

Inheritance tax: spouses and civil partners domiciled overseas

Who is likely to be affected?

Individuals who are domiciled outside the UK and who have a UK-domiciled spouse or civil partner; UK-domiciled individuals who have a non-UK domiciled spouse or civil partner.

General description of the measure

The measure will increase the inheritance tax (IHT) exempt amount that a UK-domiciled individual can transfer to their non-UK domiciled spouse or civil partner. The legislation will also allow individuals who have a UK-domiciled spouse or civil partner to elect to be treated as domiciled in the UK for the purposes of IHT.

Policy objective

The measure will ensure that UK domiciles and non-UK domiciles are treated in a similar manner for IHT purposes whilst protecting tax revenues.

Background to the measure

Budget 2012 included commitments to raise the IHT-exempt limit on the value of transfers of assets to a non-UK domiciled spouse or civil partner and introduce a new election regime.

This Tax Information and Impact Note (TIIN) updates and replaces the TIIN published on 11 December 2012.

Detailed proposal

Operative date

The measure will have effect in relation to transfers of value made on or after 6 April 2013.

Current law

IHT charges are based on domicile status. Domicile is a common law concept and is not defined in statute for tax purposes. Broadly, it is where an individual has their permanent home or intends to settle permanently. Individuals domiciled in the UK are liable to tax on their worldwide assets; individuals whose domicile lies outside the UK are only liable to IHT on assets situated in the UK.

All individuals, irrespective of their domicile status, benefit from an IHT nil-rate band, currently £325,000. Transfers of assets between spouses and between civil partners, whether gifts made during a person's lifetime or transfers of assets occasioned by the death of one of the couple, are generally exempt from IHT.

But where the spouse or civil partner to whom the assets are transferred does not have a UK domicile there is a lifetime limit ('cap') on the value of the assets that can be transferred free of IHT. The cap is currently £55,000 - section 18(2) Inheritance Tax Act 1984.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to reform the IHT treatment of transfers between UK-domiciled individuals and their non-UK domiciled spouse or civil partners in two ways:

- the cap will be increased to the level of the prevailing nil-rate band level; and,
- under a new election regime, individuals domiciled other than in the UK and who are married or in a civil partnership with a UK domiciled person will be able to elect to be treated as UK-domiciled for IHT purposes. The legislation will allow individuals who have become UK domiciled to make a retrospective election to cover an earlier period when they were non-UK domiciled. There is also provision for individuals whose marriage or civil partnership has been dissolved to make a retrospective election to cover the period they were married or in civil partnership with a UK domiciled person.

Where an individual chooses not to elect for UK domicile treatment their overseas assets would, as now, be exempt from IHT but any transfers from their spouse or civil partner would be subject to the increased 'cap'. Individuals who choose to make an election would benefit from uncapped IHT-exempt transfers from their spouse or civil partner, but subsequent disposals by them would be liable to IHT (subject to their own nil-rate band), irrespective of the location of the assets.

The lifetime limit on the amount that can be transferred exempt from IHT to a spouse or civil partner domiciled outside the UK (or treated as such for IHT purposes) will be increased from its current level of £55,000. Initially the cap will be raised to £325,000. Going forward its level will be linked to any future changes in the nil-rate band.

The election will only affect an individual's treatment for IHT purposes. The election will need to be made in writing to HM Revenue & Customs (HMRC) and may be made at any time after marriage or registration of the civil partnership. Elections that follow a death will only be valid if they are made within two years of the death or such longer period as an officer of Revenue and Customs may in the particular case allow; and only where death occurs on or after 6 April 2013. The personal representatives of non domiciled individuals will be able to make a death election on their behalf.

Electing spouses making either a lifetime or death election will be able to choose a date the election applies from going back up to a maximum of seven years so that any lifetime gifts during that period are covered by the election. The earliest date that can be specified is 6 April 2013.

Elections will be irrevocable while the electing individual continues to remain resident in the UK. An election will cease to have effect if the electing person is resident outside the UK for more than four full consecutive tax years.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	–	negligible	-5	-5	-5	-5
	These figures were set out in Table 2.1 of Budget 2012 and have been certified by the Office for Budget Responsibility. More detail can be found in the policy costings document published alongside the Budget.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	This measure will affect only a small number of individuals and households as the base of estates that fall within the charge to IHT is fairly small (in 2011-12 it is forecast that there would be approximately 19,000 estates left on death paying IHT, representing less than 4 per cent of the total). The number of individuals affected will be reduced considerably further as the policy affects only those whose spouse is non-UK domiciled. There will be a slight increase in administrative burdens for affected individuals as they will be required to inform HMRC if they wish to elect to be treated as UK domiciled for IHT purposes only.					
Equalities impacts	Marriage and civil partnership are protected characteristics and this measure strengthens both institutions. HMRC does not have any evidence of impacts on different equality groups as a result of this measure.					
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses and civil society organisations. There will be a negligible increase in administrative burdens and a one off cost for Personal Representatives as they familiarise themselves with the new guidance. As very few individuals will be affected by this measure, those businesses advising them or acting as their representatives will also be few in number.					
Operational impact (£m) (HMRC or other)	The operational impact on HMRC will be minimal.					
Other impacts	Small firms impact test: there will be a negligible impact on small businesses (firms with fewer than 20 employees) involved in the administration of lifetime and death estates due to the need to familiarise themselves with the change of rules. Although there has been no consultation with small firms or any other groups, the measure will benefit individuals whose spouse or civil partner is domiciled abroad and non UK domiciled individuals whose spouse or civil partner is domiciled in the UK. Other impacts have been considered and none have been identified.					

Monitoring and evaluation

The measure will be kept under review through regular communication with the relevant business sector.

Further advice

If you have any questions about this change, please contact Tony Zagara on 020 7147 2861 (email: antonio.zagara@hmrc.gsi.gov.uk).

Declaration

David Gauke MP, Exchequer Secretary to the Treasury has read this Tax Information and Impact Note and is satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impacts of the measure.