

Amendments to Clause 82 and Schedule 15: Inheritance tax: increased nil-rate band

Summary

1. Clause 82 and Schedule 15 provide for an estate to qualify for all or part of the new residence nil-rate band when a home is left to direct descendants which would otherwise be lost when an individual downsizes to a less valuable property or ceases to own a home. This is known as a 'downsizing addition'. The amendments to these provisions ensure that they apply in certain specific situations such as where an individual had more than one interest in a former residence, or the former residence was held in a trust, or where an individual gave away a former residence but continued to live in it and subsequently moved out. The amendments will apply for deaths on or after 6 April 2017.

Details of the amendments

2. Amendment 13 amends subsection (4) of section 8FA, which deals with the entitlement to the downsizing addition when a person has downsized to a lower value residence, to take into account the introduction of new section 8HA.
3. Amendment 14 amends subsection (4) of section 8FB, which deals with the entitlement to the downsizing addition when a person no longer has a residence on death, to take into account the introduction of new section 8HA.
4. Amendment 15 amends subsections (4B) and (4C) of section 8H, which defines the qualifying residence, to cover situations where a person had more than one interest in a former residence. For example, the person might have owned half of the residence outright and only had a right to live in the other half during their lifetime. Amended subsection (4B) applies where a person disposes of one or more interests in a nominated former residence on the same day. It provides that that interest (or those interests) will be the qualifying one(s) for the purposes of any downsizing addition. Amended subsection (4C) applies where a person disposes of interests in a former nominated residence on different days. The personal representatives can only nominate one of those days and the interests disposed of on that day will be the qualifying ones for the purposes of any downsizing addition.
5. Amendment 16 inserts a new subsection (4CA) into section 8H for situations where a person gave away a former residence but continued to live in it or benefit from it in some way.
6. New section 8H(4CA) clarifies that where a person gives away an interest in a residence but still benefits from it so that the gift with reservation of benefit rules apply, that gift does not count as a disposal for the purposes of determining the qualifying residential interest and downsizing addition. However, if that residence ceases to be a gift with reservation of benefit, for example if the donor moves out of the property, that later event is to be treated as a disposal of an interest in the residence.

7. Amendment 17 makes a small change to section 8H(4D) to clarify that where a person disposes of an interest in a former residence, which was conditionally exempt and the conditions for the exemption are still met at the time of death, that interest may not be included in cases where there are multiple interests in a former residence.
8. Amendment 18 makes a minor change to section 8H(4E) to clarify that the "post-occupation time" ends with death and hence that any former residence has be disposed of before death.
9. Amendment 19 inserts new section 8HA which deals with former residences held in an interest in possession trust. This is broadly a trust where a beneficiary has an immediate right to the income from the trust property.

Section 8HA: "Qualifying former residential Interest": interests in possession

10. Subsections (1) and (2) explain that the section applies to determine whether a person's (P's) residence held in an 'interest in possession' trust (settled property) may be considered as a former residence for downsizing purposes.
11. Subsections (3) and (4) deal with the case where the property in the trust includes a residence and the trustees dispose of that residence but the person P continues to have an interest in possession in the trust property. The disposal by the trustees is to be treated as a disposal by that person so that the residence previously held in the trust can be regarded as a former residence for downsizing purposes.
12. Subsections (5) and (6) deal with cases where the person (P) sells or disposes of their interest in possession or P's interest in possession ends during their lifetime, and the trust property includes the residence. Both these situations are to be treated as a disposal of the residence by P for downsizing purposes.
13. Subsections (7) and (8) list the types of interest in possession to which these provisions apply.

Background note

14. Summer Budget 2015 announced that the new residence nil-rate band will also be available when a person downsizes or ceases to own a home on or after 8 July 2015 and assets of an equivalent value, up to the value of the additional nil-rate band, are passed on death to direct descendants. Clause 82 and Schedule 15 provide for this extension of the residence nil-rate band.
15. The amendments to these provisions will ensure that they work as intended in situations where an individual had more than one interest in a former residence, or the former residence was held in a trust. They also clarify how the provisions apply to certain disposals and make minor consequential changes.