



FIELD COURT TAX CHAMBERS

Private residence relief: what is a residence?¹

A lack of clarity on the central issue

Everybody is familiar with the CGT exemption for the only or main residence in TCGA 1992 s 222. There are various technical issues with the exemption, but the first thing to recognise is that the property must be a residence. That seems pretty straightforward, and we have numerous decisions of the courts and tribunals to assist us. Unfortunately, on this subject, clarity seems to be in short supply.

Let us start with the case of *S Bradley v HMRC* [2013] UKFTT 131 (TC). Mrs Bradley lived with her husband. She also owned another small house which was normally let. She decided to leave the matrimonial home and moved into the small house when it became vacant in April 2008. She expected to live permanently in the property, making various improvements and generally making it her home. However, Mr and Mrs Bradley later became reconciled and she moved back to the matrimonial home in November 2008, selling the small house in January 2009.

During the period April 2008 to November 2008 she lived in the small house and probably felt confident that the property would qualify, not only as her residence, but as her main residence. The tribunal decided that the property was not her residence at all. It said that she never intended to live permanently in the property; it was only ever going to be a temporary home and it was therefore never even a residence.

The tribunal was heavily influenced by the Court of Appeal judgment in *Goodwin v Curtis* [1998] STC 475, where it was held that the occupation of the property must involve some degree of permanence and some expectation of continuity – following Lord Widgery’s tests in *Fox v Stirk* [1970] 3 All ER 7. However, in *Goodwin v Curtis*, the taxpayer had separated from his wife and family, stayed in the property as temporary accommodation, and after only two days he completed the purchase of another property which was intended to be his private residence.

This is a long way from the situation of Mrs Bradley who moved into a perfectly suitable home, took steps to make it more of a home and lived there from April to November without any intention of moving out.

Mrs Bradley may have thought herself a bit unlucky with the outcome of her case, but maybe she accepted that she was not really there long enough for it to be her residence. However, she would have been enraged by reading the case of *D Morgan v HMRC* [2013] UKFTT 181 (TC) which was published only three weeks later.

Mr Morgan was getting married. He was in the process of purchasing a property which would be the matrimonial home. He was living with his fiancée’s family but unfortunately two weeks

¹ This article was first published in the InBrief section of Tax Journal published by LexisNexis on 5th February 2021.

before the purchase, the relationship ended. So, he went to live with his parents. Nevertheless he carried on with the purchase of the property and moved in for two weeks specifically to prepare the house for renting and then moved back to live with his parents. The property was let and then sold. He claimed the exemption – and the tribunal decided that Mr Morgan had lived in the property for two weeks and this was enough to qualify it as a residence.

Then we have the case of *P Moore v HMRC* [2013] UKFTT 433 (TC). Mr Moore also had matrimonial difficulties and moved into another property taking furniture with him from the matrimonial home, knowing that he would never return. He lived there from November 2006 to July 2007, spending pretty much every night there except when he was away on business. The tribunal found that he did not occupy the property with a sufficient degree of permanence for it to be a residence. It was only temporary accommodation.

Mrs Bradley would by now have disappeared into a slough of despond. There she would probably have found Mr Moore (and lots of others) – but also Mr Yechiel, who had claimed the exemption too: *H Yechiel v HMRC* [2018] UKFTT 683 (TC). He bought a property which (after refurbishment) would be the family home for him and his fiancée. They got married but the marriage failed. In April 2011 he moved into the property, but he went back to live with his parents in December and he sold the property in August 2012.

There was no dispute that Mr Yechiel lived there, although the accommodation was rather unsatisfactory. It had a bedroom, a kitchen and a bathroom, and he slept there every night between April 2011 and July 2011, although it is not clear what happened after July. He did not cook there (he did not cook at all it seems) and had meals at his parents' house or had a takeaway. He had meals at his property, sometimes standing up, sometimes in his car and sometimes in bed. He received post at the property but took his clothes to his parents for washing (this rings a distant bell).

The tribunal said that as well as occupation and an intention to occupy with a reasonable degree of permanence, the quality of his occupation must be determined by what he actually did in the house. It considered that to have the quality of residence, the occupation of the house should not only involve sleeping, but also periods of cooking, eating meals sitting down and generally spending some periods of leisure there. It is not clear where the authority for these additional conditions comes from.

Clearly Mr Yechiel's living arrangements were unsatisfactory compared with people in rather better circumstances, but the fact that he ate his takeaway meals in bed or standing up seems a rather bizarre criterion on which to base whether he was living in the property. The tribunal members might have thought 'you cannot live like that' but some people have to.

I turn to the recent case of *S Core and another v HMRC* [2020] UKFTT 440 (TC). Mr and Mrs Core bought a property in Green Lane. They did some building work and soon after they moved in somebody made an offer for the property (which they rejected). However, about a month later, he made a higher offer which they decided to accept. The tribunal found that their six weeks' occupation was enough to represent a residence, as they had moved into the property expecting to live there for an indefinite period.

There are many other cases on this subject, which do not make matters any clearer. It is really unhelpful (and even more wasteful) for such confusion to exist. Furthermore, it promotes litigation because both sides have loads of cases which directly support their position. Unfortunately, the outcome is utterly unpredictable – and sometimes inexplicable.

We urgently need some definitive guidance from the superior courts.

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