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Private Client MAGAZINE

TAX EDITION

PLANNING FOR TOMORROW: PRIVATE CLIENT TAX INSIGHTS FOR 2025

INTRODUCTION

"In this world nothing can be said to be certain, except death and taxes."

Benjamin Franklin

We are delighted to present the 2025 Tax Edition of our Private Client Magazine. In this issue, we cover some of the most significant developments impacting HNW individuals and families in the year ahead. It has been a busy year, from the UK General Election, to the changes to non-dom tax rules, and this annual edition will delve into all the opportunities and issues facing our tax practitioners for 2025.

Thank you to all our contributors for sharing their insights for this year's edition.

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CONTENTS

Breaking Down the Complexities of Donating Non-Cash Assets to Charity 4

Tax Britannica, Pax Americana - US/UK Gift and Estate Tax Treaty Offers Refuge from UK Budget Measures 6

Non-Doms on the Move - The Spanish Impatriate Regime and Spanish Inheritance and Gift Tax 10

Key Points from the First Post-Budget HMRC Non-Dom Taxation Subgroup Meeting 12

Making the Hard Work Pay - Maximising a Business Exit 15

When are Rights of Occupation Under a Will Trust Interests in Possession for IHT Purposes? 17

Dual Resident Trusts - Meaning of 'Place Of Effective Management' and Lessons for Offshore Trustees 19

UK Tax Changes and Their Implications for Trustees 22

"Better Together" in Times of Change 24

Recent Developments in the Attitude of The Jersey Courts to Onshore Tax 27

Trustees and Tax 29

Unpacking The Budget - Key Tax Changes and Useful Planning Tips 32

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HNW Tax: The New Era

26-27 June 2025 (Thursday & Friday)

Pennyhill Hotel & Spa, Bagshot, Surrey

HNW Tax: The New Era Circle will bring together industry experts to unpack the budget and provide valuable insights on tax planning, global mobility, and residence options.

This Circle will look back on the 2024/25 tax year by sharing client responses to the legislation and exploring technical issues and difficulties that have been addressed whether the clients decided to leave, remain or arrive. It will also look to the future by discussing what has been announced and is still to be implemented and what planning if any can be done to address these future changes. The Circle would also like to take soundings on what we might expect from the Chancellor beyond what has already been announced.

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BREAKING DOWN THE COMPLEXITIES

OF DONATING NON-CASH ASSETS TO CHARITY

Authored by: Joe Crome (Head of CAF American Donor Fund (CADF)) - Charities Aid Foundation

When talking about 'giving to charity', most people will instinctively think of donating cash. However, in our experience with philanthropic clients, an increasing group of donors are choosing to donate non-cash or complex assets to charity. This includes stocks and shares, as well as less common assets, such as property, artwork or jewellery. Some of the more unconventional gifts CAF has helped donors to donate in recent years include private equity shares, residential and commercial real estate and, even a Victoria Cross medal.

This form of charitable giving provides donors with a unique opportunity to maximise charitable impact by leveraging their valuable assets, as well as tax-efficiency. Because you do not have to pay tax on qualifying land, property or shares that you donate to charity, you can benefit from income, capital gains or inheritance tax relief, depending on the gift and your eligibility.

However, donating complex assets comes with challenges that require knowledge, expertise and resource to ensure the donation works for both the receiving charity and the donor themselves. With rising demand for this type of giving, advisers would benefit from increasing their understanding about the options available to their clients.

In a survey of 215 professional advisers, CAF found that 29% wanted more knowledge about donating non-cash assets.

Non-cash assets are still gifted less frequently than cash donations – share gifts made up 31% of the value of total gifts by private clients through CAF in 2023 - but they can significantly advance a donor's philanthropy, allowing them to consider the entire spectrum of capital for charitable purposes.

The circumstances in which clients choose to donate complex assets can vary greatly. We recently received a generous share gift from a business leader in investment management who chose to donate a proportion of his ordinary shares in his company. In another case, one of our dual-tax clients was moving back to the US from the UK and rather than sell his Chelsea home before moving, he donated it to CAF. After managing the sale process, we were able to donate £4 million to a range of children's health charities chosen by the client. The Victoria Cross medal we received was a precious family heirloom gifted as a Deed of Variation. With the client's permission, CAF donated the medal to a museum to remain on display for the public benefit. Another client, moved by images of Ukrainians fighting in trenches, reminiscent of the First World War, decided to donate a pick-up truck to support the war effort through an organisation called car4ukraine.

However, the time and due diligence expertise involved in facilitating these kinds of donations means that not all charities can receive them. Determining the transferability of non-cash donations is resource intensive. Charities have a regulatory obligation to value and appraise complex assets before acceptance, which can sometimes result in legal or cost implications. Following the acceptance of a non-cash donation, liquidating the asset may pose further challenges.

Yet many of these challenges can often be overcome by donating the non-cash asset via a donor advised fund (DAF). A DAF is a giving account which sits under the umbrella of a large charitable organisation. With the right in-house expertise, a DAF provider, such as CAF, can take on the due diligence and administrative processes required to accept the complex

assets, and can then onward donate or liquidate the asset (depending on the circumstances), enabling the donor to support their chosen charities.

This approach also provides flexibility and the opportunity to give more strategically. Donors can donate multiple securities to a DAF in one transfer and decide later which charities to donate to. Some clients donate large share gifts worth over a million pounds once or twice a year, while for others it might be a one-off opportunity to give a lot more than they usually do. Using a DAF also enables the charitable fund to be invested and increase its value, increasing the amount of money available for charities.

Some providers, including CAF, also allow donors to leave their shares in their will to the provider, which can then be sold for the proceeds to be given to the charity or charities of the donor's suggestion.

The different options of gifting, selling your shares to a charity or donating your share gains have different implications for your taxes and the recipient. For instance, a charity cannot claim Gift Aid from non-cash donations. It's therefore important to discuss your personal circumstances and motivations with an adviser before deciding which is the right approach for you.

It's also worth considering whether a specialist philanthropy advisory service could add further support to ensure the donor achieves their goals. For example, we recently had a client who, while having always been philanthropic, had the opportunity to donate a much more significant sum due to shares received from a previous equity buy-out that included future pension entitlements. They knew they wanted to support the youth sector but wanted to ensure their philanthropic impact was as strategic and meaningful as possible. Through our Advisory service we were able to set out a strategy and theory of change for them focused on young care leavers. A gift of shares enabled them to support this cause in the most tax and administratively efficient way.

Michael J Lewis is a tax specialist and partner at EY who we work with regularly. He says:

"The ability to claim capital gains tax and income tax relief on a charitable gift of qualifying shares is a powerful tool in incentivising charitable giving.

Unfortunately, too few individuals seem aware of the advantages of giving shares as opposed to cash. The charitable sector, advisers and government all need to improve their communication of this issue."

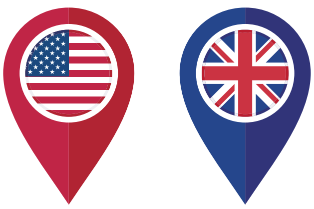
Currently in the UK, in order to achieve income tax relief you can only donate qualifying listed shares to charity, and we have less flexibility than other countries on other non-cash assets. Given the popularity of this form of giving, we'd encourage the Government to consider extending tax reliefs on gifts of a wider range of assets, including unlisted shares, as is the case in the US for example. This would empower ambitious donors to utilise their entire spectrum of capital for charitable purposes, bringing much needed additional philanthropic funds into the charitable sector.

TAX BRITANNICA, PAX AMERICANA

US/UK GIFT AND ESTATE TAX TREATY OFFERS REFUGE FROM UK BUDGET MEASURES

Authored by: Maya Buckland (Partner) and Joe Brothers (Partner) - Withers

The Labour Government's 30 October 2024 Budget (the 'Budget') radically changed the UK's taxation of 'non-domiciled' residents, particularly in relation to UK inheritance tax ('UK IHT'). US citizens and domiciliaries resident in the UK now face unique challenges and opportunities in relation to mitigating exposure to UK IHT, both personally and through assets held in trust.



Basic Framework

Under the US Internal Revenue Code, (the "Code"), a US citizen or domiciliary generally is subject to US gift and estate tax on his or her worldwide estate to the extent lifetime gifts and property passing on death exceeds an inflation-adjusted lifetime exemption amount (the 'unified credit'). The 2025 unified credit amount stands at $13.99m but is scheduled to be approximately halved from 1 January 2026, unless extended. Generally, an individual is 'domiciled' in the US for Code purposes if he or she lives there with no intent to leave permanently or indefinitely or has left the US and intends to return eventually.

Currently, a UK domiciled or deemed domiciled individual generally is liable for UK IHT on his or her worldwide estate, to the extent it exceeds a £325,000 'nil rate band' exemption amount. UK domicile is established under similar (but not identical) principles to those used to determine US domicile. Regardless of subjective intent, an individual generally is UK deemed domiciled if he or she resided in the UK for at least 15 out of the preceding 20 years. UK IHT is imposed on, inter alia, assets personally held and assets in trust where the decedent settlor retained certain benefits —e.g. a revocation power or status as a permissible beneficiary ('Gift with Reservation of Benefit' or 'GROB Trusts').

All trusts (regardless of GROB Trust status) settled by UK domiciled or deemed domiciled individuals broadly are potentially subject to the UK's 'relevant property regime' ('RPR') which imposes an approximate 6% charge on trust property on each 10-year trust anniversary, and when property exits or is deemed to exit the trust. Generally, non-UK situs assets settled into trust before a settlor become UK domiciled or deemed domiciled benefit from the 'excluded property trust' regime and become exempt from UK IHT and RPR charges, even for a GROB Trust.

Budget Proposals

From 6 April 2025, the UK will replace domicile-based taxation with a residence-based system that subjects an individual to worldwide UK IHT on personally held assets if that individual was UK tax resident for 10 out of the previous 20 tax years ('long-term residents'). An UK IHT 'tail,' which persists for up to ten years, will apply after that person's UK exit date (the 'ten-year tail').

