



Appeal number: TC/2016/03057

5 *Capital gains tax –principal private residence relief- purchase of apartment
off-plan -whether period of ownership commences and ends with the date of
the contract to acquire and dispose per section 28 TCGA – No - ordinary
meaning of period of ownership accords with purpose of the relief - appeal
allowed.*

10 **FIRST-TIER TRIBUNAL
TAX CHAMBER**

15 **DESMOND HIGGINS** **Appellant**

- and -

THE COMMISSIONERS FOR HER MAJESTY’S **Respondents**
REVENUE & CUSTOMS

TRIBUNAL: JUDGE GETHING
Helen Myerscough

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25 **Sitting in public at Fox Court, Court 13, 5th Floor, 30 Brooke Street, London,
EC1N 7RS on Wednesday 1 February 2017 at 1.00pm.**

Mr Michael Thomas instructed by Fieldfisher for the Appellant

30 **Mrs Bisi Sanu, Presenting Officer of HM Revenue and Customs, for the
Respondents**

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DECISION

1. This case concerns the availability of principal private residence relief under sections 222 and 223 Taxation of Chargeable Gains Act 1992 (TCGA). HMRC had assessed Mr Higgins to be liable to £61,383.48 by way of capital gains tax on the gain which he realised on the disposal of an apartment which he claimed to be his principal private residence. The amount of the gain is not in dispute.

Evidence

2. A Supplementary Bundle contained the Agreement for the Sale and Purchase of Apartment 4.24 St Pancras' Chambers, Kings Cross, N1. We had two witness statements of Mr Higgins and we also received oral evidence from Mr Higgins who informed us about the dates of payment of deposits, the reasons for the delay in completing the works, his inability to access the premises until late 2009, the place of his residence during the period 2007 to 2010 and the date of his disposal. Mrs Sanu cross-examined Mr Higgins.

Facts

3. We find the following facts:
- 3.1 In 2004 Mr Higgins paid a reservation deposit of £5,000 to secure a right to be granted a lease at a premium of an apartment 4.24 St Pancras Chambers, Kings Cross, London N1 which we refer to as the Apartment. To avoid tedious repetition, we use the word "buy" in relation to the lease of the apartment as "take".
- 3.2 The building in which the Apartment is situated is the former St Pancras Station Hotel which was redeveloped by the Seller in association with London & Continental Railways and included a conversion of part of the former hotel into apartments.
- 3.3 On 2 October 2006 when the issues relating to title to the site had been ironed out Mr Higgins entered into a contract with Manhattan Loft St Pancras Apartments Limited which is referred in the contract and in this decision as the Seller. Mr Higgins is referred to as the Buyer. Clause 1 of the contract provided as follows:
- "The Seller agrees to grant and the Buyer agrees to enter into the Lease of the Apartment."*
- 3.4 The term Apartment is defined as:
- "Apartment 4.24, St Pancras' Chambers, Kings Cross, London N1 which is edged red on the Plan."*
- 3.5 The Apartment did not exist in 2006. The area of the former hotel which was to become the Apartment was a space in a tower.

3.6 Clause 6.1 of the Contract provided:

“The Seller will complete the refurbishment and/or construction of the Apartment in a good and workmanlike manner in accordance with:

5 *The terms of the relevant planning permission (and the section 106 agreement)* and the listed building consent;

*The scheme the subject of the Guarantee Registration (defined in clause 10.1);
Building regulations;*

The 'Interior Specification Sheet' annexed

10 *Subject to such revisions amendments or variations to the Plans and Specifications as may be found necessary which do not materially adversely affect the Buyer’s enjoyment”*

3.7 Under clause 6.2 the Seller reserved to itself the ability to vary the materials or workmanship *“as may prove necessary to complete the Apartment, to vary the design and construction”* where for any reason it is found to be necessary provided the changes would not materially affect the market value or floor area of the Apartment.

3.8 Under clause 6.3 the Buyer acknowledged that completion of the sale of the Apartment may take place prior to the completion of the works to the remainder of the Chambers and under clause 6.4 the Buyer accepts his right to quiet enjoyment will be affected by the remaining construction works. The provisions of clause 6 survive the grant of the lease.

