*CGT – Principal Private Residence relief - meaning of 'period of ownership'*

**FIRST-TIER TRIBUNAL**
**TAX CHAMBER**

**Appeal number: TC/2020/00016 and TC/2020/00017**

**BETWEEN**

**GERALD LEE**
**AND**
**SARAH LEE** **Appellants**

**-and-**

**THE COMMISSIONERS FOR**
**HER MAJESTY'S REVENUE AND CUSTOMS** **Respondents**

**TRIBUNAL: JUDGE ALLATT**
**CELINE CORRIGAN**

**The hearing took place on 24 January 2022. With the consent of the parties, the form of the hearing was video. A face to face hearing was not held because at the time of the listing, work from home guidance was in place.**
**Prior notice of the hearing had been published on the gov.uk website, with information about how representatives of the media or members of the public could apply to join the hearing remotely in order to observe the proceedings. As such, the hearing was held in public.**

**Laurent Sykes QC for the Appellants**

**Gary Cruddas, litigator of HM Revenue and Customs' Solicitor's Office, for the Respondents**

## DECISION

### INTRODUCTION

*1. This case surrounds the meaning of 'period of ownership' where the house that is sold has been lived in since completion, but the land has been owned for considerably longer than the existence of the house.*

### BACKGROUND

2. On 26 October 2010, the Appellants jointly purchased a freehold interest in land known as 8 Nuns Walk for £1,679,000.00. It was registered at the Land Registry under title number SY209588.

3. Between October 2010 and March 2013, the land at 8 Nuns Walk was redeveloped and the original house on the land was demolished and a new replacement house built. The new house was completed on 15 March 2013.

4. On 19 March 2013, the Appellants took up residence in the new house, occupying and enjoying the rest of the land at 8 Nuns Walk as the garden and grounds of that dwelling.

5. On 22 May 2014, the Appellants sold their interests in the land at 8 Nuns Walk registered at the Land Registry under title number SY209588 for £5,995,000.00.

6. On 29 January 2016, the Appellants submitted their SATRs for the year ended 5 April 2015.

7. On 10 January 2017, the Respondents opened enquiries into the Appellants SATRs under section 9A TMA 1970. From January 2017 to June 2019, correspondence between the Respondents, the Appellants and their representative, Gabelle LLP, considered whether the purchase, redevelopment, and sale of 8 Nuns Walk was either a trading or capital transaction and if the latter, whether Extra Statutory Concession D49 ("ESC D49") applied.

8. On 23 November 2018, Gabelle LLP wrote to HMRC to advise that they had further reviewed the Capital Gains position and considered the whole of the gain would not be covered by Principal Residence Relief (PRR). PRR is given by S222 to S226 Taxation of Capital Gains Act 1992("TCGA 1992"). The purpose of the relief is to allow a person to replace their existing home with another home of similar value by ensuring that the proceeds of sale of the old home are not diminished by a charge to Capital Gains Tax, when certain conditions are met.

9. On 11 July 2019, the Respondents wrote to Gabelle LLP accepting the sale of the Appellants interest in land known as 8 Nuns Walk was not a trading transaction but advised ESC D49 did not apply.

10. On 27 August 2019, the Respondents wrote to Gabelle LLP to provide a calculation of the Capital Gain arising on the disposal of the interest in land known as 8 Nuns Walk and the amount of PRR due.

11. On 4 September 2019, the Respondents issued Closure Notices to the Appellants under section 28A TMA 1970. The Respondents decision was a chargeable Capital Gain of £541,821.00 (after annual exemption) had been omitted from both Appellants SATRs.

12. On 25 September 2019 Gabelle LLP wrote to the Appellant appealling the decision on the grounds that further relief was due as ESC D49 should apply.

13. On 8 October 2019, the Respondents provided the Appellants with their view of the matter letter and offered a review. On 21 October 2019 the offer of a review was accepted. On 28 October 2019, the Appellants' representative, Markel Tax (previously Gabelle

LLP), summarised the Appellants position for the benefit of the reviewing officer. On 5 December 2019, an independent Review Officer for the Respondents, wrote to the Appellant upholding the decision made in the Closure Notices issued on 4 September 2019.