The excluded property trust regime also will be abolished, subject to limited grandfathering relief for trusts established prior to 30 October 2024 by individuals who were neither UK domiciled nor deemed domiciled as of the settlement date. Grandfathered excluded property trusts will not be subject to personal UK IHT charges on death even if they have GROB Trust status but will be subject to lifetime RPR and exit charges with respect to all trust assets, (and not just non-UK situs assets as under current rules).

Going forward, GROB Trusts settled by long-term residents will be within the scope of personal UK IHT and all trusts will be within the scope of RPR charges. Where a settlor ceases to be long-term resident, an 'exit charge' applies to trust property at that time. Trusts settled after 30 October 2024 will be subject to a 20% 'entry charge' if the settlor is a long-term resident upon funding.

Where a US citizen or domiciliary also is subject to worldwide UK IHT, the impacted estate is, very generally, entitled to a foreign death tax credit for any UK IHT against the US estate tax liability. Despite the availability of tax credits, Americans may lose the benefit of the higher unified credit as the nil rate band is significantly lower. Therefore, traditional cross-border estate planning techniques often preserved the 'delta' between the two exemption amounts, particularly in relation to non-UK situs assets.

Americans who undertook estate planning pursuant to the current rules may feel uneasy about their renewed exposure to UK tax on non-UK assets, while others may feel precluded from undertaking any estate planning going forward. Nonetheless, the UK's inheritance tax treaty network will be unaffected by these changes; the Government's should be welcome news for many Americans, who may turn to the 1980 US-UK Estate and Gift Tax Treaty (the 'Treaty') to curtail the impact of these charges.

The Treaty: Article 5(1) and personally held assets

The core operative provision of the Treaty is found in Article 5 (Taxing Rights). Article 5(1)(a) gives the country of an individual's 'domicile' at death, as determined under the Treaty, the exclusive right to impose inheritance tax on that individual's estate, apart from, generally, real estate and active business assets which remain taxable by the situs country. Article 5(1)(a) may therefore protect Americans from significant UK IHT liability, even if the decedent was a UK long-term resident at death or subject to the ten-year tail.

'Domicile' is determined by Article 4 (Fiscal Domicile). A person's domicile initially is determined by looking at the domestic law of the two countries. As above, under internal US rules a person is US domiciled if, very generally, he or she has the subjective intent to remain in or return there permanently or indefinitely. US citizenship alone is insufficient to claim US domicile for Treaty purposes. A US citizen also is treated as US domiciled for Treaty purposes if he or she was US domiciled under US internal / Code rules at any time within the preceding three years (even if not US resident during those years).

An individual is treated as UK domiciled if that person was 'domiciled in the [UK] in accordance with the law of the [UK] or is treated as so domiciled for the purpose of a tax which is the subject of this Convention.' Going forward, an individual will continue to be regarded as UK 'domiciled' for Treaty purposes under the current, pre-Budget UK internal legislative definition of that term.

An individual domiciled in both countries under domestic laws may 'tie-break' under the Treaty exclusively to either the US or the UK.

An individual will automatically tie-break to exclusive US domicile status if at death he or she was (i) a US citizen; (ii) not a UK citizen; and (iii) not resident in the UK for seven or more years within the preceding ten-year period.

If exclusive domicile still cannot be established, a second tie-breaker test comes into effect, relating to an individual's personal and economic links to each of the two countries.

Americans within the scope of worldwide UK IHT liability will undoubtedly be incentivized to use Article 4 to establish exclusive US domicile status and thereby claim the benefits of Article 5(1). Many Americans also should be entitled to Article 5(1) relief if they lived in the UK for less than seven years and did not hold UK nationality at death. Americans now also may be conscious to retain personal and economic ties to the US and also should consider the tax-related disincentives of obtaining, or keeping, UK nationality.

The Treaty: Article 5(4) and assets held in trust

Article 5(4) provides that, except for UK real property and UK business assets,

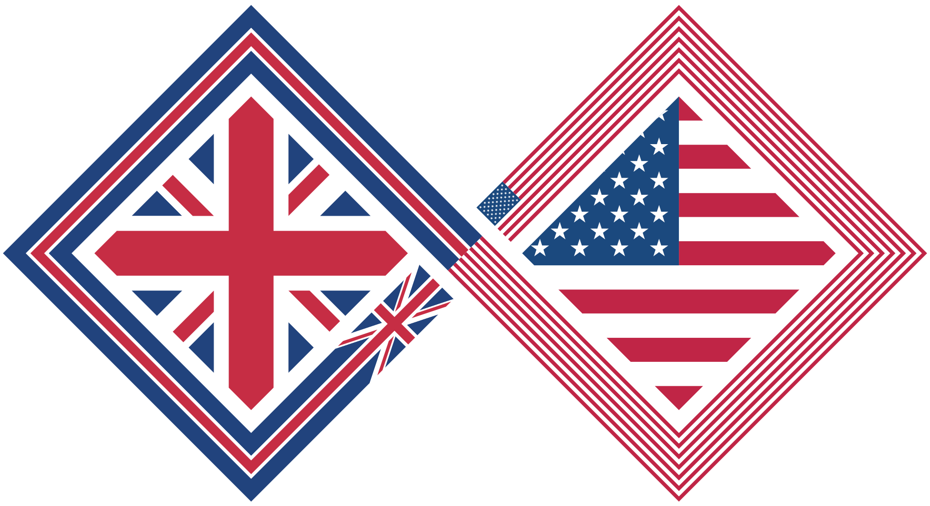
'tax shall not be imposed in the [UK] on [property held in a trust settlement] if at the time when the settlement was made the settlor was domiciled in the [US] and was not a national of the [UK].'

The precise scope of the term 'tax' as used in this provision is somewhat vague and there does not appear to be any legal authority on point. However, some leading commentators suggest that Article 5(4) should be read expansively to encompass both personal UK IHT exposure on GROB Trusts as well as ongoing RPR charges (regardless of GROB Trust status). This expansive interpretation accords with the plain meaning of the provision and indicates that Article 5(4) effectively replicates large parts of the excluded property trust regime.

Eligible Americans who previously established non-UK trusts may seek Article 5(4) relief against RPR charges. At the same time, Article 5(4) may be a key estate-planning tool for Americans going forward, as the Treaty may insulate non-UK assets in Article 5(4) trusts from personal UK IHT liability (to the extent the trust is a GROB Trust) as well as RPR charges. Where an American anticipates being UK resident for a significant time, an Article 5(4) trust may be established, as part of his or her pre-UK immigration planning or very soon after arriving to the UK, to shield non-UK situs assets from UK IHT when personal or economic ties to the US are at their strongest. Immediate planning should help insulate against the risk that an individual's domicile shifted from the US to the UK as he or she spends considerable time in the UK. This planning strategy may allow an American to effectively 'lock in' his or her Article 4 US domicile status at an early stage, insulating trust property from UK IHT even if that person's ties to the United States may wane over the years between moving to the UK and when he or she eventually passes away.

Conclusion

Article 5 may give Americans resident in the UK significant protection against personal UK IHT exposure as well as assets held in trust. However we caution that because Article 5 has been relatively untested or relied upon until now, there is little authority as to how this provision will be interpreted by HMRC. Therefore, there is some unavoidable risk in relying on Article 5 to shield non-UK situs assets from UK IHT, at least until HMRC's position becomes clearer. In addition, HMRC may become less sanguine about continuing to respect the Treaty in its current form and there may a future desire to renegotiate its terms.



NON-DOMS ON THE MOVE

THE SPANISH IMPATRIATE REGIME AND SPANISH INHERITANCE AND GIFT TAX

Authored by: Sonia Velasco (Partner) and Sílvia Niubó (Principal Associate) - Cuatrecasas

The abolishment of the United Kingdom's (UK) non-domiciled (non-dom) regime and the changes to the inheritance tax framework have precipitated a significant exodus of UK non-domiciled individuals seeking more favourable tax jurisdictions.

Spain, with its attractive impatriate regime—colloquially known as the "Beckham law"—and lenient inheritance and gift tax (IGT) regulations in various autonomous communities, stands out as a highly appealing destination. This article explores the myriad opportunities available for non-doms considering a move to Spain.

Spanish impatriate regime: An enticing proposition

The Spanish impatriate regime, commonly known as the "Beckham law," offers a compelling taxation framework for individuals relocating to Spain for work purposes.

The impatriate regime provides exemptions for foreign-sourced income, including dividends, interest, rental income, and capital gains. Conversely, employment income and income from business or professional activities are subject to worldwide taxation but benefit from a flat tax rate of 24% on earnings up to €600,000, with a 47% rate applied to amounts exceeding this threshold.

To qualify for the impatriate regime, individuals must relocate to Spain for work purposes, which include, among others, the following scenarios:

1. Employment with a Spanish employer or an assignment to Spain mandated by the current employer.
2. Remote work for a foreign employer, using exclusively computer and telecommunication systems.
3. Appointment as a director of a Spanish entity, provided the individual holds a direct or indirect participation in the entity. However, if the entity is classified as a passive company (i.e., over 50% of its assets are not engaged in business activities), the individual's participation must be below 25%.

Spain imposes wealth tax and a so-called solidarity tax on high-net-worth individuals owning assets exceeding certain thresholds.

Individuals under the impatriate regime are subject to both taxes on their Spanish situs assets only, meaning only assets located in Spain are considered when calculating these taxes. This provides a significant advantage for individuals relocating to Spain, as their foreign assets remain beyond the scope of both taxes.

Wealth tax is a progressive tax levied on the net value of an individual's assets, with rates ranging from 0.2% to 3.5%, depending on the autonomous community. The solidarity tax applies to individuals whose net worth exceeds €3 million, with rates ranging from 1.7% to 3.5%.

However, individuals subject to both taxes are not subject to double taxation, as the wealth tax paid is credited against the solidarity tax payable.

Inheritance and gift tax in Spain

The impatriate regime does not offer special provisions for Spanish IGT.

Therefore, individuals under this regime who receive assets through inheritance or inter vivos gifts are subject to the same tax rules as ordinary residents in Spain.

