England & Wales

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and disability planning documents

A. Will formalities and enforceability of foreign wills

1. Will formalities

The strict requirements for a will are set out in the Wills Act 1837. A will should be in writing (members of Her Majesty's (HM) Forces on active service or mariners at sea can make oral wills). It should be signed by the person making the will, although it can be signed on the testator's behalf by someone who signs in the testator's presence and at his or her direction. The testator should sign in the presence of two witnesses who should also sign the will in the presence of each other and the testator.

Witnesses should preferably be at least 18 years old, and they must have mental capacity.

These formalities have been modified under the Wills Act 1837 (Electronic Communications) (Amendment) (Coronavirus) Order 2020, SI 2020/952 to permit remote witnessing by means of videoconferencing technology in relation to wills made between 31 January 2020 and 31 January 2022.

No one who benefits under the will, or their partner in marriage or a civil partnership, should sign the will (if they do, the gift to them will be invalid). Note that civil partnership is a relationship registered under the Civil Partnership Act 2004, which has the same implications for succession law and tax law as marriage. All references below to marriage and related terms refer equally to civil partnerships, including foreign equivalents recognised under the law of England and Wales.

Another document may be incorporated in the will by reference and the most frequent example of this is the incorporation of the Society of Trust and Estate Practitioners' standard provisions (ie, boilerplate clauses).

An English will may be stated to be limited to certain property, for example, it may only apply to real estate in England and Wales.

2. Best practice

Ideally, a will should be typewritten and the signatures should be at the end with an attestation clause confirming the identities of the signatories and that they signed in each other's presence. Although not strictly required, the will should be dated and should state that it is a will.

3. Capacity to make a will

A valid will requires knowledge, approval and intention on the part of the testator but, more fundamentally, it may only be put in place by someone who has testamentary capacity and, unless they are a member of HM Forces on active service or mariner at sea, they must be at least 18 years old. The Court of Protection can make a will for someone who lacks capacity (see below).

4. Amendment and revocation

A will can be amended by a 'codicil', which must comply with the same formalities as a will.

A will is fully or partially revocable until death or loss of capacity by another will, a codicil or a document complying with the formalities of a will, which is itself not a will or codicil.

A will can also be revoked by intentional destruction (or a particular clause revoked by striking it out before the will has been signed and the signature attested).

A new will only revokes those aspects of a previous will that are inconsistent with the new will, unless the new will explicitly states that it revokes the whole of the previous will. In practice, a new will should state that it revokes either the whole of a previous will or specific parts of it; for example, a new English will could state that it revokes a previous foreign will only so far as it relates to real estate in the United Kingdom. Sometimes clients mistakenly put in place a new will without considering a mismatch with a will in their home jurisdiction (or vice versa) or create an ambiguity because the other jurisdiction will not regard an attempted revocation by the new will as effective.

Marriage automatically revokes any pre-existing will unless the will stated that it was made in contemplation of that marriage. A will made in contemplation of marriage may state that it will not take effect if the marriage does not take place. Divorce does not revoke a will. Instead, the will should be read as if the divorced spouse had died and so will not act as executor or take a benefit (unless the will explicitly states that this rule is not to apply).

5. MUTUAL WILLS AND JOINT WILLS

It is possible for two people to make a joint will, but it can be revoked by either of them so far as it applies to their own estate, so is in effect no more than two wills drafted as one document.

Whether it is possible for individuals to bind themselves as to how they will leave assets under their will is open to significant doubt, but mutual wills are recognised, whereby two people will leave their property in a particular way on the first death on condition that the property will be dealt with in an agreed way on the second death. Once the first person has died, the property is held on constructive trusts for the ultimate beneficiary. However, these arrangements are not entirely satisfactory in practice, and where, as is more usual, the similar wills of a couple are not intended to be 'mutual wills' then care should be taken to avoid giving the impression that they are.

6. THE ENFORCEABILITY OF FOREIGN WILLS

a. Formal validity

The UK has ratified the Hague Convention on the Conflicts of Law Relating to the Form of Testamentary Dispositions and this is reflected in domestic legislation. The Wills Act 1963 states that a will is formally valid if properly executed:

- in the territory where it was executed;
- in the territory where the testator was domiciled (when the will was executed or at death);
- in the territory where the testator had his or her habitual residence (when the will was executed or at death); or
- in a state of which the testator was a national (when the will was executed or at death).

Under common law, a will of moveable property is formally valid if executed in accordance with the rules of the testator's domicile, and a will of immovable property is valid if in accordance with the *lex situs* of the property.

An affidavit of foreign law or a verified witness statement containing the required evidence may be required to obtain probate.

A will already accepted as valid by the court of the deceased's domicile will generally be accepted in the UK, unless it is limited to property situated outside the UK.

b. Material or essential validity

Even where a foreign will (or, indeed, an English will) is recognised as formally valid, its intended effect may be invalid as a matter of the applicable succession law. In deciding which is the applicable succession law, English law makes a distinction between personalty and realty, otherwise referred to as moveable and immovable property. As a matter of English private international law, the succession of moveable property will be governed by the law of the deceased's domicile. The succession of immoveable property will be governed by the law of the jurisdiction where it is situated. This is subject to any conflicts of law issues arising from the approach taken by another relevant jurisdiction. For example, English law may still govern succession to overseas immovables if the foreign law applies the law of the deceased's nationality or habitual residence and rejects any renvoi.

7. THE EU SUCCESSION CONVENTION

The EU (European Succession) Regulation 650/212 has, from 17 August 2015, applied a sole European Union-wide criterion (apart from in Denmark and Ireland) for determining the jurisdiction and law applicable to a cross-border succession. Under this convention, testators may opt for the law of their nationality to apply to their assets. Otherwise, the default criterion is the deceased's habitual residence. In theory, this convention allows a British national who becomes resident in one of those countries to disapply local forced heirship rules over moveables and immoveables by electing that English succession law applies.

B. Will substitutes (revocable trusts or entities)

There are no like-for-like alternatives to wills in England and Wales, and revocable trusts are not used for this purpose in domestic situations. However, the following concepts should be noted.

1. SECRET AND HALF-SECRET TRUSTS

There is a legal basis for making secret gifts in wills by making a gift to one beneficiary who has been separately instructed to hold it on trust for another. This is a secret trust. It is also possible to have a half-secret trust, where the will states that the named recipient holds only as trustee but does not identify the true beneficiaries. Without there being any secret trust, as such, it is common for a will to include a discretionary trust for a class of beneficiaries (which may be added to by the trustees) with a separate letter of wishes (which is not publicly disclosable) giving the trustees guidance as to how the testator would wish them to exercise their powers.

2. *DONATIO MORTIS CAUSA*

This is a gift made in contemplation of death that is conditional on the donor passing away. In practice, this is most likely to be seen, if at all, in relation to tangible, moveable property.

C. Powers of attorney, directives and similar disability documents

Under English law, there are a number of measures that can be put in place during an individual's lifetime to protect him or her in the event that he or she loses capacity to make important decisions about his or her personal or financial affairs. There are also steps that individuals can take to enable them to make decisions on behalf of others who have already lost the capacity to make such decisions.

The protection afforded to those suffering from a mental illness, learning disability or any other form of mental impairment is provided by the Mental Capacity Act 2005 (the 'MCA 2005'). This sets out clear guidelines about when carers and professionals can make decisions on behalf of others and in what circumstances.