3.9 The Purchase Price was £575,000. A table in the list of definitions is as follows:

Apartment Price	£575,000
Reservation Deposit	£5,000
Less 10% deposit on exchange	£52,500
Less 10% deposit on 1 March 2007	£57,500
Balance due on completion	£460,000

3.10 The obligations to pay the Reservation Deposit, the 10% deposit on exchange and the 10% deposit on 1 March 2007 are in clause 2. By Clause 2.4 failure to pay any Deposit allowed the Seller to rescind the contract in which event any Deposit that had been paid is forfeit.

3.11 Clause 5 deals with "Completion" in the legal rather than the physical sense which we refer to as "legal completion". Completion was to proceed subject to satisfactory evidence that construction of the Apartment had been substantially

completed. If legal completion had not occurred by 30 June 2012 the Buyer had the right to rescind the contract and to receive the Deposits plus interest. Under clause 5.4 vacant possession of the Apartment was given only at legal completion and not before legal completion.

5 3.12 Clause 8 dealt with the insurance. The Seller was obliged to insure the Apartment against loss or damage and other risks as are normal in a development such as this. The Seller was not obliged to provide details to the Buyer or the Buyer's mortgagees (if any). Nor was the buyer entitled to have an interest noted on the seller's policy or to raise any objection in respect of the lack of entitlement.

10 3.13 Clause 9 provided that upon completion the Buyer was to accept a lease of the Apartment.

3.14 The deposit paid on exchange was held as stakeholder pending the Seller complying with a requirement to ensure the Guarantee Registration arrangement with Zurich Insurance Company when it would be held as agent.

15 3.15 The progress of the works was delayed by the credit crunch which caused the Seller to seek alternative finance in 2008.

3.16 The work on the area that became the Apartment began in November 2009. The Apartment was substantially physically complete in December 2009 and Mr Higgins was informed on 18 December 2009 that legal completion was scheduled to occur on
20 5 January 2010.

3.17 Mr Higgins was not allowed access to the building at all until late 2009 when the Apartment was actually under construction and when he was allowed to look around the site which was to become the Apartment.

3.18 Mr Higgins had no right to occupy the dwelling until 5 January 2010 when he
25 completed the purchase. It was not challenged that Mr Higgins occupied the Apartment as his principal private dwelling from 5 January 2010 until completion of its sale on 5 January 2012. Mr Higgins entered into the contract for sale on 15 December 2011.

3.19 From July 2007 when Mr Higgins sold his former residence until January 2010
30 Mr Higgins's residential arrangements varied, he stayed with his parents some of the time, travelled some of the time and stayed in another apartment owned by Mr Higgins which had previously been occupied by a tenant. We find as a fact that there was no other dwelling which Mr Higgins regarded as his principal private residence throughout the period July 2007 to January 2010 which we understand was not
35 challenged.

The Legislation

Sections 222, 223, 224, 28 and 43 TCGA relevantly provided as follows:

“222 Relief on disposal of private residence

222(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or an interest in-

5 (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) ...

10 (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"

223 Amount of relief

15 "223(1) No part of a gain to which section 222 applies shall be a chargeable gain if the 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 36 months of that period.

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

20 (a) the length of the part or parts of the period of ownership during which the dwelling-house or parts of the dwelling-house was the individual's only or main residence, but inclusive of the last 36 months of the period of ownership in any event, divided by

(b) the length of the period of ownership."

"224 Amount of relief: Further provisions

25 "(3) Section 223 shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling-house or part of the 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
30 incurred wholly or partly for the purposes of realising a gain from the disposal."

28 Time of Disposal and acquisition where asset disposed if under contract

35 "(1) Subject to section 22(2), and subsection(2) below, where an asset is disposed of and acquired under a contract the time at which disposal and acquisition is made is the time the contract is made(and not, if different, the time at which the asset is conveyed or transferred).

