



FIELD COURT TAX CHAMBERS

CGT and the date of acquisition¹

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 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 seems all 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]

¹ This article was first published in the InBrief section of Tax Journal published by LexisNexis on 13th December 2019

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.

Peter Vaines

Field Court Tax Chambers