The two principle bodies are the Court of Protection, a court specifically set up to help those who have difficulty making their own decisions; and the Office of the Public Guardian (OPG), which, as the administrative arm of the Court of Protection, registers powers of attorney and supervises and assists court deputies.

1. ENDURING POWERS OF ATTORNEY (EPA)

EPAs were replaced in 2007, but those made and signed before 1 October 2007 are still valid. Many individuals in England and Wales may already have an EPA in place. An EPA allows a nominated individual to make decisions about another person's property and financial affairs on his or her behalf. This will include decisions, among others, about paying bills, dealing with the bank, and managing and selling investments and property. The power can be used unregistered while the person making the power still has capacity to make decisions but must be registered to be effective when the donor no longer has capacity.

2. LASTING POWERS OF ATTORNEY (LPA)

LPAs replaced EPAs following the introduction of the MCA 2005. Unlike EPAs, LPAs come in two forms: the LPA for property and financial affairs, and the LPA for health and welfare; for either to be effective, they must first be registered with the OPG.

The LPA for property and financial affairs covers the same decisions as an EPA. Further restrictions, conditions and guidance can be included by the donor to make it clear how he or she expects the attorney to manage his or her affairs. This LPA can be used as soon as it is registered or only on loss of capacity, as specified by the donor.

The LPA for health and welfare allows an attorney to make decisions about medical treatment, care, medication and housing on behalf of a donor, but only where the donor no longer has the capacity to make such decisions. The donor can include further restrictions, conditions and guidance, and may also choose whether or not the attorney can give consent to refuse life-sustaining treatment on his or her behalf. The OPG holds a register of everyone who has an LPA, EPA or a deputy acting for them, which can be searched to find the contact details of those involved. There is also a service which allows donors and attorneys to give organisations access to view an online summary of a registered LPA through the use of an activation key.

3. FOREIGN POWERS OF ATTORNEY OR EQUIVALENT

The only part of the UK to have ratified the Hague Convention on the International Protection of Adults is Scotland, but the government intends to do so for England and Wales and bring into force provisions contained in MCA 2005 that largely implement it. These include measures that relate to foreign powers, which largely reflect those given in LPAs and EPAs. If the donor of the foreign equivalent of an LPA is habitually resident in a country other than England and Wales at the time that the power is granted, then the law applicable will be that of the other country, unless England and Wales is a 'connected country', that is, the donor is a national, was habitually resident or has property there, in which case English law may be chosen.

The MCA 2005 also provides a system of rules for the recognition and enforcement in England and Wales of foreign measures for the protection of adults in foreign states who, by reason of an impairment or insufficiency of their personal faculties, are not in a position to protect their interests.

4. COURT OF PROTECTION

The Court of Protection is a specialist court set up to protect vulnerable individuals who suffer from a mental impairment. The court has the power to make decisions on behalf of others and, where appropriate, will appoint 'deputies' to make ongoing decisions in the best interests of someone who is unable to make their own decisions. The court also hears cases concerning the validity of LPAs and EPAs and objections to their registration.

An individual can make an application to the court for any of the above reasons (subject to the applicable court fee). It is also possible to make a fast-track application where a decision is needed urgently, for example, where urgent medical treatment is required, or funds need to be released to pay for critical care.

II. Estate administration

A. Overview of administration procedures

A deceased's estate is administered by a maximum of four personal representatives who are 'executors' (if appointed by a will) or 'administrators' (when there is no will, or no will that appoints executors who are willing and able to act). Where there is no surviving executor able to act, certain people specified by statute are entitled to act as administrators. Where the testator dies intestate, those entitled to benefit may act (up to a maximum of four). Special rules apply where there is a dispute over the will.

Locating the deceased's will or wills (if any) and ensuring that he or her property is secure are the first steps in dealing with the administration of the deceased's estate. In order to deal with the assets, the personal representatives will require a grant of representation (known as a grant of probate where there are executors, and a grant of letters of administration where there are not). The grant of representation is a court order confirming that the assets are vested in the personal representatives, which can be relied upon by third parties.

B. Inheritance tax return

In order to obtain a grant, first the personal representatives must account to HM Revenue & Customs (HMRC) for the inheritance tax due on the estate.

An inheritance tax return must be completed and filed with HMRC within six months of the deceased's date of death and all inheritance tax due must be paid at the same time, other than inheritance tax on certain assets (eg, land), which may be paid in instalments. For low value estates where no inheritance tax will be due, there is an expedited process.

This requires an information-gathering exercise, to ascertain what the deceased owned, obtain valuations and decide the inheritance tax liability.

Under the Administration of Estates Act 1925, inheritance tax is treated as a general testamentary and administration expense of the personal representatives payable out of residuary estate rather than specific legacies of cash or property, unless the will states that the specific gift should bear its own tax. In practice, care is taken to state in the will that the residuary estate is to bear the tax, except in relation to property given, which is to bear its own tax.

1. FUNDING THE TAX LIABILITY

The personal representatives need to pay the inheritance tax before they have a grant of representation, meaning they may not be able to use assets in the estate to meet the liability, whether because a bank will not release funds without seeing a grant, or a third party will not purchase an asset without being sure the personal representatives are entitled to sell. They have a number of possible options to resolve this. It may be possible to sell an asset of the estate without the purchaser requiring to see the grant – most likely with personal chattels. Investment managers who are holding assets of the deceased as nominee may be prepared to sell investments to fund the tax. The personal representatives could borrow from a bank or beneficiary. Some banks might be persuaded to make a payment from the deceased's account to meet the inheritance tax liability.

2. APPLICATION FOR A GRANT OF REPRESENTATION

In order to apply for a grant of probate the submission is usually made online through a portal administered by HM Courts and Tribunal Service. A statement of truth is given by an executor, or by a solicitor or probate practitioner on their behalf, who then posts the will. Situations where an application must be made in paper form at a district registry include that of a foreign will and often where the deceased had died domiciled outside England and Wales. The process for letters of administration is similar. Personal representatives typically ask for several office copies of the grant to give to third parties with whom they are dealing.

It is possible for an interested party to apply for a caveat to be entered preventing the issue of a grant until some particular issue has been resolved.

A grant of representation, once issued, is a matter of public record. The value of the deceased's estate in the UK must be declared and is shown on the grant.

3. USING A FOREIGN GRANT OF PROBATE IN ENGLAND AND WALES

Scottish and Northern Irish grants may be used in England and Wales. Under the Colonial Probates Acts 1892 and 1927, a foreign grant can be re-sealed for use in England and Wales if from one of a number of countries including most provinces of Canada, the states of Australia, South Africa and various other African countries, New Zealand and several Caribbean countries.

There are procedures for an English grant of probate to be issued for use with English assets to those who have been appointed to administer the deceased's estate in another jurisdiction.

English probate can also be granted where, for some reason, none has been granted overseas.

4. PAYING OFF DEBTS

Personal representatives are liable for the deceased debts up to the value of the estate under their control (and may settle the debts from the estate). This will include the deceased's income tax and capital gains tax liabilities up to the date of death. There is a statutory mechanism by which personal representatives can protect themselves from liability for unknown liabilities by advertising for creditors.

If assets are later sold for an amount different from the value contained in the inheritance tax return, then there may need to be an adjustment to the tax paid.