(2) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal and acquisition is made is the time when the condition is satisfied. "

Section 43 Assets derived from other assets

5 " If and in so far as, in a case where assets have merged....., the value of
an asset is derived from any other asset in the same ownership, an
appropriate proportion of the sums allowable as a deduction in the
computation of a gain in respect of the other asset under paragraphs (a) and
10 (b) of section 38 shall, both for the purposes of computation of a gain arising
on the disposal of the first mentioned asset and, if the other asset remains in
existence, on a disposal of the other asset, be attributed to the first
mentioned asset."

15 References below to section numbers are to those of the TCGA 1992 except
where otherwise indicated.

Mr Higgins' arguments

4. Mr Thomas on behalf of Mr Higgins argued that:

20 (1) The period of ownership referred to in section 223 began on legal
completion when when the lease of the Apartment was granted to Mr
Higgins– namely 5 January 2010.

25 (2) The words "*period of ownership*" should be given their ordinary
meaning and should therefore begin with the grant of the lease. That is
when Mr Higgins began to own the interest he has contracted to acquire.
The period of ownership by an individual of a dwelling is not ordinarily
understood to include the period after the contract has been entered into
and before completion during which a purchaser may as a matter of law
have an equitable interest in land subject to an unpaid vendor's lien. Such
an interest is a very limited interest.

30 (3) Further when sections 222 and 223 are construed purposively and
applied to the facts viewed realistically per *BMBF v Mawson* [2005] STC
1 ("*BMBF*"), the "period of ownership" in sections 222 and 223 must be
confined to the period when the Apartment existed and was available for
occupation, i.e. upon completion of the contract by the grant of the lease.
The Apartment did not exist at the date of the contract- it had to be
35 constructed. The contract made that clear. Mr Higgins had no rights of
access of the site until the Apartment was constructed and no right of
occupation until completion of the grant of the lease.

40 (4) Further the purposive construction is necessary to avoid absurdity and
injustice where a taxpayer buys an Apartment off-plan which is a recent
and increasingly common arrangement.

(5) The purpose of the principal private residence relief was explained by
Brightman J in *Sansom v Peay* ("*Sansom*") [1976] STC 494 at 498f-h as

an economic necessity without which, in inflationary times, a taxpayer who sells his home and needs to acquire another would be unable to do. A gain may well be made on the sale of one home which will be lost when he buys his second home. Brightman J remarked, "*the evil of inflation was evident even in 1965*" the year of the introduction of capital gains tax by the Finance Act 1965 which provided for private residence relief.

(6) Section 28 on which HMRC rely is not a substantive provision. It cannot displace a substantive provision imposing or relieving liability by reference to a different period of ownership such as the principal private residence relief. Mr Thomas relies on Lord Hoffmann in *Jerome v Kelly* ("*Jerome*") 2004 STC 887 at 891 [11] where he stated. "..., *it seems to me clear that the paragraph was intended to deal only with the question of fixing the time of disposal and not with the substantive liability to tax*".

(7) Section 28 TCGA is a deeming provision as confirmed by Lord Hoffmann at [11] in *Jerome* and Lord Walker in *Underwood v Revenue & Customs Commissioners* ("*Underwood*") [2009] STC 239 at 247a and, per Lord Browne-Wilkinson, endorsing the judgement of Peter Gibson LJ in *Marshall v Kerr* ("*Marshall*") [1994] STC 638 at 649b-d, the application of a deeming provision should be confined, "*to the extent needed to avoid...injustice or absurdity unless such application would clearly be within the purposes of the fiction*". In this case Mr Thomas asserts it would be unjust to deny relief from tax on the gain on the disposal of the Apartment which Mr Higgins had occupied as his principal residence throughout the period from legal completion of the lease until his ultimate disposal of the Apartment. (In *Marshall* there were a number of deeming provisions in question including (1) the effect of a deed of family arrangement entered into by Mrs Kerr the daughter of the deceased who was a settlor under a will trust, and (2) whether Mrs Kerr should be regarded as the settlor. In *Underwood* the taxpayer agreed to sell land in 1993 to B for £400,000 but before completion the taxpayer agreed to buy back the land for £420,000 and paid B £20,000. The taxpayer then sold the land to C a connected person for £600,000. The taxpayer claimed a loss on the sale to B. The Court of Appeal said there was no disposal of land to B. *Disposal* must be given its ordinary meaning as conferring the full beneficial ownership in the land.)

