

Pump Court Tax Chambers Pupillage Applications 2023

Problem question (45 minutes prep time)

Introduction

1. In answering the questions below, you are not expected to have any knowledge of tax law beyond what is set out here and will not get credit for using such knowledge (including statutory provisions and case law). You do not need to and should not use other resources in preparing your answers. Please do not discuss the question with anyone else during your preparation or after the interview.
2. We expect you to have time to answer all the questions below in the time available. We have included the marks available for each question to give you an idea of the time we might spend on each question, and we will try to help you keep to time.
3. A good answer will be based on the statutory language and will include reasoning as well as a conclusion. While preparing, you may want to make a note of the specific part(s) of the statute you are applying in each question.

CGT and main residence relief

4. Capital gains tax is charged on the capital gain made (broadly the increase in value) by a person when selling or otherwise disposing of an asset. There is an exemption where a person disposes of their “main residence” (found in the Taxation of Chargeable Gains Act 1992 sections 222 onwards). This question is about that exemption but based on a simplified version of the legislation.
5. The exemption provides:

‘222 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 or part of a dwelling 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.

...

(7) In this section “the period of ownership” where the individual has had different interests at different times shall be taken to begin from the first acquisition, and in the case of an individual living with his spouse or civil partner living with him—

(a) if the one disposes of, or of his or her interest in, a dwelling or part of a dwelling 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 or part of a dwelling 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.

223 Amount of relief

(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling or part of a dwelling 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 9 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 or the part of the dwelling was the individual's only or main residence, but inclusive of the last 9 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 period of absence not exceeding 3 years (or periods of absence which together did not exceed 3 years shall be treated as if in that period of absence the dwelling or the part of the dwelling were occupied by the individual as a residence if conditions A and B are met.

(3A) Condition A is that before the period there was a time when the dwelling was the individual's only or main residence.

(3B) Condition B is that after the period there was a time when the dwelling was the individual's only or main residence.

224 Further provisions

(1) If a gain to which section 222 applies accrues on the disposal of a dwelling or part of a dwelling 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 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 a manner which is just and reasonable.

(3) Sections 223 shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling or the part of a dwelling 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.

Question A (8 marks)

Mary buys a derelict house in January 2018. It is barely habitable but Mary camps in it for six months while getting planning permission for a redevelopment. The development starts in July 2018 and finishes in July 2019. During that time Mary lives in a caravan in the garden of the house. When the development is finished, Mary moves into the house and lives there until October 2022. From October 2022 Mary lives with her partner elsewhere and tries to sell the house. The house is sold in January 2023. At no point does Mary own any other real property.

1. What “dwellings” are involved? (2 marks)
2. What is Mary’s period of ownership? (2 marks)
3. What proportion of any gain arising on the sale of the house will be exempt? (2 marks)
4. What difference to the exemption would it make if Mary had always intended to sell as soon as possible after the redevelopment? (1 mark)
5. What difference to the exemption would it make if Mary had moved back into the house in December 2022? (1 mark)

Question B (10 marks)

Matthew buys Flat 1 in January 2018. Flat 1 is a large flat occupying the bottom two floors of a converted house. The top floor is a separate flat (Flat 2). Matthew lives in Flat 1 until January 2020 and does not own any other property. In January 2020, he buys Flat 2 so that he owns the whole house, moves out to stay with his parents for 6 months and divides the original flat (i.e. Flat 1) into two smaller flats (Flats 1a and 1b). In July 2020 he moves into Flat 2 and lets Flat 1a to Jo. Matthew uses Flat 1b for storage. In January 2023 Matthew sells Flat 1a

to Jo, sells Flat 1b to Edith and sells Flat 2 to Fred. At no point does Matthew own any other real property.

1. What “dwellings” are involved? (3 marks)
2. What is Matthew’s period of ownership of those dwellings? (2 marks)
3. What proportion of any gain arising on the sale of Flat 1a will be exempt? (1 marks)
4. What proportion of any gain arising on the sale of Flat 1b will be exempt? (1 mark)
5. What proportion of any gain arising on the sale of Flat 2 will be exempt? (1 mark)
6. Would Matthew have qualified for the same level of exemption on any gain if he had let his mother live in Flat 2 rent free from July 2020 to January 2023 whilst living in Flat 1b himself? (2 marks)