

SCHEDULES

SCHEDULE 9

Section 39

PRIVATE RESIDENCE RELIEF

1 TCGA 1992 is amended in accordance with this Schedule.

2 In section 222 (relief on disposal of private residence)—

(a) after subsection (6) insert—

“(6A) Where an individual has determined, by giving notice under subsection (5)(a), that a residence is the individual’s main residence, that determination does not cease to be effective at any time by reason only of the fact that, at that time, another of the individual’s residences is treated by section 222B(1) as not being occupied as a residence (or, having been so treated, is no longer so treated).”;

(b) in subsection (7), for “223” substitute “222A”.

3 After section 222 insert—

“222A Determination of main residence: non-resident CGT disposals

(1) This section applies where—

(a) an individual (“P”) makes a disposal of, or of an interest in—

(i) a dwelling-house, or part of a dwelling-house, which was at any time in P’s period of ownership occupied by P as a residence, or

(ii) land (as mentioned in section 222(1)(b)) which P had for P’s own occupation and enjoyment with that residence as its garden or grounds, and

(b) the disposal is a non-resident CGT disposal (see section 14B).

In the remainder of this section the residence concerned is referred to as “the dwelling-house”.

(2) So far as it is necessary for the purposes of section 222, P may determine, by a notice under this section, which of 2 or more residences (of which one is the dwelling-house) was P’s main residence for any period within P’s period of ownership of the dwelling-house.

(3) A notice under this section may vary, as respects any period within P’s period of ownership of the dwelling-house, a notice previously given under section 222(5)(a).

See also subsections (4) and (7).

(4) A notice under this section may not vary a notice previously given under section 222(5)(a) as respects any period for which the previous notice had

Status: This is the original version (as it was originally enacted).

the effect of determining whether or not a disposed of residence was P's main residence.

- (5) In subsection (4) “disposed of residence” means one of P's residences which was disposed of (in whole or in part) before the date of the disposal mentioned in subsection (1)(a).
- (6) A notice under this section—
- (a) must be given in the NRCGT return in respect of the disposal mentioned in subsection (1)(a), and
 - (b) may not subsequently be varied, whether by a notice under this section or section 222(5)(a).
- (7) Where a notice under this section affects both P and an individual (“X”) who was, in the period to which the notice relates (“the relevant period”), P's spouse or civil partner living with P—
- (a) in a case where each of P and X is required to make an NRCGT return in respect of the disposal of an interest in the dwelling-house, notice given by P under this section is effective as respects any part of the relevant period when P and X were living together as spouses or civil partners only if notice to the same effect is also given under this section by X in respect of that period;
 - (b) in any other case, notice given by P under this section is effective as respects any part of the relevant period when P and X were living together as spouses or civil partners only if it is accompanied by written notification from X agreeing to the terms of the notice in respect of that period.
- (8) Nothing in subsection (2) affects the application of section 222(5) in relation to P.

222B Non-qualifying tax years

- (1) For the purposes of sections 222 to 226 the dwelling-house or part of a dwelling-house mentioned in section 222(1) is treated as not being occupied as a residence by the individual so mentioned (“P”) at any time in P's period of ownership which falls within—
- (a) a non-qualifying tax year, or
 - (b) a non-qualifying partial tax year.

In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as “the dwelling-house”.

- (2) Except where the disposal mentioned in section 222(1) is a non-resident CGT disposal, subsection (1) does not have effect in respect of any tax year or partial tax year before the tax year 2015-16.
- (3) A tax year the whole of which falls within P's period of ownership is “a non-qualifying tax year” in relation to the dwelling-house if—
- (a) neither P nor P's spouse or civil partner was resident for that tax year in the territory in which the dwelling-house is situated, and
 - (b) the day count test was not met by P with respect to the dwelling-house for that tax year (see section 222C).

Status: This is the original version (as it was originally enacted).