(8) Even where the relevant issue is computational section 28 TCGA has not been given a literal meaning. This was the case in *Chaney v Watkiss* ("*Chaney*") [1986] STC. Mr Thomas invited us to adopt the same approach here. In *Chaney* the taxpayer agreed to sell property but had to incur expenditure to obtain vacant possession. The expenditure was incurred after the date of the contract for sale but not reflected in the nature or state of the property and which on a strict reading of sections 28 and 38 TCGA would not have been allowable expenditure. The Special Commissioner considered time of disposal in section 38 meant completion. Nichols J. upheld the Special Commissioner's decision.

5 (9) HMRC's argument that the timing of the incurring of allowable expenditure upon entry into a contract determines the period of ownership for the purpose of the principal private residence relief is flawed as expenditure on fees in connection with a disposal of a dwelling-house will almost certainly be incurred on or after completion and therefore after the date of the contract.

10 (10) Principal private residence relief was introduced in 1965 by section 29 Finance Act 1965. The term period of ownership was also used in section 29. What is now section 28 was introduced in 1971 after academic speculation about when an asset is acquired. This is indicative that "period of ownership" had to be given its ordinary meaning and the deeming provision to deal with the time of acquisition and disposal of an asset ought not to affect the relief from tax on the gains on disposal of principal private residence.

15 (11) Under Extra Statutory Concession D49 HMRC allow a taxpayer a period of grace of one year after contract to complete or up to 2 years where a taxpayer acquires land to build a dwelling or acquires a dwelling which requires alteration before occupation. Mr Thomas considers the terms of the concession are irrelevant to the meaning of the provisions. Taxpayers are entitled to be taxed by reference to the statute and not taxed or untaxed by Extra Statutory Concession. Mr Thomas referred us to 20 decisions of Lord Hoffmann in *ex parte Wilkinson* [2006] STC 270 and Bingham LJ in *MFK Underwriting* [1989] STC 873. He also noted that following the decision in *ex parte Wilkinson* HMRC had taken the criticism to heart and many concessions were enacted. 25

(12) The deeming effect of section 28 is tempered on the death of an individual as is apparent from section 225A. Mr Thomas considered there should be a read across to this circumstance to avoid unfairness.

30 (13) Alternatively this case can be distinguished on its facts from a case where a person buys an interest in a dwelling-house and does not occupy it for a substantial period. The delay in completing the acquisition was out of Mr Higgins' control – it was due to the financial crash.

35 (14) Further the increase in value would not have been a straight-line increase as HMRC's pro rating of the gain across the period of ownership suggests.

40 (15) In summary Mr Thomas argued that Mr Higgins occupied the flat as soon as he was legally able at completion of the purchase. Mr Higgins occupied the Apartment for the purpose for which the relief was granted. The policy of the statute to afford relief from gains on the disposal of principal private residence is not undermined by providing relief in this case.

HMRC's arguments

5. Mrs Sana on behalf of HMRC argued that:

(1) The issue is not whether principal private residence relief is available but the amount of the relief.

5 (2) The dispute centres around the period of ownership which HMRC says commences at the date the contract to acquire the lease of the Apartment and ends at the date of the agreement to sell. The time of disposal and acquisition of an asset is determined by the date of the contract to acquire and dispose per section 28(1) TCGA. In consequence Mr Higgins' period of ownership began 2 October 2006 (and not 5 January 2010) and ended on 15 December 2011 (and not on 5 January 2012, the date of legal completion).

10 (3) The computational rules in sections 222 and 223 indicate that it is not an adequate starting point in this case which is concerned with computation, to identify the general scheme of the legislation which is to exempt from tax the proceeds of disposal of a person's home. The cases of *BMBF* and *Sansom* should not be relied upon in this case.

15 (4) Mr Thomas' reliance of the cases of *Jerome*, *Underwood*, and *Chaney* for the proposition that section 28(1) could not create a liability was misplaced. Those cases were dealing with computation of a gain and do not assist Mr Higgins.

