

## **Recent PPR developments #CGT #Property #PPR**

There have been some recent cases which have seen taxpayers successfully challenge HMRC to claim PPR tax relief on the disposal of their main residences. The fundamental requirement of PPR is that the dwelling house has been the individual's residence. There is no statutory definition of 'residence' and cases have been brought before the courts to define how this should be interpreted.

### **How long do I need to have lived in the property?**

HMRC look at the total use of the property over the period of a taxpayer's ownership and examine the quality of the occupation by looking at the 'nature, quality, length and circumstances' of the occupation.

There must be 'some assumption of permanence, degree of continuity and expectation of continuity'. HMRC will look at the evidence which can prove this such as what is kept at the property (furniture) and use of utilities at the property, where a taxpayer is registered to vote etc. The case of Dutton-Forshaw saw the courts find in favour of a taxpayer who had lived in a property for a mere 52 days.

### **Property bought 'Off-Plan'**

A recent case, *Higgins v HMRC* (2019) heard in the Court of Appeal determined that the 'period of ownership' for PPR CGT relief begins when the property purchase is completed, not when exchange occurs. This is a significant change.

Mr Higgins put down a £5,000 reservation deposit in March 2004 before contracting to enter into the lease in October 2006. The property was a new development and completed in Jan 2010. In December 2011 he entered into a contract for sale and on 5<sup>th</sup> Jan 2012 the property sale completed.

The judge determined that the apartment qualified for PPR throughout his period of ownership and hence no CGT was payable. The judge felt that an alternative result would have been unfair, given that ownership could not have commenced until the building work was completed.

### **ESC D49 – Extra Statutory Concession**

For disposals on or after 6 April 2020 an extra-statutory concession known as ESC D49 applies where an individual cannot occupy their own home either because they are completing the sale of a previous main residence or their new home is being constructed, redeveloped or renovated before it can be occupied.

When this applies HMRC allow PPR relief to be claimed for the first 12 months of ownership, despite no actual occupation of the property during this time. This can be extended to 24 months in some circumstances.

This provides a statutory basis, albeit at HMRC's discretion, to the principle of the relief allowed in the *Higgins* case. In *Higgins* the court's view was that the circumstances in *Higgins* (where occupation could not occur due to the completion of building work) could be distinguished from ESC D49 which is designed to apply to land which existed throughout, i.e. a plot of land and subsequent construction of a dwelling.

HMRC have sought to reduce tax relief on the sale of a main residence by reducing the final period exemption from the original 36 months down to 9 months in recent years and also via the removal of lettings relief from 6 April 2020 (further information: <https://www.fuller-spurling.co.uk/changes-to-cgt-2020-ppr-and-lettings-relief/>) Further challenges will no doubt be brought by taxpayers given the disparity of interpretation between HMRC and the courts.

This article was produced in April 2020 – please always check with Fuller Spurling that information is current, up to date and applicable to your situation