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UK (England and Wales)

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TAXATION

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The tax year starts on 6 April and ends on 5 April.

Tax returns for income and chargeable gains must be submitted by:

- 31 October for paper returns.
- 30 December for online returns with tax payment through a tax code.
- 31 January for online returns where the tax payment is not made through a tax code.

Income tax (IT) and capital gains tax (CGT) are due by 31 January of the year following the tax year in question (that is, 31 January 2014 for the tax year 2012/13).

Employees generally have tax on their employment income deducted at source. Any additional liability (for example, any CGT) is due by 31 January. Self employed individuals pay the current tax year's liability in two instalments based on the previous year's liability. These instalments are due on 31 January and 31 July. A balancing payment or refund is due the following 31 January after the year's actual income and gains have been returned.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

Domicile is relevant for inheritance tax (IHT), IT and CGT.

Everyone has a domicile of origin, which is usually the domicile of the individual's father at the time of his birth.

A domicile of origin can be replaced by a domicile of choice. The establishment of a domicile of choice is a subjective test as to whether the individual has settled in a new country and intends to remain there for the rest of their life. In the event that a domicile of choice is abandoned, the domicile of origin applies until a new domicile of choice is established.

For IHT purposes only it is possible for an individual to be deemed domiciled. This applies where they have been resident in the UK for at least 17 of the previous tax years. This is an objective test.

Residence

An individual can be resident or ordinarily resident in the UK. There is no statutory definition for these terms and, instead, individuals must rely on case law and the guidance notes produced by HM Revenue and Customs (HMRC) (the UK tax authority).

At present, an individual who spends 183 days or more in the UK in one tax year is UK resident. HMRC consider that an individual who spends at least 91 days on average in the UK in a tax year over a four-year period (counting the day of arrival but not day of departure) is UK resident.

An individual is ordinarily resident in the UK if they are habitually resident there.

From 6 April 2013, a new statutory residence test is expected to come into force. This has recently been published in draft legislation and is formed of a three part test:

- Part A contains factors which are conclusive as to whether an individual is non-resident. It includes factors such as:
  - leaving the UK to carry out full time work abroad;
  - residency abroad;
  - presence in the UK for fewer than 45 days in the current year;
  - being absent from the UK in the previous three tax years; or
  - presence in the UK in only one of the past three tax years while spending fewer than ten days in the UK in the current tax year.
- Part B contains factors which make an individual resident. These include:
  - presence in the UK for at least 183 days in a tax year;
  - having only one home which is in the UK;
  - carrying out full time work in the UK.
- Part C is used if parts A and B are not conclusive. Factors include:
  - the presence of family in the UK;
  - presence in the UK for more than 90 days in either of the two previous tax years;
  - spending more time in the UK than anywhere else.

Remittance basis

A non-domiciled individual who is not ordinarily resident in the UK, but is UK resident can avoid paying tax on their foreign income and gains provided that they do not remit them to the UK and make a remittance basis claim. If they have been UK resident for seven out of the previous nine tax years, they must pay

GB£30,000 for each year they claim the remittance basis. From tax year 2012/13 there will be a GB£50,000 charge each year for individuals resident for 12 out of the previous 14 tax years.

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

The UK does not impose any exit tax.

UK taxation is based on domicile and residence rather than citizenship and giving up British citizenship does not affect liability, save that it would be a factor considered in whether an individual had established a domicile of choice (*see Question 2, Domicile*).

Where a UK resident individual leaves the country part way through a tax year, tax applies for the entire tax year unless an application is made to split the year into resident and non-resident periods.

Individuals who have previously been ordinarily resident in the UK become liable for CGT on any chargeable gains incurred during their period outside the UK if it is less than five complete tax years.

Where a UK resident who has been taxed on the remittance basis leaves the UK but returns within five complete tax years, they are liable to tax on the foreign income remitted to the UK during their absence.

A UK-domiciled individual is treated as UK domiciled for IHT for three calendar years after leaving the UK even if they have established a domicile of choice or a non-UK domicile of origin is revived.

If a trust becomes non-resident, a disposal for CGT purposes will be made. Similarly, in the event that a trust beneficiary who has made a holdover election for CGT on a capital appointment becomes non-resident, the trust becomes subject to the clawback of the CGT due on the original appointment.