Finally, on application, a clearance certificate is issued for the inheritance tax.

5. INCOME TAX AND CAPITAL GAINS TAX DURING THE ADMINISTRATION

The taxation of income arising from the estate during the administration is a complex area but broadly speaking, it is, ultimately, taxable on the beneficiaries to whom that income is distributed at their marginal rates.

Assets are re-based for capital gains tax on death, and beneficiaries are treated as receiving assets, which are distributed to them with that base cost. If personal representatives dispose of assets during the administration, then if there is a gain compared against the value on death; this is taxable.

6. ESTATE ACCOUNTS

Other than in very simple cases, estate accounts should be prepared.

7. DISTRIBUTING THE ESTATE

Interim distributions may be made before all of the issues described above are resolved, but personal representatives will wish to retain significant assets until they have certainty as to their debts and tax liabilities. Then final distributions are made and the administration of the estate comes to an end.

C. *Intestate succession and forced heirship*

1. INTESTATE SUCCESSION

If an individual dies without a valid will, then where English succession law applies, the Administration of Estates Act 1925 determines who inherits the estate.

These rules are complex, but their effect in certain common scenarios is as follows (note that a spouse is not treated as surviving unless they do so by at least 28 days):

- If the deceased was married with children, then the surviving spouse takes all personal chattels and a fixed sum of £270,000 (with simple interest from the date of death) and the remainder is held: (1) as to one half on trust for the spouse outright; and (2) as to the other half, on trust for the children.
- Where there is no surviving spouse but there are children, the estate is held on trust for them.

- If the deceased was married and did not have surviving children, the spouse takes the whole estate.
- Where there is no spouse or children, the estate is held first for parents, then for siblings, then half-siblings, then grandparents, then uncles and aunts, then uncles and aunts who were only half-siblings of the parents, and finally, for certain organs of state who may provide for dependents of the deceased.

There are numerous further complexities in the law where there is full or partial intestacy which only serves to emphasise the advantages of having a will in place.

2. FORCED HEIRSHIP

There are no forced heirship rules in England and Wales so, in principle, testators are able to leave their estates to whoever they choose. However, where a person dies domiciled in England and Wales, dependents of the deceased are protected by the Inheritance (Provision for Family and Dependents) Act 1975, which applies whether or not the deceased died intestate. A claim that 'reasonable financial provision' has not been made from the estate may be made by:

- children (or those treated by the deceased as a child of the family whether or not this treatment was in relation to a marriage to which the deceased was a party at any time);
- spouses or those in a similar relationship of at least two years;
- former spouses who have not remarried; and
- anyone not falling in those categories who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased.

An individual is to be treated as maintained by the deceased only if the deceased was making a substantial voluntary contribution towards the reasonable needs of the dependent.

Whether there has been reasonable financial provision is an objective test determined according to statutory guidelines and principles established in case law with specific guidance applying to certain types of claimant.

3. MARITAL PROPERTY

There is no marital property regime in England and Wales in the civil law sense of that concept.

4. TENANCIES, SURVIVORSHIP ACCOUNTS AND PAYABLE ON DEATH ACCOUNTS

a. Joint ownership

Property may be owned jointly under a joint tenancy or as tenants-in-common. Joint tenants hold property in undivided shares, the proportion owned is not specified, and on the death of one joint tenant, the property automatically passes to the survivor or survivors and is outside the scope of any will or the intestacy provisions (the property is still potentially liable to inheritance tax). Tenants-in-common hold divided shares of specified amounts, and their share passes under their will, not automatically to the other tenants-in-common.

As part of will planning, it is generally desirable to sever joint tenancies over significant assets, typically the family home, so that they pass in accordance with the will rather

than automatically to the joint owner. For an international family, joint ownership of property may be advantageous if it takes it outside the scope of foreign forced heirship provisions.

III. Trusts, foundations and other planning structures

A. Common techniques

1. UK DOMICILED CLIENTS (OR DEEMED DOMICILED CLIENTS)

For UK domiciled clients (or those who are treated as domiciled in the UK for tax purposes), trust structures are generally subject to punitive inheritance tax charges. However, there are uncontroversial and highly effective measures that are frequently incorporated into estate planning strategies, and trusts remain useful, in some cases.

2. WILL TRUSTS

A married couple frequently leave their estate to each other on trust for life, and then to their children, which as well as protecting the assets from the claims of a future spouse or children, has tax planning advantages. On the first death, there should be no inheritance tax (assuming assets are not passing from a UK domiciled spouse to a non-UK domiciled spouse on which, see below). Furthermore, the assets will be re-based for capital gains tax purposes. Decisions can then be made by the trustees as to whether to distribute assets to the spouse or to gradually pass assets to the children. This will be free of inheritance tax if the spouse survives seven years and capital gains tax on the transfer will only be payable with reference to the value at the date of the first death.

3. TRUSTS OVER PENSION FUNDS

Until 6 April 2015, lump sum death benefits, payable at the individual saver's death before retirement and after retirement before benefits were taken, under a UK-registered pension scheme or a qualifying non-UK pension scheme (QNUP) were generally held on discretionary trusts. The deceased could then leave directions as to how funds should be held after death (what benefits there will be subject to the terms of the scheme).

The Taxation of Pensions Act 2014 introduced alternative possibilities, and these have changed pension thinking. Individuals given the option to transfer into a money purchase or defined contribution (DC) pension scheme may instead pass benefits on by way of a 'flexi-access-drawdown' account (or the purchase of an annuity), which holds out attractions not given to trusts.

4. LIFE POLICY TRUSTS

Where an individual takes out a life insurance policy or members of a group life scheme tax out a policy that complies with the requirements for excepted group life policies (EGLP) set out in the Income Tax (Trading and Other Income) Act 2005, sections 481 and 482, this may be assigned to trustees to hold on trusts to take the policy outside the estate of the life assured so that when the policy pays out on death, the proceeds are outside the scope of inheritance tax.

5. GIFT AND LOAN TRUSTS

A gift to trustees of an amount lower than the available inheritance tax nil rate takes the sum outside the scope of inheritance tax if the donor is not a beneficiary. In addition to the gift, further funds may be loaned. The amount loaned is not subject to inheritance tax, and although the value of the loan remains part of the donor's estate, any growth within the trust on the amounts loaned is not.

A similar form of planning is a discounted gift trust, where assets are transferred to a trust subject to an annuity for the transferor, which depresses the value of the gift.

6. Agricultural and business property trusts

Trusts can be created over business or agricultural assets that benefit from relief from inheritance tax, meaning that trusts remain a valuable succession planning structure for family businesses and landed estates. No capital gains tax is payable on a transfer of such assets to a trust (but nor is there any re-basing). This type of planning is very complex, and there are a number of traps for the unwary.

7. Family partnerships and family investment companies

Family partnerships and UK resident family companies are also sometimes used for tax and estate planning reasons. The attraction of family partnerships is that there should not be an inheritance tax charge when assets are contributed, and the terms of the partnership allow parents to retain control while gradually shifting value to their children. Companies may be valuable where it is possible to take advantage of the discrepancy between personal tax rates, and the tax rates and exemptions that apply to companies.

