Spring Cleaning

Personal tax

14 December 2015

Ximena Montes Manzano discusses recent changes to only or main residence relief

The capital gains tax exemption on the disposal of a person's only or main residence (which is in most cases automatic), had been fairly settled and subject to few changes since the consolidating Taxation of Chargeable Gains Act of 1992. This "settled" state of the law came to an end with FA 2014 – which introduced a narrowing of the deemed periods of occupation – and was considerably overhauled by FA 2015. This article will explore the amendments made by, and the implications of, the Finance Acts of 2014 and 2015 in relation to only or main residence relief ("main residence relief"). For the purposes of this article a working knowledge of the relief is assumed. For a detailed analysis of the conditions and mechanics of the relief please refer to my book Main Residence Relief by Claritax Books .

Finance Act 2014 Amendments

Deemed periods of residence

With effect from 6 April 2014, section 58 of FA 2014 amended section 223(1) of TCGA 1992 in order to halve the period at the end of an individual's period of ownership which is deemed to be a period of actual occupation as the individual's only or main residence. The deemed period of residence changed from the last 36 months in the period of ownership to the last 18 months. This change is accompanied by an exception which covers owners who are disabled or who are long-term residents in a care home. In those cases, the deemed period of occupation will be extended to the last 36 months of ownership if the following conditions are met:

1. The individual (or the individual's spouse or civil partner) has a mental health disorder which prevents them from managing their own affairs or is in receipt of

a disability benefit or allowance; or
2. The individual is a long-term resident in a care home (already resident or reasonably expected to be resident for at least three months); and
3. The individual does not have any other relevant right in relation to a private residence at the time of the disposal of the dwelling-house.

An individual is deemed to have “any other relevant right in relation to a private residence” if:

1. he owns or holds and interest in a second dwelling-house (or part) which is not the main residence disposed of; or
2. he is entitled to occupy the dwelling-house under the terms of a trust and the trustees own or hold an interest in a second dwelling-house which is not the main residence in question; and
3. main residence relief would have applied to any gain accrued on the disposal of the second dwelling-house or would have done is an election had been made.

It is clear from the amended provisions that the exception excludes unmarried couples even in cases where all the conditions for the exception are met. It is also clear that mere ownership of (or an interest in) a second home could mean that the extension of time is disapplied. It seems that this would be so even in circumstances where the second home is unsuitable for the disabled person’s occupation (for instance a third-floor flat without a lift) and where there has never been an election.

Finance Act 2015 Changes

Disposals of UK residential property by non-UK residents

New section 14B of TCGA 1992 introduced a charge to CGT for non-UK residents (individuals, trustees and personal representatives) on the disposal of any UK residential property.

Individuals will benefit from the annual exemption and from main residence relief only in certain cases:

Determination of main residence

For disposals made on or after 6 April 2015, an individual's dwelling-house (or grounds) will not be eligible for main residence relief for a tax year unless

a) the individual making the disposal was resident for tax purposes in the same country as the dwelling-house for the tax year (or for a partial tax year) or

b) the individual spent at least 90 midnights in that dwelling-house or another qualifying house ("the day count test") (ss. 222A – 222B).

The day count test is generous in that the 90-days required do not need to be consecutive; any days spent by the individual's spouse or civil partner count towards the total (double counting excluding) and any days spent in different qualifying houses (i.e. owned by the individual or spouse/ civil partner) within the same country may be aggregated.

Amount of relief and period of ownership

When calculating the amount of main residence relief due to an individual, section 223(7) of TCGA 1992 provided that the period of ownership did not include any period before the rebasing date. Changes to 223(7) and the insertion of new 223(7A) and (7B), mean that where a capital gain (or part thereof) on the disposal of a main residence is a non-resident CGT disposal ("NRCGT"), the "period of ownership" does not include any period before 6 April 2015 (unless the individual makes an election to apportion).

Any chargeable gain will be on the growth from 6 April 2015 and, therefore, there are two possible bases for computing relief: the first is by rebasing at 6 April 2015 and the second by an express election by the individual to apportion.

Elections

According to section 222(6A) of TCGA 1992, if an individual occupies two or more residences for a period and has made an election for one of them to be treated as his main residence, that election is not disturbed just because during the same period another of his residences is treated as not being occupied as a residence by virtue of the restrictions for NRCGT.

Similiarly, if an individual wishes, he may nominate which of two or more residences (of which one is the NRCGT residence) was his main residence for any period within

his period of ownership of the NRCGT residence (section 222A(2), (3)). A notice of election may vary any notice previously given to elect another residence within the individual’s ownership period.

When an individual makes a disposal whilst non-UK resident, any main residence election must be made in the non-UK resident pages of a self-assessment tax return. Such an election is irrevocable and cannot vary a previous election made on a residence that has already been disposed of, in other words, the provisions do not have retroactive effect (section 222A(5), (6)). If the election affects an interest held by a spouse or civil partner, the election must be made by both parties either in the same election notice or by written notification agreeing to the terms of the notice (section 222A(7)).

Finally, a taxpayer subject to the NRCGT charge must report and pay within 30 days of the UK residence disposal unless they already file a UK tax return (in which case payment is to be made when the NRCGT return is submitted or deferred until the normal payment date).