14. In upholding the decision the independent Review Officer concluded that the period between the date of acquisition and the Appellants moving into the property known as 8 Nuns Walk was 29 months, the total ownership period was 43 months between date of acquisition on 26 October 2010 and sale on 22 May 2014.

15. HMRC concluded the amount of PRR available would therefore be 18/43rds of the gain arising, this being the PRR available for the last 18 months of ownership under Section 223(2)TCGA 1992

16. On 2 January 2020, the Appellants appealed to the Tribunal.

17. The matter for the Tribunal to consider is therefore the interpretation of s222 and 223 TCGA 1992. Matters for particular consideration are whether 'dwelling house' should be read as including land, and whether the period of ownership should include anything other than the period of ownership of the house being sold.

**THE LAW**

**TCGA 1992, s222 Relief on disposal of private residence**

(1)This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—

(a)a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

(b)land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.

(2)In this section "the permitted area" means, subject to subsections (3) and (4) below, an area (inclusive of the site of the dwelling-house) of 0.5 of a hectare.

(3)In any particular case the permitted area shall be such area, larger than 0.5 of a hectare, as the Commissioners concerned may determine if satisfied that, regard being had to the size and character of the dwelling-house, that larger area is required for the reasonable enjoyment of it (or of the part in question) as a residence.

(4)Where part of the land occupied with a residence is and part is not within subsection (1) above, then (up to the permitted area) that part shall be taken to be within subsection (1) above which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(5)So far as it is necessary for the purposes of this section to determine which of 2 or more residences is an individual's main residence for any period—

(a)the individual may conclude that question by notice to the inspector given within 2 years from the beginning of that period but subject to a right to vary that notice by a further notice to the inspector as respects any period beginning not earlier than 2 years before the giving of the further notice,

(b)subject to paragraph (a) above, the question shall be concluded by the determination of the inspector, which may be as respects the whole or specified parts of the period of ownership in question,

and notice of any determination of the inspector under paragraph (b) above shall be given to the individual who may appeal to the General Commissioners or the Special Commissioners against that determination within 30 days of service of the notice.

(6)In the case of a man and his wife living with him—

(a)there can only be one residence or main residence for both, so long as living together and, where a notice under subsection (5)(a) above affects both the husband and the wife, it must be given by both, and

(b)any notice under subsection (5)(b) above which affects a residence owned by the husband and a residence owned by the wife shall be given to each and either may appeal under that subsection.

(7)In this section and sections 223 to 226, "the period of ownership" where the individual has had different interests at different times shall be taken to begin from the first acquisition taken into account in arriving at the expenditure which under Chapter III of Part II is allowable as a deduction in the computation of the gain to which this section applies, and in the case of a man and his wife living with him—

(a)if the one disposes of, or of his or her interest in, the dwelling-house or part of a dwelling-house which is their only or main residence to the other, and in particular if it passes on death to the other as legatee, the other's period of ownership shall begin with the beginning of the period of ownership of the one making the disposal, and

(b)if paragraph (a) above applies, but the dwelling-house or part of a dwelling-house was not the only or main residence of both throughout the period of ownership of the one making the disposal, account shall be taken of any part of that period during which it was his only or main residence as if it was also that of the other.

(8)If at any time during an individual's period of ownership of a dwelling-house or part of a dwelling-house he—

(a)resides in living accommodation which is for him job-related within the meaning of section 356 of the Taxes Act, and

(b)intends in due course to occupy the dwelling-house or part of a dwelling-house as his only or main residence,

this section and sections 223 to 226 shall apply as if the dwelling-house or part of a dwelling-house were at that time occupied by him as a residence.

(9)Section 356(3)(b) and (5) of the Taxes Act shall apply for the purposes of subsection (8) above only in relation to residence on or after 6th April 1983 in living accommodation which is job-related within the meaning of that section.

(10)Apportionments of consideration shall be made wherever required by this section or sections 223 to 226 and, in particular, where a person disposes of a dwelling-house only part of which is his only or main residence.

**223Amount of relief**

(1)No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 18 months of that period.

