



HM Revenue
& Customs



HM Treasury

Capital Gains Tax: Private Residence Relief: changes to the ancillary reliefs

Summary of Responses

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1. Introduction

1.1 On 1 April 2019 HM Revenue & Customs (HMRC) and HM Treasury (HMT) published a consultation document “Capital Gains Tax: Private Residence Relief: changes to the ancillary reliefs”. The consultation sought views on changes announced at Budget 2018 to lettings relief and the final period exemption. In addition, the consultation suggested some technical changes to aspects of the private residence relief (PRR) rules to make them fairer.

Background

1.2 PRR is and remains a key feature of Capital Gains Tax (CGT). It is designed to keep out of CGT those gains or losses that arise when a person sells or otherwise disposes of a dwelling that has been used as that person’s only or main residence. It is supplemented by a number of ancillary reliefs that aim to deal with other situations where imposing a tax charge would lead to undesired outcomes.

1.3 The government remains committed to keeping peoples’ main homes out of CGT. The government is also committed to keeping the tax system under constant review to ensure that any reliefs and exemptions are properly targeted.

1.4 In line with both those ongoing commitments, at Budget 2018, the government announced that two of the ancillary reliefs would change from 6 April 2020 to better target PRR at owner-occupiers:

- The final period exemption will be reduced from 18 months to 9 months, although the special rules that give those with a disability, and those in care, an exemption of 36 months will not change.
- Lettings relief will be reformed so that it only applies where an owner is in shared occupancy with a tenant.

Overview of consultation responses

1.5 The consultation received 70 written responses, with 26 being from professional firms and representative bodies (see Annex A), mostly in the fields of accountancy and law and one from a house builder. HMRC and HMT also attended a meeting, organised by the Chartered Institute of Taxation, with several tax professionals and representative bodies.

1.6 A small number of respondents also suggested other legislative changes which fell outside the scope of the consultation. The government noted these suggestions as part of the ongoing commitment to keep the tax system under review.

1.7 This document summarises the main responses received, the government’s response and next steps. The government is grateful to all the organisations and individuals who took the time to respond to this consultation.

2. Responses

Responses to Chapter 3 - Final Period Exemption

2.1 Chapter 3 discussed the proposed reduction of the final period exemption (FPE) from 18 to 9 months.

Question 1: Do you have any comments about the reduction of the final period exemption?

2.2 Of the respondents who answered this question, the majority thought that reducing the final period exemption to 9 months was too short. The reasons given included:

- Houses can take longer to sell in certain regions and homes are taking longer to sell in the current housing market than in previous years.
- The complexity of divorce, separation and relationship breakdown.
- Decisions to relocate for work reasons can take over a year.

Many felt that one year, or maintaining the current 18 months, was more appropriate.

2.3 Some respondents suggested that the calculation of the gain should be reformed, with individuals being able to undertake valuations at different points of their ownership in order to calculate their final tax liability.

2.4 A number of respondents suggested that if the measure was aimed at countering avoidance, one way to restrict abuse would be to make the final period exemption equal to the length of the occupation of the property as a main residence, subject to a maximum period such as 18 months.

2.5 A few respondents suggested that consideration should be given to extending the 36 months that applies to persons who are disabled or resident in a care home to other vulnerable groups who cannot live in their own home due to ill health, such as those in supported living.

2.6 One respondent, who agreed with the proposal, was of the opinion that the public purse should not be subsidising those few individuals who are in a position to own or occupy two residential properties at the same time.

Government response

2.7 The intention of FPE is to give individuals who are owner occupiers a CGT free period in which to sell a dwelling after leaving it should they not be able to do so before moving into a new main residence. These changes are not driven by the desire to prevent avoidance.

2.8 The government judges that, for the majority of individuals, a 9 month final period exemption strikes the right balance between being long enough to provide relief whilst they go through the process of selling their home, but not so long that they are able to accrue large amounts of relief on two properties simultaneously, or on homes that are no longer used as their main residence.