Notably, in Spain, the beneficiary of an inheritance or a gift is the one liable for IGT. The inheritance or gift is subject to the tax if the beneficiary is a Spanish tax resident (or if there are Spanish situs assets, in the case of a non-resident beneficiary), regardless of the decedent's tax residency. There is no inheritance tax treaty in force between Spain and the UK.

a) Receiving assets through inheritance or inter vivos gifts while being an ordinary Spanish resident or under the impatriate regime

If the impatriate (or ordinary tax resident) is the one who inherits or acquires assets through a gift, he or she would be subject to Spanish IGT.

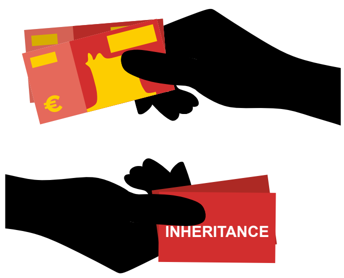
Spain's autonomous communities possess the authority to modify, in certain provisions, the national IGT rules, resulting in significant variations from one autonomous community to another. IGT rates in Spain can reach 34% but some autonomous communities offer generous exemptions and allowances, such as in the following cases:

- **Andalusia:** Provides a 99% allowance on both inheritance and gift tax liabilities for transfers between parents, descendants, spouses, and registered de facto partners.
- **Community of Madrid:** Provides a 99% allowance on both inheritance and gift tax liabilities for transfers between parents, descendants, and spouses. Also, the scope of allowances has been extended to include siblings, uncles, and nephews, offering a 25% allowance.
- **Balearic Islands:** Provides a 100% allowance on inheritance tax for transfers between parents, descendants, spouses, and registered de facto partners. For inter vivos gifts, the allowance results in a 7% effective tax rate.
- **Catalonia:** Provides a 99% allowance on inheritance tax for transfers between spouses or de facto partners. For gifts to descendants, ascendants, spouses, and de facto partners, tax rates are reduced to a maximum of 9%.

To apply the above allowances in case of gifts, certain autonomous communities may require the transfer to be executed in a public deed, and the origin of funds must be proven for cash gifts.

For each transfer of assets, what autonomous community regulations are applicable will need to analysed. This determination will hinge upon several factors, including the residency status of the decedent (or the donor) and the beneficiary, as well as whether the transfer includes Spanish real estate. For this reason, a case-by-case analysis is required.

Beyond the general tax benefits available under the impatriate regime and autonomous community IGT regulations, Spain offers specific incentives for transferring family businesses. However, given the complexity and significance of these incentives, a detailed analysis of this topic deserves its own dedicated article.



b) Transferring assets through inheritance or inter vivos gifts while being an ordinary Spanish resident or under the impatriate regime

If an impatriate (or ordinary tax resident) makes an inter vivos gift or deceases while being a Spanish tax resident, the transfer of non-Spanish situs assets to nonresident beneficiaries is not subject to Spanish IGT. In other words, nonresident beneficiaries are only liable for Spanish IGT if they receive Spanish situs assets.

Also, from a Spanish perspective, if an impatriate donates assets as a gift, it is considered that they realize a capital gain (or loss) equal to the difference between the asset's acquisition value and market value. However, the capital gain is not subject to tax in Spain if the gift comprises non-Spanish assets.

Conclusion

Recent changes to the UK tax regime have prompted non-domiciled individuals to seek alternative jurisdictions to optimise their tax liabilities. Spain, with its attractive impatriate regime and favourable tax incentives for IGT, stands out as an attractive destination. By carefully planning their relocation timing and choosing the autonomous community in Spain that is best suited to them, UK non-doms can significantly reduce their tax burdens. The Spanish tax system, particularly the impatriate regime, offers substantial benefits for those relocating for work purposes, while variations in certain rules between autonomous communities provide further opportunities for tax optimisation.

In addition to the above, is worth noting that the Community of Madrid has enacted a new tax incentive aimed at attracting non-resident individuals who wish to establish their tax residence in Madrid, popularly known as the "Mbappé Law".

The regulation aims to attract new investors to the Community of Madrid by offering a 20% deduction in personal income tax (applying on the part corresponding to the Community of Madrid), for new investments in certain assets. Investments that qualify for this deduction include bonds, debentures, and any security that represents a participation in any type of entity, such as shares, ETFs, and CIIs.

The main limitations are that investments cannot be made in non-listed entities resident in tax havens, in companies where the taxpayer has a significant participation, or in companies where the taxpayer is an administrator or employee. The investment must be made in the fiscal year of acquiring tax residence in Madrid or the following year. Alternatively, it can be made in the year before acquiring tax residence when the investments consist of purchasing equity or debt securities issued by Spanish entities. Note that this incentive is incompatible with the impatriate regime.

KEY POINTS FROM THE FIRST POST-BUDGET HMRC NON-DOM TAXATION SUBGROUP MEETING

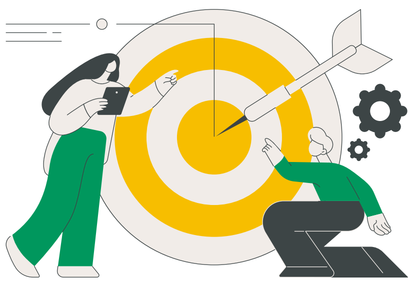
Authored by: Lucy Byrne (Associate) - Hunters Law

As we move into the New Year, the dust has begun to settle following the 2024 Autumn Budget. On 18 November 2024, HMRC invited members of its Wealthy External Forum and Capital Taxes Liaison Group to the first post-Budget non-dom taxation subgroup meeting, the minutes of which have now been published.

Representatives invited included those from the Law Society, the Society of Trusts and Estates Practitioners and the Institute of Chartered Accountants in England and Wales, among others.

The subgroup will meet approximately every four weeks and aims to give HMRC a greater understanding of the impacted customer group, increase transparency, provide an opportunity for representatives to feed directly into draft guidance, facilitate discussions around implementation, and ultimately enhance the working relationship between HMRC, customers and representatives.

The first meeting focussed on discussion of some of the key provisions of the Finance Bill, including the treatment of double tax treaties, the statutory residence and domicile tests, exit charges, national insurance, the temporary repatriation facility and the remittance basis.



Some Clarity…

Double Tax Agreements – No Change?

Attendees sought clarity on how the long-term residence test will interact with double tax agreements, particularly concerning US domiciled individuals.

In circumstances where a US domiciled, UK deemed-domiciled individual returns to the US and dies within 3 years of living there, they would currently be caught by UK inheritance tax under the new long-term residence rules. Attendees sought clarity as, unlike the deemed-domicile rules, long term residence as set out in legislation does not appear to override treaties and, given that the US treaty still mentions domicile, it is unclear whether the legislation will address this.

HMRC confirmed that there is no change within the draft legislation to the way that the double taxation conventions currently operate.

It was also queried whether it was HMRC's intention that, where a non-UK domiciled spouse who qualifies for inheritance tax relief under a double taxation agreement elects to becoming long term resident in the UK for inheritance tax purposes, this election should have no practical effect.

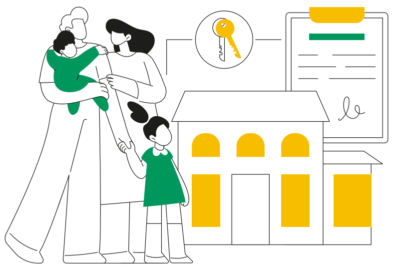
HMRC confirmed that their status as a long-term resident will not be relevant to the operation of double tax treaties. However, HMRC additionally clarified that where the domicile or deemed domicile status gives taxing rights to the UK under the treaty, the long-term UK residence rules will be relevant.

Statutory Residence Test (SRT) – Possibility Of Election Pre-2013-2014

Attendees noted that it can often be difficult to ascertain residence under the pre-SRT rules, particularly with the passage of time since 2013-2014.

Attendees therefore suggested that individuals could be offered the opportunity to elect to apply the SRT rules where residence has not been settled pre-2013-2014.

Existing pre-SRT rules do not allow individuals to determine residence according to SRT rules for pre-2013-2014 tax years, so the legislation would need to be adjusted should Government wish to adopt this approach.

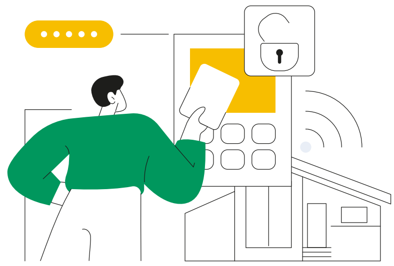


Domicile Test Replaced By Long-Term Residence Test - Reset After 10 Consecutive Years of Non-Residence

HMRC clarified that the reference to 19 years in the newly inserted section 6A IHTA 1984 below:

> 'but an individual is not a long-term UK resident at any time in a tax year ("the current tax year") if they were non-UK resident—
>
> **(a)** for any 10 consecutive tax years during the 19 tax years before
>
> the current tax year, or
>
> **(b)** for at least the required number of consecutive tax years ending 10 with the tax year before the current tax year'

provides a mechanism for a reset after 10 consecutive years non-residence, aligning with foreign income and gains. Attendees agreed that individuals could otherwise still be in scope of inheritance tax in the 11th year.



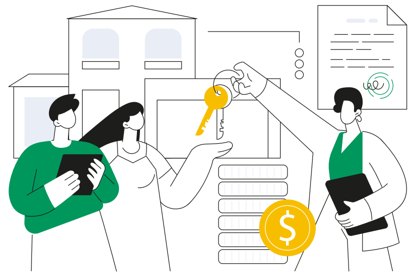
Exit Charges

HMRC confirmed that if an individual is currently a formerly domiciled resident and becomes a non-long-term resident on 6 April 2025, trust property will change to excluded property and there will be an exit charge.

Attendees also asked whether the tax treatment will be the same if an individual leaves the UK before 6 April 2025, and is initially still treated as a long-term resident, but then ceases to be a long-term resident after 3 years. HMRC confirmed that an exit charge would similarly arise in this situation.

On exit charges as at 6 April 2025, attendees highlighted that it could be seen as unfair treatment for those UK domiciles whose trusts were in scope, but become out of scope under the long-term resident settlor test. HMRC confirmed that this would bring forward a charge from the next ten-year anniversary.

