

PRIVATE OR MAIN RESIDENCE RELIEF – WHAT YOU NEED TO KNOW!

2020/21

Lee Sharpe

taxinsider
PROPERTY

Contents

About Lee Sharpe.....	6
Introduction and IMPORTANT Finance Bill 2020 Note.....	6
1 What Does Private Residence Relief Do?.....	7
1.1 Sting In The Tail.....	7
1.2 Basic Restrictions	7
1.3 Intention Counts	7
1.4 One At A Time – In Theory... ..	8
1.5 So, What Is A ‘Residence’?	8
1.6 Actual Occupation Is Critical... ..	8
1.7 ...Except When It’s Not!	9
2 Selling Other Land/Buildings Alongside.....	9
2.1 The Basic Rules For Grounds, Etc.....	10
2.2 Can A ‘Main Residence’ Be More Than One Building?.....	10
2.3 Curtilage.....	10
2.4 HMRC Guidance And Its Limitations.....	11
2.5 The ‘Permitted Area’ Of Garden Or Grounds.....	11
2.6 ‘...Required For The Reasonable Enjoyment’	12
3 Periods Of Absence.....	13
3.1 Basis Of Calculation – Why ‘Periods Of Absence’ Are Important.....	13
3.2 Delays in Taking up Occupation	14
3.3 Intervening Periods of Absence.....	16
3.4 Care Needed With Other Residences.....	17
3.5 ...But The “Last 9 Months Rule” * Trumps Almost Everything!.....	18
4 The Power To (Flippin’) Nominate.....	19
4.1 Why Nominate?	19
4.2 The Default Approach Without A Nomination	19
4.3 Silver Lining?	20
4.4 The Power To Nominate.....	20
4.5 The Power To Vary A Valid Nomination	20
4.6 Can We Do Better?.....	21
4.7 Timing.....	21
4.8 There Must Be More Than One Residence!	21
4.9 Job-Related Accommodation.....	21
4.10 Overseas Aspects Of Nomination	22
4.11 How To Nominate.....	22
5 The Demise of Lettings Relief?	23
5.1 Lettings Relief – How Much Is It Worth and How to Calculate It?.....	24
5.2 Scoping Lettings Relief and ‘Residential Accommodation’.....	24
5.3 When – For What Period(s) – Is It Available?.....	25
5.4 Wholly Or Partly Let	25
5.5 What Is The ‘Main Residence’?	25

5.6	Single Property.....	26
5.7	Examples – Contrasting Original and Proposed Lettings Reliefs.....	26
6	Evidence Of Occupation As A Residence	29
6.1	The Onus Is On The Taxpayer As Claimant	30
6.2	Useful Tax Cases.....	30
6.3	Evidence Basis	31
6.4	Traditional Evidence Of The Main Residence.....	31
6.5	More Modern Indicators	31
7	Common Pitfalls For PPR.....	32
7.1	Quality Of Occupation	32
7.2	Which Is The ‘Main Residence’?.....	32
7.3	Spouses Can Have Only One Main Residence	33
7.4	Who Owns The Property?	33
7.5	Transfers Between Spouses On Separation Or Divorce.....	33
7.6	Delay In Taking Up Occupation – Holding On To Land For Too Long.....	34
7.7	...A Comforting Thought?!	34

‘Private or Main Residence Relief – What You Need to Know!’ – First published May 2014; second edition October 2016, third edition June 2018, fourth edition April 2020.

Copyright

The rights of Lee Sharpe and Tax Insider Ltd to be identified as the authors of this report have been asserted in accordance with the Copyright,

Designs and Patents Act 1988.

© 2014–2020 Tax Insider Ltd

Disclaimer: This ‘Tax Insider’ guide is produced for general guidance only, and professional advice should be sought before any decision is made. Individual circumstances can vary and therefore no responsibility can be accepted by the contributors or the publisher, Tax Insider Ltd, for any action taken, or any decision made to refrain from action, by any readers of this guide. All rights reserved. No part of this guide may be reproduced or transmitted in any form or by any means. To the fullest extent permitted by law, the contributors and Tax Insider Ltd do not accept liability for any direct, indirect, special, consequential or other losses or damages of whatsoever kind arising from using this guide.

About Lee Sharpe

Lee is a creative Chartered Tax Adviser with 20 years' experience of advising property investors and family businesses on tax matters.

He is also an experienced tax writer: As well as writing for taxationweb.co.uk, Lee is a lead writer for Property Tax Insider (taxinsider.co.uk) and its sister publications, and writes on tax matters for Bloomsbury Professional publications. He has written a number of specialist property tax saving reports that are available through the Tax Insider website.

Introduction and IMPORTANT Finance Bill 2020 Note

This special report tells you everything you need to know about this valuable capital gains tax relief, ('PPR'), and how and when it can be applied. While many property investors may not have an immediate use for PPR, there are many more who might – or even better, could spot an opportunity to utilise this relief to their advantage, having read this report. As with previous reports, it is intended to take readers from the very basics through to a useful appreciation of the relief and how it can be applied.

