

**Capital Gains Tax (CGT): Private Residence Relief (PRR): changes to the ancillary reliefs**  
**Draft Clause, Finance Bill 2019-2020**  
**Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 LITRG welcomes the opportunity to comment on the draft clause for Finance Bill 2019-2020 in relation to the changes to the relief from CGT on disposal of a private residence.<sup>1</sup>
- 1.2 In section 3 of this submission below, we first restate our objections to the proposed reduction of the final period exemption (FPE) from 18 months to nine months and the proposed restrictions to lettings relief. We think that many people, particularly unrepresented taxpayers, will be unwittingly caught out by the new rules and that the impact will be significant – especially when coupled with the changes to reporting requirements for CGT liabilities on disposal of residential property, also due to come into effect from April 2020.
- 1.3 However, if the proposed changes are to go ahead, we strongly recommend that the draft legislation is amended to provide greater protection for people who do not meet the definition of ‘disabled’<sup>2</sup> but who may nevertheless require care, and not just those in ‘care home’ settings as provided for in the existing legislation. We outline these concerns in section 4 below.

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<sup>1</sup> <https://www.gov.uk/government/publications/changes-to-ancillary-reliefs-in-capital-gains-tax-private-residence-relief>

<sup>2</sup> FA 2005, Sch 1A

## **2 About Us**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 General objections to the reduction of the final period exemption and restrictions to lettings relief**

- 3.1 LITRG participated in the HMRC and HM Treasury (HMT) consultation on these changes earlier this year, focussing our comments on the reduction of the FPE from 18 months to nine months and the proposed restrictions to lettings relief.<sup>1</sup> For reasons discussed in detail in that earlier submission, LITRG strongly objects to both changes, arguing that:
- the proposed nine-month FPE is far too short, there being several other ways to tackle the perceived avoidance so that the impact to low-income taxpayers is mitigated;
  - the changes to lettings relief are retroactive, introducing a cliff-edge effect;
  - if the changes are to be introduced in any form, they should be delayed to allow proper time for unrepresented taxpayers to become aware of the rule changes and their impact, as well as to allow a realistic timescale for such individuals to dispose of their property prior to the rule changes should they wish to do so;
  - the 36-month FPE for those who are disabled or resident in a care home should be broadened in scope, so that it applies to all individuals who are no longer able to live

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<sup>1</sup> <https://www.litrg.org.uk/latest-news/submissions/190524-capital-gains-tax-private-residence-relief-changes-ancillary-reliefs>

independently and are consequently unable to occupy their home for reasons of health, fitness or safety.

- 3.2 It is hugely disappointing that the government is choosing to continue with these changes in their originally proposed form, despite the vast majority of respondents appearing to object to them in some way or other. Indeed, out of 70 responses, the *Summary of responses* document references just one respondent who agreed with the proposal to reduce the FPE to nine months.<sup>1</sup>
- 3.3 It is also disappointing that the government has not published information on the proportion of properties which take more than nine months to sell, nor any analysis or research into the circumstances of such property listings – stating simply that ‘the individuals affected by these changes are likely to be relatively well-off’.<sup>2</sup> How can the government properly understand the impact of the change without such information? We also note that there is no published evidence for the perceived exploitation of the rules, despite us having requested that the government publish this in their response.<sup>3</sup>
- 3.4 However, if the intention is to proceed, we would particularly like to stress our concerns about the impact of the FPE reduction on those with care needs. We do this in section 4 below.
- 3.5 For the avoidance of doubt, we have not undertaken a review into the fundamental principles of private residence relief. The aim of this submission is merely to comment on the present proposed change, within the context of the relief as it stands.

#### **4 Impact of the FPE reduction on people with care needs**

- 4.1 As we mentioned in our original submission, the proposed changes bring into focus who can qualify for the existing exception for people with care needs. We would like to re-iterate our case for s225E TCGA 1992 to be widened to include vulnerable people who currently fall outside of scope of the provisions but who feel unable to continue to live independently in their home, usually for reasons of health, poor fitness or personal safety (often as a result of older age).

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<sup>1</sup> Paragraph 2.6, <https://www.gov.uk/government/consultations/capital-gains-tax-private-residence-relief-changes-to-the-ancillary-reliefs>

<sup>2</sup> <https://www.gov.uk/government/publications/changes-to-ancillary-reliefs-in-capital-gains-tax-private-residence-relief/changes-to-ancillary-reliefs-in-capital-gains-tax-private-residence-relief#detailed-proposal>

<sup>3</sup> Paragraph 4.4, <https://www.litr.org.uk/latest-news/submissions/190524-capital-gains-tax-private-residence-relief-changes-ancillary-reliefs>