Temporary residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

An individual who spends less than 183 days in the UK in a tax year and is in the UK only on a temporary basis is not currently treated as UK resident. From 6 April 2013, the statutory residence test will be applied (*see Question 2, Residence*).

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

CGT is charged at 18% for basic rate taxpayers (up to the limit of their remaining basic rate band). It is 28% for higher rate taxpayers and trusts (*see Question 6*).

CGT is not payable on transfers between spouses, providing they have not separated and are outside the tax year of separation. CGT is also not payable on an individual's main residence.

Every individual has a personal allowance, which is currently GB£10,600 (GB£5,300 for trustees). Any gains realised above this in a tax year are chargeable unless a relief applies.

A UK resident who is taxed on the remittance basis does not have to pay CGT on gains realised from foreign assets, providing that they do not remit the sale proceeds to the UK. Non-UK residents are exempt from CGT on all UK and foreign assets.

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

The income tax rates are:

- 10% (savings rate) on savings income only up to GB£2,710.
- 20% (basic rate) on income up to GB£34,370.
- 40% (higher rate) on income above GB£34,371.
- 50% (additional rate) on income above GB£150,000.

There is a personal allowance of GB£8105 on which no income tax is charged. From the tax year 2013/14, the additional rate will be reduced to 45%.

Dividend income is taxed at 10% for basic rate taxpayers, 32.5% for higher rate taxpayers and 42.5% for additional rate taxpayers.

A non-domiciled UK resident is taxed on their UK income. If they do not claim the remittance basis they are also taxed on their foreign income.

A non-UK resident is taxed only on UK income. If the income is taxed in a foreign jurisdiction, they may be entitled to relief under a double taxation treaty.

Inheritance tax and lifetime gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

IHT is a form of estate tax paid on the worldwide assets of a UK-domiciled individual and the UK-sited assets of a non-UK domiciled individual.

IHT is charged on all assets owned at the date of death, including jointly owned assets and any property that was given away within a period of seven years before death over the value of a cumulative total of GB£3,000 in any one tax year. Assets which the deceased has given away more than seven years before their death but have reserved a benefit in (for example, continuing to occupy a gifted house) remain part of their estate for IHT purposes.

IHT is also payable on trusts (*see Question 30*).

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Tax rates

Every individual estate has a nil rate band (NRB) which is currently GB£325,000. No IHT is payable on chargeable lifetime gifts up to this amount (but taking into account any earlier chargeable lifetime gifts within the seven years before the gift). The NRB also applies on death.

Lifetime gifts which are not exempt are taxed at 20% on their value over the donor's available NRB. This increases to 40% in the event of the donor's death within seven years.

On death, any assets over the deceased's available NRB is chargeable to tax at 40% unless an exemption or relief applies (*see below, Exemptions*).

A spouse can claim the unused percentage of their deceased spouse's NRB to use in relation to their own estate.

Tax free allowance

IHT reliefs include:

- **Taper relief.** This relief applies to gifts made between three and seven years before death.
- **Business property relief (BPR).** This relief applies to business property if certain conditions are met, at either 50% or 100% of the asset's value.
- **Agricultural property relief (APR).** This relief applies at either 50% or 100% of the agricultural value of the asset if certain conditions are met.

Exemptions

IHT exemptions (on which no IHT is payable) include:

- Gifts to a UK-domiciled spouse or civil partner (or non-domiciled spouse or civil partner where the deceased is also non-domiciled).
- Gifts to charities.
- An annual exemption for gifts of GB£3,000 which can be carried forward for one year.
- Gifts out of surplus income.
- Maintenance payments.
- Wedding and civil partnership gifts of no more than GB£5,000 from a parent, GB£2,500 from a grandparent and GB£1,000 from other individuals.
- Gifts which the donor survives by seven years and in which no benefit is reserved.

Techniques to reduce liability

There are a number of ways to reduce IHT liability, including:

- Non-UK domiciled testators purchasing a property using an offshore company (as non-UK sited shares are not chargeable to UK IHT).
- Gifts of surplus income.
- Make gifts and survive them by at least three years.
- Invest in assets on which BPR or APR apply (*see above, Tax free allowance*).
- Giving away assets that are likely to grow in value as the growth does not form part of the donor's estate, providing that they do not reserve a benefit in the asset.

