4. Gardens and grounds

4.1 Overview

In addition to relief on any gain made on the disposal of a dwelling-house used as a residence, s. 222(1)(b) also provides full relief from CGT on the disposal of adjoining land which an individual has for his own occupation and enjoyment with the said residence.

In so far as relevant, s. 222 provides relief for garden land or grounds as follows:

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–

[…] **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) Where the area required for the **reasonable enjoyment** of the dwelling-house (or of the part in question) as a residence, having regard to the size and character of the dwelling-house, is larger than 0.5 of a hectare, that larger area shall be the permitted area.

(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.

In the past, a mistaken assumption has been made that the rules on main residence relief are the same for adjacent land and for the dwelling-house itself. There is a significant distinction between treatment in TCGA 1992 of a dwelling-house and of its garden land and it should be noted that s. 223 (amount of relief) applies to a

disposal of a dwelling-house that has been – throughout the period of ownership – occupied as a main or only residence *and* of land which at the time of the disposal is occupied as garden or grounds up to the permitted area. All the other sections which comprise the *private residences* sections of TCGA 1992, Pt. VII refer to the dwelling-house only.

S. 222(1)(b) therefore reveals a test containing two limbs:

1. The land must be occupied as garden or grounds for the enjoyment of the residence.
2. The land must not exceed the "permitted area".

It should also be noted that even if land used as a garden or grounds meets the two conditions in the s. 222(1)(b) test, the amount of main residence relief will still be subject to all the other conditions in s. 223.

The draftsman deals with garden or grounds as a separate subsection in TCGA 1992, s. 222(1). This suggests that they are separate and should be distinctly considered from the main "dwelling-house" in question. It also means that an ancillary building, which is not within the curtilage of and appurtenant to the main house (a much more stringent test), may still qualify for main residence relief because it is situated within the permitted area of garden or grounds an individual has for his own occupation and enjoyment of his main residence.

4.2 What does "garden or grounds" include?

There is no definition of this phrase within the legislation or case law so its ordinary and natural meaning should apply. The Shorter *Oxford English Dictionary* defines "garden" as "a piece of ground (often enclosed) where fruits, flowers, herbs, or vegetables are cultivated; without specification esp. one adjoining a house or other residential building". "Grounds" are in turn defined as "a large enclosed area of land surrounding or attached to a house or other building".

The common characteristics between these two terms are a degree of enclosure (relevant to "permitted area" in this case) and an extent of physical attachment to the house.

It therefore follows that *gardens* may include vegetable patches, flower beds and pots, water features including ponds, extensive areas of lawn, and *grounds* may include fruit trees and orchards and less maintained areas like overgrown fields, meadows or paddocks (unless used commercially). As grounds are ordinarily defined as a larger enclosed area, it follows that any land developed into swimming pools, tennis courts or any other amenity areas may also qualify.

The determination of whether land amounts to a residence's garden or grounds is a matter of fact to be considered by the decision-maker on the specific circumstances of each case considering adequate historical data and any conveyances.

Generally speaking, it will be difficult (albeit not impossible) to establish that land which is physically separated from the main dwelling-house belongs to the house's garden or grounds just because it is in the ownership of the same individual. The crux of the argument would be that the land has to be occupied as grounds for the enjoyment of the residence. If the land is removed and not very easily accessible from the main house, enjoyment of it becomes a less likely possibility. A possible exception to this presumption would be gardens or grounds which are historically and traditionally separated from the dwelling-house because of local custom (e.g. historic villages with gardens across a footpath or highway).

Conversely, land which was previously occupied as gardens or grounds within the ordinary sense of the words, but which has been abandoned, is likely to fail the s. 222(1)(b) test due to lack of enjoyment at the time of disposal.

HMRC's guidance at CG 64360 explains that a useful dictionary definition for grounds (without mentioning which dictionary) would be:

> "Enclosed land surrounding or attached to a dwelling-house or other building serving chiefly for ornament or recreation."

HMRC seize upon the "enclosed" description of grounds without appreciating that there may be good reasons why gardens or grounds adequately occupied for the individual's enjoyment of the

dwelling-house are not or could not be enclosed (restrictive covenants, planning conditions, etc.).

In the recent case of *Fountain v HMRC,* the FTT held that a gain accrued on a sale of a building plot located on land in the ownership of the appellants was not eligible for the exemption as the plot did not form part of the garden or grounds of their main residence.

The appellants lived in a residence at 31 Doddington Road for several years. They used an area behind the dwelling-house for business purposes (workshop and parking area). This area was accessed through a driveway on one side of the dwelling-house. There were two farming fields (of 1.31 and 1.80 acres respectively) beyond the business area. After cessation of the business, the appellants divided their land into five building plots. The issue for the FTT to determine was whether plot number 2 (which was sold in December 2009) formed part of the grounds or gardens of plot number 4, which had become a newly built dwelling-house and the appellants' main residence in January 2007.