Many UK domiciled, non UK resident individuals with trust structures may face charges on these relevant property trusts as they move out of the relevant property regime on 6 April 2025.



Situs Of Foreign Property

HMRC clarified that for the provisions relating to an interest in possession or gift with reservation of benefit trusts to apply, a property must be foreign situated throughout (not just at the relevant chargeable event) to remain excluded. This may discourage individuals from acquiring UK property, which was noted by attendees.

Relief on Foreign Employment Income and application of PAYE for internationally mobile employees

HMRC confirmed that legislation does not change the National Insurance position or process for employees. The existing social security agreements and processes for globally mobile workers will continue.

And Some Answers Yet To Come…

Attendees also raised questions about the Temporary Repatriation Facility and the remittance basis after the 2024/25 tax year upon which HMRC have yet to provide clarification. With the next meeting due to take place in the coming weeks, it is hoped that HMRC will continue to expand upon the points raised and account for the intricacies of the drafting required.

The confirmed changes and clarity provided thus far underline the importance of obtaining specialist advice on residency status as well as remaining mindful of key dates for trusts, and the situs of any assets held.

Circle

Private Client Contentious Trusts Circle Europe

24-25 April 2025 (Thursday & Friday)

Le Mirador Resort & Spa, Vevey, Switzerland

In its fourth successful year, this event has previously taken place in the UK, and for the first time, we're moving locations to the beautiful mountain setting of Le Mirador Hotel in Vevey, Switzerland.

This event is an exclusive TL4 Circle event and is by invitation only. Curated by our Co-Chairs and Advisory Board, this Circle brings together key practitioners focusing on both non-contentious and contentious private client work. We are currently working with the Co-Chairs and Advisory Board on an interactive and next level agenda for the discussions. There are no set-piece presentations or panel sessions and purely designed to be as interactive and as inclusive as possible.

Co-Chairs:

Geoff Kertesz
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Charlotte Fraser
Farrer & Co

Advisory Board:

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Robert Christie
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Jutta Gangsted
Lenz & Staehelin

Attendance, Booking & Partnership:

Please contact Rachael Mowle, BD & Partnerships Director

on +44 (0) 20 3398 8560 or email rachael@thoughtleaders4.com

MAKING THE HARD WORK PAY

MAXIMISING A BUSINESS EXIT

Authored by: David Barker (Senior Wealth Planner) - Lombard Odier

Selling a business is a life-changing event for many entrepreneurs, and one that is actively pursued by an increasing number of business owners. Indeed, recent research suggests that 65% of owners are looking to sell, with 40% hoping to sell within the next two years, according to research from Evelyn Partners. Yet there are several emotional and practical considerations that entrepreneurs will face on their 'exit journey'.

Making The Decision To Sell

Some business owners will find this first step – making the decision to sell – a tough one to take. These may be entrepreneurs who started their own business, nurturing it through good times and bad, taking financial risks and shaping it into something remarkable that others want to buy. Or they may be the current holders of a family business that has passed through a generation or more, and become almost a part of the family.

Business owners are highly dedicated, and their companies will have demanded deep practical and emotional commitment. Sellers should expect mixed feelings: concern for the business under new ownership and the employees who remain, but at the same time relief that a significant liquidity event will secure the family's long-term future.

At what can be an emotionally charged time, it is important to focus on practical actions that will help to maximise the value of the deal.

Getting The Business Into Top Shape

If the timeframe allows, it's best for the owner to invite advisers to assess the business and identify – and rectify – any problem areas. If this isn't done, these issues will be discovered in the process of rigorous buyer due diligence, and this may put the owner under price pressure.

The exercise is usually straightforward, focussing on basics such as checking the terms of key customer contracts; ensuring security of tenure over business premises; checking that ownership of intellectual property is correctly registered; ensuring the existence of a robust IT data recovery plan; checking that the business is fully compliant with its PAYE, VAT and tax obligations, etc. The list goes on….

Let The Team(s) Take The Strain

The importance of identifying the right advisory team to support the owner cannot be underestimated. And it may be necessary to consider deploying two teams rather than one (although there may be overlaps).

Firstly, there will be the specialist team needed to provide support in the lead-up to the sale and during the sale itself. This team may comprise the corporate financier who can assist in identifying the best buyer and guiding the negotiations; the corporate lawyer who will focus on the detailed terms of the sale and purchase agreement; the corporate accountant or auditor who will provide support to the owner in responding to buyer due diligence; and one or more tax specialists who can advise on any pre-sale restructuring that may be necessary, not forgetting shareholder tax planning for the owners.

Secondly, the owner's financial and tax situation will be radically different post-sale, and advisers with a different set of skills will be needed. A safe bank at which to deposit the sale proceeds is a must, while decisions are taken on more long-term investment and asset allocation; a private client lawyer to advise on a multitude of new issues such as wills, succession, asset structuring and philanthropy; a personal tax accountant to deal with the potentially complex tax filing the owner will have to undertake post-sale; and one or more investment managers to manage or advise on the investment of the sale proceeds.

And then there is the wealth planner.

Wealth Planner?

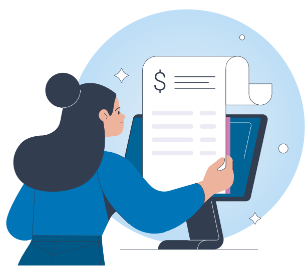
As a wealth planner, I cannot overstate the importance of this role. At a time when there are so many specialists in the teams focussing on their specific tasks, there is much to be said for the involvement of the experienced 'generalist'.

Their role is to step back, look at the bigger picture and help the owner keep the many considerations of the transition journey in perspective, as they move from business owner to wealth holder.

Some of these considerations are: understanding the financial priorities and cash flow needs of the owner and their family post-sale, including available liquidity to pay Capital Gains Tax (CGT) at the required time following the sale; help developing a plan for ongoing support and family wealth governance; succession planning involving distribution of wealth across a family grouping, perhaps using holding structures such as a family investment company; financial education of younger family members and the business owner themselves if they have not held financial investments previously; and understanding the owner's approach to philanthropy.

When Should The Teams Be Engaged?

With both teams, the answer is the sooner the better. There is much to be done pre-sale and much to plan for post-sale. As already observed, the wealth profile of the owner, in terms of liquidity, will change dramatically once the business has been sold. The owner's tax profile will also undergo a dramatic transformation, especially when it comes to Inheritance Tax (IHT), where business assets which may, for many years, have been protected from IHT are exchanged for wealth which is fully chargeable to IHT.



A Shifting Tax Environment

The Labour government's Budget on 30th October 2024 included a number of measures that will, to a degree, impact UK-based owners contemplating a business sale.

Aside from the increase in the CGT main rate from 20% to 24% which was effective from Budget day, the 10% rate applied to the first GBP 1 million of gains on disposals of business assets will increase to 14% for sales after 5th April 2025 and then to 18% for disposals after 5th April 2026.

There were also some immediate changes to the conditions that apply to claiming the CGT exemption for disposals to Employee Ownership Trusts.

Effective succession planning can still be performed in the pre-sale period, provided the post-sale advisory team is in place early enough to advise on it. The 50% reduction in IHT relief for business property above a new GBP 1 million threshold announced in the Budget may incentivise owners to consider a restructuring of shareholdings before the proposed changes are due to take effect on 6th April 2026.

We are in a shifting tax landscape and taking advice early will help to avoid pitfalls and make the most of opportunities.

Key Takeaways

There are some key points for all business owners contemplating a sale:

- Be patient and recognise that it can be emotionally difficult to give up your baby!
- Expect it to take longer than you might think.
- Get the right advisers in place.
- Explore the tax implications early.
- Have a plan ready for using wealth post-sale.

WHEN ARE RIGHTS OF OCCUPATION UNDER A WILL TRUST INTERESTS IN POSSESSION FOR IHT PURPOSES?

Authored by: Kate Selway KC (Barrister) - Radcliffe Chambers

The reader can be forgiven for thinking this was all sorted out in IRC-v-Lloyds Private Banking Ltd [1998] STC 559, but the recent case of Hall-v-HMRC [2023] UKFTT 32 (TC), has highlighted an interesting point that has not previously made its way into reported case law, although it's hard to believe that similar factual circumstances have never arisen before.

IHT liability (or if the IIP ends during their lifetime, say in favour of a non-charitable remainder beneficiary, they will be treated as having made a potentially exempt transfer). In Hall-v-HMRC the question mattered to the tune of £190,000. The IHT due to HMRC was either that amount or zero. A person will have an IIP if they have "a present right to present enjoyment" of settled property (Pearson-v-IRC [1981] AC 753).

In the Lloyds Private Banking case, a Revenue appeal from the Special Commissioners, Lightman J held that a husband who had been granted, under his late wife's will, a right of occupation in her half share of the matrimonial home, which they had owned as tenants in common, and who continued to occupy the property after her death, had an IIP in her beneficial half share.

The issue was whether the clause conferring the right of occupation in the half share, for as long as the husband wished, with a gift over to their daughter, conferred an IIP, or merely contained administrative directions. The judge held that the clause conferred an IIP.

The mere fact of occupation is not sufficient to give rise to an IIP under a will trust. In the case of Judge (Walden's Personal Representative)-v-HMRC

[2005] STC (SCD) 863, clause 3 of the testator's will gave to his trustees all his interest in the matrimonial home (which he owned in his sole name) upon trust for sale (with the consent of his wife in writing during her lifetime) and further declared that the trustee during the lifetime of his wife should permit her the use and enjoyment of the property "for such period or periods as they shall in their absolute discretion think fit", his wife paying the outgoings. The wife continued to occupy the property after her husband's death, but this was absent any specific exercise of discretion by the trustees who wrongly assumed that the wife had an automatic right of occupation under the will as long as she paid the outgoings. The tribunal decided that Mrs Walden did not have the right to occupy the property on a true construction of clause 3 in the absence of the exercise of the trustees' discretion and therefore she did not have an IIP in it. The fact that she occupied the property for the rest of her life and was treated by the executors and trustees as if she did have such an IIP was immaterial.

