- If the period of ownership relates to the land, there will be a period between the old house being demolished and the new house being built when there was no residence as such, and therefore no occupation as an only or main residence, which is a prerequisite for PPR relief, resulting in a potential restriction in the amount of PPR relief available on a future disposal.
- If the 'period of ownership' for PPR purposes relates to the newly built dwelling, then if it was occupied as the individual's only or main residence until its eventual disposal, PPR relief shouldn't be restricted on that basis.

Which interpretation of 'period of ownership' is correct in this context - does the period run from when the land is acquired, or from when the new dwelling is built after the old one has been demolished?

Starting over

This point was recently considered by the Upper Tribunal in *Revenue and Customs v Lee & Anor* [2023] UKUT 242 (TCC).

On 26 October 2010, Mr and Mrs Lee jointly purchased a freehold interest in land for £1,679,000. Between October 2010 and March 2013, the original house was demolished, and a new house was built.

The new house was completed on 15 March 2013. On 19 March 2013, Mr and Mrs Lee took up residence in their new house. On 22 May 2014, they sold the dwelling for nearly £6 million. HMRC opened an enquiry into Mr and Mrs Lee's tax returns for 2014/15.

HMRC noted that the period between acquisition and the appellants moving into the rebuilt house was 29 months (i.e., from October 2010 to March 2013), and the total ownership period was 43 months (i.e., between acquisition on 26 October 2010 and sale on 22 May 2014).

HMRC considered that the PPR relief available should be 18/43rds of the gain, being the PPR relief available at the time for the last 18 months of ownership. The First-tier Tribunal (FTT) allowed Mr and Mrs Lee's appeal, concluding that the natural reading of the legislation was that 'period of ownership' meant the period of ownership of the dwelling house being sold. HMRC appealed to the Upper Tribunal.

The central issue for the Upper Tribunal was statutory interpretation. HMRC's case was that the First Tier Tribunal made an error in deciding that the 'period of ownership' referred to ownership of the new house, as opposed to the plot of land. However, the Upper Tribunal pointed out that the difficulty with HMRC's interpretation was there was no reference in this context to any asset other than the dwelling house. The whole focus of the PPR relief provisions was on there being a dwelling house. The Upper Tribunal considered that an ownership interest in a dwelling house required that a dwelling house existed. HMRC's appeal was dismissed.

Other cases

The Upper Tribunal also rejected HMRC's submission that the First Tier Tribunal made an error in its treatment of the case law, in particular *Higgins v HMRC* [2019] EWCA Civ 1860 and *Henke v HMRC* [2006] STC (SCD) 561.

In *Higgins*, on 2 October 2006, the taxpayer entered into a contract to lease an apartment. However, the apartment did not exist in 2006; the area which was to become the apartment was simply a space in a tower. Work on the area that became the apartment began in November 2009. The apartment was completed in December 2009. The purchase was legally completed on 5 January 2010. The taxpayer had no right to occupy the dwelling prior to completion. He occupied the apartment as his principal private residence from 5 January 2010 until 5 January 2012. He entered into a contract to sell the apartment on 15 December 2011, and the sale was completed on 5 January 2012.

HMRC considered that the taxpayer's period of ownership commenced at the date of the contract to acquire the lease of the apartment and ended at the date of the agreement to sell. The time of disposal and acquisition was determined under s.28 TCGA 1992. In HMRC's view, the taxpayer's period of ownership began in October 2006 and ended on 15 December 2011. The case reached the Court of Appeal, where the main issue was the meaning of 'period of ownership' in s.223 TCGA 1992. In the court's view, the mere fact that someone contracted to buy a property would not give them 'ownership' such as could allow him to possess, occupy or even use the property, let alone to make it their 'only or main residence'. Allowing the taxpayer's appeal, the court concluded that the taxpayer's 'period of ownership' of the apartment for PPR relief purposes did not begin until the purchase was completed.

Returning to the *Lee* case, whilst acknowledging that the earlier cases were not the same in context, the First Tier Tribunal stated that *Higgins* lent credence to the view that 'period of ownership' was unlikely to start before the asset in question existed, notwithstanding the differentiation between land and a space in a tower.

In *Henke*, the period of ownership was held to start when the land was purchased, not when the dwelling was constructed. A married couple had purchased the land in 1982 with planning permission for the construction of a house, which commenced in December 1991. The couple took up residence in the house in June 1993. The Special Commissioner held that the 'throughout the period of ownership' condition in s.223(1) TCGA 1992 was not met. An apportionment was therefore required, limiting PPR relief to the period of ownership from the first occupation of the house as the taxpayers' PPR in 1993.

However, the First Tier Tribunal in *Lee* stated:

“The fact that the definition of ‘land’ includes dwelling houses upon that land does not operate in reverse to mean that ‘dwelling house’ should be read to include the land.”

The Upper Tribunal subsequently held that the First Tier Tribunal was correct to depart from the reasoning in *Henke*.

The last word?

HMRC’s guidance in the Capital Gains Manual (at CG64923) states that where a dwelling-house is purchased and disposed of by way of contract, the period of ownership for PPR relief purposes will generally commence on completion of the contract to acquire the dwelling and cease on completion of the contract to dispose of it, and that PPR relief should be computed on that basis.

However, HMRC’s guidance does not deal specifically with the demolition of an old dwelling and the building of a new dwelling on the same plot of land. At the time of writing, it is not known whether HMRC intends appealing the Upper Tribunal’s decision in the *Lee* case, so it may not be the last word on this matter.

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