(2)Where subsection (1) above does not apply, a fraction of the gain shall not be a chargeable gain, and that fraction shall be—

(a)the length of the part or parts of the period of ownership during which the dwelling-house or the part of the dwelling-house was the individual's only or main residence, but inclusive of the last 18 months of the period of ownership in any event, divided by

(b)the length of the period of ownership.

(3)For the purposes of subsections (1) and (2) above—

(a)a period of absence not exceeding 3 years (or periods of absence which together did not exceed 3 years), and in addition

(b)any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the United Kingdom, and in addition

(c)any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual was prevented from residing in the dwelling-house or part of the dwelling-house in consequence of the situation of his place of work or in consequence of any condition imposed by his employer requiring him to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of his duties,

shall be treated as if in that period of absence the dwelling-house or the part of the dwelling-house was the individual's only or main residence if both before and after the period there was a time when the dwelling-house was the individual's only or main residence.

(4)Where a gain to which section 222 applies accrues to any individual and the dwelling-house in question or any part of it is or has at any time in his period of ownership been wholly or partly let by him as residential accommodation, the part of the gain, if any, which (apart from this subsection) would be a chargeable gain by reason of the letting, shall be such a gain only to the extent, if any, to which it exceeds whichever is the lesser of—

(a)the part of the gain which is not a chargeable gain by virtue of the provisions of subsection (1) to (3) above or those provisions as applied by section 225; and

(b)£40,000.

(5)Where at any time the number of months specified in subsections (1) and (2)(a) above is 36, the Treasury may by order amend those subsections by substituting references to 24 for the references to 36 in relation to disposals on or after such date as is specified in the order.

(6)Subsection (5) above shall also have effect as if 36 (in both places) read 24 and as if 24 read 36.

(7)In this section—

"period of absence" means a period during which the dwelling-house or the part of the dwelling-house was not the individual's only or main residence and throughout which he had no residence or main residence eligible for relief under this section; and

"period of ownership" does not include any period before 31st March 1982.

**224Amount of relief: further provisions**

(1)If the gain accrues from the disposal of a dwelling-house or part of a dwelling-house part of which is used exclusively for the purpose of a trade or business, or of a profession or vocation, the gain shall be apportioned and section 223 shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.

(2)If at any time in the period of ownership there is a change in what is occupied as the individual's residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling-house for the purpose of a trade or business, or of a profession or vocation, or for any other purpose, the relief given by section 223 may be adjusted in such manner as the Commissioners concerned may consider to be just and reasonable.

(3)Section 223 shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.

**CASE LAW**

18. We were referred to a number of cases, of which the following were the most salient:

19. Henke and another v Revenue and Customs Commissioners [2006] STC (SCD) 561 – held that period of ownership meant the period of ownership of land, where a dwelling house was built sometime after the ownership of the land had been acquired.

20. Makins v Elson [1977] 1 WLR 221 – held that a caravan was a dwelling house even though it was not part of the land.

21. Paul Gibson v The Commissioners for HMRC [2013] UKFTT 636 (TC) – this concerns a case where there were two dwelling houses successively) on a plot of land. The first house was lived in and then demolished, and the second house was not lived in. The Tribunal found that the first house was not the same asset as the second house. 'Period of ownership' was not considered.

22. Higgins v HMRC [2019] EWCA Civ 1860 – it was held that 'period of ownership' began at completion of contracts and not at exchange.

**GROUND OF APPEAL**

23. The Appellants argue that 'period of ownership' in the legislation refers to period of ownership of the dwelling house in question.

24. Therefore, because the Appellants lived in the house for all but 4 days of the house's existence as a 'dwelling house' (that is, signed off as completed by the builders), and the total length of occupation was less than 18 months, they contend that s223 (1) applies.

25. HMRC contend that 'period of ownership' refers to the ownership of the land, and therefore only 18/43rds of the gain is relievable by this provision.

**CASE MADE ON BEHALF OF THE APPELLANTS**

26. The Appellants say that "period of ownership" in s222(1) and s223(1) and (2) TCGA 1992 is not defined.

27. S222(7) is not a definition (as was recognised by the Court of Appeal in Higgins v Commissioners for HMRC [2019] STC 2312, [2019] EWCA Civ 1860 at §26 and as was argued by HMRC in Henke and accepted by the Special Commissioner, at §71(2) and §123). "Period of ownership" should therefore take its ordinary meaning and the wording of each of these provisions clearly refers to the ownership of the dwelling-house.