- 4.2 We do this in support of the government’s own objective of ensuring the relief is ‘properly targeted’.<sup>1</sup> If such a broad brush approach is used to restrict the FPE (as opposed to, for example, simply restricting it in the case where an individual would otherwise accrue PRR on two properties at the same time), then it must be accompanied by proper measures to protect vulnerable groups who are affected unintentionally. Otherwise the relief is no more effectively targeted than it was before; it is simply restricted for all.
- 4.3 We believe that it is inappropriate to introduce a change into the tax system designed to tackle perceived avoidance, but which affects vulnerable and low-income individuals with no profit motive and with no practical way of avoiding the additional charge.
- 4.4 In response to our proposal to extend the relief under s225E, the government said:
- ‘Extending the rules to those not disabled or in care would be challenging. For example, it would be impractical to extend relief to those people who move to live with a relative when they can no longer live independently because it would be difficult to distinguish this group from those moving for other reasons.’<sup>2</sup>*
- 4.5 We challenge this assertion. An individual would be able to obtain and provide evidence to support not being able to live independently. For example, under the Care Act 2014, local authorities must provide a ‘needs assessment’ where it appears to them (or they are otherwise made aware) that the adult may have needs for care and support.<sup>3</sup> Such an assessment could easily demonstrate whether or not an individual is able to live independently. Where such an assessment has not been carried out, alternative evidence might include a hospital discharge letter stating clinical frailty or high support needs, or other evidence provided by a suitability qualified medical professional.
- 4.6 While s225E also covers disabled people generally, the definition of disability is mainly linked to receipt of benefits, for example attendance allowance, disability living allowance or personal independence payment. However, it appears that many older people in receipt of local authority social care get no disability benefit at all, suggesting that these benefits are

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<sup>1</sup> Paragraph 1.3, <https://www.gov.uk/government/consultations/capital-gains-tax-private-residence-relief-changes-to-the-ancillary-reliefs>

<sup>2</sup> Paragraph 2.13, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/816107/CGT\\_PRR\\_summary\\_of\\_responses.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816107/CGT_PRR_summary_of_responses.pdf)

<sup>3</sup> s9

not taken up by all who might qualify for them.<sup>1</sup> It follows that some people will miss out on the CGT relief simply because they had not claimed a disability benefit to which they might have been entitled.

- 4.7 Furthermore, the second limb of the s225E exception, being long-term residence in a care home, is inadequate. A care home is not the only option for people who no longer feel able to live independently. They might, for example, choose a form of sheltered accommodation or move in with family.
- 4.8 Consideration should also be given to the impact on family members acting as carers for elderly relatives who have needed to move out of their home for health reasons. The summary of impacts<sup>2</sup> makes no mention of carers, nor that those providing care are more likely to be women than men.<sup>3</sup> Rather, the short section on ‘equalities impacts’ assumes that there is no impact on anyone other than the taxpayer themselves.
- 4.9 One typical situation is where an elderly person has been living independently but they have allowed their property to get in a state of disrepair, having done little to maintain it because they have not been capable of doing or arranging this personally. At some point, such an individual may move in with a family member owing to care needs and the property needs to be sold. The property may then require a lot of work before it is in a proper state to be marketed for sale. The burden of arranging this will often fall upon the family member with whom the elderly property owner has moved in, who is likely to be overstretched in sorting out day-to-day care as well as, perhaps, a family and work.<sup>4</sup> Nine months in such circumstances is quite unrealistic, and extending s225E in the way proposed below would provide much-needed protection from the impact of the change.
- 4.10 Private residence relief already contains provisions for ‘deemed occupation’ depending on circumstances relating to why that individual has moved. In particular, s223(3)(c) speaks of

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<sup>1</sup> See Joseph Rowntree Foundation report, *‘Disability and poverty in later life’*, August 2016, <https://www.jrf.org.uk/report/disability-and-poverty-later-life>, page 5 under the heading ‘Overlap of the social care and disability benefit systems’: “Evidence from survey data suggests a surprisingly modest degree of overlap of the two systems. Table 1, based on information from the nationally representative Family Resources Survey, suggests that over a third of local authority social care recipients get no disability benefit at all...”

<sup>2</sup> See Summary of impacts: <https://www.gov.uk/government/publications/changes-to-ancillary-reliefs-in-capital-gains-tax-private-residence-relief/changes-to-ancillary-reliefs-in-capital-gains-tax-private-residence-relief#detailed-proposal>

<sup>3</sup> Carers UK state that ‘58% of carers are women and 42% are men’, see <https://www.carersuk.org/news-and-campaigns/press-releases/facts-and-figures>

<sup>4</sup> See Carers UK ‘Facts & figures’ which refer to ‘the significant demands of caring’ and the high probability (72% of carers responding to a Carers UK’s 2018 State of Caring Survey) of suffering mental ill health as a result of caring: <https://www.carersuk.org/news-and-campaigns/press-releases/facts-and-figures>

an individual being '*prevented from residing in the dwelling-house...in consequence of the situation of his place of work or in consequence imposed by his employer requiring him to reside elsewhere...*'. Would it be so out of place for s225E to apply also in the case where the individual is '*prevented from residing in the dwelling-house...in consequence of his care needs requiring him to reside elsewhere*'? As in 4.5 above, there are suitable sources of evidence available. We therefore strongly recommend this suggested amendment to the existing proposed clause is included in the Finance Bill.

- 4.11 Finally, we hope lessons will be learnt from the recent research report on CGT communications<sup>1</sup> and that HMRC will promote awareness of the changes as soon as possible once they have finished considering how to do so. For some, this will already be too late.

LITRG  
4 September 2019

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