Main residence relief: the impact of non-occupancy

Property Tax



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We look at a case where main residence relief was given despite the appellant not actually living in the properties concerned.

Key Points

What is the issue?

Mr Campbell purchased and sold four properties between 2010 and 2016. Despite not physically residing in the properties, Mr Campbell argued that they qualified for relief due to an extension of the rules deeming a property to be occupied as a main residence while the taxpayer resides elsewhere in job-related accommodation.

What does it mean to me?

The court rejected HMRC's claim that Mr Campbell was engaged in property trading and accepted that his residence with his parents was necessitated by his employment as a full-time carer for his father.

What can I take away?

Mr Campbell's claim was supported by evidence including detailed medical documentation and property photographs showcasing personal touches. Maintaining extensive documentary evidence, such as photographs and records, is important, especially where tax risks or property matters are involved.

This is (I believe) my 250th case report for *Tax Adviser* and I will treat myself by writing about a case in which I was actually instructed (alongside chambers colleague, Siobhan Duncan). The only other time that I wrote about one of my own cases in *Tax Adviser* was almost exactly 10 years ago in the November 2015 issue.

One advantage of writing about one's own case is the greater awareness of some of the issues than can always be derived from the judgment itself; a disadvantage, of course, is the risk of a lack of objectivity. I hope that readers will forgive the latter.

At a high level, the case concerns the availability of main residence relief. As readers will be aware, the relief generally requires not only occupation of a dwelling house (or part of a dwelling house), but that occupation also has to have sufficient quality so as to make the property the taxpayer's 'residence'.

For example, the case law is littered with cases where taxpayers buy a property and, before actually moving in, some unexpected situation arises and the taxpayers end up selling. When the property market is buoyant (or if improvements have been carried out) what might have been expected to be an exempt asset suddenly becomes one where capital gains tax might fall due. A typical scenario is where a couple buy a property together only for the relationship to founder before they move in. In such cases, tax might not be the first thing on the taxpayers' minds, but a hefty tax bill could nevertheless become a further consequence of the breakdown of the relationship.

Even moving into the property might not be sufficient to avoid a capital gain. The leading case here is the Court of Appeal's decision in *Goodwin v Curtis (HM Inspector of Taxes)* [1998] STC 475. In that case, an individual moved into a house when it

was already on the market. It was held that the occupation of the property was as a stopgap measure, a view that was reinforced by the fact that the house was clearly too big for occupation by a single man (and the fact that it was already in the process of being sold).

Notwithstanding these ominous signs, the taxpayer in the present case – *Campbell v HMRC* [2025] UKFTT 867 (TC) – did not claim to have lived in three out of the four properties under review and, when he occupied the fourth of them, it was already on the market to be sold.

The facts of the case

Between 2010 and 2016, Mr Campbell purchased four different houses relatively close to his parents' home. Each was substantially renovated and sold at a profit.

HMRC started to investigate the case and concluded that Mr Campbell was carrying on a trade of property development and, in the alternative, they charged him to capital gains tax on the gains arising. Furthermore, HMRC imposed penalties on the basis that Mr Campbell had deliberately failed to notify HMRC of his chargeability to tax.

Mr Campbell appealed against HMRC's decisions and the appeal went to the First-tier Tribunal, which gave its first decision in the case in early 2022. The tribunal accepted that Mr Campbell was not trading. However, it rejected his argument (expanded upon below) that the properties qualified for main residence relief. The First-tier Tribunal also upheld HMRC's contentions that Mr Campbell had deliberately failed to disclose his chargeability to tax.

It was at this point that I (and shortly afterwards, Ms Duncan) became involved. We took the case to the Upper Tribunal and argued that the First-tier Tribunal had wrongly considered Mr Campbell's main residence argument.

The essence of Mr Campbell's case was that his father had become ill with a progressive illness in 2007. By early 2010, his father's condition had deteriorated to such an extent that he required full-time care but he was unwilling to be looked after by strangers. As a result, the appellant gave up his career as a mechanical engineer and became his father's paid carer. The role required Mr Campbell to be available around the clock, even though the paid hours were initially only 24 hours per week

(later increased to 35); the contract also required Mr Campbell to reside at his parents' home.

In the meantime, Mr Campbell sought a home of his own, as somewhere that he could escape to when his duties to his father were less pressing. Mr Campbell argued that he could rely on an extension to the main residence rules which deems a property to be occupied as a main residence at any time when the taxpayer is living elsewhere in accommodation which is job-related, provided that it is intended that the taxpayer will in the future occupy the property as a main residence.

It will immediately be seen that, unlike the normal rules concerning main residence, this extension does not require the taxpayer ever to have occupied the property as a main residence; the intention is sufficient (for as long as it lasts).

What made Mr Campbell's case somewhat more difficult (both factually and from the perspective of presentation) was that he was making this claim in respect of four distinct properties over a six-year period. However, in each case, there were reasons why the properties unexpectedly ceased to be attractive to Mr Campbell, leading him to sell them and, subsequently, acquire a replacement.

The Upper Tribunal agreed that the First-tier Tribunal had misapplied the statutory test and furthermore that it had also wrongly adopted HMRC's categorisation of Mr Campbell's conduct as deliberate. The Upper Tribunal also rejected HMRC's second attempt to treat Mr Campbell as a property trader.

The Upper Tribunal then remitted the case to a differently constituted composition of the First-tier Tribunal.