8. Offshore insurance life bonds

The use of offshore life insurance bonds as an investment wrapper is widespread. Provided certain conditions are met, a specific tax regime applies by which income and gains roll up tax free within the bond and up to five per cent of the capital can be withdrawn tax free per year over a 20-year period. Income tax is paid on amounts withdrawn in excess of the annual allowance (which can be carried forward) or on the growth in value when the bond is redeemed.

9. Non-UK domiciled clients

If an individual (or one of his or her close family members) is non-UK domiciled, then this opens up a completely different and wide range of tax planning opportunities. The most important in the context of estate planning is that a non-UK domiciled individual (who is also not deemed in the UK – see below) may create a trust over non-UK situs property without any charges to inheritance tax, and the property should remain outside the scope of UK inheritance tax after his or her death. It should also be noted that an individual is deemed to be UK domiciled for inheritance tax purposes when her or she has been resident in the UK for more than 15 UK tax years. There is also a lifetime limit on the amount that a UK domiciled (or deemed domiciled) spouse can leave exempt from inheritance tax to a non-UK domiciled spouse. With effect from 6 April 2013, this amount was raised to £325,000, and a new regime introduced under which, provided certain conditions are met, spouses or their personal representatives may remove the cap and instead obtain complete exemption from inheritance tax by electing to be treated as domiciled in the UK.

B. Fiduciary duties (trustees, board members, directors etc)

1. Trustees

Under English law, the duties of a trustee are imposed by a combination of the nature of his or her office and the terms of a trust, as understood in the light of case law, statute and equity. Fundamentally, a trustee has a duty to ensure that the terms of the trust are performed and that he or she acts in the best interests of the beneficiaries (and not one in favour of another, although discretionary power may be exercised in that way). The standard duty of care is that which would be expected from a prudent person of

business, but a higher standard of care is expected from a professional trustee. The Trustee Act 2000 imposes a statutory duty of care, which applies to specified activities mainly relating to investment management and financial transactions, which broadly mirrors the principles of case law and which can be excluded by the express terms of the trust. When considering whether a trustee has fulfilled its duties, it is important to make a distinction between obligations and discretions. A trustee may sometimes have an obligation to exercise a discretion or to consider whether to exercise a discretion (the statutory duty of care does not apply to the exercise of discretionary powers). If a trustee fails to do something, it is obliged to do or fails to do it with the necessary degree of care (or fails to exercise a discretion with the necessary degree of care), then this is a breach of trust for which the trustee may be liable to beneficiaries of the trust. A trustee's duties begin in the process of becoming trustee and continue in the process of ceasing to be trustee. A frequently neglected duty is the duty to keep accounts, which are essential to allow beneficiaries to monitor the performance of the trustees. However, the extent to which information must be available to beneficiaries, and in particular beneficiaries of discretionary trusts, is a contentious area. Under English law, in general, the duties of trustees may be modified and excluded by the express terms of trust so that the trustees' liability may even be excluded where they have been negligent or wilfully acted in breach of trust (where the default was made in good faith, in the belief that it was in the interests of the beneficiaries and falls within the normally acceptable standard of honest conduct). Conversely, an exclusion of liability for fraud, dishonesty or conscious wrongdoing would be null and void.

C. Duties of directors of companies

Under the Companies Act 2006, directors, de facto directors and shadow directors of companies incorporated in England and Wales owe statutory duties to the company (not usually to shareholders and not to creditors, although directors' duties are subject to the requirements of insolvency law). Directors must act in accordance with the company's articles and exercise powers for the purposes for which they are conferred and for the benefit of the company and the Companies Act 2006 sets out detailed guidance about what this means. A director must exercise the care, skill and diligence to be expected of an individual carrying out the director's functions and from someone with the particular director's competency. A director must avoid conflicts of interest unless her or she is authorised by the directors, shareholders or articles, and must declare an interest in a proposed transaction. A director will not have breached his or her duties if the company has authorised the action or if the director is acting in accordance with provisions in the company's articles of association that deal with conflicts of interest.

D. Treatment of foreign trusts and foundations

The UK has adopted The Hague Convention on the Law Applicable to Trusts and their Recognition. The tax treatment of trusts with UK resident and non-UK resident trustees (or both) can be very different.

There is no English law foundation, and foreign foundations are not specifically recognised by English law. Where there are UK resident settlors or beneficiaries, it is preferable to use vehicles that are recognised and understood within the UK, such as trusts, partnerships and companies. If alternative structures are used, such as *Stiftungs* and *Anstalts,* then there may be unclear or unexpected tax consequences. The current HMRC view is that *Stiftungs* are likely to be characterised as trusts for UK tax purposes, while *Anstalts* are likely to be opaque and treated as if they were companies.

IV. Taxation

A. UK tax system

The vast majority of taxes in the UK are set by central government in Westminster and apply across the whole of the nation, but there are exceptions. From 2012, legislation has devolved tax powers to the Scottish Parliament and the Senedd Cymru (the Welsh Parliament), but the changes are piecemeal and inconsistent. In Scotland, rates and bands of income tax (SRIT) (except for the personal allowance) have been devolved. Wales sets its own Welsh income tax rate (WRIT) on top of the UK rates, which have been reduced by 10p in each band. Legislation passed in 2015 to devolve tax powers to the Northern Ireland Assembly is limited to the conferral of a corporation tax rate setting power for Northern Ireland, which has yet to be brought into effect.

HMRC administers the main UK taxes relevant to individuals, namely, income tax, capital gains tax and inheritance tax (which is supplemented by pre-owned assets tax and the annual tax on enveloped dwellings). In England, stamp duty land tax, VAT and National Insurance contributions may also be payable by individuals, but they are not dealt with here.

The UK tax year, which is of particular relevance to income tax and capital gains tax, is not a calendar year but runs from 6 April to 5 April. Although some tax is deducted at source (the most significant example of which is income tax on salaries), the tax system operates on the basis of self-assessment, so that taxpayers with more complex affairs must file tax returns to account for the tax due. Generally, an individual's tax return for income tax and capital gains tax must be filed by 31 January following the end of the tax year, with tax paid at the same time (though tax may be payable on account). Since April 2019, a return has had to be filed and capital gains tax paid in relation to individuals and trusts and corporation tax paid in relation to companies within 30 days of the disposal of UK land directly or indirectly owned by any form of non-UK resident (subject to exceptions applicable to certain companies and collective investment vehicles). Starting in April 2020, the 30-day filing requirement has been extended to all UK residents, but only in relation to residential property. Liability to other taxes tends to be reportable quarterly or on the occurrence of particular events.

Primary legislation for making tax digital (MTD) for income tax was passed in 2017. This is a long-term project to modernise the tax system. Self-employed businesses and landlords will start to follow MTD rules from 6 April 2023.

HMRC may enquire into tax returns within certain time limits and are assisted in this with significant information gathering powers. Enquiries may be made after time limits have expired where it is later discovered that not enough tax was paid. There are increasingly severe penalties for non-payment or late payment of tax, and this can be a criminal offence. Initiatives to allow taxpayers to disclose undeclared liabilities with less severe consequences have been replaced by initiatives to secure the reporting of financial information by intermediaries, including across borders, such as the Organisation for Economic Co-operation and Development's (OECD's) Common Reporting Standard (CRS) and automatic exchange of information (AEOI) with other revenue authorities under international tax agreements. The Disclosure of Tax Avoidance Schemes (DOTAS) rules may oblige the promoter of a tax scheme to provide details of it to HMRC and oblige taxpayers to notify HMRC that it has been used. With effect from 1 January 2021, these have been supplemented by the Mandatory (Cross Border) Disclosure Rules (MDR), which require third parties to disclose arrangements that undermine CRS

or obscure the beneficial ownership of assets (the hallmark D1 and D2 descriptions under the EU Sixth Directive on administrative assistance).