Other

Trusts can be used to reduce liability to IHT. Trusts created on different days are not assessed in relation to each other when the rate of tax for anniversary and exit charges are calculated (*see Question 30*), meaning that bequests to pilot trusts can be tax efficient. Similarly, gifts of the NRB to a trust every seven years will not attract IHT providing that the donor survives each gift by seven years.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

Non-UK domiciled individuals are subject to UK IHT on their UK-sited assets. An individual who has been domiciled in the UK for at least 17 out of the previous 20 tax years is deemed domiciled for IHT purposes and will be liable to IHT on their worldwide assets (*see Question 2, Domicile*). This applies from the first day of the 17th tax year.

10. Are there any other taxes on death or on lifetime gifts?

There are no other taxes on death. CGT applies to gifts (*see Question 11, Purchase and gift taxes*).

Taxes on buying real estate and other assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and gift taxes

CGT is payable on a gift to an individual who is not the donor's spouse in the event that the asset has risen in value since the donor acquired it.

Stamp duty land tax (SDLT) is payable on the purchase of land at the following rates:

- Value up to GB£125,000: nil.
- GB£125,000 to £250,000: 1%.
- GB£250,000 to GB£500,000: 3%.
- GB£500,000 to GB£1 million: 4%.
- GB£1 million to GB£2 million: 5%.
- Over GB£2 million: natural persons pay 7%, non-natural persons pay 15%.

SDLT does not apply to a gift unless the gifted property is subject to a mortgage of GB£125,000 or more.

SDLT is payable at 0.5% on the price paid for shares on UK companies that are valued above GB£1,000.

Wealth taxes

There are no UK wealth taxes.

Annual rates

Council tax is payable annually on residential property and business rates on commercial property. Rates vary according to the local authority area.

Other

From 6 April 2013, non-natural person owners of residential property worth over GB£2 million will be liable to an annual charge of between 0.3% and 0.7% based on the property's value.

From 6 April 2013, non-resident, non-natural persons will be liable to CGT on the sale of a residential property worth over GB£2 million.

Non-natural persons is not yet defined but is likely to include companies, unit trusts and possibly partnerships and trusts.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

A non-resident individual can hold UK property personally. The changes from 6 April 2013 with regard to non-natural persons mean that it is unlikely now to be tax efficient to hold UK property through an offshore company.

Taxes on overseas real estate and other assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Income and gains arising from offshore assets are taxed in the UK unless the remittance basis is claimed (*see Question 2, Remittance basis*). Double taxation treaties may reduce or avoid a charge to UK tax.

International tax treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

The UK is a party to a wide range of double tax treaties for IT and CGT. The treaties can contain:

- Tie-breaker clauses to determine an individual's residence.
- Provision for certain foreign income and gains to be exempt from UK taxation and credit to be given against UK taxation.

There are a number of double taxation treaties for IHT. These must be considered individually. The pre-1975 double tax treaties with India, Pakistan, France and Italy are particularly advantageous for individuals domiciled in one of these countries and deemed domiciled in the UK.

WILLS AND ESTATE ADMINISTRATION

Governing law and formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

It is not essential to make a will in England and Wales for UK-sited assets, although it is recommended. A will made in a foreign jurisdiction can apply to assets in England and Wales.

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

A will must be:

- In writing.
- Signed by the testator in the presence of two witnesses who must also sign.

A beneficiary or their spouse cannot witness the will. In the event that they do, their legacy will be void.

A will is revoked where the testator subsequently marries or enters into a civil partnership and is domiciled in England or Wales at that time, unless the will was made in anticipation of marriage/civil partnership to the testator's subsequent spouse or civil partner.

A will is not revoked on the testator's divorce, although any bequests to the former spouse/civil partner lapse, with the former spouse/civil partner being treated as though they have pre-deceased the testator.

A testamentary disposition that is validly made under the law of another country is valid in England and Wales.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

A post-death variation can be used to redirect a beneficiary's entitlement under intestacy or a will. For such a variation to be effective for IHT and CGT purposes, it must be carried out within two years of death with elections regarding the tax effect made. A post-death variation does not alter the IT position.

