

Clause 2: Deemed domicile: inheritance tax

Summary

1. Clause 1 amends the inheritance tax (IHT) legislation relating to individuals who will be treated as domiciled in the United Kingdom. The amendment will provide that an individual will be treated as domiciled for IHT purposes if they have been resident in the UK for at least 15 out of the previous 20 tax years rather than 17 out of the 20 tax years ending with the tax year in question. The clause also introduces a separate rule to provide that an individual born in the UK with a UK domicile of origin who has acquired a domicile of choice elsewhere will be treated as domiciled for IHT purposes if at any time they are resident in the UK and have been resident in the UK in at least one out of the two previous tax years.
2. The changes will take effect from the start of the 17/18 tax year on 6 April 2017.

Details of the clause

3. Subsection 1 amends section 267(1) of the Inheritance Tax Act (IHTA) 1984 to insert new paragraph (aa). This sets out another situation in which an individual is treated as being domiciled in the UK. It relates to individuals who are formerly domiciled residents, a phrase that is explained in paragraph 12 below.
4. Subsection 1 also makes an amendment to section 267(1) (b). The amendment reduces the time for which an individual has to be resident in the UK in order to be treated as being domiciled here for the tax year in which a relevant time falls. Rather than being resident in the UK in not less than 17 of the 20 years of assessment ending with that in which the relevant time falls, an individual will have to be resident in the UK only for at least 15 of the 20 tax years immediately preceding the tax year in question. However, a person who would otherwise satisfy the test will not be deemed domiciled if they are non UK resident in that tax year and have been non-resident for the previous three consecutive tax years.
5. Subsection 2 omits subsection 267(3)
6. Subsection 3 makes an amendment to section 267(4) by substituting "any year of assessment" with "any tax year".
7. Subsection 4 makes amendments to section 48(3) of the Inheritance Tax Act (1984). New section 48(3E) provides that any foreign assets settled into trust by a formerly domiciled resident while they were domiciled outside the UK will, no longer be treated as excluded property for a tax year in which the formerly domiciled resident is resident in the UK.
8. Subsection 5 makes an amendment to section 64 of the Inheritance Tax Act (1984) to ensure that the provision at section 64(1B) does not apply if the settlor meets the

conditions in new section 48(3E). This means that long-retained income that is invested abroad (or in authorised unit trusts or open ended investment companies) cannot be excluded property while the settlor is a formerly domiciled resident.

9. Subsection 6 makes an amendment to section 65 of the Inheritance Tax Act (1984) to ensure that tax is not charged under this section if property that was settled by an individual who then became a formerly domiciled resident subsequently becomes excluded property once more by virtue of the fact the settlor is no longer resident in the UK.
10. Subsection 7 makes an amendment to section 82 of the Inheritance Tax Act (1984) so that the tests in s82 are aligned with the test under new section 48(3E). This will ensure that where there is property to which section 80 or section 81 applies then not only must the settlor of the first or second settlement as appropriate not have been a UK domiciliary when the settlement was made, but they must also not be a formerly domiciled resident in the tax year concerned in order for foreign property to benefit from excluded property status.
11. Subsection 8(a) makes an amendment to the definition of "foreign owned" in section 272 of the Inheritance Tax Act (1984). Property settled by a formerly domiciled resident cannot be foreign owned.
12. Subsection 8(b) defines the term "formerly domiciled resident". This means an individual who was born in the UK, with a UK domicile of origin and who was resident in the UK for the tax year and at least one of the two immediately preceding tax years.
13. Subsection 9 contains the commencement provision and provides that the amendments will take effect in relation to times after 5 April 2017 subject to subsections (10) to (12).
14. Subsection 10 inserts a transitional provision to ensure that a person leaving the UK before 6 April 2017 will not be subject to the 15/20 test provided that they do not return.
15. Subsection 11 also ensures that the 15/20 test will not be relevant in determining the excluded property status of property added to a settlement before 6 April 2017.
16. Subsection 12 preserves the transitional provisions as originally enacted in section 267(3) to the extent that they are still needed to determine the excluded property status of property added to a settlement on or before 9 December 1974.

Background note

17. The clause is related to a series of reforms announced at the summer 2015 Budget to the tax rules for individuals who are not domiciled in the UK under the general law. It will broadly align the existing Inheritance Tax deemed domicile provisions for individuals with the proposed changes for income tax and capital gains tax.
18. The new rules will also ensure that individuals who are born in the UK, with a UK

domicile of origin at birth and who reside in the UK are treated for tax purposes in the same way as an individual domiciled in the UK under general law. It also means that when an individual who was born in the UK and who had a UK domicile of origin has created a trust whilst they were non domiciled, that trust will be subject to IHT, whilst they are UK resident, in the same way as a trust which had been created by somebody who was domiciled in the UK.

19. HM Revenue & Customs (HMRC) will produce updated guidance to support these changes at their commencement date.
20. If you have any questions about this change, or comments on the legislation, please contact Aidan Close on 03000 585 255 (email: aidan.close@hmrc.gsi.gov.uk)