Tax legislation seeks to prevent tax avoidance in relation to specific circumstances, sometimes with punitive consequences, and this is supported to a degree by case law, particularly where schemes involve artificial transactions. In 2013, the government introduced a general anti-abuse rule (GAAR) to target abusive arrangements and in 2014 extended a requirement for taxpayers to pay upfront any disputed tax associated with schemes covered by the DOTAS rules or counteracted by the GAAR.

The government has since introduced penalties at up to 60 per cent of the tax counteracted by the GAAR and legislation, which allows HMRC to recover tax debts directly from taxpayers' bank accounts.

The Finance Act 2021 gives HMRC a new power to give a new Financial Institution Notice (FIN) that requires certain financial institutions to provide information about a specific taxpayer, without the need for the approval of the taxpayer or the independent tribunal that considers tax matters.

HMRC maintains a register of information on beneficial ownership that trustees of UK express trusts with taxable consequences (with some exclusions) are required to collect and new rules introduced in 2020 extend the scope of the register to include trusts with no tax consequences and non-UK trusts that hold UK real estate. Once fully implemented, the changes will allow information on the register to be made available in certain circumstances to those with a legitimate interest.

B. Domicile and residency

Three main concepts are relevant to the way in which an individual is taxed in the UK, 'domicile', 'residence' and 'ordinary residence', and the UK tax system famously has advantages for those who, though resident, are non-UK domiciled.

1. DOMICILE

The meaning of 'domicile' in English law is not the same as the habitual residence concept common in other jurisdictions. Under English law, 'domicile' means the jurisdiction with which the person has the longest-term association and it is established by certain legal conventions involving an analysis of their 'domicile of origin' (usually taken from their father) and whether this has been displaced by a domicile of dependency or a domicile of choice. A domicile of choice is acquired if an individual over the age of 16 becomes resident in another jurisdiction and forms an intention to remain there permanently or indefinitely. It can be lost if he or she ceases to be resident in the relevant jurisdiction and ceases to intend to remain there permanently or indefinitely. Prior to 1 January 1974, a woman automatically took the domicile of her husband, as a domicile of dependency. When the law changed on that date, the domicile of dependency of such women became a domicile of choice unless, and until, they lost it either by abandonment or by acquisition of a new domicile of choice.

An individual is domiciled in a jurisdiction rather than in a country. So, in a federal system an individual is domiciled in a particular state (eg, in New York or Florida). Similarly, no one can be domiciled in the 'UK'; they are either domiciled in England and Wales, Scotland or Northern Ireland. But what is relevant for tax purposes is whether or not they are domiciled in the UK.

2. DEEMED DOMICILE

In July 2015, complex changes to the taxation of non-domiciliaries were announced by the government. From 6 April 2017, under Finance (No 2) Act 2017, persons who have never been domiciled in the UK can be treated as UK domiciled for income tax, capital gains tax (CGT) and inheritance tax purposes, provided that they have been resident in the UK for a sufficiently long period. If a person has been resident in the UK for 15 tax years out of the previous 20, they will be deemed domiciled in the UK from the 16th year even if not resident that year. Once deemed domiciled, an individual will not lose that status until they have been non-resident for six complete tax years for income tax and CGT purposes and three complete tax years for inheritance tax, provided the fourth year is also a year of non-residence. There are other rules for inheritance tax which include that:

- an individual born in the UK and returning will be treated as deemed domiciled on arrival, if his or her domicile of origin was in the UK; and
- a person previously domiciled in the UK, by origin, choice or dependency, will be deemed to remain domiciled in the UK for three calendar years after the person has abandoned his or her domicile. For long-term non-domiciled residents the approach of the 15 years of residence milestone is a key time to consider inheritance tax planning.

3. RESIDENCE

a. Statutory residence test (SRT)

The SRT has been in force since 6 April 2013.

The rules are complex, but the government's intention in bringing in a SRT was, so far as possible, to replicate the old law but in a way that allowed taxpayers to know with certainty whether or not they are UK resident, and this has been substantially achieved.

b. Automatic residency tests

The way that the SRT works is that there are five automatic overseas residence tests. If one or more of those tests is met, the individual is not UK resident for that year. There are then four automatic UK residence tests. If any one or more of those tests is met, then the individual is a UK resident for that year. If the individual meets none of the automatic tests, then a sufficient ties test will determine whether the individual is resident in the UK in that year.

Under two of the automatic overseas tests:

- an individual who visits the UK, having not been resident in the three preceding tax years (an 'Arriver'), will be automatically not resident in a year in which he or she spends less than 46 midnights in the UK; and
- an individual who visits the UK, having been resident in one or more of the three preceding tax years (a 'Leaver'), as a general rule will be automatically not resident in the UK in a year in which he or she spends less than 16 midnights in the UK.

Under two of the automatic UK tests:

- an Arriver or Leaver will be automatically resident for any year in which he or she spends more than 183 midnights in the UK; and

- an individual, who has not met the requirements of one of the automatic overseas tests, will be automatically resident if he or she has a home in the UK for at least 30 days in the tax year, visits that home on at least 30 days during a continuous period of 91 days in or across tax years and throughout that continuous period either has no home abroad or no home abroad that he or she visits on less than 30 days in the tax year.

Other tests hinge on full-time employment in the UK or overseas.

c. Sufficient ties test

Under the sufficient ties, a day count (ie, midnights spent in the UK count) is combined with a count of 'UK ties'. In the case of an Arriver, there are a maximum of four ties:

1. family (a spouse or minor child who is also UK resident);
2. accommodation (accommodation available in the UK for use);
3. work (over three hours of work on 40 or more days in the UK); and
4. previous history (91 midnights in one or both of the preceding two tax years).

In the case of a Leaver, in addition to these ties, there is a country tie (more midnights in the UK than in any other country).

The table below shows how many UK ties are sufficient for a determination of UK residence.

Midnights spent in the UK in a year	*Number of ties that are sufficient for a Leaver*	*Number of ties that are sufficient for an Arriver*
More than 15, but not more than 45	At least 4	–
More than 45, but not more than 90	At least 3	All 4
More than 90, but not more than 120	At least 2	At least 3
More than 120	At least 1	At least 2

C. Residence in other jurisdictions

It is possible to be resident in both the UK and another country or countries at the same time. If the UK has a double tax treaty with the other country, tie-breaker provisions will apply to determine in which country a taxpayer is to be regarded as resident for the purpose of applying the treaty provisions.

D. Gift, estate and inheritance taxes

1. INHERITANCE TAX

Inheritance tax is charged on 'transfers of value', which may occur during someone's lifetime or on his or her death, and the tax is charged on the amount by which the individual's estate is reduced in value by a transfer, subject to any available reliefs. Sales at undervalue may (but will not always) result in a charge, as might certain other transactions that may not seem like a transfer, but do have the effect of reducing the value in someone's estate, such as on the restructuring of privately held companies. A transfer to a trust is a lifetime transfer that may give rise to a tax charge. Once held on

trust, property may be subject to later inheritance tax charges (as 'relevant property'). In some cases, where an individual has an interest in a trust, the trust property forms part of his or her estate for inheritance tax purposes rather than being taxed as relevant property. Transfers to a company may also be chargeable.