A beneficiary can disclaim their entire gift, which is effective for all tax purposes. A partial disclaimer is not possible.

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

A will is valid as to form in England and Wales in accordance with the HCCH Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961 (Hague Testamentary Dispositions Convention) if it complies with the law of the country where the testator was:

- Domiciled when the will was executed or at their death.
- Habitually resident when the will was executed or at their death.
- A national when the will was executed or at their death.

Validity of foreign grants of probate

A grant of probate issued in England and Wales is usually required to administer the deceased's assets sited in the jurisdiction.

A grant of probate is issued in England and Wales to the person entitled to administer the estate in the jurisdiction in which the deceased died domiciled, providing that a grant has been made by the court there.

Alternatively, a grant of representation is issued in England and Wales where a grant application has not yet been made in the foreign jurisdiction or if where the foreign court does not appoint personal representatives that would be recognised in England and Wales. This grant is issued to the person entitled to administer the estate in the deceased's jurisdiction of domicile.

If the deceased died domiciled in a jurisdiction where the Colonial Probates Acts 1892 and 1927 apply then an application can be made in England and Wales for an existing grant of probate in the jurisdiction of domicile to be resealed in England and Wales. These Acts generally apply to Commonwealth countries.

Death of foreign nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

The executors may find that assets outside the jurisdiction have vested in the heirs in accordance with the laws of that jurisdiction and that they therefore have no control over the assets and they do not pass under any UK will. This is a particular issue where the deceased is considered to be domiciled in the UK, as UK IHT is payable in relation to the assets unless an exemption or relief applies (*see Question 8*).

Administering the estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for administering

The deceased's personal representatives are responsible for administering the estate. Where there is a will, the named executors are the personal representatives. Where there is no will, then administrators take this role.

The role of a personal representative includes:

- Ascertaining the deceased's assets.
- Collecting in the assets of the deceased.
- Obtaining a grant of representation.
- Paying all the deceased's debts and taxes (including any UK IHT).
- Distributing the assets to the heirs.

During the administration of the estate, the personal representatives have power to deal with the assets as though they were absolutely entitled, although they must ensure that they do not act in breach of their fiduciary duties.

Vesting

The estate vests in the personal representatives who then distribute it to the deceased's heirs.

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- **Establishing title and gathering in assets (including any particular considerations for non-resident executors)?**
- **Paying taxes?**
- **Distributing?**

Establishing title and gathering in assets

A grant of representation is usually required to allow the personal representatives to establish title to the deceased's assets and gather them in. For example, the grant must be produced to the Land Registry to secure registration of a property in the names of the personal representatives or the heirs or to sell the property. Banks also require the grant of representation, as will company registrars where the deceased held shares.

Procedure for paying taxes

The personal representatives must file an account with HMRC for IHT purposes before the grant of representation can be obtained. This gives full details of the deceased's assets, including overseas assets and some trust interests. Once the account has been filed and the tax paid, the Probate Registry issues a grant of representation. Since the personal representatives cannot access the deceased's funds until after the grant of representation has been issued, it is common for them to borrow money to pay the IHT.

Where the deceased has UK assets but is considered to be non-domiciled by their personal representatives, the IHT account must be filed at the Charity, assets and residence IHT section of HMRC so that they can consider the deceased's domicile.

Distributing the estate

The personal representatives can distribute the deceased's property at any time after they have obtained the grant of representation. However, claims made against the deceased's estate if he died domiciled in England and Wales can be brought within six months of death (*see Question 23*), meaning that it is prudent for assets to be retained until at least that date. Where the personal representatives believe that an application will be made to the court to make a claim past the six month time limit, they should retain the estate assets.

Personal representatives can consider making interim distributions to beneficiaries in the event that the administration of the estate proves to be complex or delayed. When the final distribution is made they should prepare estate accounts setting out the deceased's assets and liabilities at death, as well as income and charges incurred during the administration period. These should be made available to the residuary beneficiary and signed by them to confirm their acceptance of the contents.