2.9 Research from an organisation that monitors the housing market indicates that the average time taken between property listing and sale is around 4.5 months. A FPE of 9 months is still therefore double the average time it takes to sell a property.

2.10 Where the other ancillary relief rules (see Annex B) do not apply, the government considers that there is sufficient flexibility within the CGT system to minimise any tax liability the typical individual might have to pay. For example:

- (a) PRR that is accrued for those periods that the dwelling was used as a main residence is not affected.
- (b) The 9 months final period exemption will apply whether the property is rented out or kept empty.
- (c) The annual exempt amount can be used to offset against any taxable gain that accrues for those periods that do not qualify for PRR.

2.11 Allowing valuations to be undertaken at different points of ownership, such as at the point of putting house on the market, would increase the administrative burdens on both taxpayers and HMRC who would have to ensure the valuation is correct.

2.12 The government acknowledges the complications of divorce and relationship breakdown, but considers that the existing rules are appropriate to provide relief from CGT in most cases.

2.13 The government considers 36 months of FPE to be appropriate for those who are disabled or in a care home and remains committed to maintaining this longer FPE for these groups. Extending the rules to those not disabled or in care would be challenging. For example, it would be impractical to extend relief to those people who move to live with a relative when they can no longer live independently because it would be difficult to distinguish this group from those moving for other reasons.

2.14 The government will therefore legislate to reduce the final period exemption to 9 months from April 2020.

Responses to Chapter 4: Lettings relief

2.15 Chapter 4 discussed lettings relief and the government's proposals to reform the relief to cases of shared occupation.

Question: 2 Do you have any comments about the reform of lettings relief?

2.16 The majority of respondents opposed the reform of lettings relief. Some felt that removing accrued lettings relief after 2020 was unfair and that the new rules should only be applied to periods of lettings made after April 2020. Others thought lettings relief should be kept but reduced to £20,000, or suggested that a time period such as two years, rather than a value, should be ascribed to a period of letting.

2.17 Some respondents were of the opinion that because it is common for tenancy arrangements to be for a period of at least one year, introducing the rules from April 2020 does not give the majority of landlords enough time to prepare for the changes. A later implementation date would allow landlords sufficient time to consider the options available to them.

2.18 Some respondents felt it was unfair to tax gains on properties that they have occupied in the past but, for various reasons such as divorce or lifestyle choices, they are no longer able to live in.

2.19 Some respondents felt that a reformed lettings relief was unnecessary on the grounds that many lodgers do not have "exclusive use of the property", even of the bedroom they use. As such, their occupation of the property does not impact on the owner-occupiers claim for full PRR. Questions were also asked about the impact of short holidays, hospital stays and periods working away from home.

2.20 Several respondents commented on the effects of the proposed reforms on 'accidental landlords'. Whilst there is no set definition of what it means to be an 'accidental landlord', it appears to encompass those who have acquired an additional property either through inheritance or who own and have lived in a property and, for whatever reasons, have made the decision to live elsewhere whilst retaining ownership of that property. It was noted by these respondents that the reforms to lettings relief will no longer mean relief worth up to £40,000 is available to those landlords who let them out, even in cases where the acquisition of a property was not a direct personal or business decision.

2.21 A number of respondents expressed concern as to whether landlords generally would know about the changes to both lettings relief and final period exemption and that enhanced guidance would be required.

2.22 A further representation thought that there should be transitional rules for contracts already entered into before 6 April 2020 so that there is no 'cliff-edge' for those disposing around the end of the tax year.

Government response

2.23 The government's reforms to the ancillary reliefs in PRR are intended to better target relief at owner occupiers. While it is right that people should be free to own more than one property, and be able to let out properties should they choose to do so, private residence relief is designed primarily to relieve from CGT gains made during periods of

owner occupation. Landlords are able to access benefits through the tax system that are not available to owner occupiers such as tax relief on replacing domestic items when maintaining the property for their tenants.

2.24 The government does not consider that ‘accidental landlords’ should be treated differently to other landlords. This is because such landlords have retained ownership of their property and let it out in the same way as, for example, buy to let landlords.

