

# United Kingdom

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## 1. Types of tax

### 1.1 Inheritance tax and tax on gifts during lifetime

The United Kingdom (UK) has a unified estate and gift tax called inheritance tax (IHT). IHT applies to the value of an individual's estate when he or she dies (in which case he or she is deemed to make a transfer of the whole estate immediately before such time) and to certain transfers or gifts made during the individual's lifetime. The tax applies on the basis of the loss to the donor's estate that arises by reason of the transfer of value.

Adjustments are made to property that increases or decreases in value by reason of an individual's death (e.g., life insurance policies that mature on death and form part of the deceased's estate).

Certain other events give rise to deemed transfers of value, including deliberate depreciatory transactions, sales at an under value, where a person's interest in certain trusts comes to an end, and where a close company (broadly one in the control of five or fewer persons) makes a disposition. In addition, certain trusts are subject to 10 yearly inheritance tax charges and charges when an asset is distributed out of trust.



## Types of transfer

Essentially there are three types of transfer for IHT purposes. These are:

### Exempt transfers

As noted in Section 4, certain transfers, in lifetime or on death, attract special exemptions such as gifts to charities and spouses. These attract no tax.

### Potentially exempt transfers (PETs)

These are certain lifetime transfers that only become chargeable if the transferor dies within seven years of making the gift. Types of gift that fall within this category include outright gifts from one individual to another.

It should be noted that the potential tax exposure, which would arise on death, can normally be insured at quite competitive rates.

### Chargeable transfers

These are immediately chargeable and will utilize the nil-rate band (see Section 4 below) and any available annual allowances, with any excess being liable at 20% (and potentially higher taxes if death occurs in the following seven years). Common lifetime chargeable transfers include transfers to most trusts or to a company that is not 100% owned by the transferor.

Transfers on death are fully chargeable at 40% to the extent they exceed the available nil-rate band, unless specific reliefs are available (e.g., business property relief) or the transfer is exempt (e.g., a bequest to a spouse (to the extent that the spouse exemption is unlimited – see Section 4) or to an exempt person such as an EU charity).

## Transfers by non-UK domiciliaries

With respect to the three types of transfers set out above, it is important to note that where an individual is non-UK deemed domiciled (as set out in Section 2.2), then these transfer rules only apply to assets that are UK *situs*.

### Gifts with reservation

A gift where the donor has reserved or retained some direct or indirect benefit or enjoyment over the property given away is treated as being part of the donor's estate for tax purposes until the reservation is removed. It should be noted that this does not affect the normal Inheritance tax consequences on making the gift; although if ultimately this causes potential double taxation, regulations provide appropriate offset to avoid this. For example, a gift to a trust of which the settlor is a beneficiary may trigger a lifetime tax charge at 20% while the asset gifted would still remain within the settlor's estate for IHT purposes. The release of the reservation is regarded as the making of a potentially exempt transfer. These provisions can also be triggered by any informal non-binding arrangement made with the recipient of the gift to provide a benefit in some indirect way to the donor.

### Pre-owned assets charge

This is an income tax charge which depends on whether or not property is included in a person's estate for IHT purposes. The provisions were introduced to counter planning measures that gave the donor continued benefit from the assets given away, but which did not fall within the gifts with reservation legislation outlined above. From 6 April 2005, where a donor has previously owned an asset (either tangible or intangible) and no longer does so, but arrangements have been made to give him or her continued enjoyment of such property, without the asset forming part of his or her estate for IHT purposes, an income tax charge is imposed on him or her, broadly based on the value of the benefit he or she receives. The charge applies where there was previous ownership by the donor at any time since 17 March 1986, and complex rules cover situations where substitutions and replacements have been made by the donee since then. Gifts of cash can also cause the provisions to apply if made within



the prior seven years. The pre-owned assets charge on intangible property affects assets that are neither land nor chattels placed in a settlement where a settlor still has an interest and where certain other conditions are also met.

## 1.2. Gift tax

There is no specific gift tax in the UK although the above sets out circumstances when lifetime gifts can trigger an IHT charge. Additionally, lifetime gifts (other than to a spouse) are treated as disposals for capital gains tax purposes.

## 1.3. Real estate transfer tax

England and Wales levy a stamp duty land tax (SDLT) charge on transfers of land and buildings, at rates ranging from 0% to 12% (the highest rate payable to the extent residential properties exceed £1.5 million). For transfers on or after 4 December 2014 the tax is progressive, with properties being charged at the percentage applicable to the banding, and is charged on the purchaser of the land or property. Gifts of land and buildings for no chargeable consideration do not, however, realize a charge.

