Written evidence submitted by the Chartered Institute of Taxation (FB09)

Finance Bill 2020 – Submission to Public Bill Committee

Chartered Institute of Taxation
Excellence in Taxation

Clause 23
Relief on disposal of private residence

Executive Summary

Clause 23 makes a number of changes to private residence relief, including:

- **Reducing the final period exemption from 18 months to 9 months – we suggest the timing of this change should be reconsidered in light of the impact of Covid-19 on the housing market**
- **Reforming lettings relief so that it only applies where the owner of the property shares occupancy with a tenant – we suggest a technical drafting change to simplify understanding of the relief**
- **Legislating an extra statutory concession relating to identification of a main residence where someone owns one property and rents another – we think this could be done more simply by excluding a property someone does not own from consideration as a main residence for PRR**

1 Overview

1.1 Private Residence Relief (PRR) is the relief which enables most home owners to sell their properties without being liable for capital gains tax on any rise in their property's value since they bought it.

1.2 PRR is a complex relief of wide application to home owners; if there are cost or other policy concerns, it would be preferable to initiate a broader consultation about its objectives and effectiveness. The specific changes in the current Finance Bill were consulted upon by government. However, the consultation started at Stage 2 of the consultation process (Stage 2 '*Determining the best option and developing a framework for implementation including detailed policy design*') not at Stage 1 (*'Setting out objectives and identifying options'*).

1.3 An Office of Tax Simplification report on tax reliefs in 2011 recommended that PRR should be reviewed. Their essential point was that what should be a simple relief has become overcomplicated, with scope for taxpayers to go wrong, so that they need professional help to establish their liability.

1.4 The new rules must be well communicated. Their introduction coincides with the new 30-day time limit running from the date of completion to report and pay capital gains tax (CGT). There is now much less time to establish CGT liability.

2 Reduction in the final period exemption from 18 months to 9 months: re-evaluation of the evidential basis

2.1 Final period exemption means that, under the law currently in place, people do not have to pay capital gains tax on gains made in the final 18 months of ownership, even if it is not their main residence during that period. This legislation reduces that period (backdated to take effect from 6 April 2020) to the final nine months of ownership for most people, though the existing 36-month period for disabled persons or those in a care home is retained.

2.2 The stated intent for the reduction in the final period is to better target the exemption at owner-occupiers with one main dwelling. In addition, the longer the exemption period, the more PRR can be accrued on two dwellings simultaneously. We recognise that this period of 'deemed residence' has been deliberately use to shelter gains accruing on more than one residence from tax.

2.3 The final exemption period was originally introduced so that those trying to move house (particularly those moving to follow work) were not disadvantaged in a property slump when it is difficult to sell a former home before acquiring a new one. The original exemption period when CGT (and PRR) was introduced in FA 1965 was for twelve months. This was increased to twenty-four months in FA 1980 with a further increase to thirty-six months in FA 1991 before being reduced to eighteen months for disposals after 5 April 2014 subject to the relief for disabled persons or care home residents (thirty-six months).

2.4 The evidential basis for the reduction in the final period exemption was based on an average selling time of approximately 4.5 months before the current COVID-19 pandemic. Our concern is that this evidence base may now be undermined by the effect of COVID-19. Government advice in place until 13 May noted that putting a home onto the market may be more challenging than usual in this period, with physical viewings not permitted. Official advice stated that the process was *'likely to take longer than normal'* and that people *'should, where possible, delay moving to a new house while measures are in place to fight coronavirus'.* The updated advice put in place on 13 May is less restrictive, but still notes that *'those involved in the process will need to adapt practices and procedures to ensure that the risk of spread of coronavirus is reduced as far as possible.'*[1]