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

The IHT account must be filed with HMRC within 12 months of death to avoid a penalty. The IHT is payable by the end of the sixth month after the date of death. Interest applies for late payment (currently at a rate of 3%).

Where the estate includes a property, the IHT attributable to the property can be paid in ten annual instalments. Where the property is sold before the expiry of the ten year period, all the remaining instalments and interest become due immediately.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

A claim can be made under the Inheritance (Provision for Family and Dependants) Act 1975 (Inheritance Act) within six months of the date of death for financial provision out of the estate. It can only be made where the deceased died domiciled in England and Wales.

The people who can claim under the Inheritance Act in the event that reasonable financial provision has not been made for them, are:

- Current or former spouses or civil partners (providing that they have not remarried or entered into a new civil partnership).
- Cohabitees who have lived with the deceased for at least two years before death.
- Others who were financially maintained or financially dependent on the deceased.

The Law Commission has recently proposed changes to Inheritance Act claims. At the end of 2011, the draft Inheritance and Trustees' Powers Bill was published which includes the proposal that claims could be allowed in certain circumstances where the deceased died not domiciled in England and Wales but left property and dependants in England and Wales.

The validity of the will itself can be challenged on the following grounds:

- Lack of testamentary capacity at the time the will was made.
- The deceased was subject to undue influence when making the will.
- The will was not executed correctly (*see Question 16*).
- Fraud or forgery in relation to the will.
- The deceased did not know or approve the contents of the will.

A challenge can be made by anyone who could potentially have an interest in the estate.

Succession regimes

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

There is no forced heirship in England and Wales and testators have full testamentary freedom.

However, in relation to this, certain factors must be considered including:

- The provisions of the Inheritance Act.
- The devolution of jointly owned property.
- The possibility of a challenge to the will (*see Question 23*).
- Intestacy provisions.

Forced heirship regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

There is no forced heirship regime in England and Wales.

Real estate or other assets owned by foreign nationals

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Immovables sited in England and Wales are always subject to the succession laws of England and Wales.

Movable property is subject to the succession law of the jurisdiction including all of its private international law rules (that is, subject to total *renvoi* or the foreign court theory) in which the deceased is domiciled. The question of whether the deceased is domiciled in England and Wales is decided in accordance with the law of England and Wales and not with reference to the rules of any other jurisdiction (*see Question 2*).

27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

The law of England and Wales applies within the jurisdiction to determine the applicable law. The courts in England and Wales will accept a reference back from a foreign jurisdiction in some circumstances.

Immovables sited in England and Wales are subject to the internal succession laws of England and Wales, with no *renvoi*, regardless of the domicile or residence status of the deceased.

INTESTACY

28. What different succession rules, if any, apply to the intestate?

The distribution of the deceased's estate under an intestacy depends on the classes of family members that survive the deceased.

Where a minor (that is, an individual who has not yet reached the age of eighteen or married or entered into a civil partnership before that date (*see Question 40*)) inherits under the intestacy provisions, their prospective share is held on trust for them, with the income being available for their maintenance, education or benefit.

Surviving spouse or civil partner but no surviving issue. Where there is a surviving spouse or civil partner but no issue, they are entitled to the first GB£450,000 from the estate.

If the net estate is worth more than GB£450,000, the spouse also receives:

- All the personal chattels.
- Half of the remainder of the estate, with the other half passing to the deceased's parents. If neither parent survives, then the other half passes to the deceased's full siblings or the issue of their full siblings where they pre-deceased the deceased.

Surviving spouse or civil partner with issue. Where there is a surviving spouse or civil partner as well as issue, the spouse or civil partner is entitled to GB£250,000 outright.

If the net estate is worth more than GB£250,000, the spouse or civil partner also receives:

- All the personal chattels.
- A life interest in half the remainder of the estate, with the issue receiving the residuary interest in this half and the remaining half outright. If any issue have predeceased the deceased, their issue take their parents' share.

The spouse or civil partner has the right to elect to capitalise their life interest.

Surviving spouse or civil partner with no issue, parents or full siblings or their issue. In this case the surviving spouse or civil partner receives the entire net estate.