The Tribunal found that plot 2 had been levelled and fenced off from the adjacent plots number 3 and number 4. The plot was said to have hard landscaping and was not cultivated. The appellants stated that it had been used for storing building materials used for the construction of the new main residence at plot 4 and for parking of a caravan, but no evidence was submitted to support this statement. Plots 2 and 4 were on the same "title deed" but they were physically separated by plot 3. There was no direct way of accessing plot 2 from the dwelling-house at plot 4.

The FTT held that following *Varty v Lynes*, the land in question had to form part of the garden or grounds of the main residence *at the time of the sale* (see **4.9.1** below). This meant that the fact (which was accepted) that plot 2 formed part of the grounds of the former residence at 31 Doddington Road was an irrelevant consideration.

Further, the fact that plots 2 and 4 were registered under the same title was also an irrelevant factor. In the FTT's view, the dictionary definition of "garden" contemplates that a garden should adjoin a residence and be cultivated as a garden. Plot 2 never adjoined plot 4 and there was no evidence that it had ever been cultivated as a garden, therefore it was not part of the garden of plot 4. Moreover, the dictionary definition of "grounds" contemplates that the land

must surround a house or building and as plot 2 did not surround plot 4 and was physically separated by plot 3, it never formed part of the grounds of plot 4. Finally, the FTT held that the alleged fact (which was not proved) that plot 2 had been used for the storage of building materials and to park the appellants' caravan did not mean that the plot ever formed part of the garden or grounds of the main dwelling-house.

Cases: *Varty (HMIT) v Lynes* [1976] STC 508, (1976) 51 TC 419; *Fountain and Fountain v HMRC* [2015] UKFTT 0419 (TC)
Guidance: CG 64360

4.3 "Has for his occupation and enjoyment" – time of disposal

Section 222(1)(b) is phrased differently to its sister provision, s. 222(1)(a), in that it refers to the present tense and does not look back to periods of occupation over the length (or history) of ownership. This means that any land held as garden or grounds will not be required to be held contemporaneously with the dwelling-house if full main residence relief is to be obtained. If the land is held as garden or grounds at the date of disposal of the dwelling-house that would be, as a matter of legislative interpretation, sufficient.

Law: TCGA 1992, s. 222(1)(a), (b), s. 223

4.4 Permitted area – 0.5 ha or more if "reasonably required" for the enjoyment of the house

4.4.1 Introduction

Section 222(2) provides:

> "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."

The permitted area was originally set as one acre (by FA 1965) but in 1991, as a direct result of an EEC directive requiring the UK Government to stop using imperial measurements for most purposes by December 1994, FA 1991, s. 93 increased the permitted area by approximately 0.2 acres to half of a hectare. This change took effect from 19 March 1991 and the permitted area has been the same ever since.

It is ambiguous whether the use of the words "up to the permitted area" in s. 222(1)(b) is meant in the spatial or quantitative sense. The distinction is important because:

- If it was drafted and meant to be interpreted in its spatial sense, then it would mean that one would have to identify the physical boundaries of the permitted area first (which may exceed 0.5 ha) and then determine if the land sold was located within it. On this basis no relief would be due if the land sold was not within the boundaries of the permitted area even if it did not extend in itself beyond the permitted half a hectare.
- Conversely, if the section was meant to be read in a quantitative way, it would mean that any land which was enjoyed as garden or grounds which measured half a hectare or less would automatically qualify for relief. If this were the case, there would not be a requirement to look at the implications of s. 222(3) unless the area in question was, as a matter of fact, larger than 0.5 ha.

HMRC prefer the spatial reading of the provision (CG 64815) which imposes a burden on any house owner or landowner disposing of land used as a garden or grounds to identify the boundaries of the permitted area before and after any disposal.

There is a possibility[1] that when a large area in excess of the permitted area is going to be sold, more relief could be obtained on smaller consecutive transfers or part disposals than would be the case if the same total area were sold in one single transaction. For example, if the total area of grounds amounts to one hectare, the individual could dispose of the land in plots of 0.25 hectares or 0.5 hectares which, of course, would be covered by the permitted area exemption. The effectiveness of this route would be subject to the layout of the dwelling-house and whether the land disposed of can be described as the most suitable for occupation and enjoyment (for which expert opinion would be needed), to any anti-avoidance provisions or even to a finding that the transactions amount to a venture in the nature of a trade.

[1] The theory is treated as a possibility because each case may present factors and facts that could change the ultimate outcome or conclusion reached.