2.5 According to research published by property website Zoopla on April 28, a total of 373,000 property transactions were on hold at that time, amounting to £82 billion in sales. Research by Zoopla, conducted between 12 and 19 May, found 41 per cent of would-be home movers across Britain had put their property plans on hold in light of market uncertainty, loss of income and lower confidence in their future finances.[2] It is unclear how long the current situation will last or whether changes in economic conditions will cause large scale cancellations of sales, but it must be a significant possibility that the market will remain slow for some time, with houses taking much longer to sell than expected at the time of the consultation, leaving some sellers with an unexpected tax liability because it takes longer than nine months to sell. (Limited evidence so far suggests that while there has been a slight pick-up since 13 May, the market still remains very slow - property enquiries are reported to be more than 50 per cent down on pre-lockdown levels.[3])

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[1] https://www.gov.uk/guidance/government-advice-on-home-moving-during-the-coronavirus-covid-19-outbreak

[2] Reported in 'Two-fifths of UK home movers put property plans on ice', Financial Times, 27/5/20 - https://www.ft.com/content/391f069d-7f

[3] Reported in 'Property market is bouncing back', Property Wire, 27/5/20 - https://www.propertywire.com/news/property-market-is-bouncing-back/

2.6 We suggest the original evidence base should be re-evaluated and, if necessary, taking into account the wider policy intent behind the changes, the reduction in the final period exemption should be deferred.

3. New form of lettings relief – a technical issue

3.1 Clause 23 replaces the existing lettings relief with a more restricted form. The new relief applies to owner-occupiers of residential property who let out part of the home as residential accommodation. Unlike the predecessor lettings relief, the new provision, inserted by new section 223B, is limited to situations where the individuals share occupancy with the owner.

3.2 Consequential amendments are made to an existing provision section 224, that excludes PRR relief where part of a property is <u>used exclusively for the purpose of a trade, profession or vocation</u>. We suggest that the amendments to section 224 (effected by clause 23(6) (b)(ii), 23(6)(c) and (d)) are unnecessary and potentially confusing because the new lettings relief can only apply to the element of a gain that relates to the part let out as <u>residential accommodation.</u>

3.3 We suggest that the amendments to section 224 are removed to better reflect the policy intent and to simplify the operation and understanding of the new relief.

4. A simpler approach to legislating ESC D21

4.1 Following a House of Lords judgment in 2005 in the *Wilkinson*[4] case, HMRC carried out a review of all extra statutory concessions (administrative concessions that depart from the strict statutory position). Following the case, as part of the review, ESCs have been either withdrawn, enacted or remain as they are within the (reduced) administrative powers of HMRC. The decision has been made to enact two ESCs relating to PRR including ESC D21.

4.2 ESC D21 deals with the practical issue where for PRR it is necessary to elect, within a two-year time limit, which of two properties is the main residence. Someone might have two residences, say a family home and also a weekly/monthly rented flat or employer provided accommodation. A weekly/monthly rented flat will not usually give rise to a gain on disposal but the legislation does not disregard the tenant's interest. Most people will not appreciate they need to elect at all in these circumstances. ESC D21 allowed for a late election in these circumstances and the draft legislation enacts that concession.

4.3 Instead of legislating D21 in the form of the draft legislation (inserting new section 222(5A), our preferred approach, in the interests of simplicity, would be to address the underlying practical issues by excluding the need to consider interests that have no capital value (and therefore potential for a gain) to the person in question when deciding which of two properties is a main residence for PRR.

4.4 An alternative might be to abolish the two-year time limit for a PRR nomination, and simply enable PRR nominations to be made following a sale. This approach would have the advantages of aligning the position of UK residents with that of non-UK residents, who are

[4] R v. HMRC ex parte Wilkinson [2005] UKHL 30 https://www.bailii.org/uk/cases/UKHL/2005/30.html

not subject to the two-year time limit, removing the bear-traps for internationally mobile individuals who become/recommence UK residence after the time limit for making nominations has passed and, additionally, remove the various quirks around determining whether or not a nomination needs to be made and/or is in time.

5. The Chartered Institute of Taxation

5.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
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