Financial Remedies Journal

CLASS LEGAL

LIVE WEBINAR

Keep Calm and Carry On: Tax for the Financial Remedies Practitioner

Thursday 12th January 2023 | 1pm - 2pm

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Agenda

- Tax changes
- Overview of the CGT new rules
- Transition cases
- Stamp duty land tax
- Deferred compensation

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Changes

Income Tax

- 45% rate will start from £125,000
- Personal allowance is £12,570 until March 2026

Corporation Tax

- Corporation tax rates are rising from 19% to 25% for some!
- Companies with profits up to £50,000 will pay tax at 19%
- Companies with profits over £250,000 will pay tax at 25%
- Companies with profits between £50,000 to £250,000 will pay tax between 19% and 25%

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Reminder of capital gains tax basics

- Capital gains tax is charged on the gain when an individual has a chargeable disposal (usually a sale or a transfer).
- Capital gains tax is charged at different rates for different assets
- For gains on residential property the rate is 18% or 28% - this is payable 60 days from disposal.
- For gains on non residential property (i.e. land and shares) the rate is 10% or 20% - this is payable by 31 Jan following the end of the tax year.

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Current rules (until 5 April 23)

- Transfers between spouses after the end of the tax year of separation are charged to capital gains tax
- The transferring spouse is deemed to have sold the asset to the receiving spouse.
- This liability must be settled in 60 days.

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Overview of new rules

- Extending the ‘no gain no loss’ period on transfers
- Allowing PPR relief on sale even when the individual has been absent from the home.
- Allowing PPR relief for the non-occupying spouse when the property is subject to a deferred charge
- Effective date - 6 April 2023

Transfer of Assets with no immediate CGT

- Couples transferring assets between themselves will not have a CGT liability on transfer.

- This will be the case if either the transfer takes place within 3 years of separation, or any time if the transfer is before **a formal divorce agreement**

> ‘the day on which a court grants an order or decree for A and B’s divorce, the annulment of their marriage, the dissolution or annulment of their civil partnership, their judicial separation or, as the case may be, their separation in accordance with a separation order.’

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The CGT is deferred not gone

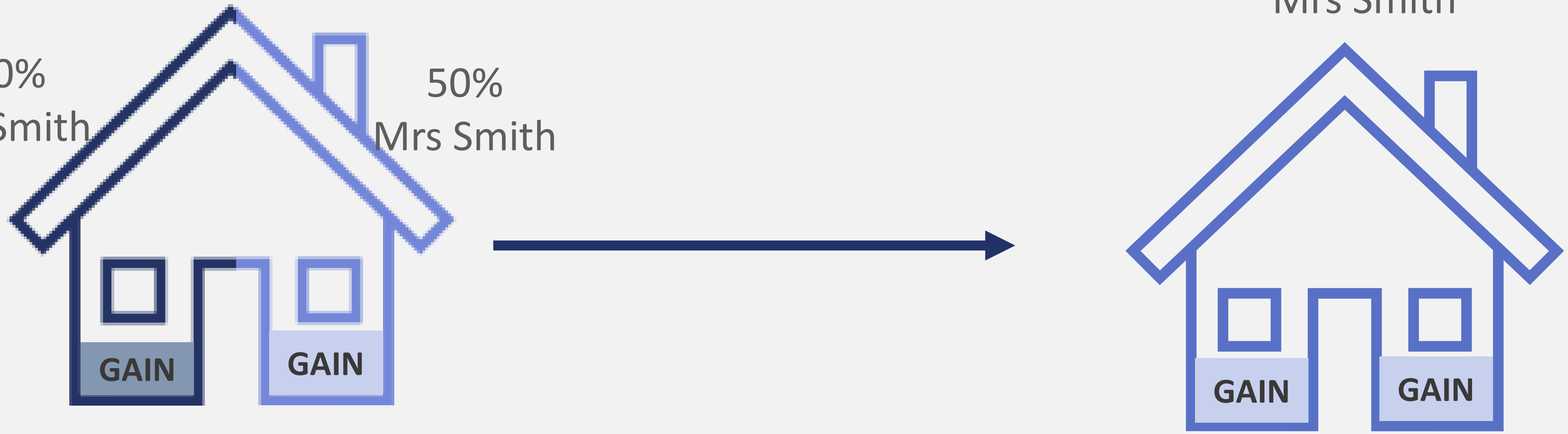
- Any latent gain in the property passes over to the new owner
- They will be responsible for paying the CGT on future sale or transfer
- The transferring spouse will have no CGT to pay and no reporting requirements.
- This applies to all capital assets (properties, shares, land, art).

'no gain no loss' – Case Study

50%
Mr Smith

50%
Mrs Smith

100%
Mrs Smith



Market Value £150,000
CGT liability £25,000

Market Value £150,000
CGT liability £25,000

Market Value £300,000
CGT liability £50,000

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'no gain no loss' – Case Study - Considerations

Considerations

Hard to predict how taxes will apply in the future

If the property goes down in value, the tax payable will also decrease

The tax may never actually become payable

Lots of things that it cannot do but it is a snapshot of a moment in time.

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‘no gain no loss’ things to note

- The value of the asset may be lower than initially thought if there is a large latent gain in the property.

- If the transferring spouse has any of the documents these should be passed to the receiving spouse

- The receiving spouse needs to understand their tax responsibilities with regards to the property.

