Foreign aspects of IHT

Synopsis: The relevance of long-term UK residence, situs of assets and double tax relief for IHT.

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Domicile

Domicile is a concept of general law, which, until 5 April 2025, was extended for the purposes of inheritance tax (IHT). (New rules have replaced domicile with long-term UK residence as the determinant of liability to tax in the UK of foreign income and gains and also in relation to liability to IHT on non-UK situs assets from 6 April 2025 – please see below.)

Broadly speaking, a person is domiciled in the country of their permanent home. Domicile is distinct from nationality or residence. A person may be resident in more than one country, but at any given time can be domiciled in only one (although, until 5 April 2025, it was possible to be ‘deemed’ domiciled in the UK despite having a legal domicile elsewhere – please see below). A person acquires what is known as a domicile of origin at birth. In England and Wales, this is normally the father's domicile (domicile follows the mother in the case of illegitimacy) and so not necessarily the country of birth. A person retains this domicile until a different domicile is acquired - a domicile of choice or a domicile of dependence.

The domicile of a married woman is not necessarily the same as her husband's. It is decided by reference to the same factors as in the case of any other individual capable of having an independent domicile. Prior to 1 January 1974, the rules in England on this were different. For this reason, where, immediately before 1 January 1974, a married woman had her husband's domicile by dependence, she retains that domicile until it is changed by the acquisition or revival of another domicile. From the same date, any person in England, Wales or Northern Ireland who is married or over sixteen years of age is capable of acquiring an independent domicile.

In Scotland, the Family Law (Scotland) Act 2006 abolished the status of illegitimacy from Scots law, and s.22(2) now provides that a child (a person under the age of 16) shall be domiciled in the same country as the child’s parents or, if not applicable (e.g. if parents are domiciled in different countries or the child has home with neither parent), the child is domiciled in the country with which they have for the time being the closest connection. From age 16, the child can acquire a different domicile of choice.

To acquire a domicile of choice, a person must sever all ties with the country of their domicile of origin and settle in another country with the clear intention of making their permanent home there. Being long-term resident in another country is not enough in itself to prove that a person has acquired a domicile of choice there, unless it can be regarded as indicating intention. There has to be evidence of a firm intention to live there permanently. Such evidence may include establishing a business there, voting there, acquiring citizenship, making a local will and burial arrangements and having family there. Registration and voting in the UK as an overseas elector will not be taken into account in determining whether an individual is domiciled in the UK, unless the taxpayer wishes such an action to be taken into account.

If a domicile of choice is abandoned, the domicile of origin is revived and will continue until another domicile of choice is established.

Long-term UK residence in relation to IHT from 6 April 2025

A long-term UK resident for IHT purposes is someone resident in the UK for at least ten out of the last 20 tax years immediately preceding the chargeable event. However, for IHT purposes, the term long-term UK resident also includes someone who leaves the UK after having acquired long-term UK resident status. The length of time that they remain in scope for UK IHT will depend on how long they were resident in the UK before leaving:

Those resident in the UK between ten to 13 years before leaving, remain in scope for three tax years;

This then increases by one tax year for each additional tax year of UK residence. For example, someone resident in the UK for 15 years before leaving, remains in scope for five years; whereas someone resident in the UK for 17 years, remains in scope for seven years.

Someone who is resident outside of the UK for ten full tax years and then returns to the UK has their ‘clock reset’.

Transitional rules applied for non-domiciled or deemed domiciled individuals not resident in the UK in 2025/26. These individuals were long-term UK resident only if they satisfied the previous 15 out of 20 deemed domicile test and were, or had been, resident for a least one of the last four consecutive tax years ending with the relevant year.

Residence status for a tax year is determined in accordance with the Statutory Residence Test (SRT), although where an individual has split year treatment under the SRT, this will count as a year of UK tax residence for IHT purposes.

Deemed domicile

Prior to 6 April 2017, the concept of deemed domicile only existed for IHT purposes and provided that a person who was not domiciled in the UK under general law was treated as domiciled in the UK at the time of a transfer if...

- They were domiciled in the UK within the three years immediately preceding the transfer; or
- They were 'resident' in the UK in at least 17 of the 20 income tax years of assessment ending with the year in which the transfer is made.

For tax years 2017/18 to 2024/25, a person who was not domiciled in the UK under the general law, would nevertheless be deemed to be UK domiciled for all tax purposes (i.e income tax, capital gains tax (CGT) and IHT) if certain conditions were satisfied. Different conditions applied to income tax and CGT rules and to IHT.

