

Main residence relief – beware when buying off-plan

Introduction

Private residence relief exempts any gain arising on the sale of the only or main residence from capital gains tax. Where the property has been occupied as the main residence throughout the period of ownership, the whole gain is exempt; if the property has only been occupied as a main residence for part of the period of occupation, the gain eligible for relief is reduced accordingly.



A recent tribunal case highlighted the loss of relief that may potentially arise when a property is purchased off-plan.

The taxpayer, Mr Higgins paid a deposit to reserve an apartment in what was previously St Pancras station. Contracts were exchanged on 1 October 2006, but the purchase did not complete until 5 January 2010 as a result of delays in the construction of the apartment. Mr Higgins signed a contract to sell the flat on 15 December 2011; the sale completing on 5 January 2012. He lived in the property for two years, from 5 January 2010 until 5 January 2012. He claimed main residence relief in respect of the gain arising on sale.

HMRC sought to deny part of the relief relating to the period from which contracts were exchange – 1 October 2006 – to the date on which Mr Higgins occupied the property – 5 January 2010. For capital gains tax purposes,

the period of ownership runs from the date of exchange of contracts, rather than from completion. However, main residence relief can only start from the date the property was first occupied. It did not matter that it was not physically possible to occupy the property in October 2006 as it did not exist at that point; and indeed Mr Higgins had no right to occupy the property until the sale had completed.



The Tribunal agreed with HMRC and accordingly the proportion of the gain relating to the 39 months from 1 October 2006 to 5 January 2010 was liable to capital gains tax as during that period the apartment was not occupied as a main residence.

Although extra-statutory concession D49 can provide relief where there is a delay of up to two years in taking up residence, the tribunal found the concession not to be relevant in this case.

Delay between exchange of contracts and completion

This decision is not only relevant where a property is purchased off plan. The start date for ownership for main

residence relief purposes is the date contracts are exchanged, not the completion date (regardless of the fact the purchaser has no right to occupy the property until completion). Unless exchange of contracts and completion occur on the same day (which is not usually the case) there will be a window where, technically, main residence relief is not in point. In practice, where the delay is only a few weeks, HMRC usually ignore it and grant main residence relief.

The decision in this case is somewhat worrying – and something to be aware of when buying a new home. Extra-statutory concession D49 may help to bridge the gap where the delay in taking up occupation is beyond the taxpayer's control.

Information to readers

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Recommendation

Take advice of the implications if a delay does occur beyond the normal expected period. It is important the implications are understood if you then decide to sell the property at a future date.

Ashley Clarkson FCA BSc(Hons)

Director

AMEC Consultancy Limited

M: 07775 940992

E: ashley@amec-consultancy.co.uk

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