

Inheritance tax: spouses and civil partners domiciled overseas

Who is likely to be affected?

Individuals who are domiciled outside the UK and who have a UK-domiciled spouse or civil partner and UK-domiciled individuals who have a non-UK domiciled spouse or civil partner.

General description of the measure

The measure will increase the inheritance tax (IHT) exempt amount that a UK-domiciled individual can transfer to their non-UK domiciled spouse or civil partner. The legislation will also allow individuals who are domiciled outside the UK and who have a UK-domiciled spouse or civil partner to elect to be treated as domiciled in the UK for the purposes of IHT.

Policy objective

To ensure that UK domiciles and non-UK domiciles are treated in a similar manner for IHT purposes whilst protecting tax revenues.

Background to the measure

Budget 2012 included commitments to raise the IHT-exempt limit on the value of transfers of assets to a non-UK domiciled spouse or civil partner and introduce a new election regime.

Detailed proposal

Operative date

The measure will have effect in relation to transfers of value made on or after 6 April 2013.

Current law

IHT charges are based on domicile status. Domicile is a common law concept and is not defined in statute for tax purposes. Broadly, it is where an individual has their permanent home or intends to settle permanently. Individuals domiciled in the UK are liable to IHT on their worldwide assets; individuals whose domicile lies outside the UK are only liable to IHT on assets situated in the UK.

All individuals, irrespective of their domicile status, benefit from an IHT nil-rate band, currently £325,000. Transfers of assets between spouses and between civil partners, whether gifts made during a person's lifetime or transfers of assets occasioned by the death of one of the couple, are generally exempt from IHT.

Where the spouse or civil partner to whom the assets are transferred does not have a UK domicile there is a lifetime limit (cap) on the value of the assets that can be transferred free of IHT. The cap is currently £55,000 - section 18(2) Inheritance Tax Act 1984.

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to reform the IHT treatment of transfers between UK-domiciled individuals and their non-UK domiciled spouse or civil partners in two ways:

- the cap will be increased to the level of the prevailing nil-rate band level; and,
- under a new election regime, individuals domiciled other than in the UK and who are married or in a civil partnership with a UK domiciled person will be able to elect to be treated as UK-domiciled for IHT purposes.

Where an individual chooses not to elect for UK domicile treatment their overseas assets would, as now, be exempt from IHT but any transfers from their spouse or civil partner would be subject to the increased cap. Individuals who choose to make an election would benefit from uncapped IHT-exempt transfers from their spouse or civil partner, but subsequent disposals by them would be liable to IHT (subject to their own nil-rate band), irrespective of the location of the assets.

The lifetime limit on the amount that can be transferred exempt from IHT to a spouse or civil partner domiciled outside the UK (or treated as such for IHT purposes) will be increased from its current level of £55,000. Initially the cap will be raised to £325,000. Going forward its level will be linked to any future changes in the nil-rate band.

The election will only affect an individual's treatment for IHT purposes. The election will need to be made in writing to HM Revenue & Customs (HMRC) and may be made at any time after marriage or registration of the civil partnership. Elections made while both of the couple are still alive will take effect for transfers on or after the date of the election. Where there has been a transfer as a result of a disposition on the death of a UK domiciled individual, a surviving non-UK domiciled spouse or civil partner may elect to be treated as UK domiciled for IHT purposes from the date of death. Elections that follow a death will only be valid if they are made within two years of the death, and only where death occurs on or after 6 April 2013.

Elections will be irrevocable while the electing individual continues to remain resident in the UK. An election will cease to have effect if the electing person is resident outside the UK for more than three full consecutive tax years.