28. The asset disposed of is the legal interest in the land but the Appellants' case is that what attracts relief is that part of the asset which corresponds to dwelling house in s222(1)(a) and those grounds which are in s222(1)(b). This is why apportionment of consideration may be required – as mentioned in s222(10).

29. The Appellants say that if 'dwelling house' was to mean 'land' then there would be no need for s222 (1) (b) because all the land within the title would be already included within the 'dwelling house' wording of s222 (1) (a).

30. In any event, the Appellants argue that no asset can comprise or include a dwelling house until the dwelling house has been built.

31. The Appellants looked also at the purpose of the legislation. It is common ground that the purpose is to enable the proceeds from the sale of a residence to be invested in a new residence. The Appellants say that this purpose is better achieved by their construction (that the length ownership of the dwelling house sold is relevant rather than the length of ownership of the land). The Appellants point out that in the case where land is owned without a property on it, and does not appreciate in value, and then a house is built on it, which results in a gain, there is no logic in reducing the exempt amount of the gain simply because the land has been owned for a period of time before the house was built.

32. They point out that if any gain on the land was sought to be 'masked' by building a dwelling house and then living in it, this would be prevented by s224(3).

33. The Appellants point out that elsewhere in tax legislation gains on assets that for a period of time did not qualify for relief can be made fully relievable by subsequent events, sometimes subject to similar anti-avoidance provisions found in s224(3). As examples, they give the substantial shareholding exemption in Schedule 7AC TCGA 1992 and Business Asset Disposal Relief.

34. The substantial shareholding exemption in Schedule 7AC TCGA 1992 exempts a gain on shares provided the substantial shareholding condition, the investee trading condition and the investor trading condition are all met during the required time period. As long as the conditions in the Schedule are met, the exemption applies to the whole gain notwithstanding the fact that the gain may have arisen economically when the conditions were not met e.g. when a 10% shareholding was not held. Paragraph 5 contains an anti-avoidance provision, analogous to s224(3).

35. S169H-s169V TCGA 1992 provide for Business Asset Disposal Relief (formally Entrepreneurs Relief) which reduces the rate of tax on qualifying business disposals. Disposal of shares in a personal trading company will be eligible for the relief if the employment requirement and the shareholding requirement are satisfied by the seller for at least two years before the date of the disposal. As a result one could purchase shares in a company when not meeting these conditions (for instance when the 5% shareholding requirement in s169S is not met), and then subsequently meet these conditions such that the whole gain on the disposal of the shares falls within the relief. That gain may or may not have been generated when the shareholding did not qualify.

36. The Appellants also pointed out that HMRC had understood that their construction of the legislation gave problems for self builders, and had introduced an extra-statutory concession (D49) to give a period of ownership before residence in the dwelling house which would qualify for full relief. The Appellants argue that actually ESC D49 was not needed, and that Parliament would not have legislated (originally) for a provision that meant self-builders could not access full relief.

37. The Appellants case is that on their construction, anything which seeks to 'mask' a gain is taxable under s224(3), and in addition exemption is given to situations which otherwise may be 'unfairly' taxed simply due to ownership before the building of a house, whether or not a gain arose in the time that there was no house on the land.

**CASE FOR HMRC**

38. HMRC contend that the Appellants purchased an interest in land, known as 8 Nuns Walk, on 26 October 2010 and sold that same interest on 22 May 2014 which gave rise to a charge to Capital Gains Tax.

39. HMRC contend that as a matter of statutory construction the 'period of ownership' has to be interpreted as including the whole period of ownership of the interest in land on the disposal of which a gain accrued which qualifies for relief under s.222 TCGA 1992, whether or not the dwelling house was on that land throughout that time, went through renovations or was changed entirely.

40. They point to the case of Henke, where Special Commissioner John Clark stated at paragraph 122 "Buildings cannot (at least in normal circumstances) be owned separately from the land on which they are situated. By s 288(1) TCGA 1992, for the purposes of the Act, "land" includes houses and buildings of any tenure."

