

Availability of PPR when there is a delay between exchange and completion or buying off plan

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In the recent case of *Desmond Higgins v Revenue & Customs Commissioners* (2019) a taxpayer appealed against the Upper Tribunal's interpretation of the phrase 'period of ownership' in the Taxation of Chargeable Gains Act 1992 s223(1) (the 'Act'). This section of the Act states that a gain will not be chargeable if the property has been the person's only or main residence throughout the 'period of ownership'. But what is the 'period of ownership'?

Mr Higgins had exchanged contracts on the purchase of an apartment 'off-plan' in October 2006 and had paid the second deposit in March 2007. He sold his former residence in July 2007 but, owing to various delays out of his control, was not able to complete the purchase of the apartment until December 2009, and not able to move in until January 2010.

The question of PPR arose two years later when he sold the apartment. Mr Higgins was claiming PPR on the entire increase in value of the property on the basis that he had been in occupation of the apartment for the entire period of his ownership. HMRC contended, however, that Mr Higgins' period of ownership had, in fact, begun when the initial contract was entered into in October 2006, several years before the lease contract had been completed and Mr Higgins had been able to live in the apartment. They were therefore denying full PPR because Mr Higgins was not in occupation between exchange of contracts and completion.

The First Tier Tribunal concluded that the 'period of ownership' could not include any time when occupation was impossible (because the property had not been built) and rightly began in January 2010 when Mr Higgins owed the legal and equitable interest in the lease. However, the Upper Tribunal disagreed and took the view that once Mr Higgins had acquired an equitable interest (in 2006 once contracts were exchanged) and had acquired a disposable asset (once the second deposit had been paid in 2007) then the 'period of ownership' had begun. Therefore, as the apartment had not been Mr Higgins' main residence throughout the entirety of this period, the Upper Tribunal concluded that PPR should be restricted.

The case went to the Court of Appeal where it agreed with the First Tier Tribunal. The Court found that 'period of ownership' had indeed begun when the purchase had been completed and not when contracts were exchanged. The judgement noted that exchange and completion often take place on different days and if HMRC's position were upheld then Parliament would have failed in allowing for complete relief from capital gains tax in the normal course of a taxpayer selling their main residence. Moreover, simply entering into a contract to buy a property does not mean the individual can necessarily possess, occupy or even use the property, and so the period of ownership cannot rightly be said to have started.

The Appeal being allowed in this way was good news for Mr Higgins, and the pragmatic interpretation of the legislation will also be a relief to those involved with off-plan property purchases where there is often a significant delay in exchanging contracts and taking up residence.

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