CGT and the date of acquisition

The period of ownership commences from completion.

Section 28 of TCGA 1992 provides that for capital gains tax purposes, a person acquires an asset at the time the contract is made and not at the time that the asset is conveyed or transferred to him.

In the context of a purchase of land, the contract will generally be made when contracts are exchanged, not when it is completed. This can give rise to difficulties – and it did so in the case of *Higgins v HMRC* which has recently been heard by the Court of Appeal ([2019] EWCA 1860).

In October 2006, Mr Higgins entered into a contract for the purchase of a flat, off plan, with completion taking place when the building had been finished. Completion occurred in January 2010 and Mr Higgins moved in and used the property as his main residence. He subsequently sold the flat and claimed the main residence exemption under TCGA 1992 s 222.

That all seems straightforward. However, HMRC argued that his period of ownership started on the date of exchange in October 2006, and as he did not move in until January 2010, this period could not qualify for the exemption because the property was not his residence.

HMRC seemed to have a seriously powerful case. At the date of exchange, the purchaser acquired at least an equitable interest in the property and his period of ownership looks like it must have started on that date. (One would need to overlook that at the date of exchange, the property did not actually exist, but don't let's worry about that.)

However, the Court of Appeal drew attention to the fact that such an interpretation did not make sense in the context of a property transaction. Exchange and completion rarely take place on the same day and on this interpretation, the exemption from capital gains tax would never exempt all the gain in the paradigm case. The period from exchange to completion could never qualify for relief and would always be chargeable to capital gains tax – and Parliament could not have intended to deny complete relief from capital gains tax for this reason.

The Court of Appeal said this reasoning strongly suggested that the interpretation put forward by HMRC was wrong. It said that as a matter of ordinary language, a purchaser would be described as the 'owner' only once the purchase had been completed. And it is the 'period of ownership' which is the test for the exemption.

The Court of Appeal referred to a number of circumstances where the courts have limited the application of s 28. It mentioned *Chaney v Watkis* [1986] STC 89 and *Jerome v Kelly* [2004] UKHL 25 (to which I would add *Connolly v Bartlett* 66 TC 380). This case is another one, and the Court of Appeal summarised the position by saying that:

'The fact that using section 28 to fix a "period of ownership" for the purposes of sections 222 and 223 would neither afford total CGT relief in the paradigm case, nor sit comfortably with the ordinary meaning of the words "period of ownership", indicates that the provision should not be applied in that context'.

Accordingly, Mr Higgins' period of ownership was regarded as commencing when he moved in on completion with the result that full relief was available.

Although the result is clearly how the relief ought to apply, it does not sit comfortably with the words of s 28 which are obviously in need of some revision. I would suggest that it is no more acceptable for a relief to be given by squeezing the wording of the legislation into a more desirable shape than it is to impose a charge to tax by the same process (with which we are more familiar).

Allowing reliefs in difficult circumstances used to be dealt with by extra statutory concessions so that the problems of interpretation could be acknowledged, whilst allowing fairness to be achieved by the concession. But sadly, we are not allowed to have those any more. ■

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VAT on matchmaking

Art or science?

If you want to research what actually happens in certain walks of life, VAT tribunal reports are a treasure trove. We learn about the purpose and activities behind pilates (*Hocking* [2014] UKFTT 1034), belly dancing (*Cheruvier* [2014] UKFTT 7), fortune telling (*Indian Palmist* (2003) VAT Decision 18397), and several more. To this, and the others, we can add matchmaking services, brought to us by the case of *Gray & Farrar International LLP* [2019] UKFTT 684.

That's a grand sounding name, but, in reality, one person is responsible for providing the service, namely Claire Sweetingham, assisted by a small team. So, what kind of person is she and what is the service?

For some readers, there will already be an image of such a person, in the form of Patti Stanger of the US reality show *Millionaire matchmaker*. Her show depicts her meeting wealthy individuals, and using her intuition to seek out a worthwhile match, while coaching her clients, and then monitoring their performance after the match is made. It all makes for great TV, but you can see how it could work away from the camera's gaze. Now, at the risk of a writ coming in my direction, it seems that Sweetingham provides the same kind of service, but without the TV cameras and in the UK. But you can read the case report, and judge for yourself.

Fascinating on its own terms, no doubt; but, what's the VAT point here? It is to do with the place of supply. The UK is a small pool for such customers, and the appellant attracted clients from outside the EU also. The issue is whether the place of supply of this service is in the UK, or can be regarded as 'exported' (though technically supplied where the customer belongs) and thus outside the scope of UK VAT. The latter can only arise if the service fits into the list in VATA 1994 Sch 4A para 16. The only candidate in this list is (d): services of consultants or/and provision of information.

HMRC said that these services were not amongst the 'liberal professions' (meaning a recognised category of expert), but the tribunal rejected that limitation on defining consultancy. HMRC then argued that the service went beyond consultancy as it involved making arrangements for something, and not purely giving advice, that Sweetingham could not physically have provided the majority of the input, and that her team was doing a large amount of work which could not credibly be called consultancy. Indeed, a cloud over this hearing was the extent to which HMRC relied on perceived inaccuracies in the appellant's description of her working practices to make its case that she could not be acting as a consultant.

Among the several other points advanced by HMRC was that, as the appellant used her 'inexplicable magic of intuition' to make the matches, this did not amount to 'advising', as it lacked an intellectual component. This 'argument' comes across as clumsy and judgemental, and lacking (on its own part) much intellect. This impression is compounded by HMRC's assertion that the service is little different to what would be provided 'by a concerned friend'.

But I must now put you out of your misery. Was the service 'consultancy' with an overlay of 'providing information' (in which case it could be 'exported' to the non-EU client), or was it something else,