Summary of impacts

Exchequer impact (£m)	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
	This measure is expected to reduce receipts by approximately £5 million per annum from 2014-15. The final costing will be subject to scrutiny by the office for Budget Responsibility, and will be set out at Budget 2013.					
Economic impact	The measure is not expected to have any significant economic impacts.					
Impact on individuals and households	This measure will affect only a small number of individuals and households as the base of estates that fall within the charge to IHT is fairly small (in 2011-12 it is forecast that there would be approximately 19,000 estates left on death paying IHT, representing less than 4 per cent of the total). The number of individuals affected will be reduced considerably further as the policy affects only those whose spouse is non-UK domiciled.					

	There will be a slight increase in administrative burdens for affected individuals as they will be required to inform HMRC if they wish to elect to be treated as UK domiciled for IHT purposes only.
Equalities impacts	HMRC does not have any evidence of negative impacts on different equality groups as a result of this measure.
Impact on business including civil society organisations	This measure is expected to have a negligible impact on businesses and civil society organisations. There will be a negligible increase in administrative burdens and a one off cost for personal representatives as they familiarise themselves with the new guidance. As very few individuals will be affected by this measure, those businesses advising them or acting as their representatives will also be few in number.
Operational impact (£m) (HMRC or other)	The operational impact on HMRC will be minimal.
Other impacts	<u>Small firms impact test:</u> there will be a negligible impact on small businesses (firms with fewer than 20 employees) involved in the administration of lifetime and death estates due to the need to familiarise themselves with the change of rules. Although there has been no consultation with small firms or any other groups, the measure will benefit individuals whose spouse or civil partner is domiciled abroad and non UK domiciled individuals whose spouse or civil partner is domiciled in the UK. Other impacts have been considered and none have been identified.

Monitoring and evaluation

The measure will be kept under review through regular communication with the relevant business sector.

Further advice

If you have any questions about this change, please contact Tony Zagara on 020 7147 2861 (email: antonio.zagara@hmrc.gsi.gov.uk).

1 Election to be treated as domiciled in United Kingdom

- (1) IHTA 1984 is amended as follows.
- (2) In section 267 (persons treated as domiciled in United Kingdom), at the end insert—
 - “(5) In determining for the purposes of this section whether a person is, or at any time was, domiciled in the United Kingdom, sections 267ZA and 267ZB are to be ignored.”
- (3) After that section insert—

“267ZA Election to be treated as domiciled in United Kingdom

- (1) A person may elect to be treated for the purposes of this Act as domiciled in the United Kingdom (and not elsewhere) if condition A or B is met.
- (2) Condition A is that—
 - (a) the person’s spouse or civil partner is domiciled in the United Kingdom at the time the election is made, and
 - (b) the person is not domiciled in the United Kingdom at that time.
- (3) Condition B is that—
 - (a) the person’s spouse or civil partner died on or after 6 April 2013 and was domiciled in the United Kingdom at the time of death, and
 - (b) the person was not domiciled in the United Kingdom at that time.
- (4) An election under this section does not affect a person’s domicile for the purposes of section 6(2) or (3) or 48(4).
- (5) An election under this section is to be ignored—
 - (a) in interpreting any such provision as is mentioned in section 158(6), and
 - (b) in determining the effect of any qualifying double taxation relief arrangements in relation to a transfer of value by the person making the election.
- (6) For the purposes of subsection (5)(b) a qualifying double taxation relief arrangement is an arrangement which is specified in an Order in Council made under section 158 before the coming into force of this section (other than by way of amendment by an Order made on or after the coming into force of this section).
- (7) In determining for the purposes of this section whether a person making an election under this section is or was domiciled in the United Kingdom, section 267 is to be ignored.

