

## The capital gains tax "benefit" of your home office being invaded by the family from time to time

21 OCTOBER 2020

CATEGORY:  
ARTICLE



Capital gains tax ('CGT') is payable by individuals on gains realised when they dispose of property, including real estate. For residential property, the presently applicable rate of CGT is 28% for higher rate taxpayers, and this even applies to individuals who are non-UK tax resident. However, where an individual occupies a residential property as their only or main residence throughout the period of ownership, he will be eligible for principal private residence relief ('PPR') which provides relief from CGT on gains arising on disposal of the property.

PPR will be available in part when a property has been an individual's only or main residence at some point during their ownership. This is calculated on a time apportionment basis. Where PPR is available for part of the ownership period, the last 9 months of ownership will also benefit from PPR (see Withers' previous article – [HMRC has recently reduced this period from 18 months](#) ).

However, there are various circumstances where HMRC may seek to deny PPR, such as if the property has been acquired wholly or partly for the purpose of realising a gain from its future disposal or if the property has been rented out (although 'lettings relief' may apply where the landlord is in shared occupation with the tenant).

This article highlights a potential pitfall which may become more relevant in the era of Covid-19, especially given the pressure on the Treasury to raise funds and since potential changes to the CGT rate (if not the wider regime) are currently much talked about.

### The Home Office

With millions in the UK having been asked to work at home since March, people's homes have become their offices. Indeed, many will have reconfigured their home to suit this new requirement and, to really take advantage of the new work-life balance, it may have been a necessity to create dedicated working space, free from interference from other family members. In this instance, homeowners should be aware of s224 TGCA 1992, a legislative provision which states that those parts of a home which are "used exclusively for the purpose of a trade or business, or of a profession or vocation" will be denied PPR.

Where this is the case, HMRC apportion any gain on a disposal between the part of the home which does qualify for PPR and the part which does not and only the gain apportioned to the part that is not used exclusively for the trade, business, profession or vocation will benefit from the relief.

In terms of how much of a gain would be attributable to the residential part and excluded part of a home, HMRC has discretion to decide depending on the facts of the particular case and the apportionment is not necessarily calculated by reference to the floor area. For example, if the part of the home used for trade is a separate building isolated from the home (for example a garden shed office), HMRC could conceivably base their valuation on what the market value of the shed if it were to be sold as a separate office space.

Comfortingly, the 'exclusive use' test is construed strictly and HMRC do not usually seek to deny relief for room which has some measure of regular residential use (although occasional and very minor residential use would be disregarded). Therefore, to avoid issues and an unexpected tax bill, individuals would be well advised to make sure that any newly designated office space is used to some degree otherwise than for the purposes of business.

That may well mean, in practice, that the rest of the family is able to "invade" from time to time, that the computer is used for non-work purposes and that non-work related items are kept there. It might also be worth thinking about what marketing materials say about your property when it comes to sale, to make sure the advantage of such spaces is their flexibility, rather than a designated, single use

If you have any questions about this topic, please get in touch with any of the authors or your usual Withers contact.

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