20 (5) Section 222 is relevant to determine whether the relief is available in the first place and section 222(7) relates to the commencement of the period of ownership for the purposes of computing the gain under section 223. Specifically Section 222(7) refers to the circumstance where an individual has had different interests in a dwelling at different times in which case "*the period of ownership should begin from the first acquisition taken into account in arriving at expenditure which under Chapter III of Part II is allowable as a deduction*". In this case Mr Higgins had different interests during his period of ownership, his first interest arose upon payment of the first deposit upon entering into a contract. This indicates that there is no overriding justification for adopting an interpretation of the legislation which confines ownership to periods when an individual can first physically occupy the Apartment.

25 (6) HMRC consider the relief from capital gains tax should be confined to increases in value during the period of occupation as a residence. Increases in value before occupation as a residence should not be covered by the relief. The gains should be pro-rated to the period of ownership pre and post the date of occupation. These rules apply to all taxpayers and all taxpayers must be treated equally.

30 (7) We were referred to Extra Statutory Concession D49 ("ESC D49") which explains HMRC's practice in cases where (i) an individual acquires land on which he has a house built and then uses the house as his only or main residence and (ii) where he acquires a house and before using it as his only or main residence arranges for alterations or redecorations before completing the steps to dispose of his former residence. HMRC treat the period before occupation as a period of occupation where the period does

not exceed one year. Where there are exceptional circumstances outside of the control of the taxpayer HMRC are prepared to extend the period up to a maximum of two years. If the property is not used as a taxpayer's residence within the two years no relief is available for the period prior to occupation.

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Discussion

6. We consider that principal private residence relief should be available to relieve from capital gains tax the entire gain realised by Mr Higgins on his disposal of the Apartment in 2012 for the following reasons:

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(1) We consider that the ordinary meaning of "*period of ownership*" should be applied in both section 222 and 223 TCGA 1992. A period of ownership of a dwelling house will ordinarily be said to begin on the date the purchase of the dwelling house has been physically and legally completed and the purchaser has the right to occupy. ESC D49 does not affect the legal position as it is a mere concession.

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(2) We consider the ordinary meaning of the term is consistent with the purpose of the legislation as identified by Brightman J in *Sansom* which is to exempt from tax a gain realised on a disposal of a principal private dwelling-house which is an economic necessity where one dwelling is disposed of and another must be acquired in inflationary times.

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(3) We also consider that when the legislation is construed purposively and applied to the facts viewed realistically per *BMBF* Mr Higgins is entitled to the relief. He acquired the Apartment which was a dwelling which he occupied as his principal private residence as soon as he was legally and physically able and did so until he completed the sale in January 2012.

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(4) We consider that section 28 TCGA is not a provision which determines liability but is a deeming provision which identifies the time of acquisition and disposal of a chargeable asset. Where it applies it deems the time of disposal to be a date of a contract. That concept is not directly involved in determining the meaning of "*period of ownership*" of a dwelling house in the context of the availability of the principal private residence relief. When sections 222 and 223 are read together what is critical is that the period of ownership and the period of occupation of the dwelling house coincide. To say the period of ownership begins when a contract to acquire a dwelling is entered into, at which time it would be highly unusual for a purchaser to have a right to occupy, would be perverse in the context of providing relief to individuals for gains realised on the sale of a private principal residence. The same would be true for the time of disposal. If an individual agrees to sell his dwelling house but for reasons out of his control the purchaser is unable to complete for a significant period, in a thin market it is in the seller's interest to agree to postpone completion until the purchaser is able to complete. Following HMRC's analysis the period between contract and completion is disregarded and a

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proportion of the gain referable to that period is taxed notwithstanding that ownership and occupation coincide.

5 (5) In any event a deeming provision must give way where it is dealing with an ancillary issue and not the substantive liability to tax per Lord Hoffmann in *Jerome* [11] "..., it seems to me clear that the paragraph was intended to deal only with the question of fixing the time of disposal and not with the substantive liability to tax". The extent to which a deeming provision must be confined is to "avoid injustice or absurdity" per Lord Browne-Wilkinson, endorsing the judgement of Peter Gibson LJ in *Marshall* at 649b-d.

10 (6) We reject HMRC's assertion that the cases of *Jerome* and *Chaney* do not assist because they are cases dealing with computation of liability only and not substantive liability.