267ZB Section 267ZA: further provision about election

- (1) For the purposes of this section –
 - (a) references to a lifetime election are to an election made by virtue of section 267ZA(2), and
 - (b) references to a death election are to an election made by virtue of section 267ZA(3).
- (2) A lifetime or death election is to be made by notice in writing to HMRC.
- (3) A lifetime election takes effect from the day on which it is made.
- (4) A death election –
 - (a) must be made within 2 years of the death of the spouse or civil partner, and
 - (b) is treated as having taken effect from immediately before any transfer treated as made by section 4 immediately before the death of the spouse or civil partner.
- (5) Subsection (6) applies if –
 - (a) a death election is made,
 - (b) a disposition is made, or another event occurs, between the time when the election is treated by virtue of subsection (4)(b) as having taken effect and the time when the election is made, and
 - (c) the effect of the election being treated as having taken effect from that time is that the disposition or event gives rise to a transfer of value by the person making the election.
- (6) This Act applies with the following modifications –
 - (a) subsections (1) and (6)(c) of section 216 have effect as if the period specified in subsection (6)(c) were the period of 12 months from the end of the month in which the election is made, and
 - (b) sections 226 and 233 have effect as if the transfer were made at the time when the election is made.
- (7) A lifetime or death election cannot be revoked.
- (8) If a person who made a lifetime or death election is not resident in the United Kingdom for the purposes of income tax for the whole of any period specified in subsection (9), the election ceases to have effect at the end of that period.
- (9) That period is any period of three successive tax years, beginning –
 - (a) (in the case of a lifetime election) at any time after the election takes effect, or
 - (b) (in the case of a death election) at any time after the election is treated by subsection (4)(b) as having taken effect.”

2 Transfer to spouse or civil partner not domiciled in United Kingdom

- (1) Section 18 of IHTA 1984 (transfer to spouse or civil partner not domiciled in United Kingdom) is amended as follows.
- (2) In subsection (2), for “£55,000” substitute “the exemption limit at the time of the transfer.”

- (3) After subsection (2) insert –
 - “(2A) For the purposes of subsection (2), the exemption limit is the amount shown in the second column of the first row of the Table in Schedule 1 (upper limit of portion of value charged at rate of nil per cent).”
- (4) The amendments made by this section have effect in relation to transfers of value made on or after 6 April 2013.

EXPLANATORY NOTE

**INHERITANCE TAX: SPOUSES AND CIVIL PARTNERS
DOMICILED OVERSEAS**

SUMMARY

1. This clause introduces provisions by which an individual who is not domiciled in the UK but who is, or has been, married to, or in a civil partnership with, someone who is domiciled in the UK can elect to be treated as domiciled in the UK for the purposes of inheritance tax (IHT). While transfers from one spouse or civil partner to another are generally exempt from inheritance tax (IHT), there is a lifetime limit on the amount that can be transferred on an IHT-exempt basis from an individual who is domiciled in the UK to a spouse or civil partner who is domiciled elsewhere. Clause 0784b increases that limit to the level of the prevailing IHT nil-rate band.

DETAILS OF THE CLAUSES

Clause 1

2. Subsection (1) provides for the amendment of the Inheritance Tax Act 1984 (IHTA).
3. Subsection (2) adds a new subsection (5) to section 267 of IHTA. To apply section 267 it is necessary to determine the domicile status of an individual. New subsection (5) provides that any such determination is to be made without regard to new sections 267ZA and 267ZB (inserted by subsection (3)).
4. Subsection (3) inserts new section 267ZA and 267ZB into IHTA.
5. New subsection 267ZA(1) provides for a person to elect to be treated as domiciled in the UK for the purposes of inheritance tax (IHT) if one of two conditions is met.
6. Condition A in new subsection 267ZA(2) is that the person's spouse or civil partner is domiciled in the UK at the time the election is made and the person is not domiciled in the UK at that time.
7. Condition B in new subsection 267ZA(3) is that the person's spouse or civil partner died on or after 6 April 2013 and was, at the time of death, domiciled in the UK and the person was not domiciled in the UK.

