TAXREP 08/14

(ICAEW REP 20/14)

ICAEW TAX REPRESENTATION

DRAFT LEGISLATION FINANCE BILL 2014

Comments submitted on 4 February 2014 by ICAEW Tax Faculty in response to HM Revenue & Customs draft legislation *Capital gains tax private residence relief final period exemption* published on 10 December 2013

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The Institute of Chartered Accountants in England and Wales
Chartered Accountants' Hall, Moorgate Place
London EC2R 6EA UK
icaew.com/taxfac

T +44 (0)20 7920 8646
F +44 (0)20 7920 0547
E taxfac@icaew.com

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft legislation *Capital gains tax private residence relief final period exemption* published by HM Revenue & Customs (HMRC) on 10 December 2013.

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

3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a world leading professional membership organisation that promotes, develops and supports over 142,000 chartered accountants worldwide. We provide qualifications and professional development, share our knowledge, insight and technical expertise, and protect the quality and integrity of the accountancy and finance profession.

5. As leaders in accountancy, finance and business our members have the knowledge, skills and commitment to maintain the highest professional standards and integrity. Together we contribute to the success of individuals, organisations, communities and economies around the world.

6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

MAJOR POINTS

7. The exemption for the final period of ownership of a principal private residence allows home owners unable to sell their existing home having bought a new one to retain the full exemption from capital gains tax even though they have moved out. The period was extended to 36 months when the housing market was flat and home owners were struggling to sell their property within the grace period allowed previously. (When the measure was first introduced the grace period was just 12 months, increased to 24 months from 1980 and 36 months from 1991.)

8. While it may currently be easy to sell a property in the south within 18 months the lead time is often considerably longer the further north the property lies. A clause should be introduced allowing a longer period up to the 36 months at the discretion of HMRC provided the individual can demonstrate proactive attempts to sell the property. Whilst the context is different HMRC is given a similar discretion to allow relief outside the specified statutory period in the roll-over relief legislation (TCGA 1992, s 152(3)), so this proposal is in keeping with what has been found acceptable before.

9. We welcome the retention of the 36 months relief for persons in care homes but the extension should be extended to persons who (due to failing health/old age) go into sheltered accommodation or to live with their relatives. Just as a person moving into a care home may take longer to dispose of their former home so might a person moving to sheltered accommodation or to live with relatives for care.

10. We are not clear about the aim behind the restriction on the 36 months introduced in the draft clause s 225E(3)(b) and particularly by the words in that sub-section that are in brackets. It is unfair that the extended relief is not available to an individual who owns a second property that would not qualify for relief. If the aim is to prevent the individual being able to claim simultaneously the 18 month relief on the second property (which may at one time have been his or her main residence either actually or as a result of an election being made) and the 36 months on the first property then for the avoidance of doubt a special election (or a waiver) could be introduced. This would allow the individual to benefit for the full 36 months on the main property if he or she accepts that during those 36 months he or she cannot claim main residence relief on any other property they own.

E sue.moore@icaew.com

icaew.com/taxfac

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 icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)