No surviving spouse or civil partner but issue. Where there is no surviving spouse or civil partner, but issue, the issue of the deceased that reach the age of eighteen or marry or enter into a civil partnership before that date take the estate in equal shares. In the event that they pre-deceased the deceased, their issue take their parents' share.

Where none of the above applies. The Administration of Estates Act 1925 sets out the rules under intestacy where no close relatives of the deceased survive.

Proposed changes

Some changes to this regime are proposed under the draft Inheritance and Trustees' Powers Bill (*see Question 42*).

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

A claim under the Inheritance Act can be made in relation to an intestacy if the deceased died domiciled in England and Wales (*see Question 23*).

TRUSTS

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

Type of trust and taxation

Trusts are recognised in England and Wales. The trustees are the legal owners of assets but hold them beneficially for a beneficiary, beneficiaries or class of beneficiaries. They are created by a settlor during their lifetime or at their death. The settlor can be a trustee or beneficiary and trustees can also be beneficiaries, although there may be restrictions on trustees making appointments out of trust to themselves as beneficiaries. There are two main types of trust:

- **Discretionary trust.** With a discretionary trust, the trustees hold the trust fund for the benefit of a class of beneficiaries, none of whom have any entitlement to the trust fund except at the discretion of the trustees.

  The taxation of discretionary trusts is as follows:

  - where the trust is created during the lifetime of the settlor, there is a 20% IHT charge on the value of the trust fund over their available NRB (*see Question 8*);
  - IHT of up to 6% of the value of the trust fund on every tenth anniversary of the creation of the trust.
  - IHT of up to 6% when assets leave the trust (based on the value of the assets);

  Beneficiaries are only subject to tax on any assets or income that they have actually received from the trust;

  Provided that the settlor survives the creation of the trust by seven years, no IHT is payable on their death. Otherwise there will be IHT of 40% (with a credit for the 20% already paid).

- **Interest in possession or life interest trusts.** The life tenant has the right to the income of the trust fund or to occupy a trust property. After their deaths the property will either pass absolutely to the residuary beneficiaries or remain in trust for a further life tenant or for a discretionary class of beneficiaries.

  The tax treatment of an interest in possession trust depends on when it was created:

  - if it was created before 22 March 2006, there will be no IHT charges on the creation of the trust (unless the settlor dies within seven years) or during the duration of the trust. The full value of the trust fund is included within the life tenant's own estate at their death for IHT purposes;
  - for trusts created on or after 22 March 2006 during the settlor's lifetime, the tax position is the same as for discretionary trusts;
  - for trusts created following the settlor's death on or after 22 March 2006, the tax position is the same as for interest in possession settlements created before 22 March 2006.

For all trusts, the trustees pay income tax at the relevant rate, depending on the nature of the income. Beneficiaries who receive income from a trust and are liable to tax themselves at a lower rate can claim a tax credit.

Trustees are liable to CGT at 28%.

Residence of trusts

A trust is UK resident for IT and CGT purposes if either:

- All the trustees are UK resident.
- At least one of the trustees is UK resident and the settlor was UK resident or UK domiciled at the time that he created the trust or added funds to it.

A trustee is treated as UK resident where they act as a trustee in the course of a business which is carried on through a branch, agency or permanent establishment in the UK.

Where a trust is not UK resident, IT is due on UK income only and CGT is not payable. There are some circumstances where a UK resident settlor or beneficiary may be taxed on the income and gains realised by a non-UK resident trust.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

The UK adopted the Hague Convention of the Law Applicable to Trusts and on their Recognition 1985 and so recognises trusts governed by another jurisdiction's laws and created by foreign persons.

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

See *Question 30*.

33. If your jurisdiction has its own trust law:

- **Does the law provide specifically for the creation of non-charitable purpose trusts?**
- **Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?**
- **Can the trust document restrict the beneficiaries' rights to information about the trust?**

Purpose trusts

UK law does not generally allow the creation of non-charitable purpose trusts. There are only very limited exceptions to this.

Perpetuities and accumulations

The Perpetuities and Accumulations Act 2009 changed the position of perpetuities and accumulations. For any trusts created after 5 April 2010 (or which are contained in wills executed after that date) the perpetuity period is 125 years. It is now possible to accumulate income for the duration of the trust period, unless the trust instrument provides otherwise.