41. Special Commissioner Clark also stated "In my view the Parliamentary intention behind the legislation is clear; there is to be only one period of ownership, of the single asset consisting of the land and any buildings which may be erected on it during that period. It follows that an apportionment is required where land is held for a period and subsequently a house is built on it and occupied as the individual's only or main residence."

42. HMRC contend that the Appellants acquired, owned and disposed of a single asset, being an interest in land, and that they made changes to that asset by demolishing the house which was part of that interest in land at the time of acquisition, and constructing a new house.

43. HMRC say that in order to succeed in his appeal the Appellants would somehow need to demonstrate that the interest in land acquired in October 2010 was in some way a different asset or interest to the dwelling-house subsequently built on it so that the period of ownership of the dwelling house (or rather, more accurately, land including the dwelling-house) is then different to the period of ownership of the interest in land originally acquired. HMRC contend that, the relevant provisions of the TCGA 1992 cannot be construed in such a way as to regard the Appellant as having a period of ownership of a dwelling-house separate from his period of ownership of the land. Indeed, HMRC contend the legislation points in the opposite direction with Section 288(1) TCGA 1992 stating ' "land" includes messuages, tenements, and hereditaments, houses and buildings of any tenure;'

44. HMRC say absent any provision in the PPR legislation allowing a dwelling-house to be treated as a separate asset to the land on which it is situated, HMRC submit that the natural meaning of the phrase the 'period of ownership' used in s.223 TCGA 1992 can only be construed as the period of ownership of the single asset consisting of the Appellants' interest in land and any buildings which may be erected on it.

45. HMRC also say that if the ownership of the dwelling-house could somehow be treated as separate from the ownership of the land originally acquired then this would mean that the Appellants had had different interests at different times; being the interest in land acquired and subsequently an interest in a dwelling-house (or, more correctly, the land including the dwelling-house) which replaced the interest in land originally acquired. In that case s.222(7) TCGA 1992 would apply, HMRC say, to set the period of ownership at the beginning of the first acquisition taken into account in the computation of the gain to which s.222 TCGA 1992 applies. The first acquisition taken into account in the computation of the gain to which s.222 TCGA 1992 applies would be the acquisition of the land in October 2010. In turn, this would mean that the period of ownership would commence at the time of the acquisition of that land.

46. HMRC point to the fact that ESC D49 existed at the relevant time (it has since been codified into legislation) to deal with self builders and other similar situations.

47. HMRC also point to the fact that the codification of ESC D49 (now s223ZA TCGA 1992) would not be needed if the Appellants reading of the legislation was correct, and therefore this later codification must mean that Parliament thinks that HMRC's interpretation is correct.

**DISCUSSION**

48. The question that we need to answer is whether the period of ownership for PPR purposes is the 43 months between the acquisition of the land on which was built a house that was then demolished, and the sale of the land with the house that was subsequently built, or whether the period of ownership should be between when the newly developed house was completed and the date of disposal (15 months).

**Language of the legislation**

49. HMRC's main viewpoint is that because one asset was bought, and that asset was sold, 'period of ownership' should apply to the ownership of that asset. They contend that if this is not the case, then s227 may apply. They further contend that because 'land' is defined to include buildings, then 'dwelling house' should be read to include land. They further contend that as a matter of construction, 'period of ownership' in the legislation clearly refers to land.

50. The Appellants contend that the legislation is perfectly clear that 'period of ownership' relates to the dwelling house and that to read otherwise would be an artificial construction.

51. We do not agree with HMRC that 'dwelling house' should be read to include land. The fact that the definition of 'land' includes dwelling houses upon that land does not operate in reverse to mean that 'dwelling house' should be read to include the land. The fact that 'dwelling house' is used in the legislation means it is capable of being treated for some purposes separately to land within the same title.

52. We agree with the Appellant that that the natural construction of the legislation is that 'period of ownership' refers to period of ownership of the dwelling house.

53. In every part of the legislation concerned, 'period of ownerhip' would appear to attach to the 'dwelling house' where the taxpayer may or may not reside. No mention is made of the land in reference to 'period of ownership'.

