



CHANGES TO ANCILLARY RELIEFS IN CAPITAL GAINS TAX PRIVATE RESIDENCE RELIEF

Budget Representation by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to make representations in relation to the 2020 Budget.
- 1.2 On 11 July 2019 draft Finance Bill 2019-20 legislation was published, including 'Changes to ancillary reliefs in Capital Gains Tax Private Residence Relief' (the *draft legislation*)¹. Assuming that the Government intends to continue with the proposed changes with effect from April 2020, the ATT has a number of concerns, particularly in respect of the changes to letting relief.
- 1.3 While changes to letting relief are being made, it would be a good opportunity to update Statement of Practice 14/80 (SP14/80). Where the conditions are met, this allows those who let to a lodger to continue to claim Private Residence Relief (PRR) rather than rely on lettings relief. As this Statement is now 40 years old, it needs to be updated to better reflect modern lodging arrangements. This may help to encourage people to take on lodgers by reassuring them that doing so will not affect their Capital Gains Tax (CGT) position on any future sale of their home.
- 1.4 We have expanded our concerns on letting relief in sections 2 and 3 below and on the merits of updating SP14/80 in section 4.
- 1.5 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This representation is written with that background.

2 Lettings relief – draft legislation

- 2.1 The ATT's major concerns in respect of letting relief are:
 - 2.1.1 The draft legislation contains restrictions to letting relief which were not raised during the earlier consultation and mean that from April 2020 letting relief will only be available in exceedingly narrow circumstances.
 - 2.1.2 It will be practically very difficult to operate the new proposals as they stand. The proposed rules will require taxpayers to make judgements on whether a trade or business

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

exists. These are very fact-specific questions, where it will be very hard for HMRC to provide guidance and time consuming for them to check.

2.1.3 The changes operate on a cliff-edge basis. An individual selling on 6 April 2020 compared to 5 April 2020 could be up £11,200² worse off overnight. An individual disposing on 6 April 2020 will also to pay that larger amount of tax within 30 days under new 30-day CGT reporting rules for residential property which have previously been legislated for. An individual selling on, or prior to, 5 April 2020 has until 31 January 2021 to report the disposal and pay any tax.

- 2.2 The first two problems at 2.1.1 and 2.1.2 could be resolved simply by **removing the requirement in the draft legislation from July that letting relief is only available where the letting is ‘otherwise than in the course of a trade or business’**. We have expanded further on this below.
- 2.3 The third problem at 2.1.3 could be resolved by freezing letting relief which has already accrued at 5 April 2020 and only introducing the shared occupation requirements for periods of ownership after that date. This would allow those who have accrued the relief up to that date to retain it and avoid the retroactive effect of the policy.
- 2.4 It is unhelpful to change what has been a long standing treatment without any transitional measures. Even taxpayers who remain eligible for letting relief under the proposed new conditions many not have retained sufficient evidence of shared occupation from many years past because they did not know that it would be necessary to do so.

3 Letting relief continued – concerns over scope of legislation

- 3.1 Currently letting relief is available where the individual is providing *residential accommodation*. The courts have defined this to include B&B-style accommodation as well as lodging, so it can cover a let of a single night or a let of 365 nights. Letting relief therefore covers overnight stays by an individual for any duration.
- 3.2 Under the new proposals, letting relief will be available only where the homeowner and the tenant are occupying the property at the same time – so called *shared occupation*. The requirements are that the owner is in residence in one part of the dwelling and another part ‘is let out as residential accommodation *otherwise than in the course of a trade or business*’.
- 3.3 It was widely understood during consultation that individuals who move out of their home and then let it would lose the benefit of letting relief, but there was no mention of the restriction now included in the draft legislation that for a letting to qualify it would also have to be ‘otherwise than in the course of a trade or business’.
- 3.4 The policy document proposed that:

“Letting relief only applies in those circumstances where the owner of the property is in shared-occupancy with a tenant”

² Additional cost being the higher rate of tax on residential disposals of 28% multiplied by the maximum possible relief of £40,000.
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“The abolition of lettings relief will impact on those individuals who have chosen to wholly let out a former main residence to tenants, as relief will now be restricted to those individuals who share occupancy with their tenants.”