Beneficiaries' rights to information

The trustees of a trust have a duty to account to the beneficiaries. In deciding what information to provide, the trustees must balance a number of factors, such as:

- The nature of the trust. For example, a life tenant is more likely to receive greater information than a discretionary beneficiary.
- The type of document required and the beneficiary's reason for making the request.
- Issues of confidentiality and the need to act in the best interests of all beneficiaries.

Trustees are expected to disclose some information to the beneficiaries. If the beneficiaries are concerned about the amount of information they receive, it is open to them to make an application to the court.

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

The court can make an order varying trusts made before or after a marriage or civil partnership for the benefit of the couple or their children on or after the decree of divorce or dissolution of civil partnership has been granted. The court can also make an order removing or reducing the interest of either party for trusts made before or after the marriage or civil partnership.

The courts have the power to vary any such trusts, including those governed by foreign law or resident outside the UK. They can also vary trusts where the assets are situated outside the UK.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

Bankruptcy

On the bankruptcy of a settlor, the court can make an order to set aside trusts created by them either:

- Up to two years before the settlor became bankrupt.
- Up to five years before the settlor became bankrupt where they were insolvent at the time or became insolvent due to the trust's creation.

Additionally, there are no time limits for setting aside transactions made at an undervalue in order to place them out of reach of creditors. This includes the transfer of assets into trust.

Sheltering beneficiaries

Where a beneficiary is perceived to be vulnerable, a settlor can create a protective trust, where the beneficiary's life interest is converted to a discretionary interest in the event of their bankruptcy.

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

36. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

There are two ways in which jointly owned property can be held, as:

- **Joint tenants.** Joint tenants hold the property in undivided shares. On the death of one co-owner, under the rule of survivorship, the surviving co-owners automatically take the whole property. Property cannot pass under the will of the deceased or by intestacy.

  For IHT purposes a share of the property is included in the deceased's estate. For example, where there are two co-owners of a property held as joint tenants, for IHT purposes, the deceased is held to have owned half.
- **Tenants in common.** Tenants in common hold specific shares in the property and, on their deaths, their share passes in accordance with the terms of their will or under the intestacy provisions. For IHT purposes, the deceased's share is taxed as part of their estate.

Familial relationships

37. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

There are no matrimonial regimes under the law of England and Wales. Spouses, civil partners, ex-spouses, ex-civil partners and some cohabitees can make a claim on the deceased's estate under the 1975 Act. Alternatively, where property is held as joint tenants with the deceased, it passes to them by survivorship (*see Question 36*).

On the dissolution of a marriage or civil partnership, the court has a very wide discretion concerning the division of property, with the power to order the transfer of assets held in the sole name of one spouse or civil partner to the other. Following the Supreme Court's decision in *Radmacher v Granatino [2010] UKSC 42,* courts in England and Wales are more likely to give weight to pre-nuptial agreements on the dissolution of a marriage or civil partnership, although this is at the discretion of the court.

On death, a matrimonial regime under the law of the deceased's domicile, will be recognised.

Cohabitees do not currently have rights over the other's property or financial relief on separation. They may be able to claim a beneficial interest in assets held by the other cohabitant. The draft Inheritance (Cohabitants) Bill proposes that some cohabitants should have the right to inherit on intestacy.

38. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

Same-sex couples can enter into a civil partnership which is treated, for tax and succession purposes, in exactly the same way as a marriage. Foreign same-sex registered relationships and marriages are recognised as civil partnerships.

39. How are the following terms defined in law:

- **Married?**
- **Divorced?**
- **Adopted?**
- **Legitimate?**
- **Civil partnership?**

Married

Marriage is a legally sanctioned contract between a husband and wife. The marriage changes the status of both parties and gives them new rights and obligations.

For a marriage to be valid, both parties must be unmarried and consent to the marriage. There must also be no other legal factor which invalidates the marriage, such as the parties familial relationship or their age or incapacity.

Divorced

Divorce is the dissolution of the marriage during the lifetime of the parties.

Adopted

Adoption has been recognised in England and Wales since 1926. It terminates the legal rights and duties between a child and their birth parents and transfers them to the adoptive parents.

