STEP’s response to HMRC’s consultation on Capital Gains Tax: Private Residence Relief - changes to ancillary reliefs published on 1 April 2019

About us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries, with over 7,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members’ views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

STEP welcomes the opportunity to respond to this consultation.

Question 1

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

The final period exemption was intended to assist tax payers who, because of the slow market, are unable to dispose of their properties until sometime after they have moved out. The original period was extended to 24 months and then to 36 months to reflect the difficult property market at that time. Given the current state of the property market in most parts of the UK, it is to be regretted that the government is proposing to shorten this period again from the current period of 18 months to 9 months.

The proposal is likely to cause particular hardship in a divorce context. Transfers during the tax year of separation are on a no gain, no loss basis. But transfers after that period are potentially subject to CGT. The relief in s225B TCGA 1992 will often not be available as it only applies if the transferor spouse has not in the meantime acquired another main residence. Financial settlements on a divorce can take many months and even years to finalise and we consider that a longer final period exemption should be allowed in these circumstances.
The proposal will increase the discrepancy between the CGT final period exemption and a similar relief for SDLT. Where a person acquires a new property before disposing of their existing main residence, they are obliged to pay the additional 3% rate of SDLT. However, the additional SDLT can be reclaimed if that person subsequently disposes of the previous main residence within 36 months. Again, this is presumably to reflect the fact that there is often, usually because of market conditions, a delay between acquiring a new property and disposing of the old property. Having the SDLT and CGT periods different is in our view an unnecessary complication in the tax code, and we would urge that these periods are aligned – at 36 months.

Question 2

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

The proposed changes are not entirely clear.

The current position is as follows:

(a) Where a lodger lives as a member of the owner’s own family, shares living accommodation with them and takes meals with them, no part of the accommodation is treated as having ceased to be occupied as the owner’s main residence and PRR is not restricted (SP 14/80). Lettings relief is not relevant in this situation.

(b) SP 14/80 explains that lettings relief applies where the (i) whole or (ii) part of the property has been let as residential accommodation, provided the let part is not a separate dwelling house. In this context “part” means a distinct part of the property, eg a separate flat or set of rooms.

It appears that the proposed change will not affect the lodger situation described in (a), as lettings relief is not relevant there anyway. We understand that lettings relief will no longer be available in (b)(i) cases, but will continue to be available in (b)(ii) cases provided the owner continues to occupy the rest of the property as his main residence. However, the language of the consultation document is not entirely clear on this point. It talks about “shared occupancy with his tenants”. A “tenant” suggests that there is a lease. Under a lease the tenant has to have exclusive occupation. Therefore phrases such as “sharing occupation” do not make sense. If occupation is truly shared, there will merely be a licence. The legislation needs to make it clear whether the new, restricted lettings relief is only to apply where the owner has given a licence (and where
he continues to occupy the property) or also where the owner has given a lease over a distinct part of the property (provided he continues to occupy the rest of the property).

More generally, those who are unable to sell their property at the time they would like to because of market conditions would often look to let it until it can be sold. Restricting lettings relief to situations where the owner co-occupies with the tenant(s)/licensee(s) will be a further blow for people in that situation, following on from the proposed shortening of the final period exemption.

Question 3

Do you believe that 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?

We believe that this is a sensible proposal.

Question 4

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

We do not have any particular comments on legislating ESC D21: late claims and dual residence cases, though it may be difficult to prove that an individual was aware or unaware that a nomination could be made in the circumstances covered, and leaving this as an ESC may allow HMRC greater discretion to ensure a fair outcome.

In the case of legislating D49: short delay by owner-occupier in taking up residence, we believe that the periods of 12 or 24 months should run from the date the purchase completes, rather than the date on which contracts are exchanged. It is not usually possible for a purchaser to occupy the property between his purchase exchanging and completing. Particularly if significant works are required to the property before the purchaser can move in, it is unfair to take into account a period during which he cannot occupy the property (even if only in the sense of being able to carry out works to it). In the majority of cases, completion takes place some two weeks after exchange, but there are a significant number of cases where the time interval is much longer than this.

There can be a significant lead time even before actual physical building works start, for example the time involved in seeking planning, architectural or other advice. There could well be a further delay before a suitable builder can be found and has capacity to start work. Whereas in theory much of the preliminary advice could be taken before
the purchaser acquires the property, he is unlikely to want to commit to incurring significant expense on this until he has the certainty of actually owing the property, ie after exchange.

We consider it unfair that this concession/relief acts in an “all or nothing” way. If the new owner cannot move in until say two years and one day after exchange, then no relief is available, and he will be subject to CGT on a proportion of the gain on a subsequent disposal. We ask that in situations where the relief applies, the effect should be that the first one (or two) years of ownership should simply be exempted from CGT (in much the same way as the final period exemption is still available even if (under the current rules) the disposal does not take place until more than 18 months have lapsed since the seller moved out).

**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?**

As illustrated in the examples, the current provision can work both in favour of and against the tax payer depending on the facts. It can apply following both lifetime transfers and those taking effect on death. Looking at those separately:

**Lifetime transfers**

As lifetime transfers between spouses living together are on a no gain no loss basis for CGT purposes, we can see that it is fair to have a provision which restricts the way in which PRR is available following such a transfer. Otherwise spouse A, who has owned the property for many years, but let it until recently, could engineer a tax-free disposal of the property by transferring it to spouse B at a time when it is their main residence. Provided it remains the main residence during spouse B’s ownership, there would be no CGT on spouse B’s disposal.

However, it is rather arbitrary that this provision only applies where the property is the main residence at the time of transfer, and we agree that it would be fairer to amend the legislation so that the provision applies whether or not the property is the main residence at the time of transfer.
Transfers on death

We feel that it is not fair that the provision specifically applies where the second spouse has inherited the property or share in it on the death of the first. Though the property or share will have been rebased on the death of the first spouse (s62 TCGA 1992), it is contrary to the general thrust of the CGT code for a previous owner’s use of the property to be relevant on the new owner’s disposal.

We believe that s222(7) was originally intended as a relieving provision. To ensure that it remains such, we recommend that it is amended so that it only applies following a transfer on death if the donee spouse so elects. That would prevent the surviving spouse potentially being worse off.

Submitted by STEP UK Technical Committee on 29 May 2019