



CAPITAL GAINS TAX: PRIVATE RESIDENCE RELIEF (FINANCE BILL 2019-21, CLAUSE 23)

Issued 20 April 2020

Text of ICAEW briefing for MPs on clause 23: Capital gains tax: Relief on disposal of private residence in **Finance Bill 2019-21** published by government on 19 March 2019.

This briefing submitted on 20 April 2020 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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TEXT OF BRIEFING FOR MPS ON THE **FINANCE BILL** BY ICAEW TAX FACULTY

EXECUTIVE SUMMARY

1. The clause is retrospective. As the clause is not an anti-avoidance measure but is restricting long-standing and widely-known about reliefs and enacting extra-statutory concessions, retrospection is not appropriate. In order to comply with parliamentary conventions, help re-stimulate a currently-stagnant property market arising from the pandemic and make it simpler for taxpayers to understand from when the new rules apply, we recommend that commencement is delayed until 6 April 2021.
2. Although we like the simplicity of allocating capital gains pro-rata over the period of ownership of an asset, when the final exempt period for PRR is shortened to nine months there should be an option to elect to use the actual valuation at the beginning of the nine month exemption period and split the CGT computation into two. As a separate matter, it should be possible to extend the nine month exempt period where the owner(s) can demonstrate a clear intention to sell when they moved out of the property. These two recommendations would help to mitigate the retroactive impact of the changes.
3. Lettings relief should be able to be banked under the current rules as at the start date of the new rules to help alleviate the retroactive impact.
4. Instead of legislating extra-statutory concession (ESC) D21, which allows an individual who owns two dwellings in one of which the individual has no significant economic interest to make a nomination outside the two year window if they are unaware of the need to nominate, we suggest excluding properties in which the individual has no significant economic interest from the scope of CGT. Alternatively, the need for UK residents to make a nomination within two years could be abolished.
5. For more details of our concerns about the measures please see our consultation response [ICAEW REP 52/19](#).

THE MEASURE

6. This clause:
 - reduces the final period exemption from eighteen months to nine months,
 - reforms lettings relief so that it applies only where the owner of the property shares occupancy with a tenant, and
 - makes some technical changes to the PRR rules, including legislating two ESCs.
7. These measures are intended to start for disposals from 6 April 2020.

DETAILED COMMENTS

COMMENCEMENT

The measure

8. The clause says that it comes into effect on 6 April 2020.

Our concern

9. This clause will be retrospective because the Finance Bill will receive Royal Assent after the date that the clause says that it applied from.
10. Parliamentary convention is that retrospection is permissible only when tackling unacceptable avoidance schemes, and then subject to certain stated conditions, for example

those in the Rees Rules as amended by subsequent statements (see HoC briefing paper no.4369 **Retrospective Taxation** published on 8.4.20).

11. Given that the clause is not countering avoidance but is changing long-standing reliefs that are widely known about and are clearly stated in the existing law, the clause should not come into effect earlier than Royal Assent, and it would be simpler for taxpayers if the measure were delayed until the start of the next tax year.
12. In addition, owing to the current lockdown, the property market is stagnant and this measure will discourage sales.

Our recommendation

13. We recommend that commencement is delayed until 6 April 2021. This would comply with parliamentary convention, make it simpler for taxpayers to understand from when the new PRR rules apply and help re-stimulate a currently-stagnant property market.

FINAL EXEMPT PERIOD TO BE SHORTENED TO NINE MONTHS

The measure

14. This measure reduces the final period exemption from eighteen months to nine months.

Our concern

15. We have no objections in principle to the reduction in the final exempt period to nine months save that the measure is retroactive and there is a problem for people with homes that will not sell. This reduced final period will be exacerbated by the restrictions on lettings relief.

Our recommendation

16. Although we like the simplicity of allocating capital gains pro-rata over the period of ownership, when the final period is shortened to nine months we think there should be an option to elect to use the actual valuation at the beginning of the nine month exemption and split the CGT computation into two, so that for the first part of the CGT computation the valuation would be compared to the original base cost and for the second part of the computation covering the final nine months compared to the selling price.
17. We also recommend that the final nine month period needs to be able to be extended if the vendor can demonstrate a clear intention to sell at the time of moving out of the property. This would help those who due to the current pandemic have been locked down mid-transaction.

LETTINGS RELIEF TO REQUIRE OWNER(S) AND TENANT(S) TO CO-OCCUPY

The measure

18. This measure reforms lettings relief so that it applies only where the owner(s) of the property shares occupancy with a tenant.

Our concern

19. We understand lettings relief was introduced to help alleviate a housing shortage. This appears to be as much a need at present as when the relief was introduced; the increased limit for rent-a room-relief seems to confirm this.
20. Many individuals own houses which were bona fide sole and main residences which they have been unable to sell due to the financial crisis and its legacy over the last ten years or so. The owner(s) may have rented the property out when they could not sell it expecting to receive lettings relief, so to impose an unforeseen and unexpected retroactive capital gains

tax bill when a sale is eventually achieved is inappropriate. It will also hit vendors who rented out their property when absent earlier in their period of ownership and might otherwise have sold, but now will have an unexpected and retroactive tax charge.

Our recommendation

21. Lettings relief accrued under the current rules should be preserved. This would then wind down over time. It is already limited to £40,000 which at present rates of tax is a maximum tax saving of £11,200 per owner.

TWO OR MORE RESIDENCES: TIME LIMIT FOR NOMINATING PRIVATE RESIDENCE

The measure

22. This measure enacts extra-statutory concession (ESC) D21. In broad terms, this ESC allows an individual who:

- lives in a property in which they have no significant economic interest,
- owns another property, and
- is unaware of the need to nominate which will be treated as their private residence (PR),

to make the nomination outside the two year window.

Our recommendation

23. Rather than legislate the concession, it may be simpler to exclude properties in which the individual has no significant economic interest from the scope of capital gains tax.
24. The law would then reflect what most people expect it be as there seems to be no sense in including a property within capital gains tax when the occupier has no significant economic interest and so cannot have a capital gain arising on it.
25. As an alternative, as non-residents liable to non-resident capital gains tax can make a nomination as to which property is their PR outside the two year window, we suggest that the two year time limit for making a nomination should be removed for UK residents too.

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.