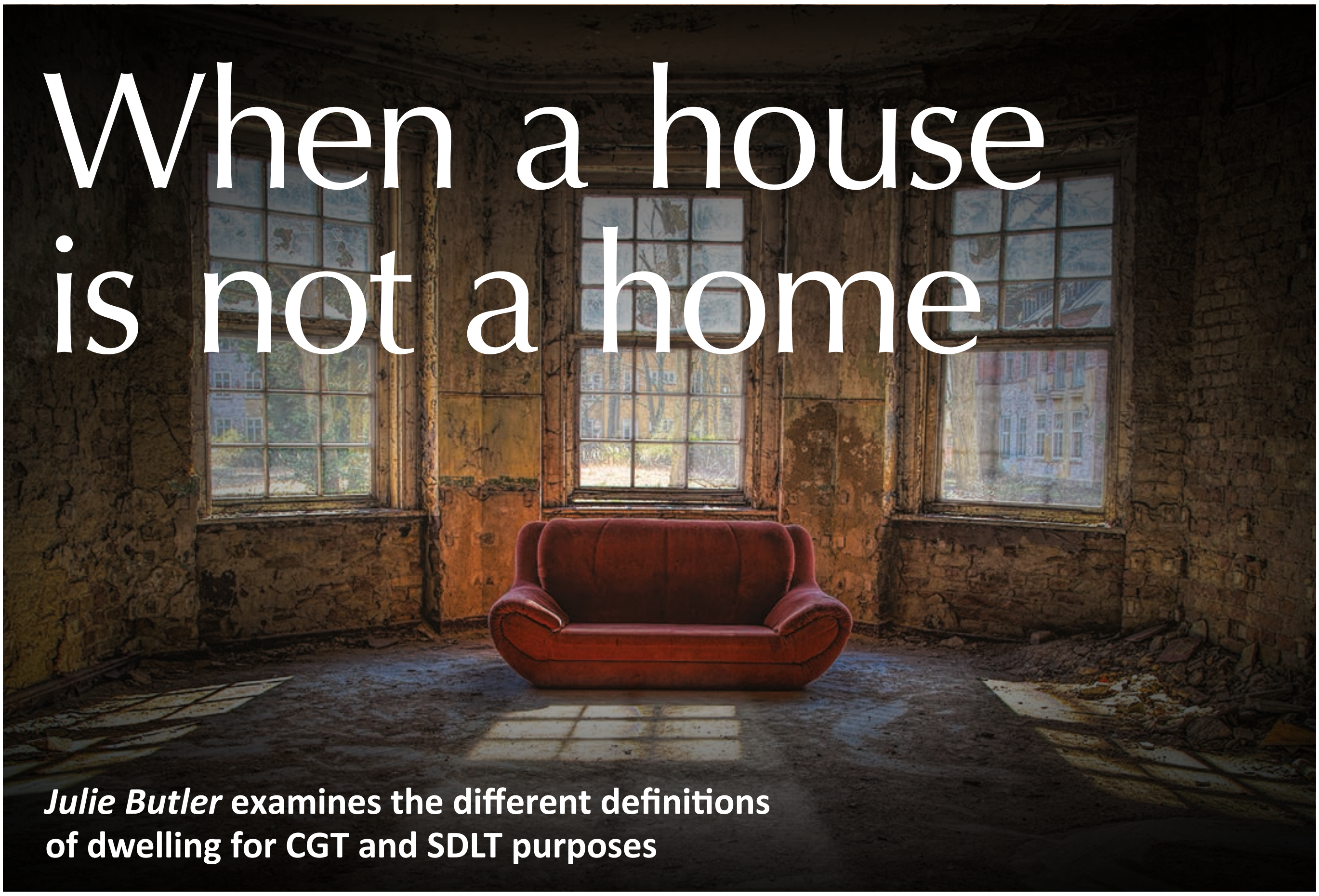

When a house is not a home

Julie Butler **examines the different definitions of dwelling for CGT and SDLT purposes**

KEY POINTS

- **What is the issue?**
How can a dwelling be defined differently for capital gains tax (CGT) purposes than for stamp duty land tax (SDLT) purposes?
- **What does it mean to me?**
For a derelict property to qualify for the 20% rate of CGT, it must have been in that condition *throughout* the period of ownership. SDLT, however, only looks at the position at the time of sale.
- **What can I take away?**
Clear records of the different uses of residences are essential, especially with the new requirement from 6 April 2020 to provide CGT computations and return these within 30 days from completion.