- (4) A partial tax year is “a non-qualifying partial tax year” in relation to the dwelling-house if—
 - (a) neither P nor P’s spouse or civil partner was resident for the tax year in question in the territory in which the dwelling-house is situated, and
 - (b) the day count test was not met by P with respect to the dwelling-house for that partial tax year.
- (5) Where part only of a tax year falls within P’s period of ownership, that part is a “partial tax year” for the purposes of this section.
- (6) For the purposes of this section an individual is resident in a territory outside the United Kingdom (“the overseas territory”) for a tax year (“year X”) in relation to which condition A or B is met.
- (7) Condition A is that the individual is, in respect of a period or periods making up more than half of year X, liable to tax in the overseas territory under the law of that territory by reason of the individual’s domicile or residence.
- (8) Condition B is that the individual would be resident in the overseas territory for year X in accordance with the statutory residence test in Part 1 of Schedule 45 to the Finance Act 2013, if in Parts 1 and 2 of that Schedule—
 - (a) any reference to the United Kingdom (however expressed) were read as a reference to the overseas territory,
 - (b) “overseas” meant anywhere outside that territory, and
 - (c) in paragraph 26 (meaning of “work”), sub-paragraphs (2) to (4), (6) and (7) were disregarded.
- (9) In applying the statutory residence test in accordance with subsection (8), any determination of whether—
 - (a) the individual was resident in the overseas territory for a tax year preceding year X, or
 - (b) another individual is resident in the overseas territory for year X,is to be made in accordance with the statutory residence test, as modified by subsection (8).
- (10) Section 11(1)(a) (visiting forces etc) is to be disregarded in determining for the purposes of this section whether or not an individual is resident in the United Kingdom.
- (11) Subsection (1) is subject to—
 - (a) section 222(8) (job-related accommodation), and
 - (b) section 223(3) (absence reliefs).

222C Day count test

- (1) This section explains how P meets the day count test (see section 222B) with respect to the dwelling-house or part of a dwelling-house mentioned in section 222(1) for a full or partial tax year.

In the remainder of this section the dwelling-house or part of a dwelling-house is referred to as “the dwelling-house”.

Status: This is the original version (as it was originally enacted).

- (2) P meets that test for a tax year with respect to the dwelling-house if, during that year, P spends at least 90 days in one or more qualifying houses.
- (3) P meets that test for a partial tax year with respect to the dwelling-house if, during that partial tax year, P spends at least the relevant number of days in one or more qualifying houses.
- (4) To find the relevant number of days for the purposes of subsection (3), multiply 90 days by the relevant fraction and round up the result to the nearest whole number of days if necessary.

- (5) The relevant fraction is—

$$\frac{X}{Y}$$

where—

“X” is the number of days in the partial tax year;

“Y” is the number of days in the tax year.

- (6) For the purposes of subsections (2) and (3) the days need not be consecutive, and days spent in different qualifying houses may be aggregated.
- (7) A day spent by P’s spouse or civil partner in a dwelling-house or part of a dwelling-house which is a qualifying house in relation to P counts as a day spent by P in the qualifying house (but no day is to be counted twice as a result of this subsection).
- (8) For the purposes of this section, a day counts as a day spent by an individual in a qualifying house if—
- (a) the individual is present at the house at the end of the day, or
 - (b) the individual—
 - (i) is present in the house for some period during the day, and
 - (ii) the next day, has stayed overnight in the house.
- (9) For the purposes of this section—
- (a) the dwelling-house is a qualifying house in relation to P, and
 - (b) any other dwelling-house or part of a dwelling-house which is situated in the same territory as the dwelling-house is a qualifying house in relation to P at any particular time if at that time any of the following has an interest in it—
 - (i) P,
 - (ii) an individual who is P’s spouse or civil partner at that time, and
 - (iii) an individual who is P’s spouse or civil partner at the time of disposal of the dwelling-house.

(10) In this section “partial tax year” has the meaning given by section 222B(5).”

- 4 (1) Section 223 (amount of relief) is amended as follows.

(2) In subsection (3)—

- (a) after “the purposes of” insert “sections 222(5) and 222A and”;

Status: This is the original version (as it was originally enacted).

(b) for “was the individual’s only or main residence” substitute “were occupied by the individual as a residence”.

(3) For subsection (7) substitute—

“(7) In this section “period of ownership”—

- (a) does not include any period before 31 March 1982, and
- (b) where the whole or part of the gain to which section 222 applies is an NRCGT gain chargeable to capital gains tax by virtue of section 14D, does not include any period before 6 April 2015 (but see subsection (7A)).