As well as this, a special SDLT rate of 15% is payable on the acquisition of residential properties above £500,000 by “non-natural persons,” such as companies (which are defined as bodies corporate), collective investment schemes and partnerships where at least one of the partners is a company (irrespective of whether these are UK or non-UK entities). This will be relevant for many individuals with offshore structures who use Special Purpose Vehicles (either directly or via offshore trusts) to hold UK residential property and will not be limited to those who have engaged in SDLT planning.

From 1 April 2015, transfers of land and buildings situated in Scotland will be subject to Land and Buildings Transaction Tax (LBTT). This too is a progressive charge levied on the value of the consideration received with rates for residential property ranging from 0% to 12%. However, the bandings differ to SDLT with the highest 12% rate applicable for consideration over £750,000. There is no special 15% LBTT rate for residential property held by non-natural persons.

An annual tax charge (known as the Annual Tax on Enveloped Dwellings or ATED) equivalent to between 0.3% and 1.1% of the property value (but capped at a maximum of £218,200 per annum (p.a.) in 2015/16) will apply to those interests held by non-natural persons (as defined above) in residential property over £1 million. This charge is separate to the transfer duty and applies to residential properties situated anywhere in the UK.

The charge will be extended to properties held by non-natural persons and valued at between £500,000 and £1 million from 1 April 2016, with a charge of £3,500 in that year for residential properties within this band.

## 1.4. Endowment tax

There is no endowment tax in the UK.

## 1.5. Transfer duty

There is no specific transfer duty in UK law (other than for real estate), although the above sets out circumstances when lifetime gifts can trigger an IHT charge.

## 1.6. Net wealth tax

There is no net wealth tax in the UK. However, an annual ATED charge (mentioned in Section 1.3) applies from April 2013 for certain residential properties in excess £1 million held by “non-natural persons.”

# 2. Who is liable?

The taxation of individuals in the UK is determined by their residence and domicile status (see below), although residence is less important for IHT. IHT is levied on the worldwide estate of a decedent who was domiciled in the UK and on the UK sited assets of



## 2.1 Residency

1. Automatic overseas test
2. Automatic residence test
3. Sufficient ties test

## 2.2 Domicile

- From 6 April 2013, the non-UK domiciled spouse can elect to be treated as UK domiciled for the purpose of IHT. This would allow an unlimited exemption for transfers of property between spouses, but would bring the whole estate of the non-UK domiciled spouse into the UK inheritance tax net. An election of this type should relate only to inheritance tax and should not have an impact on their domicile for other purposes (so would not, for example, prevent them from claiming the remittance basis). The election may either be made during lifetime or on death (by the personal representatives of the decedent's estate). While the election is defined as being irrevocable, there are circumstances where the election, while not revoked, will nevertheless cease to be effective. This occurs once the person making the election ceases to be UK tax resident for four consecutive tax years.



### 3. Rates

#### Lifetime transfers

Lifetime chargeable transfers are taxed at a rate of 20%. If death occurs within seven years of making a gift, then tax on a PET arises at up to 40% and further tax on a previous chargeable gift may arise, at up to 20%, subject to the following reductions:

Number of years after gift made	Percentage of death tax due
0-3	100%
3-4	80%
4-5	60%
5-6	40%
6-7	20%
7 or more	0%

In the case of a lifetime chargeable gift where higher tax becomes payable at death, the tax previously paid is offset against the death taxes due.

#### Transfers on death

Transfers on death are charged at 40%.

From 6 April 2012, where a will contains a charitable legacy leaving at least 10% of an individual's estate to charity, this will reduce the inheritance tax rate applied to that estate by 10% – meaning that the effective tax rate will be reduced to 36%.

The new lower rate will apply automatically to any component of an estate that meets the 10% condition. However, the legislation contains a provision to allow the “appropriate persons” in relation to that component to opt out of the provisions. They may choose to do this where it is expected that the benefit of the low rate will be minimal and they do not wish to incur the cost of valuing assets donated to charity.

#### Trusts

Trusts are also liable to IHT (see Section 7 below) on each 10-year anniversary of the trusts creation, and on distributions to beneficiaries between these anniversaries. The maximum rate charged at these events is 6% of the fund value.

#### Date for payment of tax

##### Lifetime transfers

On chargeable transfers made between dates:

April 6 and September 30	Payment is due on 30 April in following year.
October 1 and April 5	Payment is due six months after end of month in which the chargeable transfer was made.

From 6 April 2014, the tax payment and filing dates for certain trust charges changed so that they must be reported within six months of the transfer, and any tax must be settled within the same timeframe.

##### Transfers on death

On transfers at death, and extra tax becoming payable on chargeable lifetime transfers and potentially exempt transfers made within seven years of death, payment is due six months after the end of the month in which death occurred.