There is a need to review the tax position of residential property with haste. How can a dwelling be defined differently for capital gains tax (CGT) purposes than for stamp duty land tax (SDLT) purposes? Whilst the UK has the lowest CGT rates since the introduction of the CGT regime, there are still advantages to trying to avoid the residential rate of 28%. This is where looking at the definition of dwelling is key.

For CGT, there is a need to review the tax status of a residence from the point of acquisition until the point of sale. Clear records of the different uses of residences are essential for this, especially with the new requirement from 6 April 2020 pushing owners and their tax advisers to provide CGT computations and return these within 30 days from completion.

As the residential rate of CGT is 28% and the non-residential rate of CGT is 20% (with some reduction in both cases for unused basic rate band), there are considerable tax advantages for cases where a property has not been 'used or suitable for use as a dwelling' at any time in the vendor's period of ownership. However, what applies to CGT does not necessarily apply to SDLT because SDLT only looks at the position at the time of sale, with a focus on the 'state of the property on the day of purchase' to decide the rate of SDLT and when the additional SDLT rate is due.

Whilst a derelict property could be sold and deemed to qualify for the 20% rate of CGT as opposed to the 28% rate of CGT, it must have been in that condition *throughout* the period of ownership. The use throughout the period of ownership is at the core of the difference between CGT and SDLT legislation and has been brought into focus by the recent SDLT case of *Bewley*.

The *Bewley* case

In the case of *P N Bewley Ltd v HMRC* [2019] UKFTT 65 (TC), the question was asked regarding when a building is a 'dwelling', as opposed to a 'site suitable for development'. The differential state of the residence matters as a result of the higher rates of SDLT which apply to a residential property either where the property is an individual's second property or, as here, when the property is acquired by a company. The tribunal quoted from Statement of Practice 1/2004, which refers to the now repealed disadvantaged areas relief from SDLT, which helped with the understanding of the definition of 'residential property' as follows:

> 'Whether a building is suitable for use as a dwelling will depend upon the precise facts and circumstances. The simple removal of, for example, a bathroom suite or kitchen facilities will not be regarded as rendering a building unsuitable for use as a dwelling. Where it is claimed that a previously residential property is no longer suitable for use as a dwelling, perhaps because it is derelict or has been substantially altered, the claimant will need to provide evidence that this is the case.' (SP1/2004 para 17)

The provision of evidence is always key in all tax decisions.

Suitable as a dwelling

The tribunal in *Bewley* contemplated what exactly was meant by 'suitable as a dwelling' for SDLT purposes. The FTT decided that the test was not whether it was 'capable of use'. The judge commented that although 'a passing tramp or group of squatters could have lived in the bungalow as it was on the date of purchase', that was not enough.

The property could have been modernised and renovated and then have been used as a dwelling; however, that was not the test under consideration. It was argued by the tribunal that if the draughtsman had wanted to use that test, he could have used a phrase such as 'capable of being used as a dwelling after renovation'. The tribunal's view was that the actual wording was clear. The tax advisers had to look at the state of the property *on the day of purchase* and ask the simple question: 'Was it suitable on that day for use as a dwelling?'

Common sense said that based on the facts in this particular case, it was not suitable as a dwelling. The tribunal ruled that the property was not a dwelling and the additional rate of SDLT did not apply. The basis of such a decision is different from when determining the CGT, as set out above. The case shows that the definition of a dwelling/residence differs between the tax regimes and can be subject to misinterpretation.

New residential CGT return

With the new residential CGT returns from 6 April 2020 where CGT and the CGT return will be due 30 days after the completion of the sale, the whole definition of residence for CGT will be of significant importance as to whether the returns will apply. It is likely that a flurry of sales of residences or derelict properties will be attempted prior to 5 April 2020 in an attempt for property owners to avoid the new CGT returns and, above all, avoid the CGT liability acceleration.

Residences will be under the 'tax spotlight' in the months ahead and there are tax savings and advantages to be achieved in so many areas. The new CGT returns will have to be produced in a much shorter space of time and tax advisers and owners of residences will have to think through the alternatives under greater time pressures; not only to sell pertinent residences before the change in CGT rules but also to meet the 30 day deadline should they be sold after.

Both these pressures mean that extra care will need to be taken and the potential CGT and SDLT liability on all residences should be looked at now. There should be a strategy for all sales of residences based on strong professional property assistance.

PROFILE

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