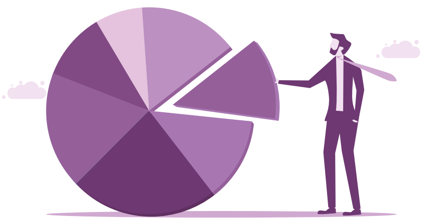
The issue in Hall-v-HMRC was complicated by a lack of liquidity in the estate. Mr Boggia was granted a right to occupy Mrs Raboni's property (but importantly not a substitute property) under the latter's will. The other assets in the estate were, however, insufficient to satisfy the IHT liability. This shortfall would have required the property to be sold to pay the tax, but for the decision of the remainder beneficiaries (who had been wrongly advised that the value of the property would be adversely affected by Mr Boggia's right of occupation) to delay realising their investment and pay the tax themselves.

The tribunal held that in the circumstances an IIP could not have arisen. The will trustees were therefore due a refund of £190,000 which they initially thought had become payable on Mr Boggia's death.

The justification for the decision can be explained in the following way. It is not the language of the will alone which confers the interest in possession on a beneficiary. In order to decide whether Mr Boggia actually had "a present right to present enjoyment" of the trust property it is helpful to consider two questions:

(1) What is the nature of a beneficiary's interest in an unadministered estate? and

(2) What are the relevant rules governing the administration of estates?



As to the former, beneficiaries of wills do not have beneficial or legal ownership of estate assets at the moment of the testator's death. During the period of administration they have inchoate rights only, including the right to compel due administration of the estate (see Commissioner of Stamp Duties-v-Livingstone [1965] AC 694 and Re Leigh's Will Trusts [1970] Ch 277.) Mr Boggia did not have an IIP in the property, or a present right to present enjoyment of it, immediately upon Mrs Raboni's death. Like any other beneficiary, he had a right to compel due administration of the estate. Whether his inchoate rights were capable of maturing into an IIP in the property, specifically the limited right to occupy it on certain conditions, therefore depended upon whether the will trust was capable of being properly constituted upon completion of due administration of the estate.

As to due administration, where the residue is insufficient to bear the burden of all the estate's liabilities then s. 34 and Schedule 1, Part II of the Administration of Estates Act 1925 sets out the order in which estate assets are to bear the liabilities. In the case of Mrs Raboni's estate the position is straightforward because there was only one other asset from which the tax liability could be paid: the property.

A combination of the limited rights granted to Mr Boggia under the will (i.e. no right to occupy a substitute property) and the insufficient size of the residuary estate to bear the IHT burden, meant that Mr Boggia's inchoate rights were never capable of maturing into an IIP (a present right of present enjoyment) under the terms of the will. He did, as it happened, occupy the property for the rest of his life but he did not do so with the benefit and protection of an IIP. At best he was a gratuitous licensee and the mistaken understanding of the trustees and other beneficiaries as to the true position could not itself give rise to an IIP.

Kate appeared for the successful appellants in Hall-v-HMRC.

DUAL RESIDENT TRUSTS

MEANING OF 'PLACE OF EFFECTIVE MANAGEMENT' AND LESSONS FOR OFFSHORE TRUSTEES

Authored by: Gilly Kennedy-Smith (Partner) and Lorcan Higgins (Associate) - Mourant

Whilst there is extensive commentary on the tax implications of a trust's residency status, significantly less attention has been given to the complexities that arise when a trust is considered tax-resident in two jurisdictions during the same tax year – known as a 'dual resident trust'.

A dual resident trust characterisation can arise because the rules that determine the tax residence of a trust vary across different jurisdictions. To address this situation, most countries have 'tie-breaker' provisions included in relevant double tax agreements (DTA), which operate to determine where a trust will be taxable.

As an example, the Guernsey & UK DTA concludes that, where a trust is a tax resident of both jurisdictions in the same tax year, its liability for tax arises in the jurisdiction in which its 'place of effective management' (POEM) is situated.[1]

The purpose of this article is to understand the meaning of POEM with reference to recent UK case law, and identify key lessons for offshore trustees to ensure the appropriate tax residency of trusts under their purview.

DTA Tie-Breaker Test

Most DTAs between offshore jurisdictions (for example, Guernsey, Jersey and Mauritius) and other countries provide the following in respect of the tax residency tie-breaker test:

> "Where… a person other than an individual is a resident of both Territories, the competent authorities of the Territories shall endeavour to determine by mutual agreement the Territory of which such person shall be deemed to be a resident for the purposes of this Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors."[2]

This wording replicates that contained in Article 4(3) of the OECD Model Tax Convention on Income and on Capital, which is intended to resolve cases of double tax residence.[3]

1 Article 4 of the UK – Guernsey DTA.

2 See Article 4 of the UK – Guernsey DTA; UK – Jersey DTA; UK – Mauritius DTA.

3 Model Tax Convention on Income and on Capital 2014, Organisation for Economic Co-Operation and Development (2015).

Judgments in Haworth, Bunter and Smallwood

In the recent case of Haworth,[4] the UK tax tribunal examined the meaning of POEM in respect of a trust that was resident in both Mauritius and the UK during the same UK tax year (that is, a dual resident trust). The judgment in Haworth expanded upon the principles first established in Smallwood, and further developed in Bunter.[5]

Leaving aside the specific facts of each case, each of Haworth, Bunter and Smallwood reached a common conclusion: the POEM of a trust is determined by where the top level management (or the realistic, positive management) of the trust takes place.[6]

That is, notwithstanding that the trustee may be located and administer the trust in a certain jurisdiction, the POEM is where the key management and commercial decisions that are necessary for the conduct of the trust's business are in substance made.[7]

In each of the three cases, the subject trust was part of a 'round the world scheme' designed to avoid UK capital gains tax on a share disposal. The decisions involved in initiating, orchestrating, superintending and refining the scheme on an on-going basis were taken by the UK-based settlors of the trust and their UK advisers during the relevant tax year.[8]

Contrastingly, the offshore trustee's role was limited to executing the administrative actions necessary to implement the scheme as directed by the UK-based parties.[9] The day-to-day management of the trust by the offshore trustees was considered subordinate to the overarching control exercised from the UK, underscoring the distinction between routine administration and substantive decision-making and the implications on the tax residency of a trust.

Lessons For Offshore Trustees

In light of the recent tax changes announced as part of the UK Autumn Budget, it is anticipated that many offshore trusts will be restructured. Such restructures may involve bringing offshore trusts 'onshore' or appointing new trustees in different jurisdictions, potentially leading to dual resident trust scenarios.

Having regard to the DTA tie-breaker test and the judicial interpretation of POEM set out in Haworth, Bunter and Smallwood, it is important that trustees, settlors, and their advisers carefully consider where the real top level management of the trust is conducted. To maintain the trust's intended tax residency, key management and commercial decisions essential to the trust's activities must, in substance, be made in the same jurisdiction.

For instance, it is prudent that offshore trustees seek advice from local advisers in their same jurisdiction when contemplating significant activities or transactions. It is not uncommon for offshore trustees to act on instructions from UK-based (or 'onshore') settlors or advisers.

However, such arrangements carry the risk of adverse tax consequences under the POEM test if decision-making is perceived to be directed from the UK or onshore jurisdiction regarding a dual resident trust.

Additionally, it is important that for trustees to maintain detailed records of the decisions and undertakings that give effect to or demonstrate the management of the trust, including where those decisions and undertakings take place. It is recommended that trustee minutes and resolutions not only document the physical location where they are executed, but also account for any input or influence from external parties (such as third-party advisers). This practice ensures transparency and helps mitigate risks related to the trust's tax residency status.

4 Haworth v HMRC [2024] UKUT 00058 (TCC) (Haworth); [2022] UKFTT 00034

5 HM Revenue and Customs v Smallwood [2010] EWCA Civ 778 (Smallwood); Lee and Bunter v HM Revenue and Customs [2017] UKFTT 279 (TC) (Bunter).

6 Haworth, paragraph 130.

7 Haworth, paragraph 145.

8 Haworth [2022] UKFTT 00034, paragraph 362.

9 Ibid.

UK TAX CHANGES AND THEIR IMPLICATIONS FOR TRUSTEES

Authored by: Tracey Neuman (Private Client Executive) - Ocorian

In 2024, the year of elections, tax was central as one of the most-popular areas for adjustment and reform and Tracey Neuman, Private Client Executive at Ocorian – the specialist provider of fund, corporate and fiduciary services – examines some of the changes seen in the UK, and how trustees should respond.

The great American novelist and humourist Mark Twain probably didn't have fiduciary professionals in mind when he wrote down one of his most-famous quotes, but it feels that our line of work is impacted disproportionately by Twain's fixed certainties: death and taxes.

That sense around the latter has been heightened since the UK's general election in July 2024, and the subsequent Autumn Budget in October. The Budget – the first from a Labour Government since 2010 – was as trailed as it was feared by those who crave stability and proportionality.

The long lead-in did seem to result in some moderation, but there were still myriad changes that every trustee needs to be aware of for managing their clients' affairs. Here are some of the most significant:

Grandfathering of existing trusts

Where the trust was settled by a non-domiciled (non-dom) settlor, the trust fund will not be treated as part of the estate of the settlor on death for inheritance tax (IHT) purposes if they are a long-term resident – so it won't be subject to the 40% rate.

However, this only applies to non-UK assets held at trust level on 30 October.

Any UK assets at trust level will not be protected from the 40%.

There are a number of considerations for trustees here, for example looking at whether loans to UK residents are specialty debts. If they are not, the value of those loans would be subject to IHT at the death of the settlor. Repaying the loan will not provide protection, as the replacement non-UK assets would also not be protected.

If any non-UK assets are replaced with UK assets in the future, the protection would be lost in respect of those assets even if subsequently replaced with non-UK assets.

This treatment will also be relevant for structures where the settlor is not a long-term resident, because they could become so in the future.

What should trustees be doing now for any trust with a living settlor?

- Keep a note of the assets held at trust level on 30 October 2024.
- Review loans from the trustees.
- Re-iterate investment policy statements (IPSs) with investment managers to ensure no accidental investments in the UK.
- Consider putting in place an investment holding company (if one does not exist) to eliminate risk of holding UK assets at trust level.