## 4. Exemptions and reliefs

IHT is charged on a cumulative basis so that the values of all gifts made within the previous seven years, which do not qualify for exemptions or reliefs, are added together. IHT is charged at a zero rate on an amount known as the nil-rate band, which is £325,000 for the tax year 2015-16 and fixed until 2017-18. Where two individuals are married or in a civil partnership, any percentage of the unused nil-rate band on the first death can be transferred to the surviving spouse's/civil partner's estate on second death. As mentioned in Section 1.1, chargeable lifetime transfers in excess of this cumulative amount are currently charged at 20% (though if death occurs in the following seven years, this figure may be increased). Transfers on death are charged at 40%. Certain lifetime transfers are regarded as exempt (see below) and others as potentially exempt (see Section 1.1).

There are a variety of exemptions and reliefs available to prevent a charge to tax arising on transfers of property. These include the following:

### Asset/purpose-related exemptions

During lifetime or at death, the following gifts can be made tax-free without affecting the £325,000 nil-rate band:

- ▶ Transfers of any amount to a UK domiciled spouse or civil partner, or between two non-UK domiciled spouses or civil partners
- ▶ Transfers by a UK domiciled spouse or civil partner to a non-UK domiciled spouse or civil partner up to the current nil rate band and unlimited if election made (see Section 2.2)
- ▶ Gifts to certain favored bodies (e.g., UK registered charities)
- ▶ Gifts of certain favored types of property (e.g., heritage property)
- ▶ Gifts of agricultural or business property (that can qualify for 50% or 100% relief depending on the nature of the property)

From 5 December 2005, same-sex couples were able to register as civil partners under the Civil Partnership Act 2004 and benefit from the same exemptions and reliefs as married couples, and the Marriage (Same Sex Couples) Act 2013 gives further rights to same-sex couples.

### Lifetime gift exemptions

The following exemptions are available for lifetime gifts only:

- ▶ Gifts of up to £250 per donee per tax year
- ▶ Annual exemptions of up to £3,000 on chargeable transfers made in a tax year (this can be carried forward for one year only)
- ▶ Gifts of between £1,000 and £5,000 in anticipation of marriage or civil partnership (depending on the identity of the donor)
- ▶ Payments for family maintenance (e.g., spouse and minor children or children in full-time education)
- ▶ Normal expenditure out of income which does not affect the donor's standard of living

### Quick succession relief

In addition, if a person inherits assets and dies within five years thereafter, a form of quick succession relief allows a proportion of tax on the earlier death to be set against the tax at the later death.

## 5. Filing procedures

In England and Wales, a Form IHT400 must be used to deliver an account of a deceased's taxable estate to HMRC Capital Taxes Office within 12 months of the end of the month of death. Any inheritance tax due must also be paid within six months after the end of the month in which the deceased died. This is normally done simultaneously with the application for a grant of probate to administer the estate as the tax must be paid before this is issued.









## Discretionary trust

A discretionary trust is one where the trustees have discretion over distributions of capital and income, including accumulation and maintenance trusts.

An accumulation and maintenance trust is a type of discretionary trust, for a class of beneficiaries under 25 years of age, which prior to 22 March 2006 (provided it complied with special rules) had beneficial ongoing inheritance tax treatment. This tax treatment is no longer available and the tax treatment follows that of a discretionary trust, as set out below. In place of accumulation and maintenance trusts, there are two new trust regimes: trusts for bereaved minors and 18-25 trusts, and provided certain conditions are met, each trust has a more beneficial inheritance tax treatment than a normal discretionary trust. However, as far as new trusts are concerned, both these new categories of trust can only be set up on death.

## Creation of trusts and transfers of assets in

The creation of an interest in possession trust or a discretionary trust, or the transfer of property into such a trust, is, generally speaking, a chargeable lifetime transfer. The creation of an interest in possession trust in favor of a disabled person is an exempt transfer.

The gift to a trust may therefore incur a lifetime IHT charge of 20% if the value of assets given over the seven-year cumulative period exceeds the nil-rate band or the transfer does not otherwise qualify for relief. Additionally, trusts that are in the relevant property regime will be subject to periodic and exit charges. This means that a tax charge of up to 6% of the fund value applies at each 10-year anniversary of the trust's creation (the periodic charge) and, proportionately, on distributions from the trust between these anniversaries (the exit charge). Income that has not been accumulated but remains undistributed for more than five years at the date of a periodic charge will now be deemed as "capital" for the calculation of the charge. It should be noted that consultations are continuing into the simplification of calculating trust charges.

Discussions have centered on allowing trustees to opt to pay the maximum 6% charge on the full value of the property in the limited circumstances where the assets are held in cash and quoted shares. This would ensure that professionals would not be required to perform more complex calculations, and it would allow a standard approach to dealing with accumulated income (and income that has not been distributed for a long period without being formally accumulated).