15 (7) HMRC's assertion that section 28 applies to determine the period of ownership for all purposes concerning the availability of the relief because section 222(7) says that where a person acquires different interests in an asset at different times, the "period of ownership" "*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*

20 *computation of the gain to which this section applies...*" [emphasis added] seems to us going too far for a number of reasons:

(a) Section 28 is not in Chapter III of Part II. It is in Chapter II of Part II of Chapter II.

25 (b) If the draftsman wanted to say that section 28 determined the period of ownership it would have been easy to make that change when section 28 was introduced in 1971.

30 (c) Section 43 TCGA which does form part of Chapter III of Part II is likely to have been in the draftsman's mind in connection with section 222(7). Section 43 deals with cases where assets have merged such as where a leasehold interest is acquired and later the freehold is acquired and the leasehold merges with a freehold interest such that the value of the freehold is derived from the leasehold. We set out the terms of section 43 annotated to reflect the effect of the section on this

35 example. Where section 43 applies a proportion of the expenditure on the acquisition of the leasehold is to be attributed to the freehold. Section 43 makes specific mention to the order of acquisition of assets.

40 "*If and in so far as, in a case where assets have merged....., the value of an asset [a freehold] is derived from any other asset [a leasehold] in the same ownership, an appropriate proportion of the sums allowable as a deduction in the computation of a gain in respect of the other asset [the leasehold] under paragraphs (a) and (b) of section 38 shall,*

both for the purposes of computation of a gain arising on the disposal of the first mentioned asset [freehold] and, if the other asset remains in existence [the leasehold], on a disposal of the other asset [the leasehold], be attributed to the first mentioned asset."

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(8) The terms of the ESC D49 recognise that using section 28 to determine period of ownership in sections 222 and 223 TCGA instead of giving the term its ordinary meaning produces absurd and perverse results. The terms of ESC D49 have no bearing on the meaning of the statutory provisions under consideration.

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(9) HMRC invited us to accept that Mr Higgins had an equitable interest in the Apartment from the date of the contract and so owned the Apartment from that date. We doubt that was possible because the Apartment did not exist at the date of the contract, the space where the Apartment was to be constructed was literally a space in a tower. The contract was a contract to buy a lease of the Apartment once the Apartment had been constructed and not a contract to buy air space. This can be seen from clause 5.1 of the contract which provides that satisfactory substantial completion of the construction of the Apartment and the production of satisfactory evidence of that fact is a condition precedent to completion. This is also consistent with clause 8 which provides that Mr Higgins had no right to have his interest in the Apartment noted on the insurance contract of the Seller, as is usual in unconditional contracts for the sale of land implying that risk of accidental loss would fall on the Seller, and tending to negative an equitable interest from the date of contract in Mr Higgins. We understand that as a matter of law there could not have been an interest that equity was able to protect until the condition that the Apartment be constructed to a satisfactory standard had been satisfied, at which time a lease could be granted and specific performance of the grant of the lease could be obtained in favour of Mr Higgins. (This issue was in point in *Inland Revenue Commissioners v Earl of Derby* [1914] KBD 1186.) The construction of the Apartment was substantially completed on 18 December 2009. At that date it might be said Mr Higgins had an equitable interest in the lease but specific performance would depend on his willingness to pay the premium at legal completion. However, even if Mr Higgins acquired an equitable interest before 18 December 2009 in a lease that had not been granted in respect of an Apartment that did not exist, we consider that that equitable interest is not an interest at which sections 222 and 223 is aimed.

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(10) The period of ownership for the purpose of sections 222 and 223 began when Mr Higgins owned the legal and equitable interest in the lease of the Apartment and owned the legal right to occupy the Apartment. That was the date of legal completion of the purchase of the lease on 5 January 2010. The period of ownership ended on the 5th January 2012 when the contract for sale (entered into on 15 December 2011) was completed.

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7. **Decision**

We allow the appeal.

5 8. 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
10 “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)”
which accompanies and forms part of this decision notice.

**HEATHER GETHING
TRIBUNAL JUDGE**

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RELEASE DATE: 16 MARCH 2017