Finance Bill 2020

Please note that this latest edition has been updated to reflect important changes to PPR relief originally included in the 2019/20 Finance Bill, which has since been re-worked into Finance Bill 2020 (confusingly, it is officially now Finance Bill 2019-21); although unlikely, the new proposed rules may change prior to Royal Assent and you should always check your tax planning with a suitably qualified professional.

1

What Does Private Residence Relief Do?

It has been reported that, between 1990 and 2015, the average UK house price almost trebled in value, from a little under £70,000 to more than £200,000. It would clearly be unfair for someone to suffer Capital Gains Tax (CGT) on the uplift in value by comparison against those historic costs, if and when they came to move to a new house. (Having said that, most other assets held by individuals, including investment/rental properties, are now exposed to CGT on simple price inflation, following the abolition of Taper Relief for CGT purposes from 2008).

What the vast majority of homeowners don't realise is that, while selling your own home can automatically qualify for CGT relief, that relief does NOT always cover 100% of the capital gain, and in fact it is NOT always available.

The basic aim of Private Residence Relief, (also known as Principal Private Residence Relief, or Only or Main Residence Relief), is to ensure that people are not caught by a CGT charge when they sell their home – or their *main* home if they have more than one. The main aims of this report are to get the best use out of this valuable relief, while not falling foul of the several restrictions that can apply.

1.1 Sting In The Tail...

Although it is rarely seen in practice, one unfortunate consequence of being eligible for PPR is that any loss on a disposal of a qualifying main residence is not an allowable loss, to the extent that any gain would have been relieved by PPR (The Taxation of Chargeable Gains Act (TCGA) 1992 s 16 (2)).

1.2 Basic Restrictions

There are important restrictions/exceptions to this general rule, such as the effects of:

- intervening periods of absence;
- ownership prior to (or following) occupation as the main residence;
- letting the property out; or
- use in a business.

Each of these (or a combination) can serve to restrict the benefit of the relief, although the rules often allow some flexibility, as we'll see later.

1.3 Intention Counts

There is a further exception, which is that a property acquired wholly or partly for the purpose of making a gain on its disposal is not relieved under the PPR rules (TCGA 1992 s 224 (3)). The restriction also applies when a residence is subsequently developed in order to make a gain on disposal, as distinct from improving the property the better to enjoy living in it. Given that most people might expect or at least *hope* to make some gain on the disposal of their property – particularly after 'doing it up' – then, interpreted strictly, this could be quite problematic and might even put something of a dent in the steady stream of home improvement television programmes.

Fortunately, HM Revenue & Customs (HMRC) has adopted a pragmatic approach and as per their Capital Gains Manual (at CG65210):

‘...It would be unreasonable and restrictive to apply the legislation in this way. The subsection should only be taken to apply when the **primary purpose** of the acquisition, or of the expenditure, was an early disposal at a profit.’

1.4 One At A Time – In Theory...

The relief is basically only available in respect of the *main* residence so that, in theory, the relief is not intended to apply to several properties at once. Notwithstanding that, there is some scope within the rules to benefit from overlapping periods of relief, and there is planning that orients around this part of the regulations – although opportunities have been partly curtailed following changes made in the last few years (see later). Also, where there is more than one residence, there may be opportunities to benefit from the flexibility available as to deciding which property is in fact the *main* residence at a particular time: it isn’t always as obvious as you might think, and actually you might be able to choose (and where you can choose, you probably should).

1.5 So, What Is A ‘Residence’?

The legislation does not define a ‘residence’ in this context, so it is open to interpretation and it seems that the courts have accepted the word’s dictionary definition.

There are in fact two separate sections in HMRC’s manual about the meaning of residence: in previous Tax Insider publications we have often warned that the manuals are only HMRC’s position and not the final word, and here is an example of where HMRC first says what it thinks, and then grudgingly reports what judges have actually decided.

The first (at CG64427) is HMRC’s position on the meaning of ‘residence’, and it says it is ‘...*the* dwelling in which that person habitually lives...’ It would be easy to infer from that statement that there can be only one residence at any given time, which would be incorrect, since the legislation itself makes it clear that there can be more than one residence at a time (otherwise there would be no facility in the legislation to choose which is one’s ‘main’ residence).

The next section (also duplicated at CG64435) goes on to discuss ‘judicial interpretation’ of the definition and includes, ‘...a residence is *a* place where somebody lives...’, and ‘...even occasional and short residence in a place can make that a residence’. Courts and tribunals have often been more disposed to accept that a property fulfils the definition of ‘a residence’ than has HMRC.

Note that even a rented property can comprise a residence, and that the rules do not ignore overseas properties, which can also count as residences, and even qualify for PPR (see also “Care Needed with Other Residences” below).

1.6 Actual Occupation Is Critical...

One area in which the courts seem more frequently to have decided in favour of HMRC is that, in order for a property to be eligible, it must generally