Great Expectations

Personal tax

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Caroline Fleet reviews recent case law on main residence relief

The Principal Private Residence relief ('PPR') provided to individuals on the disposal of their main residence is probably the most commonly claimed and known of reliefs within the capital gains legislation – sadly, it is also one of those reliefs that many taxpayers are not always fully aware of the internal subtleties and requirements for the relief to be available. Too often, taxpayers have the impression that just living in a property is sufficient to qualify for the relief.

Looking at some of the recent cases that have been heard by the tax tribunals, it is clear to see that it is often the quality of occupation and the expectations regarding the residency when the property is occupied, that is the focus of attention firstly by HMRC and then by the courts, in determining whether the relief should be available.

It is generally considered that the quality of occupation goes hand in hand with the length of that occupation - the longer you lived in a property, the more likely it is that that property was your main residence. However, there have been a few cases recently where this has not been the case and the quality of occupation has been sufficient to qualify for the relief, even though the time spent living in the property was actually quite short. Often the underlying reasons for the change of residence arise because of the breakup of a marriage or changes in personal relationships.

Richard James Dutton-Forshaw v HMRC [2015] UKFTT 478 was one such case.

Richard Dutton-Forshaw (RDF) lived with his wife and daughter in Lymington but worked in London. He would stay in London during the week and go back to Lymington at weekends. When his marriage broke down in 2002, the couple divorced. A few years later in June 2006, RDF purchased another property in Lymington with the intention of moving in with his new girlfriend while continuing to work in London. However the relationship ended prior to moving in and he then

decided that he wanted to be based in London and purchased 32 Cornwall Gardens, moving in there on 5 August 2006. He retained the property in Lymington and commenced renovation work on it with the intention of selling it on completion.

During this time, RDF's ex-wife had remarried. Her new husband had been offered work in Spain and was due to move out there. RDF did not want his daughter to move to Spain and was therefore compelled to move back to Lymington to look after her. RDF duly moved out of 32 Cornwall Gardens on 26 September 2006 and took up residence in the recently renovated Lymington property. 32 Cornwall Gardens was then rented out until it was sold in November 2009.

RDF had claimed PPR on the disposal of 32 Cornwall Gardens on his 2009/10 Tax Return but HMRC disagreed and issued an assessment, claiming that the quality of occupation was not sufficient to qualify as his residence.

RDF appealed against this decision to the First-tier Tribunal (FTT).

The key point at issue was therefore whether RDF's occupation of 32 Cornwall Gardens was sufficient to qualify as a "residence". In determining whether this was the case, regard had to be given to ''the nature, quality, length and circumstances of his occupation of the property''.

In this case, there was clear evidence presented that RDF had intended for the property to be his main residence, including:

- He applied to the Royal Borough of Kensington and Chelsea for a parking permit, which required the property to be his main permanent house for the application to be successful. Once his circumstances changed, he returned this permit.
- He joined a London based dating agency.
- He attended Church there.
- Declarations of his intention to his ex-wife.
- In addition, if the property was not his "home" then, there was no other property available to him at that time.

Due to circumstances beyond his control, his occupation was shorter than expected. He had hoped to live there on a continuous basis but this was not to be.

It was the expectation of continuity and permanence at the outset which swayed the FTT. They drew from earlier cases, stating that the need for permanence and continuity should not be overstated and it is important to look at the full circumstances to determine whether the property qualifies as residence. Therefore, despite living in the property for just over 7 weeks, the FTT ruled in RDF's favour and his claim for PPR stood.

This case was similar to that of *David Morgan v HMRC* [2013] TC02596. In this case, Mr Morgan had purchased a property with his fiancé but 2 weeks before they were due to complete and move in, the engagement was called off. Regardless, Mr Morgan moved into the property but found that a combination of high running costs and unhappy memories forced his hand and he moved back in with his parents.

He rented out the property from 31 August 2001 to 15 March 2006 and then moved back in to the property with a view to selling it, the property being sold on 28 July 2006. During the entire period of ownership, his actual occupation amounted to two separate periods totalling around 30 weeks.

Again, the FTT found in favour of Mr Morgan and despite the short length of actual occupation in the property, there was clear evidence of expectation of permanence and continuity. For example, at the time the offer was put in and accepted on the property, Mr Morgan was already engaged and had no idea that the engagement would be broken off before the purchase was completed.

Contrast these two cases with that of *Susan Bradley v HMRC* [2013] TC02560. This also involved the breakdown of a relationship whereby Mrs Bradley moved out of the marital home into a rental property she owned. At the same time as she moved into this rental property, she put it on the market and stayed there until it was sold. She reconciled with her husband shortly after moving in and the rental property was sold less than a year after she moved in there.

She had claimed PPR on the disposal but this was denied by HMRC. The FTT also dismissed her appeal on the basis that there was never any intention to live in the property permanently and it was only ever going to be a temporary home and not her residence.

The common theme here is continuity, or the expectation of it. While the length of time spent living in a property goes some way to demonstrating the quality of occupation, it is not conclusive and should be considered alongside the rest of the

facts pertinent to each individual case.

Crucially, the onus is on the taxpayer (and their advisers) to be able to provide evidence, if subsequent challenge by HMRC that their occupation of a property ‘’shows some degree of permanence, some degree of continuity or some expectation of continuity.” Where the period of occupation is relatively short, obtaining this evidence is even more vital.