

Comments to HMRC by the Association of Taxation Technicians (ATT)

Finance (No 2) Bill 2017-19: Clause 41

Relief for First-Time Buyers

Interpretation of the term *first time buyer*

Overview

1. Clause 41 contains provisions for introducing a new relief for the *first time buyer* of a residential property. The definition of a *first time buyer* is included in paragraph 6 of Schedule 6ZA, which is to be inserted into Part 4 of FA 2003.
2. We have some concerns on the practicalities of determining whether an individual is a *first time buyer* according to the definition. The definition is reproduced in the appendix below for ease of reference.
3. The definition requires knowledge of whether or not an individual has acquired an *equivalent interest* in property outside of England, Wales or Northern Ireland at any previous time. Firstly, how will HMRC be able to effectively police this part of the measure? Secondly, how HMRC will be interpreting what constitutes an equivalent interest to a UK dwelling? Guidance in this area would be helpful.
4. We consider that there may be unintended consequences to the operation of this relief:
 - 4.1. The relief will not be available to an individual who has at some point held property abroad, even if subsequently through war, natural disaster or other circumstances they can no longer occupy this property.
 - 4.2. There are circumstances in which the relief is available to individuals who have previously been gifted or inherited a dwelling in England, Wales and Northern Ireland but not if the individual was gifted or inherited a property in Scotland or the rest of the world.

Definition of First Time Buyer

5. A *first time buyer* is someone who has either previously purchased a major interest in a dwelling in England, Wales and Northern Ireland, or acquired an *equivalent interest* outside of England, Wales and Northern Ireland (EW&NI).
6. Our concern is how the acquisition of an equivalent interest can be tested for property held outside EW&NI. There are two elements:
 - Does HMRC have the necessary powers to inspect land registry/property records overseas where they exist? If so, are any available records sufficiently reliable?
 - What is the definition of an *equivalent interest*? It may be difficult to meaningfully compare the nature and land rights held in some developing countries to a purchase of a property in EW&NI.

7. Under the relief rules as currently drafted, a refugee who has previously owned a home outside EW&NI which they have had to leave either as it is no longer habitable, or the situation is such it is no longer safe for them to reside in that property, would not be entitled to the relief on their first purchase in EW&NI.
8. The relief is available to an individual who has acquired residential property in EW&NI through inheritance or gift – provided that prior to their first purchase this initial property is no longer held. (Where previously inherited or gifted property is still held, while technically qualifying as a *first time buyer*, the individual would be denied the relief under section 1(7) as they would be subject to the additional 3% charge as they would hold two or more residential properties.)

It is therefore possible to inherit a residential property in EW&NI, sell it and then utilise the relief, provided all other conditions are met.

However, if the inherited or gifted property is outside of EW&NI, even if it is sold prior to the first purchase, it has been acquired, which is a broader definition than purchased. If the inherited or gifted property is an equivalent interest, the relief is denied even if the property outside EW&NI is disposed of prior to first purchase in EW&NI.

9. Our members have also drawn attention to the situation where someone may own a share in another property, for example as a result of inheritance, and is unable to either occupy personally or practically dispose of their share prior to acquisition of their first home. Disposal may be impossible due to legal constraints (sitting tenant) or inability of other family members to buy them out. While the individual may be unable to occupy or dispose of their interest, their ownership would result in first time buyers relief being denied (and potentially a charge to higher rates). We would be happy to discuss any potential solutions to this further.

Appendix:

1. Interpretation of First Time Buyer as currently drafted in Schedule 6ZA, Part 3

“6 (1) In this Schedule “first-time buyer” means an individual who -

(a) has not previously been a purchaser in relation to a land transaction the main subject-matter of which was a major interest in a dwelling,

(b) has not previously acquired an equivalent interest in a dwelling situated in a country or territory outside England, Wales and Northern Ireland,

(c) has not previously been, or been one of the persons who was, “the person” for the purposes of section 71A or 73 in a case where the main subject-matter of the first transaction within the meaning of the section concerned was a major interest in a dwelling, and

(d) would not have been such a person for those purposes in such a case if the provisions mentioned in paragraph (c) had been in force, and had had effect in the country or territory concerned at all material times (subject, where required, to appropriate modifications).

(2) For the purposes of sub-paragraph (1)(b) and (d), ignore a lease which has less than 21 years to run at the beginning of the day after the date on which it is acquired.

2. The Association of Taxation Technicians

The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 8,300 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

Association of Taxation Technicians

4 January 2018