



TAXREP 57/15 (ICAEW REPRESENTATION 147/15)

INHERITANCE TAX ON MAIN RESIDENCE NIL RATE BAND

ICAEW welcomes the opportunity to comment on the consultation paper [*Inheritance tax on main residence nil rate band and downsizing proposals*](#) published by HM Revenue & Customs on 18 September 2015.

This response of 16 October 2015 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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

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MAJOR POINTS

Key point summary

1. Overall we are extremely concerned at the complexity this new extension to the nil rate band for main residences, not just because of the downsizing rules now being contemplated but the entire additional relief. It would be much simpler to just increase the nil rate band to £500,000, it could be tapered down to £325,000 for larger estates of £2m+ in just the same way as already envisaged for the main residence nil rate band.
2. We expressed our concern about the complexity of this additional nil rate band in [TAXrep 42/15](#).
3. In situations where the deaths of the couple are many years apart there will be a significant problem for executors in obtaining records where the main residence has been down sized.
4. The situation where a widow and a widower marry each other where both have a residential nil rate band (RNRB) available from their deceased spouse is not covered in the technical note.
5. There is no indication in this brief technical note as to how the RNRB will interact with deeds of variation or IHTA 84 s.144 appointments and we trust this will not be overlooked. Also we are still concerned that a main residence within a qualifying interest in possession is not specifically included within the measure for relief nor is it clear that a property left to a trust for minor children is treated as a direct inheritance.

General comments

6. Restricting the relief to those who have downsized on or after 8 July 2015 is prejudicial to those who have downsized earlier.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Do any of the policy design details above or conditions need further clarification? Please illustrate the problem using examples if possible.

7. The policy design is extremely complex and will force many lay executors to engage professional help in what should have been a simple estate passing to the children.
8. Will extra resources be provided to HMRC to enable them to assist executors to claim the maximum nil rate bands available?

Q2: What are the issues and practical difficulties which might arise when implementing the proposal and complying with the conditions?

9. Record keeping, valuation issues particularly where the main residence is gifted during lifetime and interaction of the RNRB available where widows and widowers remarry.
10. Where the main residence is gifted during lifetime the Will of the vendor needs to comply with the rules in that it must leave assets to at least the value of the residence at the time of the gift to direct descendants. This could prove to be a problem where the testator is not aware of the rules and the solicitor who prepared the Will is not aware of the sale.

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 via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).