

If you are thinking of claiming the CGT exemption for an only or main residence, you might need to think again.

The recent case of *Piers Moore v HMRC* [2013] UKFTT 433 (TC) (see 'Cases', *Tax Journal*, dated 20 September) is the latest in a line of cases on this exemption and the argument now is not so much about whether a property is a taxpayer's main residence, but whether it is 'a residence' at all. On the interpretation which has developed, this is becoming very difficult indeed.

We might start with Lord Widgery's celebrated description of a residence in the case of *Fox v Stirk* [1970] 3 All ER 7 (at 14): 'a place where a man is based or where he continues to live, the place where he sleeps and shelters and has his home. It is imperative to remember in this context that residence implies a degree of permanence. Consequently, a person is not entitled to claim to be resident merely because he pays a short temporary visit. Some assumption of permanence, some degree of continuity, some expectation of continuity is a vital factor which turns simple occupation into residence.'

This approach was adopted by the Court of Appeal in *Goodwin v Curtis* [1998] STC 475, although in that case, the taxpayer only occupied the property for five weeks. He had just separated from his wife and stayed in the property as temporary accommodation, and two days after moving in he purchased another property which he intended to be his main residence. He lost.

That seems fair enough until we get to the case of *Susan Bradley v HMRC* (TC02560). In this case, the taxpayer separated from her husband, moved out of the matrimonial home and into another house that she owned. She made improvements and generally made it more of a home. Although she put the property on the market, the market was very poor and she expected to live there permanently. After eight months, she was reconciled with her husband and moved back into the matrimonial home. The tribunal found that her occupation was only temporary; she had put it on the market and it was never her residence at all. This is to stretch Lord Widgery's test of 'a short temporary visit' to breaking point.

Compare this with *David Morgan v HMRC* (TC02596). Mr Morgan was purchasing a property where he intended to live when he and his girlfriend were married. However, they broke up; he carried on with the purchase, moved in for two weeks specifically to prepare the house for renting and then moved in with his parents. The tribunal found that this was his residence.

Where on earth do you go from here?

You go to *Piers Moore*. Mr Moore also had matrimonial difficulties and moved into another property. He took furniture with him from the matrimonial home and bought some more. He took all his clothes, knowing that he would never return to the matrimonial home. He lived there from November 2006 to July 2007, spending pretty much every night there, except when he was away on business. Mr Moore took up with another lady (whom he subsequently married) and later purchased another property to be the main residence for his new wife and stepchildren.

In subsequent correspondence with HMRC, Mr Moore described his occupation as temporary. Oh dear. Although he had lived in the property for some months before it was marketed and the acquisition of a new family home was not initiated until six months after he had moved into the property, the tribunal found that it was only temporary accommodation; Mr Moore did not occupy the property with a sufficient degree of permanence for it to amount to a residence.

I think we must now conclude that a person will only acquire a residence if he has no intention of ever leaving the property and if there are no foreseeable circumstances in which he might move out. This has surely gone too far. Do a new married couple expect to live in their first home forever? Of course not. It is only temporary – because they may clearly have in mind that when children come along, they will move to a bigger house.

So how do we answer the question: I have bought a new house where I am going to live, will it be regarded as my residence? Sorry, not a clue. Maybe if you occupy it for two weeks and then rent it out, that would be OK. But if you live in it as a home exclusively for eight months without any wish or intention of moving, then definitely not.

I would suggest that the time has come for an authoritative decision (or a clear HMRC statement) setting out sensible guidelines about what represents a residence, so that taxpayers can know where they are.

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Article first published in *Tax Journal* - 27 September 2013

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