

CHAPTER 30

PRINCIPAL PRIVATE RESIDENCE RELIEF

30.1 Introduction

In this section, we shall look at the relief an individual receives when he makes a capital gain on the sale of his **only or main residence**. This relief is known as "principal private residence relief", shortened to "PPR relief".

PPR relief exempts all or part of a gain which arises on a property which an individual has used as his home. We start by calculating the capital gain on the sale of the property in the normal way. From this we will deduct principal private residence relief to arrive at the chargeable gain.

[TCGA 1992, s. 223\(1\)](#)

| | |
|------------------|------------|
| Gain on Property | X |
| Less: PPR relief | <u>(X)</u> |
| Chargeable gain | <u>X</u> |

In the majority of instances, we are dealing with a private residence - i.e. not an asset used in a business.

PPR relief is an exemption relief and reduces the capital gain rather than deferring it to a later period in time. To calculate the amount of the gain which is exempt, we multiply the gain by the following fraction:

$$\text{Gain} \times \frac{\text{Period of occupation of property}}{\text{Period of ownership}}$$

[TCGA 1992, s. 223 \(2\)](#)

As you will see, if the taxpayer has lived in the property as his home throughout the whole period of ownership, 100% of the gain is exempt and no gain is chargeable.

For most taxpayers therefore, a capital gain made on the sale of their home will be completely exempt as it will be wholly covered by PPR relief. A **gain will only arise** if the taxpayer has been **absent** from the property **at some point** during his period of ownership. We will look at how we calculate capital gains in this instance later in the session.

30.2 Principal Private Residence

Before we look at the detailed computation, we will consider what HMRC mean by the term "Principal Private Residence". Gains on the disposal of a "**dwelling house**" will qualify for PPR relief. A "dwelling house" means not only the main building, but includes any relevant buildings adjoining it. Relevant buildings here would include garages, outhouses, and separate buildings occupied either by members of the family or by staff or employees.

[TCGA 1992, s. 222](#)

A taxpayer's principal private residence also includes **gardens and grounds**, provided the entire area including the site of the house, does not exceed **half a hectare**. HMRC will permit a larger area to qualify for PPR relief if they are satisfied that the whole area of land is required for the "**reasonable enjoyment**" of the property.

[TCGA 1992, s. 222\(2\)](#)

[TCGA 1992, s. 222\(3\)](#)

Over the years, there has been a large volume of case law in which the Courts have been asked to decide whether certain buildings and areas of land are within the meaning of the taxpayer's principal private residence, or whether they are separate assets for CGT purposes.

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In the case of *In Re Newhill Compulsory Purchase Order, Payne's Application (1937)* the courts considered when a larger area of land is "required". The case concerned a compulsory purchase order and the word "required" was defined as meaning that, without the land, there would be substantial deprivation of amenities so that a real injury would be done to the property owner.

A similar approach was taken in the case of *Longson v Baker (2000)* in which the judge applied an objective test as to whether the land was "*necessarily*" required for the enjoyment of the residence, not just desirable or convenient.

In the case of *Batey v Wakefield*, **staff quarters** consisting of a bungalow in which the housekeeper and gardener lived, were held to be **part** of the dwelling house. As such, the gain made by Mr Wakefield on the sale of both the main house and the staff quarters qualified for full principal private residence relief.

The Court agreed with the taxpayer that the adjoining house was **within the "curtilage"** of the main dwelling house and was not, as HMRC contended, a separate and distinct residence.

The case of *Markey v Sanders (1987)* involved a three-bedroom bungalow at the entrance to a small country estate owned by the taxpayer. The bungalow was occupied by the gardener and the housekeeper. The bungalow was held not to be part of the main residence. It is likely that the relatively large size of the bungalow was a factor in this decision.

Another relevant case is that of *Williams v Merrylees (1987)*. Here there was a main house and a lodge about 200 metres from the main house. The main house was sold first, followed by the lodge. It was held that the lodge had been part of the main residence as it was, as a matter of fact, within the curtilage of the property and appurtenant to the main house.