Exit charges

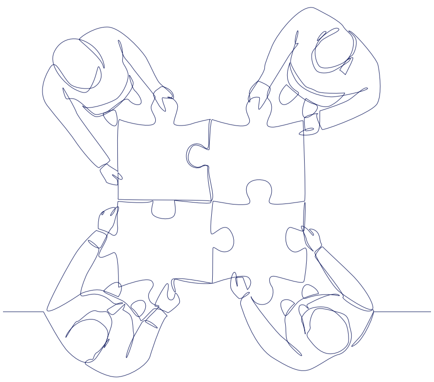
An exit charge will arise when a settlor ceases to be long-term resident (so the trust is no longer subject to IHT on the ten-year anniversaries). This will also apply in some situations which you might not expect:

Date of charge	Impacted structures
6 April 2025	• Any trust established by a UK domiciliary who would not be a long-term resident • Any trust established by a formally domiciled resident who is not long-term resident • Any trust established by a non-dom, who became non-resident from 6 April 2022
6 April 2026	• Any trust established by a non-dom, who became non-resident from 6 April 2023
6 April 2027	• Any trust established by a non-dom, who became non-resident from 6 April 2024
6 April 2028	• Any trust established by a non-dom, who became non-resident from 6 April 2025

We also need to bear in mind the different timeframes for losing long-term resident status, which depend on how long the settlor has been resident:

Number of years of residence	Number of years to cease to be a long-term resident
10-13 years	3
14 years	4
15 years	5
16 years	6
17 years	7
18 years	8
19 years	9
20+ years	10

Considering this, it is crucial for trustees to confirm the residence status of settlors, particularly those who have left and, for those who haven't, the tax year in which they became UK resident.



Beneficiaries looking for a trust distribution to utilise the TRF

The temporary repatriation facility ("TRF") potentially reduces the tax charge on an individual's foreign income and gains that have previously been outside the scope of charge by virtue of the remittance basis to 12% for 2025/26 and 2026/27 and 15% for 2027/28. It has been extended to cover trust distributions received by beneficiaries up to 5 April 2028, as long as they have previously claimed the remittance basis.

However, the reduced rate of tax only applies to the part of the distribution that is taxed by reference to either relevant income received or capital gains realised before 6 April 2025.

Relevant income matches to benefits/distributions in priority to capital gains. It is the most-recent income/capital gains that are taxed in priority to older income/capital gains and the charge only crystallises for the beneficiary at the end of the tax year. This means that for distributions during that three-year window, it could be very difficult to ensure that the tax payable by a beneficiary is limited to the rates under the TRF, meaning the distribution on 6 April 2025 will not necessarily lock in the lower rate. We're looking at ways to guarantee this and think that the following scenarios would meet requirements:

- Trusts where the settlor becomes taxable on the income and capital gains on 6 April 2025 because they have been UK resident for more than four tax years.
- Trusts where the investments have been placed into certain investment wrappers prior to 6 April 2025.
- Where the beneficiary receives the distribution this tax year and is still able to claim the remittance basis (subject to checking that the pools are sufficient to full match the distribution).

For trusts where there are UK-resident beneficiaries, trustees should ensure that the tax pools for each trust are up to date and consider generating income or capital gains this tax year to ensure pools are sufficient to match to distributions.

The tax landscape has never been simple, and it's increasingly incumbent upon trustees to be aware of changes and to communicate them to clients.

This is where we can sometimes come up against another of Twain's aphorisms – "The more you explain it, the more I don't understand it"

– and hope that we can overcome it through clear advice and respect for the role of the modern trustee.

"BETTER TOGETHER" IN TIMES OF CHANGE

Authored by: David Kilshaw (Head of Wealth Solutions) - Rothschild & Co.

Even ignoring tax return pressures, January can be a demanding month. There is the tension of facing a new year and the changes and challenges it may bring from the tax perspective.

2025 could be a noteworthy year in this regard. The seeds were sown last October when Chancellor Reeves delivered her Budget. It was not a Budget of memorable headlines (aside from it being the first Budget by a female Chancellor), but in the longer term it will have a major impact on the structure of UK taxation and how advisers need to come together to aid clients.

This article looks at the structural changes and their impact on how professionals must face the challenges.

Rothschild & Co do not provide tax advice and in practice, would work with lawyers and tax advisers on the detail mentioned below:

The Structural Changes

With the retiring of domicile as a connecting factor for UK tax purposes, one could argue that the October Budget marks the biggest change to the structure of UK personal taxation for over 200 years.

There will be few readers (unless they spent the whole festive season in Lapland) who are unaware of the tax changes which will crystallise in 2025. But for the Lapland residents, a brief recap:

- From 6 April 2025 residence will replace domicile as the connecting factor for UK taxation. Individuals who are UK resident will normally pay tax on their worldwide income and capital gains.
- The remittance basis of taxation will remain relevant for income and gains which arose prior to April 2025. Practitioners will have to face the challenge of remembering these complex rules, possibly for many years, but they will become less used in practice. That will be quite a challenge.
- To mitigate against the move to an "all in" arising basis, there are a number of transitional provisions (which are subject to qualifying conditions):

  i. Personally held offshore assets can be rebased to their value on 5 April 2017;

  ii. The 4 year FIG regime. If an individual has had a period of 10 consecutive years of non UK residence, they can have 4 years of tax free offshore income and gains whilst a UK resident whether or not they are remitted to the UK. This could encourage residents of Lapland (and other countries) to visit the new tax haven (the UK) to avoid local taxes – for example on the sale of their seasonal logistics business.

  iii. The Temporary Repatriation Facility. For a period of 3 years from 6 April 2025, those non doms who have monies trapped offshore (due to the heavy tax charge on using the monies in the UK) can designate their funds (and any offshore assets represented by them) so that the funds (whenever remitted) only suffer a 12% tax charge (rising to 15%).

- Settlor interested Trusts will lose their "protected" status for income tax and CGT purposes such that income and gains will be taxed on the settlor as they arise. This will have important consequences, as discussed below.
- The rules relating to inheritance tax (IHT) are to change too. Excluded property trusts will only avoid IHT on their non UK situs assets at times when the settlor is not a long term resident in the UK. This will considerably increase the administrative burden of trustees, as trusts can swing in and out of an IHT exposure depending on the residence plans of the settlor.

Impact

The above changes will have a major impact over the next decade and beyond. The impacts are too numerous to mention, but include the following:

- A revised approach to estate and succession planning. Non-doms will no longer be able to benefit from excluded property and there have been changes to the key reliefs from IHT, business property relief and agricultural property relief. Planning earlier in the life cycle and life assurance will have an increased prominence.
- There will be an increased emphasis on the statutory Residence Test and the mobility of clients. The focus on record keeping to track movements will grow.
- The TFR with its 12% tax rate should be considered by many clients. This is an attractive tax rate and could include a solution which provides the simplicity and release from complex structuring which many clients crave.
- With the end of trust protections and rising tax rates, there will be an increased use of tax "wrappers". A properly selected "wrapper" can offer not only tax efficiency, but administrative and tax reporting ease and avoid complexity.

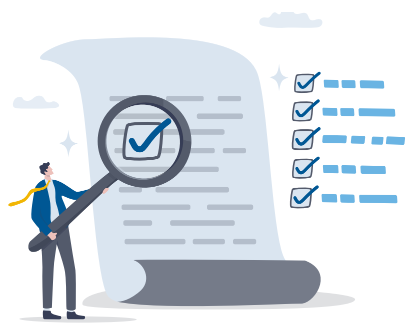
Working Together

These changes will require advisers, (be they trustees, lawyers, tax advisers, investment advisers and others) to work as one. In 2025 there will be a premium on "joined up" advice.

This is perhaps best illustrated by the use of "wrappers". As stated, they will have an increased role to play, but there are a host of wrappers: OEICs, offshore bonds, private unit trusts, protected cell companies, family investment companies to name just some.

Each wrapper has its own aspects to consider, be they tax, regulatory, security, investment considerations or other.

Clients can only be confident they have the correct wrapper where their advisers unite. Tax advisers can explain the tax rules (and are essential for that), but an investment adviser can assist in ensuring the wrapper is the correct one for the clients investment portfolios and also add practical experience of managing assets via a wrapper.



A Case Study

A case study can help illustrate the role of advisers working together.

An individual who is deemed domiciled in the UK created an excluded property trust at the start of the decade, the beneficiaries are the settlor and his children. The Trustees formed an offshore company which holds most of the Trust assets. The Trust contains significant stock piled gains.

Until the proposed changes the settlor's tax position was relatively "comfortable" in that he had considerably reduced his exposure to the main UK taxes. His comfort levels changed when his tax adviser outlined to him the impact of the proposed changes.

From 6 April 2025, the settlor and trustees will need to plan for new tax charges. The trustees realised that they and the settlors need a clear plan to navigate a course through the changes and were pleased when their tax adviser proposed a "strategy session", to include the trustees, the settlor, the tax adviser, but also their investment advisers (who also attend with a member of their wealth solutions team).

It proved to be a productive meeting, the parties agreed to sell some investments now and rebase others (so gains are taken before they would be taxed on the settlor). The Trustees then decided to place investments in a "wrapper". The Trustees were aware that they could use an "offshore bond" but they were not sure if this was the most appropriate "wrapper". Following discussions around the purpose of the trust, guided by tax and investment decisions, the trustees decide to select on OEIC primarily on the basis that the profit on realisation would be subject to CGT and that best suited their plans (in other cases a bond may have been more appropriate). As the meeting concluded, everyone in the room agreed that it was only the collective input which had enabled such a complete and positive outcome.

Circle

Private Client Circle of Trust UK

8-9 May 2025 (Thursday & Friday)

Fairmont Windsor Park, UK

The Circle of Trust forum is an exclusive TL4 event and is by invitation only. The event is chaired by Marcus Parker of Stewarts and Emily Osborne of Stephenson Harwood. Entering its fourth year at the luxurious Hotel & Spa, The Fairmont Windsor, we look forward to welcoming senior level private client practitioners for one and a half days of comprehensive discussion.