Legitimate

A child is legitimate if their parents are married at the time of either their conception or birth. Legitimacy has no relevant legal effect with regard to the administration of estates or intestacy.

ONLINE RESOURCES

HM Revenue and Customs

W *www.hmrc.gov.uk*

HMRC's official website containing their guidance notes and relevant forms.

UK Land Registry's website

W *www.landregistry.gov.uk*

The UK Land Registry's website with guidance and relevant forms.

legislation.gov.uk

W *www.legislation.gov.uk*

The official UK government website containing UK legislation.

British and Irish Legal Information Institute (BAILII)

W *www.bailii.org*

Website containing British and Irish case law and legislation.

The Human Fertilisation and Embryology Act 2008 made changes to the rules of parenthood with regard to fertility treatment.

Civil partnership

A civil partnership is a relationship that is recognised by the Civil Partnerships Act 2004 and made between two people of the same sex and who are aged over 18 years. Like a marriage, it can end only with death, dissolution or annulment.

Minority

40. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

The age of majority is 18.

Minors are unable to hold land in their own name, but can hold other property.

Where a minor is due to inherit under an intestacy, their interest is held on statutory trust until they reach the age of majority. Their inheritance under a will is governed by the terms of that will and it is usual for testators to specify an age at which minor beneficiaries can inherit. Minors cannot give personal representatives a valid receipt and it is usual for the will to contain a provision allowing the minor's parents to give a valid receipt instead. A person with parental responsibility under the Children Act 1989 has rights in relation to a minor's property.

CAPACITY AND POWER OF ATTORNEY

41. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

Where a person has created a lasting power of attorney (LPA), their appointed attorney manages their financial affairs. It has been possible to create an LPA since 1 October 2007. Before that date, enduring powers of attorney could be created which remain valid today. An LPA is valid if the person creating it has full capacity when it is signed.

Where there is no LPA, the court can appoint a deputy to manage the person's property and affairs.

Although England and Wales has not ratified the 2000 Hague Protection of Adults Convention, the law under Schedule 3 to the Mental Capacity Act 2005 is the same as the Convention and deals with jurisdiction, recognition and applicable law.

PROPOSALS FOR REFORM

42. Are there any proposals to reform private client law in your jurisdiction?

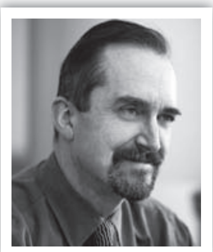
The UK has not ratified Regulation (EU) No 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (Succession Regulation). However, there are proposals to amend the private international law of England and Wales in any event.

In late 2011, the draft Inheritance and Trustees' Powers Bill was published following the law Commission's recommendations that the intestacy rules should be updated. The proposed changes include:

- Where there are no surviving descendants, all the assets of the deceased will pass to their surviving spouse or civil partner.
- Amending the legal rules that disadvantage unmarried fathers when a child dies intestate.
- Simplify the sharing of assets where there is a surviving spouse/civil partner and issue.
- Ensure that the minor children of an intestate do not lose their inheritance in the event of subsequent adoption.

Similarly, the draft Inheritance (Cohabitants) Bill produced at the same time intends to give certain cohabitants the right to take a share of the deceased's estate under intestacy (*see Question 37*).

CONTRIBUTOR DETAILS



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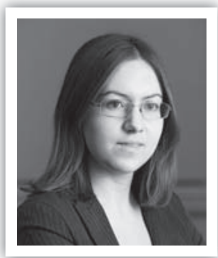
Areas of practice. Cross border taxation; estate planning.

Recent transactions

- Advising trustees on their taxation and reporting obligations under the French Supplementary Budget 2011.
- Advising on the implications of the EU Succession Regulation.
- Advising in the case of *Scarfe & Colin v Matthews & Others.*



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Areas of practice. Trusts; taxation; estate planning; advising on foreign structures.

Recent transactions

- Advising on the UK tax effect of a German GbR held by a UK-domiciled deceased.
- Advising on the UK tax position of a French SCI where some of the shares were held by a UK resident and domiciled usufructuary.
- Working with US advisers to ensure that a will was tax efficient both in the US and the UK. In particular, advising on the effect of US trusts for UK taxation.