However in the similar case of *Lewis v Lady Rook*, a gardener's cottage was held to be a **separate residence** and not part of Lady Rook's dwelling house, largely **due to the long distance** between the two properties. As a result, when Lady Rook sold the gardener's cottage and made a capital gain, no PPR relief was available.

30.3 Calculation of the relief

The PPR relief is the gain multiplied by periods of occupation divided by the total period of ownership. In this context, "occupation" means both **actual** occupation and **deemed** occupation. By deemed occupation we mean periods during which the taxpayer is **physically absent** from the property, but for PPR purposes he is **treated as living there**. We shall look at the various periods of deemed occupation in more detail shortly.

Finally, here when calculating PPR relief we **only consider periods** of ownership and occupation **since 1 April 1982**. This fits with general rebasing principles, where pre-1982 assets are treated as having been bought on 31 March 1982.

30.4 Deemed occupation

[TCGA 1992, s. 223\(3\)](#)

Certain periods of absence can be treated as occupation, and these periods are listed at Section 223 TCGA 1992. Before looking at periods of deemed occupation, it is very important to note that a period of absence can only be treated as a period of deemed occupation if it was both **preceded and followed by a period of actual, physical occupation**.

Therefore if a taxpayer purchases a property, lives in it for a while then moves out, we can only count the period of absence as a period of occupation if the taxpayer returns to the property and lives in the house before he sells it.

HMRC have not given any guidance about how long a taxpayer must live in a property for that to constitute actual occupation. Instead they will look at the individual facts and circumstances of each case. It may be possible for a taxpayer to return to his house for just a few weeks, but the important thing is that the taxpayer must satisfy HMRC that for that short period the property was his home. As far as HMRC are concerned, they will look at the **quality** of the occupation rather than the physical time period.

In any event, the **last 36 months** of ownership are **always** treated as a period of **deemed occupation**, regardless of whether the taxpayer is living there or not. The only condition here is that the taxpayer must have **occupied the property as his home at some stage**, even if that was before April 1982.

[TCGA 1992, s. 223\(2\)\(a\)](#)

The legislation is very specific as to which periods of absence can count as deemed occupation. There are **three** periods of absence that will qualify.

- 1) Where the owner is **abroad by reason of his employment**, that period of absence can be treated as a period of deemed occupation. This period is **unlimited**.

[TCGA 1992, s. 223\(3\)\(b\)](#)

- 2) Where the owner was absent from the property due to **working elsewhere** - either as an employee or as a self-employed trader - that period of absence will also qualify as deemed occupation. Here the period of deemed occupation is limited to a **maximum of four years**. [TCGA 1992, s.223\(3\)\(c\)](#)
- 3) Finally, **any period** of absence up to a **maximum of three years** will qualify as a period of deemed occupation. [TCGA 1992, s.223\(3\)\(d\)](#)

These three periods of deemed occupation can apply cumulatively. This means that a longer period of absence may all qualify as deemed occupation, as certain periods can be added together.

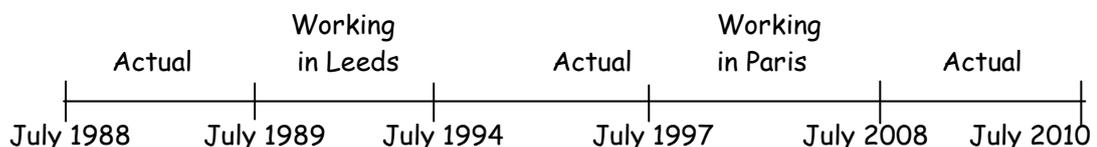
A period of absence is treated as a period of deemed occupation if the individual is **living with a spouse/civil partner who meets one of the necessary conditions** relating to work or employment.

It is extremely important to remember that a period of absence will only qualify as deemed occupation if it was **both preceded and followed by actual occupation**. This means that the taxpayer must return to the property and live in the house as his home, in order for the intervening periods to qualify.

Illustration 1

A taxpayer bought a house in July 1988 and sold it 22 years later in July 2010. From July 1988 to July 1989, the taxpayer occupied the property as his main residence. In July 1989 the taxpayer was relocated by his employer to work in Leeds, and his secondment finished in July 1994. At that point he returned to the property and lived there until July 1997.