2.25 Whilst the government agrees that where a lodger occupying a property does not have exclusive use of any specific area, and legislation relieving the gain is unnecessary, the fact is that individuals can enter into many different types of agreement. Legislation is required to ensure that lettings relief continues to apply where arrangements would otherwise result in a restriction in PRR.

2.26 As far as absences are concerned, a pragmatic approach will be taken by HMRC. Short holidays, hospital stays and the occasional working away from home by the owner-occupier of the property would not affect the view that occupation of the property was shared. Where there are longer breaks then the period of absence relief provisions, e.g. periods of absence not exceeding three years (see Annex B), may apply.

2.27 Whilst the government considers landlords should ensure they keep up-to-date about changes that might impact on their liability to pay tax in the UK, HMRC will ensure that guidance is updated reflecting the changes being made. HMRC are considering other ways of promoting awareness of the changes.

2.28 The government considered allowing periods that would have qualified for lettings relief before April 2020 to remain eligible for lettings relief after the new rules come into effect. However, as is common with previous changes to CGT, such as the changes in 2014 to the FPE which reduced the relieved period from 36 to 18 months, the government decided that to do so would have added significant complexity for both taxpayers and HMRC.

2.29 The government believes its proposals in relation to lettings relief will better target the availability of PRR at those who are owner occupiers. Taxpayers have until 6 April 2020 to rearrange their affairs under the current rules, for example disposing of a property, should they choose to do so. As long as the contracts have been exchanged before that date then the existing rules will continue to apply.

2.30 The government will therefore legislate to reform the availability of lettings relief to those who share occupation of their house with a tenant for all disposals made on or after 6 April 2020.

Responses to Chapter 5: MOD Future Accommodation Model

2.31 Chapter 5 discussed changes being made to the way the Ministry of Defence funds service accommodation under the Future Accommodation Model.

Question 3: Do you believe there is a case for legislating to ensure that the benefits of job related accommodation will continue to apply to personnel who organise accommodation through the Future Accommodation Model?

2.32 The majority who replied to this question supported the proposals. Some respondents however, suggested that a similar approach be applied to other occupations.

Government response

2.33 The government intends to legislate to extend the benefit of employer provided accommodation to armed forces personnel as set out in the consultation. It considers that the existing absence reliefs are sufficient for other occupations.

Responses to Chapter 6: Extra Statutory Concessions

2.34 Chapter 6 concerned two long standing extra statutory concessions:

- ESC D21 which applies to those situations where an individual has more than one residence, but only one of those residences has any real capital value and that person has failed to nominate which of those home is their main residence; and
- ESC D49 which applies, in certain cases, where there is a short delay in occupying a main residence.

The chapter asked whether these ESCs should be legislated.

Question 4: Do you have any comments on legislating these ESCs in their present form?

2.35 The majority of respondents answering this question agreed that extra-statutory concessions D21 and D49 should be legislated in their present form. Some suggested widening their scope. In respect of ESC D21 some respondents commented on nominations generally, which fell outside the remit of this consultation.

2.36 In the case of ESC D49 it was considered that the 12 and 24-month period of grace that is given before occupation as a main residence should start from the date the contract is completed rather than exchanged. Alternatively, the period before completion should be relieved in full where the property subsequently becomes the main residence. Other respondents considered that these time periods are too short and impact unfairly on persons who purchase off-plan or who build their own houses, where occupation of the property can sometime take more than two years and the benefit of the relief is lost. A number of respondents suggested that the ESC be extended to those who inherit, rather than purchase, a property.

Government response

2.37 The government intends to legislate Extra Statutory Concessions D21 and D49 as set out in the consultation. The government does not believe that it would be right to extend their scope as this would move too far away from the general principle that PRR is for owner-occupiers and would also open avoidance opportunities.

Response to Chapter 7: Married Persons and civil partners transfers

2.38 Chapter 7 discussed married persons and civil partners and whether the spousal transfer rules in CGT PRR should be made fairer

Question 5: Should the receiving spouse always inherit the ownership period and the use to which the property had been put in the past regardless of whether it is a main residence at the time of transfer?