(7A) Paragraph (b) of the definition of “period of ownership” does not apply in a case where paragraph 9 of Schedule 4ZZB applies by virtue of subparagraph (1)(b) of that paragraph (the individual has made an election for the retrospective basis of computation to apply).

(7B) In this section “period of absence” means a period during which the dwelling-house or the part of the dwelling-house was not occupied by the individual as a residence.”

5 After section 223 insert—

“223A Amount of relief: non-resident CGT disposals

(1) This section applies where—

- (a) the individual mentioned in section 223(1) (“P”) acquired the asset to which the gain mentioned in section 222(1) is attributable before 6 April 2015, and
- (b) P’s period of ownership for the purposes of section 223 begins on that date because of section 223(7)(b).

(2) Times before 6 April 2015 are to be ignored in determining whether or not condition A in section 223 is met in relation to a period of absence, unless P elects that this subsection is not to apply in relation to the period.

(3) An election under subsection (2)—

- (a) must specify which day before 6 April 2015 P relies on in relation to the period of absence for the purpose of meeting condition A in section 223, and
- (b) must be made in the NRCGT return in respect of the disposal.

(4) Where P has made an election under subsection (2), section 223 applies as if relevant prior periods of absence counted against the maximum periods (and maximum aggregate periods) specified in subsection (3)(a), (c) and (d) of that section.

(5) In relation to a maximum period (or maximum aggregate period) specified in paragraph (a), (c) or (d) of section 223(3), “relevant prior period of absence” means a period of absence which would have counted against that maximum period (or maximum aggregate period) if the bridge period were included in the period of ownership.

(6) In subsection (5) “the bridge period” means the period beginning with the day specified in the election and ending with 5 April 2015.

Status: This is the original version (as it was originally enacted).

- (7) In this section “period of absence” has the same meaning as in section 223.”
- 6 (1) Section 225 (private residence occupied under terms of settlement) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) In that subsection—
- (a) in the words before paragraph (a), after “person” insert “(“B”);
 - (b) in paragraph (a), for “the occupation of the dwelling-house or part of the dwelling-house, and” substitute “the matters dealt with in subsection (2),”;
 - (c) in paragraph (b), for “the person entitled to occupy the dwelling-house or part of the dwelling-house;” substitute “B, and”;
 - (d) after paragraph (b) insert—
 - “(c) the notice which may be given by the trustees under section 222A is effective only if it is accompanied by written notification from B agreeing to the terms of the notice;”.
- (4) After that subsection insert—
- “(2) In sections 222 to 224, as applied by subsection (1), references to the individual, in relation to—
- (a) the occupation of the dwelling-house or part of the dwelling-house,
 - (b) residence in a territory, or
 - (c) meeting the day count test,
- are to be taken as references to B.”
- 7 (1) Section 225A (private residence held by personal representatives) is amended as follows.
- (2) In subsection (5)—
- (a) in paragraph (a), for the words from “the occupation” to the end substitute “the matters dealt with in paragraph (aa),”;
 - (b) after paragraph (a) insert—
 - “(aa) in relation to the occupation of the dwelling-house or part of the dwelling-house, residence in a territory, or meeting the day count test, references to the individual are to be taken as references to a qualifying individual,”;
 - (c) after paragraph (b) insert “and
 - (c) the notice which may be given by the personal representatives under section 222A is effective only if it is accompanied by written notification from the individual or individuals entitled to occupy the dwelling-house or part of the dwelling-house agreeing to the terms of the notice.”
- (3) After subsection (6) insert—
- “(7) In subsection (5)(aa) “a qualifying individual” means an individual—
- (a) who has a relevant entitlement, and
 - (b) by virtue of whom the first condition is met.”
- 8 In section 225B (disposals in connection with divorce etc), in subsection (4), after “222(5)” insert “or 222A”.

Status: This is the original version (as it was originally enacted).

- 9 In section 225E (disposals by disabled persons or persons in care homes etc), in subsection (6)(b), after “subsection (5) of that section” insert “or under section 222A”.
- 10 The amendments made by this Schedule have effect in relation to disposals made on or after 6 April 2015.