2. Rates of tax

The main rate of inheritance tax is 40 per cent. This is the rate that applies on death. A rate of 20 per cent applies on a transfer to a trust or company, increasing to up to 40 per cent if the settler dies within seven years. Inheritance tax at a rate of up to six per cent may apply to relevant property held in a trust either on each ten-year anniversary of the creation of the trust or if property is distributed from the trust between anniversaries.

3. Nil rate band

Every person has a 'nil rate band' (£325,000 in the 2020/2022 and 2021/2022 tax years), which broadly means that the first £325,000 of a chargeable transfer (during life or on death) will be tax free, subject to the nil rate band not having already been used in the previous seven years. A surviving spouse inherits the nil rate band of their deceased spouse to the extent it was not used.

4. Residential nil rate band

An additional band (£175,000 in the 2020/22 and 2021/2022 tax years) gives another tax-free sum to homeowners on a death subject to a limit that tapers away completely if the estate is worth more than £2,350,000 (less any debts or liabilities) ignoring assets that are specifically excluded from inheritance tax. The 'residential nil rate' applies where the deceased owned a residence on or after 8 July 2015. Rules determine what is a qualifying residence and when as well as how the band must be used and who may benefit (basically children or other descendants outright, that is unless the trust is in a form that qualifies.) A surviving spouse inherits the residential nil rate band of his or her deceased spouse (now together worth up to £350,000).

5. Potentially exempt transfers

A lifetime transfer is exempt if the transferor survives at least seven years, otherwise the transferee must pay tax. If the gift was made more than three years but less than seven years before death, the rate of tax is reduced for each year. This is subject to the availability of the nil rate band at the time the transferor made the gift. Where an individual has an interest in a trust that forms part of his or her estate and the individual gives it up, then this is a potentially exempt transfer.

6. Post-death variations

Provided certain conditions are met, if the terms of a will or intestacy are varied within two years of death, this will not be treated as a transfer of value (and nor will a transfer by a beneficiary who is complying with a letter of wishes). In other words, the transfer resulting from the variation is treated as if it were made by the deceased.

7. Valuation

Property is generally valued at market value (which may be affected by how much or how many of a particular asset the individual holds) and there may be a discount for jointly owned property.

8. Debts

Subject to certain anti-avoidance provisions, debts are deductible from taxable property. The Finance Act 2013 introduced new provisions in response to schemes that involved debts incurred to finance the acquisition of assets that were not chargeable to inheritance tax or to take advantage of rules that allow the deduction of debts where debts were subsequently waived. Subject to these provisions and certain other anti-avoidance rules, debts are deductible from taxable property.

9. Spouse exemption

Transfers to a spouse or civil partner during life or on death are exempt unless the transfer is from a UK domiciled (or deemed domiciled) spouse to a non-UK domiciled spouse when the exemption is limited to £325,000.

10. Domiciled/deemed domiciled taxpayers versus non-domiciled taxpayers

UK domiciled persons are taxed in relation to their worldwide property (even if they are non-resident). Until 6 April 2017, only the UK situs property of non-UK domiciled taxpayers was subject to inheritance tax. Situs is determined by common law rules. If an individual owns UK situs property through a non-UK incorporated holding company, then the individual holds non-UK shares in his or her estate, not the underlying UK property, and the individual therefore holds non-UK situs property in his or her estate.

The Finance (No 2) Act 2017 has introduced important exceptions to the non-UK situs property exclusionary rule. An interest in a closely held company, a partnership and certain other forms of property (including certain loans) is nevertheless subject to inheritance tax if, and to the extent that, the value of that interest is directly attributable to a UK residential property.

Subject to those exceptions, non-UK situs property held by trustees of a trust created by a non-UK domiciled (or deemed domiciled) person is excluded property and is not subject to inheritance tax.

11. Gifts with reservation of benefit

Anti-avoidance rules provide that if an individual gives away property but continues to benefit from it, then it may continue to form part of the individual's estate and be subject to inheritance tax on his or her death.

It is currently accepted by HMRC that the excluded property rules trump the reservation of benefit rules, so if a non-UK domiciled person creates a trust, he or she can be a beneficiary under the trust (ie, reserve a benefit) and the property will remain excluded property (as long as it is non-UK situs property) even if the settlor later becomes UK domiciled.

12. Pre-owned assets tax

The Finance Act 2004 introduced a tax charge on benefits received from assets previously owned by the taxpayer as a way of countering the effect of certain inheritance tax avoidance schemes. This is an income tax charge but is popularly known as the pre-owned assets tax. Tax is charged on the rental value of pre-owned real estate or on a percentage of the market value of chattels or intangible property (the percentage being set at the official rate of interest). If a market rate is paid for use of the property, there is no benefit. It is sometimes possible to elect that the gift with reservation of benefit

regime should apply rather than the pre-owned assets tax. The tax does not apply to non-UK resident persons, and only applies to non-domiciled persons in relation to UK property.

13. Business property relief, agricultural property relief and relief on timber

Fifty per cent or 100 per cent relief from inheritance tax is available on property qualifying for business or agricultural property relief (BPR and APR).

Business property includes an interest in an unincorporated business, unquoted shares, and listed shares forming part of a holding that gives control and land, buildings, plant or machinery used in a business and owned by the owner of the business (or by the trustees of a trust in which the business owner has a life interest). Unincorporated businesses and unquoted shares qualify for 100 per cent relief and the others, 50 per cent. Certain businesses are excluded, and specific assets held by a business that are not used for the business or provide a personal benefit to the owner are excepted from relief.

To qualify for relief, the business property must be held for at least two years prior to the transfer (ownership periods of previous owners and periods of ownership of other qualifying property that was replaced may sometimes be included).

Agricultural property is, broadly, agricultural land or pasture, including ancillary woodland and any buildings used in connection with the intensive rearing of livestock or fish, and includes cottages, farm buildings and farmhouses, together with the land occupied with them (provided they are of 'a character appropriate to the property', a matter of some contention). The property must be within the UK, Channel Islands, Isle of Man or EEA. Generally, 100 per cent APR is available where the owner has occupation of the land or can obtain it within the next 12 months or has let the property on a post-1 September 1995 tenancy. In other circumstances (basically where it is subject to an older tenancy), then only 50 per cent relief is available unless transitional provisions apply.

Land must be occupied by the owner (or his company) for agricultural purposes for at least two years or owned for at least seven years and occupied by someone for agricultural purposes for all that time (as with BPR, ownership periods by previous owners or periods of ownership of other APR property may sometimes be carried over). APR may also apply to shares in a farming company that owns agricultural property.

Relief only applies to the agricultural value of the land. APR must be claimed in priority to BPR, but to the extent property does not qualify for APR then BPR may be claimed if available.

The value of timber on woodland may also qualify for relief from inheritance tax.

The availability of BPR and APR in practice is subject to numerous complexities, including where trusts are involved.

14. Employment-related planning

The provision of funds to approved retirement benefit schemes and qualifying employee benefit trusts is not a transfer of value.

15. Pensions

The taxation of pensions is a complex area that is constantly changing.