In July 1997 the taxpayer was sent by his employer to work in Paris. He returned from Paris in July 2008 and resumed occupation of the property until the date of sale in July 2010. Whilst on secondment he lived in employer provided accommodation.



On the sale of the property in July 2010, the taxpayer made a gain of £600,000. Our requirement is to calculate the amount of the principal private residence relief to deduct from this gain to give the chargeable gain.

To calculate the PPR relief, we must identify the taxpayer's periods of occupation and periods of absence. From July 1988 until July 1989, the taxpayer lived in the property, so this is one year of actual occupation.

Between July 1989 and July 1994, the taxpayer was unable to occupy the house due to working elsewhere. To determine whether this qualifies as a period of deemed occupation, we must look forward and find out if the taxpayer resumes occupation of the property at some point after July 1994. Between July 1994 and July 1997, the taxpayer lived in the property as his main residence. We therefore can consider the deemed occupation rules.

Periods of absence whilst the taxpayer is working elsewhere qualify as deemed occupation up to the maximum of four years. In addition, any period of absence up to three years will also qualify as deemed occupation. Because these periods can apply cumulatively, we can add them together. This means that the whole of the five year period between July 1989 and July 1994 will qualify as a period of deemed occupation.

Between July 1997 and July 2008, the taxpayer was in Paris by reason of his employment. Again in order to find out whether this period qualifies, we look forward and see if the taxpayer comes back and reoccupies the property.

The taxpayer returned to the property and lived there between July 2008 and July 2010. He therefore has two years of actual occupation.

Again we can consider the deemed occupation rules. Any period of absence during which the owner was abroad by reason of his employment will qualify as deemed occupation. Here therefore, the whole eleven year period will be treated as a period of occupation.

| | <i>Occupation</i> | <i>Absence</i> |
|--|-------------------|----------------|
| July 1988 - July 1989 (actual) | 1 | |
| July 1989 - July 1994 (4 years working in UK + 1 year for any reason) | 5 | |
| July 1994 - July 1997 (actual) | 3 | |
| July 1997 - July 2008 (working abroad) | 11 | |
| July 2008 - July 2010 (actual) | 2 | |
| Total | <u>22</u> | <u>0</u> |

The whole period of ownership - i.e. 22 years - is therefore treated as occupation, and the taxpayer has no periods of absence. This is despite the fact that out of the 22 years of ownership, he has only physically lived in the property for six years. The gain of £600,000 will therefore qualify for £600,000 worth of PPR relief. This reduces the gain to zero, effectively making the gain completely exempt.

| | |
|---------------------------------|------------|
| | £ |
| Gain | 600,000 |
| PPR relief | |
| $£600,000 \times \frac{22}{22}$ | (600,000) |
| Chargeable gain | <u>Nil</u> |

Illustration 2

A taxpayer purchased a property in May 1980 and sold it on 1 October 2010. Between 1980 and April 1989, the taxpayer occupied the property as his main residence. He moved out in April 1989 to live in his girlfriend's house.

He returned to the property in April 1991 and resumed residence. In April 1994, he was sent by his employer to work abroad and lived in employer provided accommodation. The taxpayer returned to the UK in October 2007, but never reoccupied the property. He sold the property in October 2010 making a gain of £600,000. Our requirement is to calculate the amount of the principal private residence relief available.

We will split the taxpayer's ownership period between periods of occupation and periods of absence. Any periods of ownership before March 1982 can be ignored. We will therefore start counting with effect from 1 April 1982.

Between April 1982 and April 1989, the taxpayer had seven years of actual occupation. Between April 1989 and April 1991, the taxpayer was living with his girlfriend. To determine whether this will qualify as deemed occupation, we look forward and see if the taxpayer returned to the property. The taxpayer came back and lived in the property between April 1991 and April 1994. Here he will have another three years of actual occupation.

We can consider the deemed occupation rules for the period in between. Here the two year period will qualify as deemed occupation, because it is a period of less than three years for any reason whatsoever.

The taxpayer left the UK to take up employment abroad in April 1994. The taxpayer never returned to the property before he sold it in October 2010. This means that he will not be able to claim that the period during which he was employed abroad was a period of deemed occupation.

