

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

Consultation Response: Wedlake Bell LLP

Wedlake Bell LLP is a central London law firm over 200 years old. It has 67 partners and is one of the top 100 firms in the UK on turnover¹

The firm welcomes the opportunity to respond to HM Revenue & Customs' consultation document "Capital Gains Tax: Private Residence Relief: changes to the ancillary reliefs" dated 1 April 2019 ("**the Consultation Document**").

Wedlake Bell's response has been prepared by its Private Client team and is limited to those aspects of the Consultation Document that it feels are most important to its client base.

Wedlake Bell's Private Client team has extensive experience of advising clients on their Capital Gains Tax liabilities and the availability of reliefs and exemptions such as Private Residence Relief. The value of our clients' estates commonly starts at £1 million.

The team is ranked in the Legal 500 2019 (tier 3) and was a finalist in the Society of Trust and Estate Practitioners (STEP) Private Client Awards 2018 for "Private Client Legal Team of the Year" (mid-size). Wedlake Bell was awarded "Law Firm of the Year – London" in the Citywealth Magic Circle Awards 2018 and came runner up in 2019, with the Private Client group's leader Camilla Wallace winning "Woman of the Year".

Consultation Question 1

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

This is the second time that the final period exemption has been reduced in six years; prior to April 2014 the final period exemption was 36 months, and a further reduction now seems unduly harsh. We believe that the proposed 9 month final period exemption is too short and will most likely result in more clients incurring a liability to Capital Gains Tax (CGT) especially given the current housing market conditions. The ongoing political uncertainty has resulted in a general sense of caution and unease within the property market and while the average time from listing to completion of a sale of a UK residential property might be 21.5 weeks in the South East², many properties remain on the market for many years, and sellers would be penalised by this. For example, Which (online) refers to a recent report by Twenty Ci entitled the Homemover Report that found in the second quarter of 2018 those trying to sell a home in East London had to wait an average of 220 days before going under offer³. Again this is an average, and there will be many properties that take longer. This was why the final period exemption was increased to 36 weeks during the property slump in the 1990s so that people who were having difficulty selling were not subjected to CGT on their main homes.

This shortened period of exemption will prove particularly hard for anyone who has had to move away from home because of work, relationship breakdown or caring commitments, as the party who has moved out of the home will only get 9 months' relief from the date they move out until the date the property is sold and will not be eligible for one of the permitted period of absence reliefs if they do not

¹ The Lawyer's top 200 UK law firms 2018 by revenue (ranking: 83)

² RICS UK Residential Market Survey March 2019

³ TwentyCi Property & Homemover Report Q2 2018

return home prior to a sale. This will therefore be seen by our clients as a revenue raising exercise and not a fair reform from a timing perspective, given the current political climate.

Consultation Question 2

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

Restricting the availability of lettings relief to those who share occupation of their house with a tenant will increase the number of clients being liable to pay CGT on a gain from the sale of property which they have let out. In light of figures published by H M Revenue & Customs last month showing that revenue from Stamp Duty Land Tax fell by £1billion over the last year, our clients will interpret this reform as an alternative way to raise revenue from property to compensate for the reduction in Stamp Duty Land Tax rather than a fair and proportionate change to the way Private Residence Relief operates.

The impact this could have on the lettings market should also be considered as it may discourage potential landlords from letting out a property, which could in turn lead to a reduction in the number of properties available to rent and subsequent rent increases.

We consider that unless the legislation provides for a statutory definition of 'shared occupation' there will be ambiguity as to what that means. HMRC's published view is that the meaning of the word 'occupies' should be taken quite widely. Case law suggests that the word 'occupy' requires some element of control. So someone who has a key and can freely enter and leave premises as they please is more likely to be in occupation; even if they are absent for significant periods.³ For example an owner/occupier who keeps a bedroom in a let property which is their sole or main residence, stores possessions there, has a key and is able to come and go as they please may be regarded as being in shared occupation with a tenant even if he/she does not 'reside' there with the tenant on a full time basis.

Consultation 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?

This proposal can only be a positive step in assisting service personnel who own homes which they intend to use as their main residence but cannot occupy because they are expected to live in work related accommodation. It is fair to give job-related accommodation ancillary relief to service personnel living in accommodation provided by the private rental sector as well as the Ministry of Defence.

Consultation Question 4

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

Legislating both ESC D21 Late claims in dual residence cases and D49 Short delay by owner-occupier in taking up residence will provide certainty as an ESC can be withdrawn without the possibility of appeal.

³ See IHTM44003.

Consultation 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?

While we rarely have clients to whom this applies, we do not see any reason why this should not be further explored. Perhaps a spouse should be able to make an election to HMRC whether or not they should inherit their spouse's period of ownership at the time of the gift. In the examples given, if Nigel was able to elect to inherit George's period of ownership that would be beneficial for him. On the other hand, if Susan could elect not to inherit Charles' period of ownership, that would mitigate Capital Gains Tax for her on the disposal of "White-acres".

Wedlake Bell LLP

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