This section concerns registered pension schemes that confer 'DC benefits' (eg, a personal pension scheme and QNUP) and the tax treatment of a savings benefit passed on as a lump sum on death.

Since 6 April 2011, inheritance tax has not applied to such schemes. If an individual dies before the age of 75 having not exercised a right to use any of his or her scheme savings then a lump sum that is payable instead on death ('the death benefit') can be passed on tax free. Conversely, if the individual has reached 75, then the death benefit will bear a charge to income tax at a fixed rate of 55 per cent.

If the individual has crystallised his or her right to draw on pension savings under the scheme, then on death, any unused savings will again bear tax, at a rate of 55 per cent, if the age of 75 had been reached. Otherwise, there is no tax on the saver's death subject to this individual having sufficient lifetime allowance (see below).

More wide-ranging changes to the tax treatment of pensions were introduced with effect from 6 April 2015 by the Taxation of Pensions Act 2014, and more legislation has followed. These changes provide enhanced flexibility and a new way to pass on assets free of inheritance tax on death.

16. CHARITY

Gifts or transfers into trust (on life or on death) to charities established in the UK are exempt from inheritance tax. A relief reduces the rate of inheritance tax applying to someone's estate to 36 per cent, if at least ten per cent of their estate has been left to charity.

17. OTHER EXEMPTIONS AND RELIEFS

There is a small annual exemption and small exemptions for gifts by family members on weddings or civil partnerships and an exemption on gifts of up to £250 per donee per year.

Regular gifts out of taxed income are exempt from tax provided the donor is left with enough to maintain his or her usual standard of living.

Maintenance payments to family members, including on separation and divorce, are exempt transfers.

There is relief for gifts to qualifying political parties, gifts for national purposes, gifts for public benefit and transfers on death as a result of active service in war, and there is quick succession relief for property received within the previous five years as a result of a transfer subject to tax. Relief may also be available for equivalent tax paid in another jurisdiction, either under the terms of a double tax treaty or as a result of statute.

E. Taxes on income and capital

1. INCOME TAX

Income tax applies to individuals, trustees, partners and non-UK resident companies. The extent to which an individual is taxed on their income is affected by whether they are UK resident and, in the case of individuals, whether they are UK domiciled (as explained below). The regime for collecting social security contributions (National Insurance contributions) broadly follows the regime for taxing income from employment and self-employment, but this is not dealt with here.

There is no straightforward definition of income, either in statute or case law. Statute describes a number of types of income and how they are taxed, generally by reference to their source, including employment income, investment income, property income and trading income. For policy reasons, it categorises as income certain types of return that might otherwise be viewed as a capital gain, and benefits in kind can be taxed as income, in addition to actual receipts of money. It is sometimes not easy to determine whether an item is taxable as income, in which case it is necessary to analyse the return according to principles established in case law, which make a distinction between the tree and its fruit and between fixed capital and circulating capital. Income can also be distinguished from gifts or voluntary receipts.

2. RATES OF TAX

Increasing rates apply to each band of an individual's income. The first £37,700 is taxed at 20 per cent (2021/22 tax year), the next amount up to £150,000 at 40 per cent and amounts above that at 45 per cent. Dividends (which are treated as falling in an individual's highest band) are taxed at lower rates of 7.5 per cent, 32.5 per cent and 38.1 per cent. Savings income of less than £5,000 may be taxed at nil per cent.

3. ALLOWANCES

For those who earn less than £100,000, a personal allowance of £12,570 can be deducted from their total income before applying the tax rates. This allowance is reduced by £1 for each £2 an individual earns above £100,000. Slightly increased allowances are available for the elderly and there is a blind person's allowance. In addition, there is a tax-free allowance on the first £2,000 of dividend income (2021/22 tax year).

4. PENSIONS

Pension planning is attractive to savers as it offers complete relief from income tax for amounts transferred to an HMRC 'approved' pension scheme, subject to annual and lifetime limits. With effect from 6 April 2021, but subject to transitional arrangements, the annual limit for tax-relievable contributions is £40,000 and the lifetime limit on the total value of the pension benefit is £1,073,100. In addition, both the income and capital gains generated by scheme assets before income draw down is rolled-up is tax free. Finally, a tax-free lump sum (the pension commencement lump sum) can be paid in connection with a saver becoming entitled to a pension. Following the publication of a consultation document in March 2014, 'Freedom and Choice in Pensions', the legislation has been enacted which introduces complex and important changes which are not dealt with here.

5. CHARITY

If a taxpayer makes a cash donation to charity, the donor's basic rate band is increased by an equivalent amount. This effectively gives the taxpayer relief from the higher rate of tax. Meanwhile the charity can claim the basic rate tax from HMRC (complications arise where the donor has not needed to pay that amount of basic rate tax).

A donation of assets to a charity gives the donor complete tax relief on a £1-for-£1 basis provided the assets comprise 'qualifying investments'.

6. VENTURE CAPITAL SCHEMES

Various schemes exist to encourage investment in small trading companies by offering investors a range of tax reliefs.

7. Capital gains tax

Capital gains tax, which is governed by the Taxation of Chargeable Gains Act 1992, applies to individuals, trustees and partners who are UK resident and, in certain circumstances, to non-UK resident companies. It is a tax on chargeable gains realised on the disposal of assets including sales and transfers for less than full consideration (eg, gifts and on death). Where transfers are between parties who are connected, they are treated as occurring at market value, regardless of the actual consideration.

The scope of capital gains tax has been extended twice recently in relation to UK real estate.

Since 6 April 2015, capital gains tax has included disposals by non-UK resident individuals, trustees and partners of residential property in the UK and restricted the private residence relief described below, which impacts on both non-UK residents with UK homes and UK residents with homes abroad.

Since 6 April 2019, capital gains tax has included disposals of all interests in all forms of UK land and from that date non-resident entities (companies and collective investment vehicles other than partnerships deemed to be companies) became similarly chargeable in their case to corporation tax. In addition to these changes to directly held interests in land, shares and other interests in non-resident companies deriving at least 75 per cent of their value from UK land (a 'property rich company') are in scope of capital gains tax or corporation tax if the investor has a 25 per cent interest in the company ('substantial indirect interest') at the time of disposal.

8. Rates of tax

Tax is charged on individuals at ten per cent or, for higher rate taxpayers, 20 per cent and each individual has an annual exemption of £12,300 (2021/22 tax year). Upper rates of 18 per cent and 28 per cent apply if the chargeable gain is in respect of non-exempt residential property or carried interest. Non-UK residents may be subject either to the capital gains tax or the corporation tax charge extended to non-resident direct or indirect owners on the disposal of real property in the UK. The current 19 per cent UK corporation tax rate makes ownership of real property through a company attractive and the rate does not vary between residential and commercial property, but the government announced in Spring 2021 that it is set to rise to 25 per cent in 2023.

9. Calculation of gain

The gain is calculated by deducting from the proceeds of sale (or market value at time of disposal) the costs of acquisition, costs of disposal and any amounts spent enhancing the value of the asset or protecting title to the asset. For an asset acquired before 31 March 1982, then (save for certain exceptional situations) one can use the asset's value on 31 March 1982 as its acquisition cost.

Since 6 April 2008, individuals and trustees have no longer been eligible for indexation allowance (which reduced the gain to take account of inflation) or taper relief which reduced the proportion of the gain that was chargeable.

