Readers' forum

PPR in care home cases

Is there a capital gains tax problem on sale of marital property?

My clients (and friends) are Mr and Mrs B. They are in their 70s.

Their only residence is worth £1.5m and has a large gain if sold. Powers of attorney are in place and there are two married adult children.

Sadly, two years ago Mrs B suffered a psychotic episode and was sectioned and is now permanently in hospital care. Fees are paid by the state because of the sectioning so there are no issues in that direction. Mrs B has minor pensions less than the personal allowance. Mr B's pensions put him in the higher rate bracket.

Mr B wishes to sell the property to give the excess funds to his children. I am assuming that the financial rights of Mrs B under the power of attorney are being respected. Originally I assumed that there would be no CGT problem as they were still married. However, my reading of the rules indicates that Mrs B's principal private residence relief (PPR) claim would cease after three years because she was no longer living in the property and they were nominally 'separated'.

Is there a further exemption in the rules which I have not yet found? If not, can Mr B transfer Mrs B's 50% share of the property to himself within three years to solve the problem?

Query 20,159 *– Sad Accountant.*

If property was their main residence, she should be able to claim full relief.

As long as Mr and Mrs B are living together, they can only have one main residence for the purposes of PPR. They will be treated as 'living together' unless separated under a court order, by deed of separation, or in circumstances in which separation is likely to be permanent. PPR should be available provided that Mr and Mrs B's marriage has not broken down permanently, though HMRC might request evidence of their continuing relationship, eg hospital records showing Mr B's visits to Mrs B.

If Mr and Mrs B are permanently separated, Mrs B should still be eligible to claim PPR on her share of the property notwithstanding her absence from it. Ordinarily, where a property has been an individual's sole or main residence throughout their period of ownership, the final nine months are eligible for PPR regardless of whether the taxpayer lives there during this time period (TCGA 1992, s 223(1)).

As Mrs B is now permanently hospitalised, this final period allowance should be extended to 36 months by TCGA 1992, s 225E, as long as she only owns one property on which she might be eligible to claim PPR. This 36-month period is available where an individual is a long-term resident in a 'care home', defined to include any establishment that provides accommodation and nursing or personal care (eg the hospital). An individual is treated as a long-term resident where they reside in a care home and can be reasonably expected to do so for at least three months (as is the case here). As long as the property was the couple's main residence from the date of purchase until Mrs B's hospitalisation two years ago, she should be eligible to claim full PPR on any gains arising provided the disposal takes place within this 36-month period.

Currently, if Mr B were to acquire his wife's share of the property post-separation he would do so at market value for CGT purposes: the no gain/loss rule for transfers between spouses does not apply after the tax year of separation, and spouses remain connected persons while married. This would not pose a practical issue if Mrs B's transfer completed before the 36-month period expired (to ensure PPR's availability). Otherwise, a CGT charge would arise on part of the gains.

However, if any post-separation transfer takes place after the Finance Bill 2023 receives royal assent, the new TCGA 1992, s 58(1C) should ensure that Mrs B benefits from the extension of the no loss/gain treatment for inter-spouse transfers until the earliest of: the end of the third tax year after the couple cease living together; the date of the final divorce order or decree absolute; the annulment of their marriage or civil partnership; or their legal separation. Depending on the date on which the couple ceased living together, this might preserve the possibility of securing full PPR on a sale (albeit by Mr B) beyond Mrs B's 36-month final period allowance.

Should PPR not be available in relation to the entire gain, a joint sale is likely to be preferable. All of the gains arising on any onward sale made solely by Mr B would be taxable at his 28% CGT rate, whereas on a joint sale part of Mrs B's gains would be taxable at 18%.
It is also unlikely to be attractive for Mr B to pay to acquire his wife's share given the likely stamp duty land tax charge arising.

It is unclear whether Mrs B retains the capacity to take decisions regarding the property. Her chosen attorneys should be able to rely on the Trustee Delegation Act 1999 to manage her share, but would require the court's approval for any gift of it to Mr B. Any transfer made on Mrs B's behalf would need to be in her best interests, judged objectively based on the Mental Capacity Act 2005, s 4 criteria. *– Rebecca Anstey, Michael Armstrong, Forsters LLP.*

Editorial note.
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