The First-tier Tribunal's decision

The case came before Tribunal Judge Tony Beare and Dr Phebe Mann.

They had to consider whether, in respect of each of the four properties, the following three statutory tests were met:

1. Mr Campbell's residence with his parents was necessary for the proper performance of the duties of the employment (as defined in Taxation of Chargeable Gains Act 1992 s 222(8)(a) and (8A)(b));

2. The accommodation at his parents' home was provided for him by reason of his employment (s 222(8)(a) and (8A)(a)).
3. The appellant intended in due course to occupy his own properties as his only or main residence (s 222(8)(b)).

The tribunal heard evidence from both Mr Campbell and his mother. It decided that the nature of Mr Campbell's work made residence with his parents necessary for the proper performance of the duties of the employment, even though Mr Campbell was able (and encouraged by his mother) to spend downtime in his own properties.

The tribunal also considered the fact that Mr Campbell had been living with his parents on and off in the period before he took on employment as his father's carer. However, the tribunal noted what Mr Campbell's mother had said at the hearing: '…had the appellant not been required to live in her home in order to care for her husband, she would have wanted him to have his own home and he would have moved out'.

HMRC had sought to rely on the fact that, when he was 17, Mr Campbell had been in intensive care following a serious car crash, and his parents kept a vigil for him at the hospital during his recovery. HMRC tried to argue that that level of love meant that Mr Campbell (when in his thirties) could always be guaranteed a home with his parents and, therefore, it was the family ties that provided the basis for Mr Campbell being provided accommodation at the family home. Mrs Campbell's oral evidence to the contrary helped to defeat that argument.

For these reasons, the tribunal accepted Mr Campbell's arguments that his parents' home represented job-related accommodation (as defined in s 222(8A)).

However, that still required Mr Campbell to show that he intended to occupy each of the properties acquired as his only or main residence (as required by s 222(8)).

In each case, he was able to prove that, from the time of acquisition, that was indeed his intention. In each case, there came a point in time at which that intention ceased (generally the time when he put the respective property on the market). However, the calculation of the exemption (in s 223(1)) provides for a grace period at the end of the period of ownership in which the main residence exemption is given, even if the property is not at that time the taxpayer's only or main residence (or, as in this case, even if the property has ceased to qualify as a deemed main residence).

That grace period is currently nine months in most cases. However, in the tax years under review in Mr Campbell's case, it was originally 36 months and, for the later properties, 18 months. In three of the four cases, the change of intention took place within the relevant grace period, meaning that the capital gain was wholly exempt. In the fourth case, the property took a long time to sell, meaning that there was a taxable gain arising. However, that gain was covered by the annual exempt amount, meaning that no capital gains tax was payable.

That conclusion meant that the penalties also disappeared. (For completeness, it should be noted that, at the remitted hearing, HMRC accepted that any failure to notify chargeability was not in fact deliberate.)

Mr Campbell's appeal was therefore allowed in full.

Commentary

This case was a perfect example of the principle: 'I wouldn't start from here.' Although we argued the case on the basis that Mr Campbell had not occupied the four properties as a residence, it was at least arguable on the facts that he had. He was in them nearly every day, whenever his caring responsibilities allowed him a break, and there was plenty of evidence to substantiate that view.

However, the advisers previously engaged by Mr Campbell early in the investigation took the view that s 222(8) was the way forward. In my view, that was a risky strategy (even though it ultimately succeeded). I would have preferred to have been able to run the case on two alternative bases – indeed, much of the evidence that proved Mr Campbell's intentions to occupy the houses as his main residence could have supported the argument that he was actually living there all along. However, by the time that I was instructed, that opportunity had long gone.

Mr Campbell's case was assisted by the fact that he had taken lots of photographs of the properties. They showed that his cats had taken up residence in each. They also showed that Mr Campbell had decorated the properties to his own idiosyncratic taste (or, in the case of the first property, to his then girlfriend's taste). This undermined the suggestion that the properties were being done up for a quick sale at a profit.

Furthermore, three of the properties were bungalows which, as Mr Campbell explained, was to facilitate visits by his father. Mr Campbell also chose kitchen tiles

to match his father’s favourite football team so as to make him feel more at home whenever he did visit. In addition, in one set of photographs, Mr Campbell can be seen in the properties, being visited by his parents, with ‘Welcome to your new home’ cards in the background.

There was also detailed medical evidence explaining the nature of his father’s illness and his care requirements. Letters from a doctor and a nurse made clear that, from a medical perspective, Mr Campbell’s duties required him to live at the same address as his father.

Another helpful fact was that in 2017 Mr Campbell purchased a fifth property, also to be occupied by him as his main residence. In many ways, that fifth property was no different from the previous four. However, there was not the supervening event which made continued ownership/occupation no longer attractive. Although the tribunal recognised that this could have been simply as a result of Mr Campbell exercising caution, given that HMRC’s investigation started in 2017, it accepted that Mr Campbell had been seeking an appropriate property to occupy in due course as his only or main residence since he bought the first of the properties but that, in the case of each of them, supervening circumstances arose which meant that he decided to dispose of the relevant property.

What to do next

Although there is tremendous benefit in hearing a taxpayer’s oral evidence, the importance of having considerable documentary evidence to support one’s case should never be underestimated. Mr Campbell was fortunate that he was able to access such evidence.

Accordingly, in any situation where there is a potential tax risk, particularly if it concerns one’s home, compiling photographic records can be a useful precaution.

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