10. Losses

When computing the gain accruing to a non-resident person chargeable to capital gains tax on the disposal of an interest in UK land, they will in general be allowed to:

- use the asset's value on 5 April 2015 or 5 April 2019 (as relevant);

- a time apportionment of the whole gain; or
- the whole gain or loss.

Relief may be given for losses realised in the same year or losses of previous years that have not been used.

11. Transfers between spouses

Transfers between spouses are treated as no gain no loss transactions, so the transferee inherits the transferor's base cost (note that, if the couple separate, this treatment no longer applies after the tax year of separation).

12. Exempt assets

Some assets are exempt from capital gains tax. This includes wasting assets (those with a life of less than 50 years), private motorcars, chattels traded for less than £6,000 and cash (foreign currency bank accounts were previously treated as an asset that could give rise to a gain or loss in sterling terms on transfers to or from the account, but from 6 April 2012, they are not). Investments held in an individual savings account (ISA) are exempt from tax.

13. Principal private residence exemption (PPR)

Gains made on the disposal by sale or gift of an individual's dwelling house used as his or her only or main residence, including grounds of up to 0.5 hectares (or such larger area as is reasonably required for its enjoyment), are exempt from CGT. It is a question of fact in each case as to what constitutes a dwelling house.

An individual has two years from the date of acquiring a second residence to elect which of them is his or her PPR for CGT purposes. In the absence of any election, this will be decided on the facts, that is, the house that the individual occupies will be treated as his or her PPR.

In any situation where an individual owns more than one property or does not occupy for the whole ownership period, or where spouses own more than one property between them care must be taken to ensure the best possible use is made of PPR.

14. Business assets disposal relief (formerly entrepreneurs' relief)

Since 11 March 2020, gains of up to £1m that qualify for business assets disposal relief may be taxed at only ten per cent. The relief will apply, after a two-year holding period, to gains on the disposal of trading businesses, the disposal of assets on the cessation of a business and gains on the disposal of shares and securities in a trading company or the holding company of a trading group. In the case of shares, the individual taxpayer must hold at least five per cent of the share capital or voting rights in the company and must be an officer or employee of the company.

15. Rollover relief and holdover relief

Gains on business assets may be 'rolled over' into new business assets that are purchased with the proceeds, postponing tax. The new assets may be purchased up to one year before or no more than three years after the disposal of the old assets.

Where a sole trader or partner makes a gift of a business asset, the gain may be 'held over' with the effect that no tax is due at the time and instead the held over gain will be deducted from the new owner's when he or she comes to dispose of the asset. Hold-

over relief is available for gifts of business assets to trustees and is also available on transfers of other assets to trustees which give rise to an inheritance tax charge.

16. CHARITY

Capital gains realised when an asset is gifted to charity benefit from tax relief.

17. THE REMITTANCE BASIS OF TAXATION

Individuals who are resident and domiciled in the UK are taxable on their worldwide income and gains on an 'arising basis'.

Those who are resident in the UK but not domiciled or deemed domiciled in the UK are able to claim the 'remittance basis' of taxation. A remittance basis user only pays tax on UK income or gains or on such foreign gains as are brought to, or used in, the UK in any way directly or indirectly ('remitted' is subject to a wide and complex statutory definition which encompasses the use of funds in the UK by closely connected persons). Once a taxpayer has been resident in the UK for at least seven of the previous nine tax years, unless that taxpayer's unremitted income and gains are less than £2,000, he or she must pay an annual remittance basis charge (RBC) to use the remittance basis. From 6 April 2017, the RBC charge is £30,000, rising to £60,000 after 12 years. After 15 years' residence in a 20-year period, the right to elect to pay tax on the remittance basis ceases because the taxpayer is then deemed domiciled.

A remittance basis taxpayer will organise his or her bank accounts and investments to allow the taxpayer to remit funds to the UK free of foreign income and gains. This involves separating assets that produce gains from those that do not, and segregating all income in a separate account as it arises.

An individual who is non-UK resident is only liable to income tax on UK source income (and then only to a limited extent) and is not liable to capital gains tax, even on assets situated in the UK. Someone who is considering moving to the UK should consider restructuring his or her assets long in advance of the move to fully take advantage of the remittance basis.

18. INCOME TAX AND NON-UK COMPANIES AND NON-UK RESIDENT TRUSTS

Complex anti-avoidance provisions seek to tax UK resident individuals in situations where they are entitled to income from non-UK resident structures that have been created for the avoidance of tax, such as companies, trusts or trusts owning companies. The creator of such a structure may be taxed on the structure's income as if it were his or her own. Those who did not create the structure but receive benefits from it may have that benefit taxed as income if the non-resident structure has earned income that has not been taxed. Remittance basis users will not be taxed on foreign income or benefits that are not brought to the UK. Structures that were not created for UK tax reasons may be exempt.

The Finance (No 2) Act 2017 extended the benefits charge to all non-UK domiciled creators of trust structures (including non-UK companies owned by a trust) with effect from 6 April 2017 in relation to what the legislation terms 'protected foreign-source income'. This was done to coincide with the introduction of a deemed domiciled status for all UK tax purposes (previously only for inheritance tax). Those individuals would otherwise have become taxable on foreign income that they or a spouse or minor child (following extensions postponed until the Finance Act 2018) could receive but had not (nor had been remitted to the UK) from their 16th year of UK residence. The trust

protection is lost, however, if there is any addition of value by the settlor or potentially another trust once the deemed domiciled has been acquired.

F. Capital gains tax and non-UK resident trusts

Although non-UK resident trusts are not subject to capital gains tax themselves (except and with effect from 6 April 2015 on the disposal of a UK residential property interest and with effect from 6 April 2019 on all forms of UK real estate), a UK resident and domiciled/deemed domiciled settlor of a trust may be taxable on gains realised (or deemed to be realised) by the trustees and a UK resident beneficiary may be taxed on gains realised by the trustees to the extent benefits are received from the trust. Non-UK domiciled/deemed domiciled beneficiaries and those who elect for the remittance basis of taxation are exempt from the full force of these provisions. If trustees cease to be resident in the UK, they are treated as disposing of, and reacquiring, trust property, with tax payable on any gain on this deemed disposal.

The Finance (No 2) Act similarly protects non-UK domiciled creators of trusts who later become deemed domiciled from the charge that attributes gains to settlors. The trust protection is lost if there are additions, as previously mentioned, for income tax.

G. Annual tax on enveloped dwellings (ATED)

The Finance Act 2013 introduced a new tax on UK residential dwelling interests. Note that references in this part to companies should be read as referring equally to partnerships with a corporate member and collective investment schemes.

The table below sets out the amount chargeable to tax for the chargeable period 1 April 2021 to 31 March 2022:

Taxable value of the interest on the relevant day	*Annual chargeable amount*
More than £0.5m, but not more than £1m	£3,700
More than £1m, but no more than £2m	£7,500
More than £2m, but not more than £5m	£25,300
More than £5m, but not more than £10m	£59,100
More than £10m, but not more than £20m	£118,600
More than £20m	£237,400

The tax return for ATED must be filed by 30 April following the beginning of the chargeable period, which is the year beginning on 1 April immediately preceding that date.

A series of reliefs apply that largely have the effect of alleviating the impact of this tax in circumstances where there is commercial justification for a residential property to be held through a company, for example, a property rental business and a property development business.