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RECENT DEVELOPMENTS IN THE ATTITUDE OF THE JERSEY COURTS TO ONSHORE TAX

Authored by: Sam Williams (Partner) & Olivia Lewis (Associate) - Appleby

At a time of ever-increasing transparency and international cooperation, what is the attitude of the Jersey courts to onshore taxes in the context of private wealth? This article looks at some of the recent cases and considers the trends.

Orthodoxy

The starting point for the Jersey courts will be that foreign taxes are unenforceable both directly and indirectly (the so-called "revenue rule"). This is a well-established principle of private international law founded on the idea that the courts should not extend the reach of foreign sovereign authorities beyond their own jurisdiction, and that revenue collection is essentially a domestic matter between a government and its subject.[1]

Most modern trust instruments will contain an express power for the trustee to make payments of foreign taxes even though they would be irrecoverable against the trustee or a beneficiary. However, trustees may find themselves open to criticism for making such payments, and will usually need to consider whether a payment is in the best interests of the beneficiaries as a whole.

Where such payments are substantial and would be opposed by a number of the beneficiaries, a trustee may be well-advised to seek approval from the courts as part of a directions application.

What then is the position if a trustee is treated as liable to pay tax by a foreign tax authority, but on questionable grounds that the trustee would need to challenge at the expense of the trust assets or at the risk of submitting to a foreign jurisdiction? This issue arose in the case of Representation of Equiom Trust (CI) Limited [2022] JRC 288, where a Jersey trustee wanted to challenge a tax liability in the French courts. The Royal Court authorised the tax challenge on the basis that reducing the tax liability would be in the best interests of all the beneficiaries. However, the trustee was not permitted to substitute trust capital for the security paid by a French resident income beneficiary, as that might be contrary to the interests of the capital beneficiaries. The Court considered that moving trust assets onshore to France in order to provide security for the challenge would prevent the capital beneficiaries from arguing in the Jersey courts that any liability was unenforceable offshore.

Inroads

While the Equiom case demonstrates that the orthodox approach is alive and well there are a number of significant qualifications to this principle. Domestic tax legislation in Jersey introduced

1 See Dicey, Morris & Collins, Conflict of Laws, 16th Edn., Rule 20 and related commentary.

over the past 20 years gives effect to international obligations for the exchange of tax information, mutual administrative assistance in tax matters, and the collection of information under the OECD Common Reporting Standard, BEPS and FATCA regimes. The Jersey courts have been required to consider the legality of the legislation itself in judicial review proceedings, as well as to consider individual administrative decisions.[2]

In upholding the transparent and cooperative approach under the statutory regime, the courts have inevitably made significant inroads into the principle of declining to enforce foreign taxes, at least indirectly.

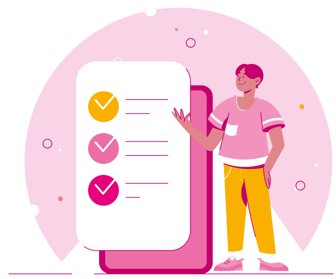
The Jersey courts are also frequently called upon to reverse transactions which have given rise to unexpected tax liabilities. Most commonly, this will take the form of a statutory application to set aside a mistaken transfer of property into a trust, or to set aside the trust in its entirety. A disposition to a Jersey law foundation may also be set aside, although the foundation has legal personality and must remain in existence. It is standard procedural practice for the application to be notified to the onshore tax authority, or for the authority to be convened, so that they have an opportunity to make representations.[3] Underlying this practice is the assumption that the interest of a tax authority in the collection of foreign tax is or at least may be a consideration relevant to the exercise of a court's judicial discretion.

Two cases in 2024 show that the Jersey courts will also apply these principles more widely and beyond "mistake" applications, where onshore tax authorities may have a prospective interest in the outcome of the proceedings.

In Representation of NBK Trustees (Jersey) Limited re C Trust [2024] JRC 133, the Jersey court granted an application for rectification by the Jersey-resident trustee of a Guernsey law trust, applying Guernsey law. In this case, an omission in the drafting of the trust instrument meant that the late settlor was not excluded as a beneficiary of the trust as had been intended. As a result, adverse UK tax consequences arose: the settlement of property onto the trust was considered to be a gift with a reservation of benefit for the settlor and therefore the property, valued at approximately £3.5 million would attract inheritance tax (IHT) at 40%. The IHT liability would be eliminated if the application were to be granted, so the court directed that HMRC should be notified of the application and given an opportunity to respond. Although HMRC did not respond,[4] the case demonstrates that the interests of HMRC were expressly acknowledged by the Jersey court.

A proactive approach to notifying HMRC was demonstrated by the court's decision in Representation of IQEQ (Jersey) Limited re the B Trust [2024] JRC 210. The case concerned an application to vary the trust based on anticipated changes to UK tax laws which could have resulted in a significant tax liability. The application sought the court's consent to a statutory variation of a Deed of Exclusion in order to change it from being irrevocable to revocable, as well as a blessing of the trustee's decision to revoke the exclusion of the settlor and appoint the entirety of the trust fund to him. No tax liability was currently due but would arise in the future, and debate arose as to whether HMRC ought to be notified.

The court considered whether there was any customary procedure in the specific context of variation applications and reviewed a number of previous cases.[5] While the court noted that "practice has not been uniform" with regards to notifying onshore tax authorities, in this particular case, it decided that HMRC should be given notice given that the prospective tax liability would crystallise in 2032 and that, by granting the application, the liability would be removed. The application was subsequently adjourned so that the notification requirements could be fulfilled. HMRC chose not to intervene and, accordingly, the Court noted "there is nothing further in that respect which we need to consider".[6] The Court ultimately consented to and authorised the variation and blessing applications, determining that the proposed course of action was a proper one and in the beneficiaries' best interests.



Conclusion

Although the Jersey courts remain willing to reverse transactions which have given rise to unexpected tax liabilities, it is evident from recent case law that they are increasingly mindful of how such applications may adversely affect foreign tax authorities' interests. Whether foreign tax authorities will choose to participate in such cases remains to be seen, but the likelihood may have increased now that the UK Government is investing in the enforcement arm of HMRC. Should they do so, the Jersey courts will need to consider the impact of the orthodox approach and, in light of that, whether it is permissible to attach any weight to what an authority has to say in seeking to uphold foreign taxes.[7]

2 See, for example, Larsen v Comptroller of Taxes (No.2) 2016 (2) JLR 198

3 See, for an example of a case involving a foundation and a trust, Representation of B and C re the N Foundation and the M Trust [2023] JRC 166 (at paragraphs 31-33)

4 Representation of NBK Trustees (Jersey) Limited re C Trust [2024] JRC 133, para. 30-32

5 See Representation of IQEQ (Jersey) Limited re the B Trust [2024] JRC 210, para. 9 citing In the Matter of the DDD Settlement [2011] JRC 243, In the Matter of the Paicolex Trust Management AG Representation [2023] JRC 127 and In the Matter of the Representation of Accuro Trust (Switzerland) SA [2023] JRC 215

6 Ibid. paras. 10-12

7 It is suggested that this is or may be a different issue to the one determined by the Guernsey Court of Appeal in HMRC v Gresh 2009–10 GLR 239, where it was held that it did not amount to indirect enforcement of a foreign tax liability to allow HMRC to intervene in order to advance an argument on a point of Guernsey trust law.

TRUSTEES AND TAX

Authored by: Donna Brehaut (Associate Director) and Tina Coutanche (Tax Manager) - Saffery Trust

While tax planning may not be a topic that most people would jump out of bed for, it could certainly be something which keeps them up at night without the right support.

Although trustees are not tax advisors, those which offer tax compliance services can play a significant role in easing these concerns by working in partnership with a network of specialist service providers.

Coordinating and implementing effective tax strategies involves many moving parts that may not immediately spring to mind. To make the subject slightly more interesting, imagine the demands of buying a car…

The first step on the journey is that an individual (or family) recognises that they need, or want, a car. Perhaps they may have previously been using public transport or walking, but something has changed – such as their financial circumstances, or their travel demands – and a car has become either a possibility or a necessity when it wasn't before.

They are now faced with a choice. They could take it upon themselves to compare various vehicles to best suit their needs and budget, learn how to do all the maintenance for the life of the car, keep abreast of changing emission regulations which may impact them and keep funding aside for repairs to potential accidental damage.

Most people, however, will either not have the interest, skills, or desire to take on all these tasks. Whether their car is for everyday use, an investment, or even a gift for someone else, most will simply want to enjoy the drive and outsource roles to various suppliers. From dealerships and garages to insurers and loan providers, it makes much more sense to rely on specialists who can manage the responsibility and risks that come with car ownership.

The biggest challenge for car owners is choosing the right service providers to trust to keep the car running smoothly, ensure compliance with all regulations, and provide peace of mind.

The same is true when it comes to wealth. People who have identified that tax planning is necessary and/or beneficial will face similar decisions. Do they manage everything themselves – keeping up with evolving laws, implementing complex strategies, and shouldering the risk of non-compliance – or do they appoint specialists to handle the complex twists and turns? Just as a mechanic ensures a car's longevity and performance, a reliable private client service provider ensures wealth is managed efficiently, compliantly, and effectively, allowing clients to focus on what matters most to them.

The challenge for individuals who engage service providers is often knowing where to start or who to trust with their assets. What constitutes the 'right' provider will depend entirely on the client's circumstances and objectives at any given time. It can quickly become a complex and time-consuming process to find and scrutinise various professionals at each stage.

By starting with a trustee, clients will be supported from the outset in identifying when specialist advice is needed, where to find it, and recommendations on who to trust. A high-level overview of a trustee's role can be segmented into five key areas, acting as navigators, facilitators, interpreters, responders, and protectors.

Navigators

While trustees are not tax advisors, they are well-equipped and qualified to ensure that tax compliance is maintained, once appropriate advice has been received.

Trustees have a duty to ensure that they understand tax compliance and will keep abreast of legislation in each relevant jurisdiction.