- 3.5 The terms of the draft legislation go beyond what was set out in the original policy document. Under the draft legislation, those with letting rooms where the guest is still in occupation at the same time as the homeowner (for example bed and breakfasts, guest houses, small hotels and those letting under AirBnB type arrangements) and who would previously have been entitled to letting relief under old rules, could now lose entitlement to letting relief.
- 3.6 Determining when a single letting or series of lettings becomes a trade or business is very fact-specific and surprisingly difficult to determine – particularly for the unrepresented who may not be aware of the case law that exists in this area.
- 3.7 During earlier consultations we sought, and failed, to establish with HMRC what sort of letting is actually supposed to fit within the new, restricted, letting relief. Is the intention for the relief to apply to lodgers who, perhaps because the provisions are out of date, are not covered by the provisions of SP14/80? For example, is it intended to apply if an individual lets to two lodgers and not just one (which would also take them outside the scope of SP14/80) or would two lodgers count as a ‘lodgings business’ as is implied in current HMRC guidance.
- 3.8 There are a huge range of ways people can let property –from the ‘traditional’ lodger occupying a room in the house as their home, to students occupying during term time, a worker staying Monday to Thursday, overnight B&B or even AirBnB accommodation. In each case it is not clear which side of the line these situations fall.
- 3.9 In order to simplify the position, and make the new rules straightforward to operate, we would like to see the restriction ‘otherwise than in the course of a trade or business’ removed.
- 3.10 Otherwise, as it stands from a practical perspective, it is unclear who will be eligible for letting relief under the proposed rules, with taxpayers forced to make highly fact specific decisions that HMRC might challenge – which in turn has implications for HMRC and Tribunal resources.

4 Modernisation of private residence relief for lodgers - Statement of Practice 14/80

- 4.1 While changes are being made to letting relief, we consider that this would be an ideal time to update Statement of Practice 14/80 (SP14/80)³, which reached its 40th anniversary this year.
- 4.2 This is a very valuable concession which allows those letting to lodgers to retain their entitlement to PRR. However, lodging arrangements have changed in the last few decades and it is vital that this statement of practice reflects the modern lodgings market to ensure that concern over loss of PRR does not discourage people from letting rooms to lodgers.
- 4.3 Under the provisions of SP14/80, individuals letting to a *single* lodger⁴ who shares meals with them do not have to consider the provisions of letting relief and can remain eligible for PRR.

³ <https://www.gov.uk/government/publications/statement-of-practice-14-1980>

⁴ HMRC’s departmental guidance on SP14/80 (at CG64702) takes the reference to ‘a lodger’ to confine the application of SP14/80 to the situation of a single lodger

- 4.4 This means that lodgers who share kitchen facilities rather than meals, a couple sharing a room or a single parent and their children would all fall out of scope, leaving the homeowner to rely on the more limited letting relief.
- 4.5 Under the draft legislation the homeowner is then forced to consider if they are providing accommodation in the course of a trade or business or not. As per our comments above the point at which an activity becomes a business is not always clear. If the letting relief is either not available or not sufficient to cover gains arising, then the homeowner will also fall within the new 30-day reporting provisions for residential property, with the associated administration and cost implications of complying with these rules.
- 4.6 Given the Government's previously expressed desire to encourage people to offer lodgings as a flexible form of accommodation we think that SP14/80 should be updated to reflect modern lodging arrangements.
- 4.7 It could, for example, provide that lodgers do not have to share meals, but perhaps have access to cooking facilities instead. Where a homeowner allows a second person connected to the lodger such as child or partner to join them, this should not put their entitlement to PRR at risk. Homeowners who are letting to individuals who have previously shared the home under fostering or shared lives care but who are now occupying as paying lodgers should also be able to retain full PRR.

5 Contact details

- 5.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Helen Thornley (hthornley@att.org.uk, mobile 07773 087125).

The Association of Taxation Technicians

6 Note

- 6.1 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 9,000 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.