54. We are aware that this provision has been considered before in the case of Henke v Revenue & Customs Commissioners [2006] STC (SCD) 561. This is a decision by the Special Commissioners and hence not binding upon us. Here the Special Commissioner found, in a case not dissimilar to this one, that the 'period of ownership' did start when the land was purchased. He based this decision on the fact that a single asset was owned

throughout the period, and on the fact that it would be an anomaly and contrary to the wishes of Parliament to allow full relief on the whole asset based on living in a dwelling house for only part of the period of ownership of the land.

55. A reasonably similar position, though with important differences, was considered in the case of Higgins v HMRC [2019] EWCA Civ 1860. Here Mr Higgins had exchanged contracts 'off plan' for the purchase of an apartment in a tower block. It was finally held by the Court of Appeal that for this purpose, 'period of ownership' began on completion and not on exchange. As Mr Higgins took up residence on completion, the point at issue here is not exactly the same. The Court of Appeal made the following observations:

> (Para 22) It would anyway be hard to see how Mr Higgins' "period of ownership" of the Apartment could have begun before late 2009. When contracts were exchanged in 2006, the Apartment was just a "space in the tower". The present case is thus distinguishable from one in which someone contracts to buy a plot of land on which a house is to be built. The plot of land will, of course, already exist. In contrast, the Apartment did not come into existence until November/December 2009.
>
> (Para 25) In the circumstances, section 28 of the TCGA does not, in my view, dictate the conclusion that the "period of ownership" of a dwelling-house for the purposes of sections 222 and 223 must run from the date of the contract under which it was bought. There is no necessity to measure "period of ownership" by the times of acquisition and disposal for which section 28 provides when (a) sections 222 and 223 do not state that "period of ownership" is to be so determined or mention section 28, (b) neither does section 28 contain a cross-reference to sections 222 and 223, (c) section 28 can aptly be described as a "deeming provision" (as Lord Walker did) the applicability of which must be assessed in the specific context and (d) the fact that using section 28 to fix a "period of ownership" for the purposes of sections 222 and 223 would neither afford total CGT relief in the paradigm case nor sit comfortably with the ordinary meaning of the words "period of ownership" indicates that the provision should not be applied in that context.

56. This decision of course was concerned with the time of the start date of 'period of ownership' with reference to exchange vs completion, but it does lend credence to the view advanced by the appellant that 'period of ownership' is unlikely to start before the asset in question exists, notwithstanding the differentiation here between land and 'space in a tower'.

**Will of Parliament**

57. Both here, and in other cases, HMRC have advanced an argument that their reading of the legislation is clearly what Parliament intended.

58. Here, the Appellant advances that argument for their case also.

59. We do not consider that this case, which is clearly unusual on its facts, will have been considered one way or the other very carefully when the legislation was drafted.

60. The purpose of main residence relief is stated in Sansom v Peay [1976] 1 WLR 1073 at p1077 B-C where Brightman J 40 stated: "The general scheme of section 29 [as it then was] is to exempt from liability to capital gains tax proceeds of sale of a person's home. That was the broad conception. The justification for the exemption is that when a person sells his home he frequently needs to acquire a new home elsewhere. The evil of inflation was evident even in 1965. It must have occurred to the legislature that when a person sells his home to buy another one, he may well make a profit on the sale of one home and lose that profit, in effect, when he buys his new home at the new, inflated price. It would not therefore be surprising if Parliament formed the conclusion that, in such circumstances, it would be right to exempt the

profit on the sale of the first home from the incidence of capital gains tax so that there is enough money to buy the new home."

61. Both the Appellant and HMRC can point to 'anomalies' that they state would be contrary to the will of Parliament if the other party's reading of the legislation was to be correct.

62. HMRC point to the fact that someone could own a dwelling house and simultaneously own a plot of land, which has risen considerably in value during their ownership. They could then build on the land, sell their dwelling house (with full PPR exemption), move into the newly built house, and in due course sell that with full exemption.

63. The Appellant points out that in HMRC's case, if the building of the house was in order to mask the gain on the land, PPR exemption would be denied by virtue of s224(3) TCGA 1992.