- The tax may never become due

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Reminder of PPR Relief basics

- Principal Private Residence Relief is a CGT relief available for individuals when they sell a home that they once lived in as their main home.
- Relief is given for total occupation – this is made up of actual occupation and deemed occupation. Final 9m of ownership is always deemed occupation.
- **Only given on property plus 0.5 hectares (as a default)**
- Can reduce the taxable gain to zero
- Usually can only apply on one property at one period of time
- Different rules apply to non residents

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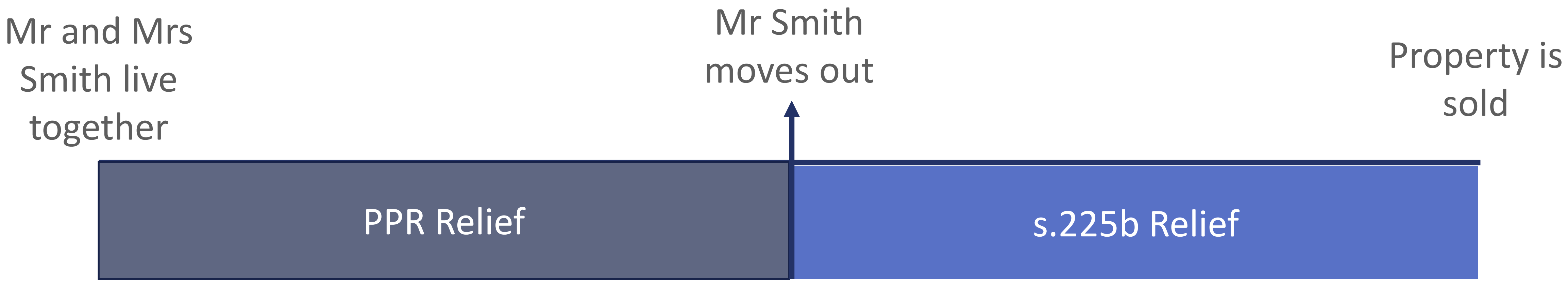
Changes to PPR Relief

- S.225b relief now applies when a property is sold to a third person.
- It allows the non occupying spouse to claim PPR relief for the period of absence



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S.225b Conditions *(DRAFT)*

- S.225b relief now apply when a property is sold to a third person.
- The sale is happening by way of agreement between spouses in contemplation of divorce or an order of the court
- The property remains the main home of the occupying spouse
- The non-occupying spouse has not elected any other property to be their main home
- The non occupying spouse has made an election for this treatment.

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PPR relief changes - things to note

- S.225b relief does not apply automatically
- It may not be tax efficient if the leaving party has purchased another home
- It cannot apply if both parties have moved out of the home
- This also applies for a property subject to a deferred charge.

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Effective Date

- These changes will come into effect on 6 April 2023.
- Therefore, Orders being finalised between now and 6 April 2023 will want to pay close attention to the tax impact of the Order.
- Just moving the date of transfer to post 6 April 2023 will not automatically mean that the transfers are subject to the new rules.
- To know the tax rules that will apply to the transfers we have to look at the date of disposal.

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Date of Disposal

There are three events to consider for the date of disposal

- The date of transfer
- The date of the Order
- The date Decree Absolute is given

If the Order is made following the Decree Absolute the date of disposal is the date of the Order

In all other cases the date of disposal is the date of Decree Absolute (even if the transfer has already taken place).

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Additional 3% SDLT

If at the end of the date of the transaction the individual will have a major interest in more than one property the additional rate of SDLT will apply to that purchase **unless**

The purchase is a replacement of the main home

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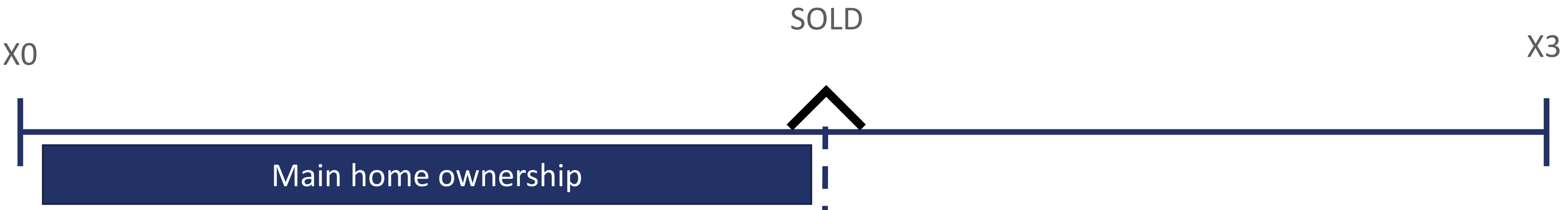
Additional 3% SDLT



Buying additional property in this period, 3% is payable and a refund is then claimed in the 12m following the sale/transfer.

Buying additional property in this period, no 3% is paid as it is replacement for the main home.

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Deferred Compensation

- Shares, Restricted Stock Units, Stock Options etc.
- Income tax and CGT considerations
- Typically there are 3 events in an RSU lifecyle

Deferred Compensation

Award

- This is a promise to receive shares at some point in time.
- Will be shown on an award certificate
- No tax event

Vest

- The shares are given to the employee
- Income tax & NICs are paid at this time, usually part of the shares are withheld to cover the taxes
- For RSUs it's income tax and employers NIC that is withheld.

Sale

- If the shares have increased in value from vest to sale, CGT will apply to the gain

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Crypto Assets

- Study by HMRC showed 1 in 10 people in the UK have Crypto Assets
- When crypto assets are sold – if there is a gain this is subject to CGT, if above the annual exemption.
- Individuals are being paid in Crypto Assets as well, similar to RSUs, in some cases income tax and CGT will apply

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