For IHT purposes, an individual was deemed UK domiciled if at the time of the transfer they...

- Were domiciled in the UK within the three years immediately preceding the transfer;
- Were a formerly domiciled resident in the tax year in which the transfer fell; or
- Were resident in the UK for at least 15 out of the 20 tax years immediately prior to the tax year of the transfer, and for at least one of the four years ending with the tax year of the transfer.

A formerly domiciled resident was a person who...

- Was born in the UK with a UK domicile of origin;
- Had subsequently become domiciled abroad; and
- Was UK resident for at least the tax year in which the transfer fell as well as for one out of the two preceding tax years.

Under the rules applying from 6 April 2017 to 5 April 2025, long-term residents of the UK became deemed domiciled a year sooner that they would have done under the previous position and the rules were tightened for those returning to the UK.

'Resident' has the same meaning as for income tax purposes.

Example

Andrew, who is non-UK domiciled, became resident in the UK in 2003/04. He remains continuously resident but retains his foreign domicile (in the usual legal sense) throughout. Andrew will have been deemed to be UK domiciled for IHT purposes on 6 April 2018 (i.e. in his 16th year of UK tax residency). From 6 April 2025, he is treated as a long-term UK resident for IHT purposes.

Since 6 April 2013, spouses and civil partners domiciled outside of the UK who have UK domiciled spouses/civil partners have been able to elect to be treated as domiciled in the UK for IHT purposes thereby enabling them to benefit from the unlimited spouse/civil partner exemption, which would be useful if, for example, their UK domiciled spouse/civil partner pre-deceased them. Otherwise, transfers of value are only exempt from IHT up to a limit equal to the current nil rate band (£325,000). The provisions were introduced by Finance Act 2013 and are now contained in section 267ZA IHTA 1984.

From 6 April 2025, the election rules will continue to allow a spouse or civil partner of a long-term UK resident who is not themselves a long-term UK resident to elect to be treated as such for IHT purposes.

An election is irrevocable so long as the spouse/civil partner making the election remains UK resident for tax purposes. Therefore, the downside of making an election is that, from the date of the election, the worldwide assets of the otherwise non-UK domiciled/non-long-term UK resident spouse/civil partner will be subject to IHT.

Previously, the election would cease to have effect if the elector subsequently became non-UK resident for four successive tax years. In such circumstances, their non-UK assets would fall outside of the scope of IHT after the end of the fourth year of non-residence, provided that the IHT deemed domicile rules did not continue to treat them as UK domiciled for IHT purposes. Domicile elections made before 30 October 2024 will remain in place, with the spouse/civil partner making the election treated as deemed UK domiciled until 5 April 2025 and then long-term UK resident from 6 April 2025 until four consecutive tax years of non-residence have elapsed.

From 6 April 2025, an amendment lengthens the time that the electing spouse or civil partner will remain within the IHT net after ceasing to be non-UK resident to ten years. With elections made on or after 30 October 2024 and before 6 April 2025, the spouse/civil partner making the election would treated as deemed UK domiciled until 5 April 2025 and then long-term UK resident from 6 April 2025 until ten consecutive tax years of non-residence have elapsed.

An election may be made by a non-UK domiciled/non-long-term UK resident individual either during the lifetime of their UK domiciled/long-term UK resident spouse/civil partner (a "lifetime election") or following the UK domiciled/non-long-term UK resident spouse's/civil partner's death (a "death election"). Generally, death elections must be made within two years of the spouse's/civil partner's death (although HMRC has discretion to extend this period).

After 5 April 2025, it is still possible to make a domicile election which covers a period prior to 6 April 2025. In this case, the spouse/civil partner making the election will be treated as deemed UK domiciled until 5 April 2025 and then long-term UK resident from 6 April 2025 until ten consecutive tax years of non-residence have elapsed.

Details of spousal/civil partner elections under the new rules are at IHTM47031 and details of the transitional rules applying to existing domicile elections are at IHTM47041.

Territorial scope

Up to 5 April 2025

Non-settled property

If a donor was domiciled, or deemed to be domiciled, in the UK, IHT applied to their property wherever it was situated. If they were domiciled abroad, the tax applied only to their property in the UK - S6(1) IHTA 1984. The tax did not, however, apply to 'excluded property'.

