

## Family Home

### Property and Residence

To avoid any confusion, it is necessary to make the distinction between property and residence before embarking on the tax issues associated with the family home.

You may own one property that you consider your home, or you may own several properties for various other reasons. Your residence is any property in which you live permanently or for a considerable period of time. You may occupy more than one property as a residence at any one time. For example, you may own a property in London, close to your place of work, which you occupy throughout the week, in addition to your family home that you return to each weekend.

### Taxation of Private Residences

The taxation of a private residence may involve income tax on any rental income received and capital gains tax (CGT) on the profit of an eventual sale. In either case, there are a number of steps that you can take to ensure that tax is minimised.

### Multiple Residences

Where you have more than one residence, it is possible to nominate one of the properties as the Principal Private Residence (PPR), which is exempt from CGT. Married couples are only entitled to one exempt residence between them, and both must join in any election.

For an election to be valid, it must be made within two years of you having a change of residences. In addition, the property must be occupied as a residence – for example, your PPR could not be a holiday cottage that you stay in for only a week. You would be advised to support a nomination by ensuring that all post is sent to that property, changing your electoral register details and paying council tax in respect of that property.

A property is not generally classed as a residence if it is let to a third party. The two-year deadline for making a nomination therefore starts when the property is first used as a residence. As a result, it may be possible to reduce a CGT liability on a property that was previously let, if you are able to establish the property as a residence (and make a suitable nomination if necessary). Not only will part of the gain be exempt due to PPR relief, but letting relief of up to £40,000 could also be available.

Where an election has not been made, your PPR will be based on which property is the main residence as a matter of fact.

### Development

Where part of a main residence property is sold for development or is developed by you, there can be unwelcome surprises, if PPR relief is expected to be available to reduce the tax payable on the development profit. Before any development takes place, it is important to note that in most cases only the first 0.5 hectares will qualify for PPR relief. If relief is claimed on more than this, it will be necessary to show that it is essential for the proper enjoyment of the property. It is not sufficient to argue that the extra land is required because of a special interest of the owner, e.g. horse riding.

Where part of a garden is to be sold for development, the order in which the garden and the property itself are sold will determine the availability of PPR. Where a house qualifying for PPR relief is sold first, relief will then not be available on the later sale of the garden.

There may also be cases where you are developing the garden. Once an area of garden has been segregated it is de facto – not required for the enjoyment of the house. In this case, you should consider selling the garden to your own development company before any segregation of the development site takes place. This will ensure that PPR relief is available.

### **PPR and Hold-Over Relief**

It should be noted that where a property has been subject to a holdover election after 10 December 2003 (e.g. deferring tax due on a transfer to a discretionary trust), PPR relief is no longer available at any stage until after it has been sold to a third party. If the original transfer took place before 10 December 2003, PPR relief is only available on the proportion of the gain arising before that date.

### **Let Property (not a residence) and Rental Income**

Income from property held by a husband and wife in joint names, is usually treated as being shared equally between them. Where one spouse is a higher rate taxpayer, this can result in an unnecessarily high income tax bill.

In order to reduce the tax payable, you can make a declaration stating a different split of your beneficial interests in the property and apply the same split of the interest. HM Revenue & Customs (HMRC) must then be notified about the declaration using Form 17 within 60 days. All income from the date of the declaration will then be taxed in accordance with the agreed proportions, thereby ensuring that the majority of the income is taxed on the lower-rate taxpayer.

Alternatively, where property is held in joint names but in unequal shares, you may decide not to submit a claim to HMRC so that the income is shared equally. The benefit here would be to redirect income to a spouse paying tax at lower rates from a higher rate taxpayer, who nevertheless owns the majority of the asset (it should however be noted that this option no longer applies to shareholdings in private companies).

### **Periods of non-occupation as PPR**

Certain periods of non-occupation are treated as occupation:

- The last 3 years of ownership providing you have occupied the property as your main home at some point
- Absences whilst working abroad
- Three years for any reason
- Four years if required by your employer to reside elsewhere

As ever there are conditions to be met.

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