Changes to private residence relief and ancillary reliefs: draft Finance Bill

Personal tax

01 October 2019

ATT, CIOT and LITRG have all commented on the draft Finance Bill clauses for the changes to private residence relief (PRR) to be included in the 2019/ 20 Finance Bill which are due to take effect from April 2020.

ATT, CIOT and LITRG have all responded to the consultation on the draft clauses published in July in relation to government's proposed changes to PRR and ancillary reliefs with each response focusing on a different aspect of the changes.

The CIOT's comments focus on the technical aspects of the draft clauses. The following points were raised:

- In terms of legislating ESC D21 (making a nomination stating which of two or more residences is the main residence outside the statutory time limit of two years), the draft clause precludes a 'late' notice being given if the taxpayer has previously made an election within the statutory time limit at any time in respect of an entirely different set of properties and circumstances, possibly many decades ago. This condition goes beyond the terms of ESC D21, which requires only that the individual was unaware that a nomination could be made. Rather than legislating ESC D21, it would be preferable to exclude the need to consider interests that have no capital value (and therefore potential for a gain).
- The provisions legislating D49 (residency delayed by owner undertaking renovations, etc.) includes an unwelcome 'cliff edge' in terms of the time allowed to carry out the works and fails to include the ESC wording that confirms it will not affect any relief due on another qualifying property in

respect of the same period.
- New s 224A provides for a reformed and much restricted letting relief that applies only where the owner of the property shares occupancy, and the letting out as residential accommodation is other than in the course of a trade or business. To the extent that TCGA 1992 s 224 applies (exclusive use of the dwelling house or part for the purposes of a trade or business), the latter restriction is otiose, and will give rise to potentially difficult questions of fact as to what type of letting may constitute a 'business'.

The two headline changes in the measures are the reduction in the final exemption period from 18 months to nine months and the introduction of a 'shared occupancy' test to letting relief.

Final exemption period

Both the ATT and LITRG commented that the proposed nine month window is too short and that there are other ways in which the perceived avoidance from 'flipping' elections between properties could be avoided. Both bodies also questioned the basis on which a nine month period was being justified as appropriate.

LITRG went on to make detailed comments regarding the impact of the final period exemption on those with care needs, arguing that the existing exception under which a 36 month period applies where the individual is disabled or resident in a care home should be extended to cover those required to live elsewhere as a consequence of their care needs. In particular, LITRG challenged the government's assertion that such individuals would be difficult to distinguish, providing examples of evidence which could be used.

Letting relief

From April 2020, the intention is that letting relief will only be available where both the homeowner and their tenant are in occupation at the same time. ATT and LITRG raised concerns about the cliff edge effect of this measure, which effectively removes letting relief retrospectively for those whose previous lettings of an entire dwelling do not now meet the new condition.

ATT also expressed concerns over the requirement that the shared letting must be 'otherwise in the course of a trade or business'. This was not a condition raised

previously in consultation.

The ATT also considers that this unexpected qualification makes the scope of the new letting relief unclear and highlighted how the restriction operates more widely than anticipated – with some small guest houses and B&Bs which might currently be entitled to letting relief no longer eligible from April 2020. The ATT considers that the policy intention could be met by making the letting relief available where property is simply ‘let out as residential accommodation’ without further qualification.

The ATT went on to request that, while reforms to lettings relief are carried out, the government also considers updating statement of practice 14/ 80 (SP 14/ 80). At nearly 40 years old, SP 14/ 80 no longer reflects the modern lodgings market and there are a number of situations which do not fall within HMRC’s strict interpretation of the concession where it would be reasonable for relief to be given.