FINANCE ACT 2015

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EXPLANATORY NOTES

INTRODUCTION

Section 39 and Schedule 9: Private Residence Relief

Summary

1. This section introduces Schedule 9, which restricts access to capital gains tax private residence relief when the residence is in a country where neither the person making the disposal nor their spouse or civil partner is not also tax resident in that country. The changes apply to disposals made on or after 6 April 2015.

Details of the Section

2. Section 39 introduces Schedule 9, which amends capital gains tax private residence relief

Details of the Schedule
Private Residence Relief

3. Paragraph 1 introduces changes to the Taxation of Chargeable Gains Act (TCGA) 1992.

4. Paragraph 2 inserts new subsection 222(6A) into TCGA 1992. This ensures that where an individual has two or more residences for a period and has determined by notice which is his main residence, that determination is not disturbed simply because during that period another residence is treated as not being occupied as a residence for a tax year under new section 222B.

5. Paragraph 3 inserts new sections 222A to 222C into TCGA 1992.

6. New section 222A provides that where a person makes a disposal when non-resident, any determination as to which of two or more of their residences was their main residence for a period is made in the advanced tax return made by non-residents. But that determination cannot vary a previous determination for a residence that has already been disposed of.

7. New sections 222B and 222C treat a residence as not being occupied as a residence for a tax year when it is located in a territory in which neither the person making the disposal nor their spouse or civil partner is tax resident and they do not stay overnight at the property at least 90 times during the year (the "day count test"). This day count test does not prevent absence relief applying in respect of a non-qualifying year.

8. Where the property is owned for part of a year the day count test is reduced by a proportionate amount; and where more than one residence is owned in the same territory during the year, the day count test applies across the properties.

9. Paragraph 4 amends section 223 of TCGA 1992 to determine 'the period of ownership' in cases involving disposals by non-residents.

10.   Paragraph 5 inserts new section 223A into TCGA 1992 and provides a transitional rule in relation to absence relief for cases involving disposals by non-residents. Under the rule, if the absence began prior to 6 April 2015 then that prior period of absence is deducted from the amount of absence available for relief for periods after 5 April 2015.

11.   Paragraph 6amends section 225 of TCGA 1992 to make corresponding changes in relation to beneficiaries of a trust occupying a dwelling-house under the terms of the settlement.

12.   Paragraph 7 amends section 225A of TCGA 1992 to make corresponding changes in relation to legatees of a deceased person occupying a dwelling-house under an entitlement as legatee.

13.   Paragraph 8 makes consequential amendments to section 225B of TCGA 1992.

14.   Paragraph 9 makes consequential amendments to section 225E of TCGA 1992.

15.   Paragraph 10 contains commencement provisions.

Background Note

16.   No capital gains tax (CGT) is due on gains accruing on the disposal of a dwelling-house if the person making the disposal has used it as their only or main residence throughout their period of ownership.

17.   Where a dwelling-house was the person's only or main residence for part of their period of ownership only an appropriate fraction of the gain is not chargeable to CGT. The remaining portion of the gain is chargeable to CGT subject to final period relief (which takes out of charge the last 18 months of ownership); relief for certain types of absences; and lettings relief.

18.   Where a person has more than one residence, he may determine for any period which of them is his main residence by making an election.