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TAX ADVISORY

The Principal Private Residence Relief – Practical Problems During the COVID-19 Pandemic

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Principal private residence relief (PPR) provides an individual disposing of their main or principal place of residence (their 'dwelling-house' — such term is not defined in the legislation, but generally includes buildings fit for human habitation and lived in) with relief from all or part of the capital gains tax (CGT) arising on such a disposal.

Broadly, in order to be eligible for PPR, the individual's dwelling-house must be the individual's only or main residence at some point during the individual's period of ownership, and the dwelling-house should not have been acquired in whole or in part for the purpose of realising a gain from the disposal of it (i.e., the dwelling-house was not acquired to be 'flipped').

There are, however, circumstances in which the use of PPR can be restricted or even entirely denied. Individuals should be aware that travel restrictions and working from home could bring two of these circumstances into play.

Business Use – All Work and No Play?

It is a fact of life at present that many people are working from home for an extended period of time, and may be required to do so by their employer (if not the law) for many months to come. Working from home may affect the use of the property for PPR purposes, as the property will no longer be solely used for domestic purposes.

As a general rule, PPR will be restricted where only a portion of the dwelling-house has been occupied as the owner's sole or main residence, while the other part or parts are being used for business purposes.

The relevant legislation (s.224 TCGA 1992) states that those parts of a dwelling-house which are 'used **exclusively** [emphasis added] for the purpose of a trade or business, or of a profession or vocation', will be in effect carved out of any PPR for which the individual disposing of the dwelling-house is eligible. An apportionment is made, whereby the gain arising on disposal of the dwelling-house is divided into the portion of the dwelling-house which is used exclusively for business purposes and the portion which is used as a home. It is the residential part alone which is eligible for PPR. Where an individual has been claiming expenses as a business deduction, or as a home working deduction in the case of an employed individual, on the basis that a room is exclusively used for business purposes then a PPR apportionment is more likely.

However, if a room or section of the dwelling-house is not exclusively used for business purposes, and instead operates in practice as a room with multiple purposes, then PPR should still be available over the whole property. This can be as simple as a room which is used as a make-shift office during the working week, but then doubles as a child's playroom or a TV room, or anything else, outside of 'office hours'. The key takeaway is for an individual to think twice before converting a portion of his or her principal residence into an office solely to be used for business purposes. While carving out private, professional space in busy homes may be a significant temptation for some, the use of such spaces should not be wholly and only designated as office spaces.

Home and Away

As of 29 May 2020, international travel remains uniquely difficult to accomplish, and between some countries it is actually impossible. A lack of mobility for individuals could, depending on personal circumstances, cause their tax residency to change. Any disposal of a property in a country where the owner is not tax resident may cause the owner

to be unable to avail themselves of PPR (and fall within the charge to UK CGT). This could occur either where the individual has property in the UK, but is unable to return to the UK due to international travel restrictions, and subsequently their tax residency changes from being UK tax resident to being resident in their current country of physical location, or conversely where the individual has property aboard but finds him or herself stuck in the UK, UK tax resident as a consequence.

Bearing the current situation in mind, the legislation (s.222A TCGA 1992 ff.) explains that, broadly, PPR will not be available for a tax year (a 'non-qualifying tax year') if the individual in question or their spouse was not tax resident in the country where the dwelling-house is within that tax year, or did not spend at least 90 nights at the dwelling-house (or dwelling-houses in the same country) during the tax year in question. It is possible, therefore, that a change in tax residency could deny an individual the benefit of PPR, as could an enforced period away from the country within which the dwelling-house in question is located.

On the domestic front, if an individual owns two or more dwelling-houses, identifying which dwelling-house is the main residence, and thus potentially eligible for PPR, is a question of fact unless a specific election has been made. It is, therefore, technically possible that an elongated stay at a second home could change the main residence status of a property.

The relevant Her Majesty's Revenue and Customs (HMRC) manual entries, however, make it clear that HMRC looks to facts such as where children go to school, correspondence address, registered doctor location, council tax and car registration — the majority of these sort of factual indicators of residence are unlikely to alter as a result of the ongoing COVID-19 restrictions on travel within the UK.

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