

Clause 1: Inheritance tax: excluded property etc

Summary

1. This clause introduces legislation to provide that additions of assets by individuals domiciled in the United Kingdom to trusts made when they were non-domiciled cannot be excluded property and are therefore within the scope of Inheritance Tax.

Details of the clause

2. Subsection 1 introduces amendments to the Inheritance Tax Act (IHTA) 1984.
3. Subsection 2 amends section 48 IHTA 1984. In this section “property became comprised in the settlement” is substituted for “settlement was made”. This amendment provides that, for the purposes of the excluded property provisions in sections 48(3)(a), 48(3A)(a) and 48(3E), the domicile of the settlor is tested when the property becomes comprised in the settlement rather than when the settlement was made.
4. Subsection 3 inserts new section 48A into IHTA 1984. New section 48A provides that the commencement of a settlement is the time the property first becomes comprised in the settlement. This section replicates section 60 IHTA 1984 but extends its effect to the entirety of IHTA 1984.
5. Subsection 4 omits section 60 IHTA 1984 which provided for the meaning of the commencement of a settlement for the purposes of Chapter 3 of Part 3 IHTA 1984 only.
6. Subsection 5 amends section 64(1B) IHTA 1984. This amendment provides that income arising (directly or indirectly) from property that became comprised in the settlement when the settlor was not domiciled in the United Kingdom is not to be regarded as relevant property so far the income is situated outside the United Kingdom or represented by a holding in an authorized unit trust or share in an open-ended investment company.
7. Subsection 6 amends section 65 IHTA 1984. This amendment provides that the exemptions from the charge to tax under subsections 65(7A) and (8) will depend on whether the settlor was domiciled in the United Kingdom when the property becomes comprised in the settlement rather than when the settlement was made.
8. Subsection 7 amends section 74A IHTA 1984. The amendments provide that the domicile of the settlor is considered for the purposes of Condition A and B when the relevant property became comprised in the settlement rather than when the settlement was made.
9. Subsection 8 amends section 157(3) IHTA 1984 which relates to non-resident’s bank accounts. The amendment provides that section 157(1)(b) IHTA 1984 will not apply in relation to settled property if the settlor was domiciled in the United Kingdom when the settled property became comprised in the settlement.

10. Subsection 9 amends section 237(1)(b) IHTA 1984 to provide that the “Inland Revenue charge” is imposed in a case where Inheritance Tax or interest remains unpaid on a chargeable transfer whereby property become comprised in a settlement whether or not that chargeable transfer occurs when the settlement is originally made.
11. Subsection 10 inserts new section 271B into IHTA 1984. New section 271B explains the interpretation of the references to the time property became comprised in a settlement. New section 271B provides that where any property comprised in the settlement is later replaced by property which represents it either directly or indirectly any reference in IHTA 1984 to the time when the property became comprised the settlement is to be read as referring to the time when the original property became comprised in the settlement.
12. Subsection 11 amends section 272 IHTA 1984 which relates to general interpretation of references. The amendment provides for the meaning of the commencement of a settlement to be given by new section 48A.
13. Subsection 12 provides that the amendments made by the clause are treated as always having been in force in relation to any charge under IHTA 1984 arising on or after the day this Act is passed.

Background note

14. These changes to legislation clarify that where offshore assets are held in trust, whether or not the property has excluded property status and is within the scope of Inheritance Tax is dependent on the domicile status of the person adding the assets to the trust rather than the domicile of the settlor at the time when the settlement was first created.
15. If you have any questions about this change, or comments on the legislation, please contact Jane Romilly Hague on 03000 547038 (email: jane.romillyhague@hmrc.gov.uk).

Clause 2: Inheritance tax: transfers between settlements etc

Summary

1. This clause introduces legislation to provide that transfers between trusts are subject to additional excluded property tests.

Details of the clause

2. Subsection 1 introduces an amendment to the Inheritance Tax Act (IHTA) 1984 in relation to transfers between settlements.
3. Subsection 2 inserts new section 81B (Excluded property: property to which section 80 applies) into IHTA 1984. New section 81B provides that, in relation to property to which section 80 IHTA 1984 applies, property which would otherwise be excluded property by virtue of section 48(3)(a) or (3A)(a) IHTA 1984 will only be regarded as excluded property if Condition A and B of the new provision are met. Conditions A and B relate to the domicile of the settlor of the first settlement when the property became comprised in that settlement.
4. Subsection 3 amends section 82 IHTA 1984. Its effect is to preserve the existing effect of section 82 in relation to property to which section 81(1) IHTA 1984 applies in cases where the property has ceased to be comprised in the first settlement before the date on which this Act is passed or in cases where, although the property ceases to be comprised in the first settlement after that date, the transfer results from the assignment by a beneficiary of an interest in the settlement or the exercise of a general power of appointment before the date on which this Act is passed.
5. Subsection 4 inserts new section 82A (Excluded property: property to which section 81 applies (new cases)) into IHTA 1984. New section 82A provides that where property moves between settlements and would otherwise be excluded property by virtue of section 48(3)(a) or (3A)(a) IHTA 1984 it will only be regarded as excluded property if the “non-domicile” condition of the new provision is met in relation to each qualifying transfer. The provision applies both in cases where property is treated as remaining in the first settlement by virtue of section 81 IHTA 1984 following one or more transfers and in cases where the property is actually transferred back to the first settlement.
6. New subsection 82A(4) explains that a qualifying transfer is an occasion on which section 81 IHTA 1984 applies or any later transfer of the same property between settlements to which Chapter 3 of Part 3 IHTA 1984 applies.
7. New subsection 82A(6) sets out the non-domicile condition. The non-domicile condition relates to the domicile and formerly domiciled resident status of the person who was the settlor of the property in relation to the first settlement (except in cases

where the qualifying transfer results from an assignment by a beneficiary of an interest in a settlement or an exercise of a general power of appointment). In those cases, it relates to the domicile and formerly domiciled resident status of the beneficiary or the person who exercised the general power of appointment.

8. New subsection 82A(6) also provides that, in cases where the qualifying transfer occurs after the death of the settlor, the non-domicile condition is met.
9. Subsection 5 provides that in relation to any Inheritance Tax charge on or after the commencement of the Act, the amendments made by subsections 2 and 3 are treated as always having been in force.

Background note

10. This change introduces new tests to determine the excluded property status of property transferred between trusts.
11. If you have any questions about this change, or comments on the legislation, please contact Jane Romilly Hague on 03000 547038 (email: jane.romillyhague@hmrc.gov.uk).