



CHANGES TO ANCILLARY RELIEFS IN CAPITAL GAINS TAX PRIVATE RESIDENCE RELIEF (DRAFT FINANCE BILL 2019-20)

Issued 5 September 2019

ICAEW welcomes the opportunity to respond to the **draft Finance Bill 2019-20 legislation** policy paper on **Changes to ancillary reliefs in Capital Gains Tax Private Residence Relief** published by HMRC on 11 July 2019.

This response of 5 September 2019 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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EXECUTIVE SUMMARY

1. The clauses introduced reduce the final exempt period on the sale of a principal private residence from 18 months to nine months and change the rules for lettings relief.
2. We responded to the consultation on these changes in [ICAEWrep 52/19](#); none of the points made in our representation seem to have been taken into consideration in the draft clauses but as we consider them valid and so reiterate them.

THE MEASURE

3. The main measures reduce the final exempt period to nine months and restrict lettings relief to periods when there is co-occupation with the owner. In addition two extra statutory concessions (ESC) are being legislated.

1ST PARTICULAR POINT WE ARE CONCERNED ABOUT

4. Given the state of the economy, stagnant property market in large areas of the country (although HMRC claim average period for a sale is less than 5 months), Brexit uncertainty is now the best time to shorten to 9 months?
5. If the desire is to reduce the relief for lettings relief a similar result could be achieved with better targeting, eg, restrict to two years or the period the property has been owned if less.

Our concerns

6. The points made in our response to the consultation were ignored, we believe they are still valid and ask that they are looked at again; the changes are retroactive and in effect we are already in the allowable final nine months violating the principle that retroactive legislation should only be used against egregious tax avoidance
7. As far as lettings relief is concerned the legislation currently quite clearly says the property is let "wholly or in part" for the lettings relief to apply and although this is not what Geoffrey Howe said in parliament the legislation is clear and so the principle in *Pepper v Hart* cannot be used which applies for poorly drafted legislation only.
8. Fall in property values may result in sellers paying capital gains tax (CGT) for what has actually been a loss period as the gain is allocated pro rata over the period of ownership; this problem would be overcome by an optional revaluation at the point the exemptions cease.
9. To prevent retroactive effect on lettings relief it should be possible "to bank" any accrued relief at 5 April 2020.
10. The change is likely to catch out people of modest means and could affect the ability of people to trade up if have to pay CGT.
11. The permitted absence of working away from home falls away if the individual does not actually return to the property, for example if the temporary job becomes permanent. As many people fall at this hurdle removing the restriction of having to return to the property would compensate for the shortened final period for those forced to move for work.
12. From 5 April 2020 the disposal of a residence by a UK resident needs to be notified by HMRC within 30 days where there is tax payable and the tax paid in the same time frame. The knock on effect of changing the final period and the lettings relief is that some people may fall foul of the 30 day notification and pay system so will receive not just an unexpected tax bill but potentially penalties and interest on top.
13. The ESC49 now being enacted says where the initial period is more than 12 months then "If there are good reasons for this period exceeding one year, which are outside the individual's control, it will be extended up to a maximum of two years.", could a similar extension be given to the 9 months?

14. The draft legislation 224A(2)(b) says “another part of the dwelling-house is being let out by the individual as residential accommodation otherwise than in the course of a trade or business.” but as renting the room out is a business this seems to be circular, should perhaps say “as part of a wider trade or business”

Our recommendation

15. Allow HMRC discretion to extend the nine months final period exemption to up to 21 months where the individual can demonstrate that they have been trying to actively sell the property.
16. Amend such that none of the changes have a retroactive effect.

2ND PARTICULAR POINT WE ARE CONCERNED ABOUT

17. ESC D21 allows an individual to make a late election as to which of two properties is to be treated as their main residence. An election outside the two year time limit is allowed where the individual the individual has not at any time during the period concerned held an interest of more than a negligible market value in more than one of the residences, eg, it is a rental property and the election is made within two years of being aware that such an election is needed/possible.
18. A common scenario is where an individual rents a property in town to live in during the working week and owns a property in the country. Without an election the rental property would be treated as the principal private residence and no relief would be available on the owned property. The issue often only comes to light at the time the property is sold hence the need for a late election.

Our concerns

19. The draft legislation includes an extra condition, only one such election can be made. This is going beyond the ESC.

Our recommendation

20. A simple solution which would remove the need to have a late election would be to exclude all properties that the individual has not at any time during the period concerned held an interest of more than a negligible market value in from consideration when looking at which property is the main residence for the purposes of the relief.
21. Alternatively remove the two year time restriction; there is no time limit for an election by non-residents subject to non resident CGT on residence.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 ([see https://goo.gl/x6UjJ5](https://goo.gl/x6UjJ5)).