

## The latest main residence decision

### (Lecture P1152 – 15.08 minutes)

In the First-Tier Tribunal case of *Davidson v HMRC* (2019), the taxpayer (D) purchased a flat in London SW5 for £555,000 on 10 June 2008. He sold this property for £750,000 on 18 February 2013. D's dispute with HMRC was over the amount of CGT, if any, which was payable in respect of the sale transaction.

HMRC contended that D had never occupied the flat as his only or main residence so that no CGT relief was due. On the other hand, D argued that this was not the correct position and went to make it clear that there were several distinct periods that required consideration:

- The first period began on 10 June 2008, following which substantial refurbishment works were undertaken at the flat. These cost in excess of £60,000. Once they were completed, the flat was let until 7 March 2011;
- Then, from 7 March 2011 to 24 May 2011, i.e. for a period of just over 11 weeks, D claimed that he and his male partner resided in the flat;
- Finally, the property was let from 24 May 2011 to 29 December 2012. After the tenant's departure, D's flat stood empty for just under two months until it was sold on 18 February 2013.

D, who was a chartered surveyor, also owned a flat in Whitehall where he was resident at the time when he bought the SW5 property. The case report tells us that D's business had been adversely affected by the financial crisis which hit in late 2007 and which led to a significant decrease in the demand for his professional services – hence his decision to rent out the Whitehall flat, which he was able to let for a substantial sum, and to move west to the cheaper environs of SW5. As well as these properties, D owned a country residence near Derby, which he used at weekends and to visit his family, and a small studio flat in Clapham where he lived after he moved out of Whitehall, given that his finances were 'strained to an even greater extent' by the cost of doing up the recently acquired flat in SW5.

However, by early 2011, D's business fortunes had revived and so he felt able to forego the rent from the SW5 property. D, along with his partner, moved in on 7 March 2011 to live there as a main residence. The case report continues:

'His evidence is that he intended to live there long term but that, soon after moving into the property, incidents of domestic violence took place between him and his partner (evidenced in documents comprising reports to the police) which subsequently gave rise to each of them vacating the subject property. He said that he did so because the events that had occurred between him and his partner left him with a sense of insecurity when it came to living at that property and bad memories that he associated with that residence.'

In cross-examination, D accepted that he was registered for voting purposes on the electoral roll in Derbyshire and that he did not have a doctor in London. As far as his car was concerned, D said that he had never notified the DVLA that his address was anywhere other than the flat in Whitehall, notwithstanding that this property was now let. D's accountant, who was described by the judges as an 'unimpressive witness', confirmed that he had never advised D, despite the fact that D owned several residential properties, to make a 'main residence' nomination under S222(5) TCGA 1992. In the circumstances, it is perhaps not wholly surprising that HMRC took the line that they did.

Although the judges had relatively little hard evidence on which to come to a conclusion, they did make the following findings of fact:

- The SW5 flat was not D's main place of residence at any time prior to 7 March 2011;
- Despite the fact that D and his partner only occupied the property for a little over 11 weeks, they moved in with the intention of it being their home on a long-term basis. It was therefore D's main place of residence for that period. This appears to be following the Courts' line, as shown in other recent cases (see, for example, the decisions in *Bradley v HMRC* (2013) and *Morgan v HMRC* (2013)), of giving considerable weight to the taxpayer's expressed intention at the time of first moving into the property;
- The SW5 flat ceased to be D's main residence as from 24 May 2011.

As a result, D became entitled to what at the time was a 36-month final period exemption (which would of course have covered his actual occupation), together with lettings relief which has a maximum of £40,000. These two factors will have significantly reduced D's chargeable gain.

*Contributed by Robert Jamieson*