However, the last three years of ownership are always treated as deemed occupation, as long as the taxpayer has lived in the property at some time beforehand. Therefore the three year period from October 2007 to October 2010 is treated as a period of occupation.

Because the taxpayer never returned to the property the period from April 1994 to October 2007 will be treated as a period of absence.

Therefore the taxpayer will have 15 years of occupation and $13\frac{1}{2}$ years of absence. These total $28\frac{1}{2}$ years - i.e. the period between April 1982 and October 2010.

| | <i>Occupation</i> | <i>Absence</i> | <i>Total</i> |
|---|-------------------|-----------------------------------|-----------------------------------|
| May 1980 - March 1982 | Ignored | | |
| April 1982 - April 1989 (actual) | 7 | | |
| April 1989 - April 1991 (any reason) | 2 | | |
| April 1991 - April 1994 (actual) | 3 | | |
| April 1994 - October 2007 (never returned) | | $13\frac{1}{2}$ | |
| October 2007 - October 2010 (last 3 years) | 3 | | |
| Total | <u>15</u> | <u>$13\frac{1}{2}$</u> | <u>$28\frac{1}{2}$</u> |

The taxpayer sold the property and made a gain of £600,000. The PPR relief is therefore the gain, multiplied by the period of occupation, divided by the period of ownership.

| | |
|----------------------------------|------------------|
| Gain | £ 600,000 |
| Less: PPR relief | |
| $600,000 \times \frac{15}{28.5}$ | <u>(315,789)</u> |
| Chargeable gain | <u>£284,211</u> |

From these two illustrations, you will note the technique we use to identify periods of occupation and periods of absence. Identify each separate period, dealing with actual occupation first. Remember that any absences can only be counted as deemed occupation if the taxpayer returns to the property at some time in the future. Once you have a "sandwich", consider the three periods of deemed occupation. Finally, do not forget that as long as the taxpayer has lived in the property at some point, **the last three years of ownership will always count as occupation.**

Example 1

Samuel sold his house in Kent in December 2010 making a gain of £100,000. He bought it in December 2000 and lived in it until December 2004 at which point he was sent on an assignment to Scotland by his employers and lived in employer provided accommodation. He returned to Kent in 2010 but never re-occupied the property.

Calculate the principal private residence relief available to Samuel.

Example 2

Adrian made a gain of £315,000 on the sale of his flat in London in March 2011. He bought the flat in March 1990. In March 1992 he was relocated to Bristol where he lived with his parents until March 2001. He returned to the flat and lived there until March 2006 at which point he moved to Windsor to live in his girlfriend's house. Adrian never returned to the flat.

Calculate his chargeable gain.

Answer 1

| | <i>Occupation</i> | <i>Absence</i> | <i>Total</i> |
|---|-------------------|----------------|--------------|
| December 2000 - December 2004 (actual) | 4 | | |
| December 2004 - December 2007 (never returned) | | 3 | |
| December 2007 - December 2010 (last 3 years) | 3 | | |
| Total | <u>7</u> | <u>3</u> | <u>10</u> |

PPR relief:

$$£100,000 \times \frac{7}{10} = \mathbf{£70,000}$$

Answer 2

| | <i>Occupation</i> | <i>Absence</i> | <i>Total</i> |
|--|-------------------|----------------|--------------|
| March 1990 - March 1992 (actual) | 2 | | |
| March 1992 - March 2001 (first 4 years - working in UK) | 4 | | |
| (next 3 years - any reason) | 3 | | |
| (remainder) | | 2 | |
| March 2001 - March 2006 (actual) | 5 | | |
| March 2006 - March 2008 (never returned) | | 2 | |
| March 2008 - March 2011 (last 3 years) | 3 | | |
| Total | <u>17</u> | <u>4</u> | <u>21</u> |

| | |
|----------------------------|------------------|
| Gain | £ 315,000 |
| Less: PPR relief | |
| £315,000 × $\frac{17}{21}$ | <u>(255,000)</u> |
| Chargeable gain | <u>£60,000</u> |