64. The Appellant advances the case that it would be unfair, in a similar case but where there was no gain on the land prior to the building of the house, that part of any gain on the house should be denied because of the ownership of the land.

65. The legislation for apportionment has always contained 'anomalies' from the outset by apportioning based on time rather than based on valuations at specific points in time.

66. We do not consider that anomalies on either side point convincingly to the requirement to read the legislation any way than its natural reading.

**The asset**

67. HMRC point to the fact that one asset was bought and the same asset was sold (same title at the land registry). HMRC contend that the appellant, acquired, owned and disposed of a single asset as can be seen from the computation of the gain which accrued on the disposal of 8 Nuns Walk.

68. The allowable expenditure includes the cost of acquisition under s.38(1)(a) TCGA 1992 which consists of the Appellant's share of the cost of acquisition attributable to his interest in the land at 8 Nuns Walk on 26 October 2010. The allowable enhancement expenditure on that single asset under s.38(1)(b) TCGA 1992 includes the Appellant's share of the cost of building the house on the land.

69. They therefore submit that the natural reading of the legislation requires the period of ownership to be the period of ownership of that one asset.

70. They submit that if this is not the case, then s222 (7) is in point 'where the individual has had different interests at different times'.

71. HMRC further submit that if the period of ownership did not begin until the completion of the building that was subsequently sold, then the Appellant would be 'having it both ways' to allow all the costs of the purchase and development prior to that point.

72. They therefore submit that as the costs should be allowable, the period of ownership should start from the ownership of the asset on which the costs were incurred.

73. We do not agree with HMRC on this point. We agree that a single asset was purchased and then subsequently sold. We therefore do not think that s222(7) is in point as there is no question that this is not a case where separate interests (e.g. leasehold and freehold) were owned at different times. But we do not agree that simply because we are dealing with one asset, the legislation for the relief has to operate on the period of ownership of that one asset.

74. The legislation works to calculate a gain on an asset, and then to determine whether, and if so how much, relief applies to that gain.

75. We are looking here at the relief part of the legislation, which operates separately to how to calculate the gain.

76. The Appellant pointed to other examples in Capital Gains Tax legislation where conditions that have been satisfied for a short period of time have an effect over the whole of the gain on an asset even if the period of ownership was longer than the period of time for which the conditions have been satisfied, for example Entrepreneur's relief (as it used to be called) s169H – s169V TCGA 1992 and the substantial shareholding exemption in Schedule 7AC TCGA 1992. Whilst these are in no way determinative, it is possible both conceptually and as the Appellant points out, actually in practice to have legislation that operates this way.

**ESC D49**

77. ESC D49 (which was in operation at the time of the disposal and has since been codified into legislation) operates to allow relief for a period of time (no more than 2 years) before the occupation of a property if during the time the property is being built or undergoing renovations.

78. HMRC say that because ESC D49 existed, it is clear that the legislation must be read according to their interpretation, because on the interpretation of the Appellant it would not be needed.

79. The Appellant say that the legislation must be interpreted on its own words independently of whether an ESC exists or not.

80. In addition, the Appellant says that the fact that ESC D49 exists shows that the way that HMCR interpreted the legislation left an anomaly that needed to be corrected, and that this shows that their interpretation is more likely to be the intention of Parliament.

81. We agree with the Appellant that the legislation must be looked at on its own an the existence or not of an Extra Statutory Concession has no bearing on how the legislation should be interpreted.

**DECISION**

82. We consider that in the absence of definitions, the legislation should be read with its natural construction, unless doing so would lead to a clear anomaly contrary to the wishes of Parliament.

83. We do not think that there is a clear definition of period of ownership.

84. For the reasons given above, we consider that the natural reading of the legislation is that 'period of ownership' means the period of ownership of the dwelling house that is being sold.

85. We do not consider there are compelling reasons to depart from the natural reading of the legislation.

86. We therefore ALLOW this appeal.

**RIGHT TO APPLY FOR PERMISSION TO APPEAL**

87. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

**SARAH ALLATT**
**TRIBUNAL JUDGE**

**RELEASE DATE: 16TH MAY 2022**