



# Blessed relief?

*Iles v HMRC is the latest in a series of claims for the capital gains tax private residence exemption. But, as Peter Vaines explains, it is becoming increasingly difficult to determine whether a property is a 'residence' at all*



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The recent case of *Iles v HMRC* [2014] TC 03565, heard before the First-tier Tribunal (the tribunal), is another judgment in a lengthening series of cases involving the principal private residence relief from capital gains tax (CGT). It is well known that there is a CGT exemption for a person's only or main residence, but recent cases such as *Susan Bradley v HMRC* [2013] UKFTT 131 (TC) and *David Morgan v HMRC* [2013] TC 02596 have thrown the whole subject into turmoil.

The main focus of HM Revenue & Customs (HMRC) in relation to this relief is not whether the property is the only or main residence of the taxpayer – it is whether the property is a residence at all.

The main guidelines for determining what represents a 'residence' were provided by Lord Widgery in *Fox v Stirk* [1970] 3 All ER 7, where he said that a 'residence' means: "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."

Unfortunately, we can learn little from the more recent cases. In *David Morgan*, two weeks of demonstrably temporary accommodation was enough to establish residence, whereas in *Susan Bradley*, eight months of settled residence (with a serious expectation of permanence), was not.

The decision in *Iles v HMRC* explored other elements. Dr Iles and her husband, Dr Kaltsas, lived in a five-bedroom detached property. They also had a two-bedroom flat in London Docklands. They sold their house and moved into the Docklands flat on 1 July 2008 when it was already under offer. It was sold on 25 July, and Dr Iles and Dr Kaltsas moved out of the flat and into a four-bedroom detached house that they had viewed before moving into the flat.

During their occupation of the flat between 1 July and 25 July, the couple had no other place to live and they claimed that this was their only or main residence. They had no other residence, so it must have been their only residence and therefore eligible for the CGT exemption. (In case the reader is querying why Dr Iles bothered about the exemption for only 25 days, if she and her husband qualified for the exemption even for this short period, they would qualify for the exemption of the last three years of ownership in any event.)

The issue, of course, was whether the flat was a 'residence' at all. The tribunal decided that, notwithstanding that the flat was Dr Iles and her husband's only home, the quality of their occupation was inadequate. They did not have sufficient permanence or expectation of continuity to justify the property being described as a 'residence'. The tribunal observed that the flat was unsuited to their needs, as evidenced by the properties they occupied before and after the flat. I question why this was relevant. Many people reside in unsuitable

accommodation, but that does not mean they do not reside there; the exemption is not confined to residences which are 'suitable'. However, maybe the tribunal was merely using the unsuitability of the flat as evidence that it must have been temporary accommodation.

The tribunal relied heavily on the Court of Appeal decision in *Goodwin v Curtis* [1998] STC 475, with which there were many similarities with *Iles v HMRC*. In that case, the taxpayer only occupied the property for five weeks, having just separated from his wife and stayed there as temporary accommodation. Indeed, only two days after moving in, he completed the purchase of another property that he intended to be his private residence.

With these authorities, the decision in *Iles* may not therefore come as a surprise. However, it does reinforce the importance of the requirement that a property must be a 'residence' and not merely temporary accommodation before one can even start to consider whether the other conditions for the private residence exemption apply.

## If you want to know more...

- ... about CGT on property, the Private Client Section ran a webinar in May 2014 that examines recent changes to CGT, as well as providing practical examples and case studies. The webinar not only looks at the circumstances in which CGT will arise, but also considers private residence relief and the final period exemption, and what happens when non-resident trusts and companies own UK residential property. You can listen again to the webinar by visiting the CPD Centre.

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