With a thorough understanding of their clients' circumstances, they will be able to identify individuals who will be affected by changes and provide tailored services to ensure tax efficiency is maintained.

They will also ensure that all tax deadlines (e.g. filing and reporting) are met, and that work is completed to a high standard in accordance with regulatory requirements. In doing so, they provide peace of mind to clients while shouldering the significant burdens of risk and responsibility.

Facilitators

Trustees play a crucial role in connecting their clients and beneficiaries with expert tax advisors, where required. This ensures the delivery of comprehensive financial planning that maximises tax efficiency while remaining fully compliant with all legal and regulatory obligations.

The value of a trust and corporate service provider is inherently tied to the strength and reliability of its network. By conducting rigorous due diligence, trustees build and sustain relationships with top-tier intermediaries, sparing clients the effort of independently sourcing tax advisors or other professionals, where necessary. This approach not only streamlines the process but also provides clients with confidence that any third-party introduction is scrutinised, reputable, and aligned with their unique needs and objectives.

Interpreters

The role of a trustee, however, goes far beyond simply facilitating introductions to specialist advisors; they also serve as interpreters, bridging the gap between technical expertise and the client's understanding. Trustees play a vital role in ensuring that complex tax advice, which is often laden with technical jargon, is effectively communicated in a clear and accessible manner.

While a tax advisor – or other specialist – may have a micro view of one area of a client's wealth journey, a trustee will see the full picture and will be able to provide context of the advice within broader objectives, while ensuring that all recommendations align with long-term goals and values.

Responders

Trustees play a vital role as responders, adapting not only to changing tax regulations, but also to a myriad of evolving client circumstances. These may include relocations to new jurisdictions, shifts in business interests, or changes in family structures.

It is essential that trustees establish and maintain strong relationships with clients and beneficiaries, prioritising open communication through the life of the relationship. This ensures that trustees are aware of any changes in circumstances and can respond accordingly.

Protectors

In addition to reacting to change, trustees adopt a proactive approach to mitigate risk. They anticipate potential challenges by conducting regular reviews of trust arrangements, engaging expert advisors, and implementing robust governance frameworks. This dual role of reacting and pre-empting ensures trustees provide a resilient, forward-thinking service that safeguards client interests for the long-term.

Conclusion

The scope and complexity of technical knowledge required for effective and compliant tax planning and implementation is typically beyond the capacity of any one person or service provider. A trustee, however, acts as a central point of contact for the client while coordinating with a network of specialist advisors. In doing so, they ensure a comprehensive and collaborative approach to meet both the current and future needs and expectations of all their clients.

UNPACKING THE BUDGET

KEY TAX CHANGES AND USEFUL PLANNING TIPS

Authored by: Phil Moss (Tax Partner) - Lubbock Fine

Chancellor of the Exchequer, Rachel Reeves, delivered her budget on 30th October 2024, the first Labour Budget in 14 years. Reeves unveiled several significant updates to tax legislation that will impact individuals and businesses alike.

To help provide you with a detailed analysis on the impact of these recent changes, the independent accounting, tax, audit and business advisory firm Lubbock Fine launched their "Unpacking the Budget" blog series focusing on four key areas:

- Capital Gains Tax (CGT)
- Non-Domiciled Individuals (Non-Doms)
- Inheritance Tax (IHT) – Key Reliefs
- The Treatment of Inherited Pension Funds

This summary aims to provide you with some useful key insights to help you understand these developments and consider essential planning strategies.

1. Changes to Capital Gains Tax (CGT)

The government has implemented sweeping changes to CGT rates, much of which was effective immediately from 30 October 2024, with further adjustments on the horizon. These measures are designed to raise revenue, affecting individual taxpayers, trustees, and investors.

New CGT Rates

The following tax rates are applied (from 30 October unless otherwise stated) to realised gains (generally where the disposal proceeds exceed the acquisition and enhancement costs):

General Assets:

- Basic rate taxpayers: Increased from 10% to 18%.
- Higher and additional rate taxpayers: Increased from 20% to 24%.
- Trustees and personal representatives: Increased from 20% to 24%.

Residential Property Gains:

- Rates remain unchanged at 18% for basic rate taxpayers and 24% for higher and additional rate taxpayers.

Business Asset Disposal Relief ('BADR') and Investors' Relief:

- Rates rise from 10% to 14% in April 2025 and to 18% in April 2026.
- The lifetime limit for Investors' Relief has been reduced to £1 million from £10 million. The BADR lifetime limit was unchanged at £1 million.

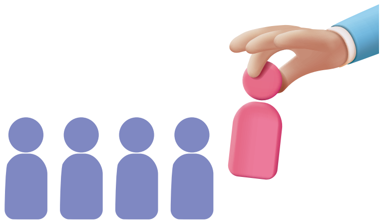
Carried Interest:

- Gains will be taxed at 32% from April 2025 rather than the current 28%
- From April 2026, carried interest receipts will be taxed as deemed trading income and so subject to income and national insurance. A 27.5% discount will be applied to the receipts, producing an effective top rate of 34.1% (72.5% of 47%).

Planning Tips

To mitigate the impact of higher CGT rates, taxpayers should:

- Review their portfolios and plan disposals strategically.
- Consider utilising Business Asset Disposal Relief before the higher rates take effect.
- Seek professional advice to explore timing and alternative tax-efficient structures.



2. Reforms for Non-Domiciled Individuals (Non-Doms)

The Budget introduces a seismic shift in the taxation of non-doms, effective from April 2025. The remittance basis, which previously allowed non-doms to pay UK tax only on UK income and remitted foreign income for up to 15 years, will be abolished.

Key Changes

Foreign Income and Gains (FIG) Regime:

New UK residents (i.e. those who had spent at least 10 years outside the UK) will be able to claim a tax exemption on overseas income and gains for their first 4 years after arrival. After this period, worldwide income and gains will be taxed on an arising basis.

Trusts (Income & Gains):

Settlor-interested offshore trusts will lose their current protections on overseas income and gains. Unless the FIG regime applies, all trust income and gains will be taxed on the settlor. This might extend to any underlying companies or other structures depending on the full circumstances.

Inheritance Tax (IHT):

After ten years of UK residence, non-doms will be 'Long Term Residents', and their worldwide assets will fall under UK IHT rules. This will continue for between 3 to 10 years after they leave the UK.

Trusts (IHT):

It has been common for wealthy non-doms to transfer non-UK assets to offshore 'excluded property trusts' to ensure they remained outside of the IHT net. From April 2025 such Trusts will be exposed to UK IHT if the settlor is a UK Long Term Resident, thus triggering tax liabilities and reporting obligations on each tenth anniversary of the Trust or any capital distributions.

Overseas Workday Relief (OWR):

This relief for the overseas proportion of employment income is to be aligned with the FIG regime described above and extended to four years, but with an annual cap of £300,000 or 30% of total earnings, whichever is lower.

Temporary Repatriation Facility ("TRF"):

The TRF will be available for the 3 tax years to 5 April 2028 to enable taxpayers who have previously claimed the remittance basis to 'cleanse' the resultant funds at preferential rates (12% for the first 2 years and then 15% in 2027/28) and so avoid a future taxable remittance at up to 45%. These 'designated' funds can then be brought to the UK in those 3 years or at any other time without triggering further taxes.

Planning Tips

Non-doms should act quickly to adjust their financial plans:

- Restructure offshore assets and trusts before the new rules take effect.
- Reassess their residency status and explore alternative jurisdictions if appropriate.
- Consult with tax advisers to minimise tax exposure and optimise wealth planning.

3. Updates to Inheritance Tax (IHT) – key reliefs

Inheritance Tax reforms announced in the Budget introduce stricter limits on key reliefs, impacting business owners, farmers, and those with significant estates.

Key IHT changes

Business Relief provides an exemption from IHT for unlisted qualifying businesses (so excluding any with over-riding investment activities), whereas as Agricultural Relief currently ensures that no IHT is due on most farmland. This will change from April 2026.

Capped Reliefs:

- 100% Business Relief (BR) and Agricultural Relief (AR) will be capped at a combined £1 million per estate from April 2026.
- Above £1M the relief will be given at 50%, effectively resulting in an IHT rate of 20%.

- AIM shares (and those on similar 'unlisted' markets) will be excluded from the above limits with any BR limited to 50% of their value.

Nil Rate Bands:

- The standard Nil Rate Band (NRB) remains frozen at £325,000.
- The Residence Nil Rate Band (RNRB) also remains at £175,000, with no increases until at least 2030.

Planning Tips

Taxpayers should consider the following steps:

- Review Wills, existing succession or Estate planning, and Trusts to reflect the new relief caps.
- Explore lifetime gifting strategies to transfer wealth tax-efficiently.
- Restructure business and agricultural holdings to maximise relief within the new limits.
- Work with advisers to balance inheritance planning with other financial goals.

4. Inherited Pension Funds: A Dual Tax Burden

The Budget introduces an additional layer of taxation on inherited pension funds, significantly

affecting beneficiaries. Starting April 2027, unused pension funds will be subject to IHT in addition to income tax.

Key Changes

Inheritance Tax (IHT):

- All unused pension funds, except those transferred between spouses or civil partners, will be taxed at 40%.

Income Tax:

- Pension distributions to beneficiaries will continue to be taxed at their marginal income tax rate if the deceased was over 75 at the time of death.

Planning Tips

The combined tax burden could reach up to 67%, making proactive planning essential:

- Update death benefit nominations to reduce exposure to IHT.
- Consider drawing pension lump sums earlier to fund tax-efficient investments or gifts.
- Work with financial planners to consolidate pension assets and explore alternative retirement strategies.

The Autumn Budget has introduced some of the most sweeping tax reforms in recent years, with significant implications for capital gains, non-domiciled individuals, inheritance tax, and pension planning. Navigating these changes requires proactive planning and expert guidance.

For individuals and businesses alike, now is the time to review your financial strategies, adjust your plans, and consult with professionals to ensure compliance and optimise your tax position.

If you are concerned about the recent changes or feel that a review of your affairs would be worthwhile, please contact Phil Moss, Tax Partner (philmoss@lubockfine.co.uk) at Lubbock Fine.

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