



ICAEW REPRESENTATION 93/16

TAX REPRESENTATION

Finance Bill (No 2) 2016 Clause 82: Inheritance tax: increased nil-rate band and Schedule 15

ICAEW welcomes the opportunity to comment on the Finance Bill published on 22 March 2016.

This briefing of 28 June 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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WHAT THE CLAUSE IS INTENDED TO DO

1. Clause 82 introduces schedule 15 which contains the provisions for the increased nil-rate band for inheritance tax (IHT) applicable to the main residence, to be available where the deceased has downsized a 'high value residence' to a lower value one or disposed of their property before death. It can be claimed providing other assets are 'closely inherited' by 'direct descendants'.
2. The clause is also intended to give relief when no residence is owned at the date of death, for example where a person has moved into a care home or a relative's house.
3. The effect of the clause is to calculate the amount of residence nil-rate band that has been lost as a result of downsizing and to provide that amount as additional relief, where a claim for the residence nil rate band is made.
4. The residence nil rate band was introduced in the Finance (No 2) Bill 2015; our briefing on the relevant clause is in [TAXREP 42/15](#).
5. The relief can only be used against a residence that is closely inherited, that is, it passes to a direct descendant which includes step children and adopted children. The residence does not have to be the one used as the principal residence and if more than one is owned, the personal representatives can choose which one the relief applies to.
6. In order to qualify for the relief, the death must be after 5 April 2017. The rate of the relief when it is first introduced will be £100,000. It will then increase by £25,000 each year up to a level of £175,000 on 6 April 2020 after which it will increase in line with inflation.
7. The relief is restricted to the lower of the relief available and the value of the residence, but if the individual downsized on or after 8 July 2015 the value of the more expensive residence can be used instead.

General comments

8. This is an extremely complex piece of legislation to ultimately increase the nil-rate band to £1m for a couple in a marriage or civil partnership. The downsizing provisions make it even more complicated.
9. The proposals discriminate against unmarried individuals, those without children and those who have chosen to invest/save their money in assets other than a residential property.
10. The provisions may require executors to obtain professional advice just to calculate the total nil-rate band available to them. This is contrary to the Government's intention to simplify tax.
11. As this relief is an extension of claiming the residence nil-rate band, it is only available to direct descendants of the deceased. It is not available to other relatives or lineal ancestors.
12. Unlike when the nil-rate band and the residence nil-rate band are transferred, the amount of the downsizing relief is 'frozen' (subsection 8FE (3)) when the property is sold, rather than being calculated as percentage of the allowance. As a result, the value of this relief will be eroded by inflation over time and people may be discouraged to downsize in order to maintain the maximum relief available to them. This is contrary to the policy objective, as it could lead to the downsizer being disadvantaged.
This is best illustrated by an example: John owns his own house which is far too big for his needs so decides to downsize and rent a property. The house at the time he disposes of it is worth £100,000.
When he dies his estate qualifies for up to the maximum residence nil rate band of £175,000. The house he downsized from is worth £150,000 at that time but the executors can only claim the £100,000 as the relief was frozen at the time he downsized.

13. This is also a different calculation as to how the transferrable nil-rate band and residence nil-rate band are calculated and could lead to confusion as to how this particular clause works.
14. The policy does not achieve its aims where a person owned more than one interest in a property, for instance the person owned part of the property outright and the other part was owned through a life interest trust. Under subsection 8H (4C) (b) only one property interest is to be nominated on which to claim the downsizing relief.
15. We are therefore concerned that executors may not claim relief due to the complexity of the wording and the many calculations required. The non-tax professional is unlikely to understand it at all. This could result in only those estates where professional advice is taken being able to benefit from any relief, whether it be the original residence nil rate band or the additional downsizing relief.
16. This complexity could also result in errors being made in calculations where claims are made and therefore additional time for HMRC in assessing those claims to ensure they are correct.

RECOMMENDATIONS

17. Rather than adding further complexity to the IHT regime, extending the existing nil-rate band to £500,000 would remove the need for this new clause and also the residence nil-rate band. This would ensure that those estates eligible to benefit from any new legislation can do so, rather than relying on executors understanding how to make a claim. This alternative was suggested in a [letter from the Treasury Committee](#) chairman the Rt Hon Andrew Tyrie MP to the Chancellor of the Exchequer in December 2015.
18. If the current system is retained largely intact, in order to provide consistency in the IHT legislation and to ensure that the downsizer is not disadvantaged, the amount of relief available should be calculated as a percentage of the relief available at the time of disposal of the first property.
19. Extensive guidance will be required to assist lay-executors, if they are to be able to make a claim without needing to take professional advice.

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 via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).