‘Excluded property’ is, broadly, property that is situated outside of the UK and some specific UK assets listed below with the exception, since 6 April 2017, of shares in an offshore company or trust interests which derive their value from UK residential property.

Settled property

Settled property situated in the UK is within the scope of the tax. However, IHT did not apply to settled property situated outside the UK unless the settlor was domiciled, or deemed to be domiciled, in the UK when the settlement was made - S48(3) IHTA 1984; or – since 6 April 2017 – the settled property derives its value from UK residential property. This means, for example, that shares in an offshore company – even if transferred to trustees at a time when the settlor was neither domiciled nor deemed domiciled in the UK - would not be ‘excluded property’ (and may therefore be subject to IHT ten-yearly and exit charges) to the extent that those shares derive their value from a UK residential property. The charge to tax does not depend upon the domicile of a life tenant, or of the beneficiaries of a discretionary trust.

It should also be noted that if someone with a UK domicile of origin acquired an overseas domicile and set up an offshore trust while non-UK domiciled, once that individual became UK resident (and so became a ‘formerly domiciled resident’ – please see above) the assets in that trust would not qualify as excluded property and so could be liable to IHT charges if, for example, a ten-year anniversary occurred while the settlor met the definition of a formerly domiciled resident. Since the residence criteria will be based on the statutory residence test where individuals are either resident or non-resident for the whole year, this could create situations in which property would switch from being excluded property to being liable to IHT under the “relevant property” regime for periods of one or more tax years and trustees therefore needed to consider whether a ten-year anniversary charge arose at any point during each period the settlor was UK resident.

From 6 April 2025

The test for whether excluded property (whether held outright or within a trust structure) is within scope for UK IHT now depends on whether the taxpayer/settlor is a long-term UK resident at the material time;

A long-term UK resident for IHT purposes is someone resident in the UK for at least ten out of the last 20 tax years immediately preceding the chargeable event;

Someone who is a long-term UK resident at the point of their death will be subject to UK IHT on their worldwide assets regardless of their domicile status. Likewise, someone who transfers non-UK assets into a discretionary trust at a time when they are a long-term UK resident will make an immediately chargeable transfer for IHT purposes;

Trusts established by long-term UK residents – regardless of whether the settlor was a long-term UK resident at the time of establishment – will also be in scope for UK IHT. This means that if a chargeable event – such as death or a tenth anniversary – occurs at a time when the settlor is a long-term UK resident, the trust assets (even if non-UK situs) will be included in the settlor's estate as a gift with reservation if the chargeable event is death and the settlor is a possible beneficiary under the trust; and the trust assets (even if foreign situs) will be subject to a periodic charge if the chargeable event is a ten-year anniversary;

Settled assets may therefore come in and out of charge depending on the residence status of the settlor from time to time and IHT exit charges may apply where trust assets cease to be relevant property as a result of a change in the long-term UK resident status of the settlor. For example, if someone who was non-UK domiciled when they established the trust (pre-6 April 2025) but who was, later, UK deemed domicile, ceases to be a long-term UK resident post 5 April 2025, an IHT exit charge will apply. A similar situation could arise where an individual, who established, e.g., a discretionary gift trust holding an offshore bond at a time when they were both UK resident and domiciled, ceases to be a long-term UK resident because they retire abroad.

Exceptions for certain trusts...

- Where the trust settlor died before 6 April 2025 and was domiciled outside the UK when the trust was established, the trust will not be subject to the relevant property regime for the duration of its existence provided that it continues to hold excluded property;

- Where the trust assets comprised excluded property before 30 October 2024, no gift with reservation will arise on death of a settlor who is a long-term UK resident at the date of their death (although the trust will still be subject to the relevant property regime);

- Where a settlor dies on or after 6 April 2025, the excluded property status of the trust going forward will depend on the settlor's residence position at the point of their death. If the settlor was not a long-term UK resident at the date of their death, non-UK situs assets will be excluded property – and so not subject to the relevant property regime – for the duration of the trust.

Situs of assets

Whether or not property is situated in the UK is determined in accordance with general law subject to any special provisions in a double taxation agreement. The following outline sets out the normal rules for the more common types of asset:

Rights or interests in or over immovable property and chattels are situated where the property is located.

Coins and bank notes are situated wherever they happen to be at the time of the transfer.

Registered shares or securities are situated where they are registered.

Bearer securities are situated where the certificate of title is located at the time of the transfer.

