

One rule for one tax...

For inheritance tax there is no 'absolute' test to assess a taxpayer's general domicile.

Domicile is the important connecting factor to determine both liability to inheritance tax and, perhaps more importantly, the availability of reliefs to inheritance tax.

It is generally assumed that where assets pass to a surviving spouse they are free of inheritance tax. That rule applies in all cases except where assets pass from a person domiciled in this country to a spouse domiciled in another country.

We have the deemed domicile rule, or the '17 out of 20' rule. If a taxpayer is resident in this country for 17 out of 20 of the last tax years then they are deemed domiciled here for IHT purposes.

What, however, of the English husband who goes abroad to live with his foreign domiciled wife and then dies? Will his UK estate benefit from full spouse relief or just the £55,000 exemption that applies to cases where assets are passing from a UK to a non UK domiciled spouse?

It used to be possible to test the point with HMRC by making a taxable disposition to a spouse such that, if full spouse relief were not available, it would give rise to a tax liability of £10,000 or more. This would allow a UK domiciled spouse to 'test the water' with HMRC prior to any major transactions.

The £10,000 threshold was set out in HMRC Brief 17/2009, but that has now been replaced by Brief 34/2010, which simply says that HMRC will only test the point if the tax liability is 'significant'.

In an era of self assessment, where it is the taxpayer's duty to disclose everything and 'get it right', this makes it almost impossible for taxpayers properly to order their affairs and obtain a ruling on their domicile.

Contrast the position where the branch of HMRC dealing with trading accounts will pursue a trader to the nth degree for the smallest liability whether justified or not.

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Tools for the job

HMRC have embarked on the publication of a number of tool kits to help taxpayers to complete their tax returns for 2010-2011 and subsequent years. They are steadily rolling these out for different taxes.



Claire Bendle,
associate

Under self assessment it is, of course, the taxpayer's responsibility to make full and

complete disclosure, but the taxpayer faces the conundrum that he does not know if HMRC will regard disclosure as having been full and complete if HMRC will not enter into a dialogue about it.

Failure to make full and complete disclosure is grounds for HMRC reopening a taxpayer's affairs outside of the statutory time limits.

HMRC helpfully explain that using the tool kit will show that you have taken reasonable care in completing your tax return and should offer protection from penalties later.

Taxpayers will, therefore, fail to use the tool kits at their peril... You should be able to find the latest tool kits on the HMRC website by typing 'HMRC toolkit' into your search engine.

Act in haste...

The Finance (Number 2) Bill appeared on the UK Parliament website last week only to be withdrawn with a hastily posted replacement – the original was full of errors!

Liechtenstein amnesty

Clients with offshore tax matters that need to be put right can take advantage of something called the Liechtenstein Disclosure Facility (LDF). Using the LDF can soften the blow and reduce penalties.

It is widely believed that taxpayers wanting to use the LDF have until 2015 to make a disclosure – though, of course, that date could be brought forward at any time.

Where, however, HMRC 'finds the taxpayer first' the LDF facility is lost.

This is a problem that has recently beset hundreds of HSBC customers with Swiss bank accounts. The HSBC data was stolen by an employee and released to HMRC, who in turn have contacted the taxpayers informing them that they are being investigated.



Nigel Roots,
partner

...because we want the Olympics to be a success

Nobody will want to miss the spectacle of the Olympics 2012 when they come to London. HMRC are amongst those equally keen to enjoy the Games. So much so that there will be legislation creating a specific exemption for participants in the Games from the Foreign Entertainers tax laws. This legislation taxes payments made to foreign entertainers performing in this country; whether it be an actor appearing in the theatre or a golfer competing in a major tournament. The payments that are caught include appearance fees, achievement bonuses, TV rights, prize money, advertising income, endorsement fees... the list goes on.

This year's football Champions League Final was moved to another country because of these tax provisions. The Final will be held here in 2011 because the Finance Act 2010 gives the players and officials exemption to tax on earnings during the tournament.

All stars will be welcomed to the Olympics because of the specific exemption for these Games that will be introduced.

There is even a Foreign Entertainers Unit in HMRC's offices in Bootle to help foreign entertainers, and those representing them, 'comply with their obligations'.

Business property relief – a surprising victory for the taxpayer

The recent appeal heard by the Upper Tribunal in the case of *HMRC v Executors for the Earl of Balfour* has been very helpful to the taxpayer.

Lord Balfour ran a farming business on an estate in Scotland and his business affairs were multi faceted. It was not the case that everything was, for example, run through a single company. There was a farming partnership and many individually owned assets. Lord Balfour, however, always felt that he ran them as 'one business'.

That the Upper Tribunal accepted this argument is one thing but it is perhaps more surprising, when one sees the individual items they accepted as being part of the business. Easy to consider were the two in-hand farms, the three let farms and the two sets of business

premises. What is more surprising, however, is the 26 let houses which were on the estate and which were pure investment properties.

Normally one would expect to see these treated as 'excluded assets' and their value removed from the relief. It is a well known fact that HMRC do not regard as relievable properties or investment assets in a business when they are not used in the actual trading.

However, in this case the Upper Tribunal upheld the judgment of the First Tier Tribunal in granting business property relief to the entire estate. This is a positive step for the taxpayer but one must be nervous about whether or not there will be future 'clarifying legislation' to restore what HMRC believed to be the rightful position.

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