8. New subsection 267ZA(4) specifies that the election in new subsection (1) does not affect a person's domicile for the purpose of Government securities free of tax while in foreign ownership and certain other types of savings.
9. New subsection 267ZA(5) provides that an election is to be ignored when interpreting or applying Estate Duty Conventions and Double Taxation Agreements which determine the domicile of an individual.
10. New subsection 267ZA(6) explains that for the purposes of new subsection 267ZA(5)(b), a qualifying double taxation relief arrangement is an arrangement which was made before this section comes into force and is specified under section 158 in an Order in Council but does not include arrangements which were subsequently specified by way of amendment to an existing Order in Council following the coming into force of the subsection.
11. New subsection 267ZA(7) provides that in determining whether or not a person is qualified to make an election, their domicile status is to be determined without regard to any deemed domicile treatment which occurs by virtue of section 267 IHTA.
12. New Subsection 267ZB(1) explains that references to a lifetime election are to an election which meets the criteria of Z67ZA(2) and references to a death election are to an election which meets the criteria of section 267ZA(3).
13. New subsection 267ZB(2) provides that such an election must be made in writing to HM Revenue & Customs.
14. New subsection 267ZB(3) specifies that where an election takes place prior to the death of the UK-domiciled spouse or civil partner, the election shall take effect from the date the election is made.
15. New subsection 267ZB(4) sets out the conditions under which an election may be made after the death of the UK-domiciled spouse or civil partner, and the effects of such an election. The election must be made within two years of the death and is treated as taking effect immediately before any transfer that arises as a result of the death of the spouse or civil partner.
16. New subsection 267ZB(5) sets out the conditions that must be met in order for the modifications contained in new subsection 267ZB(6) to apply. The modifications will apply if a death election is made and in the period between the date on which the election is deemed to take effect by virtue of new subsection 267ZB(4)(b) and the date on which it is made, a disposition or other event occurs which due to the election having been made results in a transfer of value by the person making the election.

17. New subsection 267ZB(6) contains modifications which revise the time limits that are to apply when, as the result of a death election a transfer or other event leads to the person making the election becoming liable to IHT. The time limits in subsections (1) and (6)(c) of section 216 (delivery of an IHT account), section 226 (payment of tax) and section 223 (due date for interest) are all to apply as if the transfer concerned was made at the time when the election was made.
18. New subsection 267ZB(7) provides that an election made under the new provisions cannot be revoked.
19. New subsections 267B (8) and (9) set out that if a person who has previously made an election is not resident in the UK for income tax purposes for three successive tax years beginning any time after the election has, or is deemed to have, taken effect then the election will cease to have effect at the end of the three-year period.

Clause 2

20. Subsection (1) provides for an amendment to section 18 of the Inheritance Tax Act 1984 (IHTA).
21. Subsection (2) amends section 18(2) of IHTA, altering the amount that can be transferred on an IHT-exempt basis from an individual who is domiciled in the UK to a spouse or civil partner who is domiciled elsewhere from its existing level of £55,000 to an amount defined by reference to the prevailing IHT exemption limit at the time of the transfer.
22. Subsection (3) adds a new subsection 2A to section 18 IHTA. New subsection 2A provides that for the purposes of subsection 2, the exemption limit is defined by reference to the table of rates of tax in Schedule 1 IHTA.
23. Subsection (4) provides that the amendments will apply in respect of transfers of value made on or after 6 April 2013.

BACKGROUND

24. IHT charge is based on domicile status. UK-domiciles pay IHT on their worldwide assets, whereas non-domiciles only pay IHT on their UK assets.
25. Transfers between spouses and civil partners, whether gifts made during a person's lifetime or transfers on the death of one of the couple, are generally exempt from IHT.
26. Where the spouse or civil partner to whom assets are transferred does not have a UK domicile, transfers are capped at £55,000. This cap is

intended to address the risk that an individual whose domicile is outside of the UK, could remove assets abroad following an IHT-exempt transfer from their UK-domiciled spouse or civil partner to escape any IHT on their subsequent disposal.

27. If you have any questions about this change, or comments on the legislation, please contact Tony Zagara on 020 7147 2861 (email: antonio.zagara@hmrc.gsi.gov.uk).