Goodwill is situated where the business to which it is attached is carried on.

An interest in a partnership is situated where the partnership business is carried on.

Debts are situated where the debtor resides.

A life insurance policy is treated as a debt. When the policy is written “under hand” the policy monies are situated where the debtor (company) is resident (generally the head office of the company).

Policies written under seal (i.e. impressed with the seal of the company and signed) are “specialty debts” locally situated where the policy document is found at the time of the transfer, e.g. if the policyholder keeps a policy document written under seal in their home in Australia, then that is where the policy is situated when the policyholder dies.

Bank accounts are situated at the branch where the account is kept.

Government securities

Certain British Government securities are exempt from taxation if owned by persons who are not domiciled in the UK. They are then excluded property, so that no IHT is chargeable on them - S6(2) IHTA 1984. If such securities are settled property, they are not excluded property unless...

- The individual beneficiary entitled to an interest in possession in them is not domiciled in the UK; or
- If no such interest in possession subsists, all past, present and future potential beneficiaries are not so domiciled.

For the purposes of this provision 'domicile' means domicile under general law and does not have the extended meaning given to it for IHT purposes.

Authorised unit trusts and OEICS

Finance Act 2003 extended the class of asset which qualifies as excluded property to include holdings by non-UK domiciled investors in OEICs and authorised unit trusts (section 6(1A) IHTA 1984). An equivalent provision (S48(3A)) exists to provide a similar exemption for holdings in authorised unit trusts or open-ended investment companies held in trust provided the settlor was domiciled outside the UK when the settlement was made. From 6 April 2025, this applies to people who are not long-term UK resident.

Visiting forces and staff of allied headquarters

Emoluments and tangible movable property of members of visiting forces (other than British citizens, British Dependent Territories citizens or British Overseas citizens) and certain staff of allied headquarters are exempt as excluded property - S155 IHTA 1984. Periods spent by such persons on duty in the UK are disregarded in determining whether a transferor is resident here for the purpose of the tax.

Foreign currency bank accounts

Balances on non-sterling accounts with the Bank of England, the Post Office or an 'authorised institution' within the meaning of the 1987 Banking Act held by...

- An individual who, immediately before their death, is not resident in the UK nor a long-term UK resident, or
- Trustees on behalf of such an individual with an interest in possession in the account,

...are excluded from the tax charge on death - S157 IHTA 1984.

In relation to settled property, the above does not apply if (a) the trustees are resident in the UK immediately before the beneficiary's death, (b) the settlor is alive and is a long-term UK resident immediately before the beneficiary's death, (c) the settlor died on or after 6 April 2025 and was not a long-term UK resident immediately before they died, or (d) the settlor died before 6 April 2025 and was not domiciled in the United Kingdom when the property became comprised in the settlement.

Double taxation relief

Where a transfer is liable to IHT and also to tax imposed by another country, relief may be available under a double taxation agreement or under 'unilateral' provisions - S159 IHTA 1984.

The UK has a number of bilateral Double Taxation Agreements for taxes on estates, gifts and inheritances. Their purpose is to relieve any double taxation, which would otherwise result if each of two states has the right under its law to tax the same property when a death occurs or a gift is made.

Where unilateral relief is allowed, credit is given against UK tax for the tax charged by another country on property situated in that country. For this purpose, the location of the property is determined by UK law. If the tax charged on that property by the other country exceeds the UK tax on that property, the credit is limited to the amount of that UK tax.

Credit is given where both the UK and another country impose tax on...

- Property situated in a third country; or
- Property which is situated both in the UK under UK law and in the other country under that country's law.

In these cases, the credit is for a proportion of the tax. The proportionate credit is computed by the formula (A / A+B)) x C.

Where...

- A = the IHT
- B = the overseas tax
- C = the smaller of A and B

Notice of creation of a lifetime offshore settlement

Any person, other than a barrister, who in the course of a profession or trade has been concerned with the making of a lifetime settlement, and that person knows or has reason to believe that the settlor was domiciled in the UK (up to 5 April 2025) or long-term UK resident (from 6 April 2025) for IHT purposes, and the trustees are not resident in the UK, is obliged, by virtue of S218 IHTA 1984, to make a return to HMRC. This return must be made within three months of the making of the settlement and must state the names and addresses of the settlor and trustees. The trustees are regarded as non-resident if the general administration of the settlement is carried out overseas and if the trustees, or a majority of them, are non-UK resident.

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