2.39 The majority of respondents answering this question agreed that the proposal would result in fairer outcomes for those taxpayers who can currently be caught out by the existing rules, where one spouse's occupation history does not transfer to a receiving spouse.

Government response

2.40 The government intends to legislate the married persons and civil partner amendments as set out in the consultation. This will lead to fairer outcomes for the majority of taxpayers.

3. Next steps

3.1 Legislation will be introduced in Finance Bill 2019 to make the changes outlined in Chapter 2 of this document. The changes will take effect from 6 April 2020.

3.2 Draft Finance Bill 2019 legislation is published today alongside Explanatory Notes and a Tax Information and Impact Note. Comments on the technical detail of the legislation should be sent to Nick Williams, HM Revenue & Customs, Assets and Residence Policy, BAI, Room 3C/4, 100 Parliament Street, London SW1A 2BQ. Telephone 03000 585660 Email: capitalgains.taxteam@hmrc.gov.uk by 05 September 2019.

Annex A: List of stakeholders consulted

70 written responses were received. These included 26 from the following advisory and professional bodies:

Association of Taxation Technicians

Berkeley Associates Tax Advisers Ltd

Berkeley Group

Burness Paull LLP

Chartered Institute of Taxation

Crowe UK LLP

Deloitte LLP

Ernst and Young LLP

Gabelle

Herbert Smith Freehills LLP

Institute of Chartered Accountants of England and Wales

Institute of Chartered Accountants of Scotland

JN Flanagan

Kingston Smith LLP

KPMG LLP

London Society of Chartered Accountants

Low Incomes Tax Reform Group

Morris Crocker Chartered Accountants

PricewaterhouseCoopers LLP

RSM UK Tax and Accounting Ltd

Saffery Champness LLP

Smith and Williamson LLP

Stanford Knights Letting

Taylor Wessing LLP

UHY

Wedlake Bell LLP

Annex B: Ancillary reliefs

Relief	How it works – summary
Job related accommodation	<p>This relief applies where a person owns a residence that they intend to occupy as their only or main residence, but for work reasons they are required to live elsewhere.</p> <p>This relief deems the dwelling to be occupied by the person as a residence during the period whilst the intention continues. Should that intention end then the relief ends.</p>
Final Period Exemption	<p>Where a property is or has been occupied as the owner's only or main residence, the final 18 months of their period of ownership always qualifies for PRR, regardless of the property's use.</p> <p>This provides that the last 18 months of ownership is included as qualifying for relief in the apportionment calculation. This period is extended to 36 months for persons who are disabled or resident in a care home.</p> <p>Changes are proposed to this exemption, as set out in chapter 3 of the consultation.</p>
Absence any reason/work-related absence(s)	<p>Certain periods of absence can be treated as residence where a property is occupied as the only or main residence before and after absence. These are as follows:</p> <ol style="list-style-type: none"> Absences for whatever reason, totalling no more than 36 months in all. Absences during which the person is in employment and all their duties are carried on outside the UK. Absences totalling not more than 48 months when either <ul style="list-style-type: none"> the situation of their place of work prevents someone living at home; or an employer requires a person to live away from their home for the effective performance of their duties <p>The relief given for absences under b. and c. still applies if a person cannot return to their home afterwards because the nature of their work requires them to work away again. The absences at b. and c. will also apply if the employment was of the spouse or civil partner.</p> <p>These reliefs deem the dwelling to be occupied by the person as a residence during the period of absence.</p>
Lettings relief	<p>Where a person lets part of or all of their main residence, or former main residence, as residential accommodation then further relief is available.</p> <p>The relief deems that the qualifying gain is not a chargeable gain to the extent that is the lowest of:</p> <ul style="list-style-type: none"> the amount of Private Residence Relief already calculated, or £40,000, or the amount of the chargeable gain relating to the letting. <p>Proposed reforms to this relief are set out in chapter 4 of the consultation.</p>