Prior to 22 March 2006, the creation of an interest in possession trust and an accumulation and maintenance trust were potentially exempt transfers. Since 22 March 2006, only the following gifts into trust should qualify as a potentially exempt transfer:

- ▶ A gift into a qualifying disabled person's trust
- ▶ A gift into a bare trust created for an individual beneficiary

## Non-UK settlements

Trusts, whether or not UK resident, which are created by UK domiciled or deemed domiciled individuals, are subject to the UK IHT legislation regardless of the residence of the settlor at the time of their creation or the *situs* of the assets held. Whenever trusts are formed by non-UK resident persons, care needs to be taken to ensure they are not still deemed to be UK domiciled and so subject to the UK IHT provisions.



### Excluded property settlements

If a trust is established by a settlor when he or she is non-UK domiciled (and when he or she is also not deemed domiciled in the UK) and the trust assets are sited outside the UK, the trust is an excluded property trust. This means that the assets, provided they are situated outside the UK at the time of any charge to IHT, will remain outside the scope of IHT, even if the settlor subsequently becomes UK domiciled or deemed domiciled. As the law currently stands, the trust can therefore offer total protection against IHT for such assets. Such trusts are normally non-UK resident trusts since this status can also attract capital gains tax benefits.

It is also possible to take advantage of the excluded property trust status where the assets are sited in the UK. This can be achieved by means of the trust owning the UK assets through the medium of a non-UK *situs* company. The assets of the trust are in these circumstances regarded as being the shares in the company (which are regarded as non-UK *situs* assets) rather than the underlying assets situated in the UK. Certain assets should typically not be held in this way as there may be other UK tax disadvantages (e.g., UK real estate occupied by a beneficiary).

## 8. Grants

With regard to estate taxes, there are no specific rules in the UK.

## 9. Life insurance

The proceeds from a life insurance policy will fall into an individual's estate on death and trigger an IHT charge on assets passing. It is possible, however, to write the policy into trust so that it falls outside the estate and, consequently, the value is not chargeable on death.

## 10. Civil law on succession

### 10.1 Estate planning

#### UK domiciliaries and UK deemed domiciliaries

Estate planning for UK domiciliaries and deemed domiciliaries has become more limited since 22 March 2006, but the following remain viable mitigation techniques:

- ▶ Lifetime gifts that constitute PETs or annual gifts out of income
- ▶ Lifetime gifts that are exempt
- ▶ Investing in assets that qualify for reliefs such as business property relief or agricultural property relief
- ▶ Settling assets into trust to create a nil-rate band trust

#### Non-UK domiciliaries

The main planning that individuals who are not UK domiciled should consider is the creation of an excluded property trust (discussed above in Section 7) prior to becoming deemed domiciled in the UK.

### 10.2 Succession

There are no compulsory succession rules in England and Wales, other than the statutory rules of intestacy covered below in Section 10.5.



In Scotland, however, members of the family have automatic inheritance rights irrespective of the provisions in a will (legal rights), and these rights are covered below in Section 10.3.

### 10.3 Forced heirship

#### England and Wales

There are no compulsory inheritance rules or forced heirship rules in England and Wales. However, if no provision has been made for his or her spouse or for other persons financially dependent on the deceased, a claim against his or her estate may be made under the Inheritance (Provision for Family and Dependents) Act 1975.

#### Scotland

However, in Scotland, a spouse and children (and grandchildren if his or her parent has predeceased) have automatic inheritance rights irrespective of the provisions in a will (legal rights). These can be claimed as an alternative to accepting any inheritance under the Will. It is not possible to accept both. If there are no children, Scots law provides a surviving spouse with half of the net movable estate (assets excluding buildings and land). If there is no spouse, the children take half of the net movable estate. If there are spouse and children, the spouse and the children (jointly if more than one) each take one-third of the net movable estate. The balance can be freely disposed of by will or by the laws of intestacy if there is no will.

These rights under Scots law can be defeated by lifetime gifts to others or to trusts of the individual's moveable estate. It is difficult to completely defeat legal rights, however, as there is almost always some moveable property remaining in an individual's estate on the date of death.

### 10.4 Matrimonial regulations and civil partnerships

There is no concept of matrimonial or community property in the UK.

### 10.5 Intestacy

#### Testamentary documents and intestacy

A will is a legal document that regulates an individual's estate after death. Subject to what is said above with regard to Scotland, in England and Wales an individual generally has complete freedom of disposition.

The UK will normally accept the formal validity (i.e., of the document itself) of a will drawn under the laws of the deceased's domicile, nationality or place of residence at the time of making the will or at death. In England and Wales, the requirement is that the testator signs at the end of the will in the presence of two witnesses and they must sign in his or her presence and in the presence of each other. In Scotland, the testator must sign every page in the presence of one independent witness. A will can generally be revoked and replaced save in limited circumstances where mutual wills have been written.

Whether he or she has the personal legal capacity to make the dispositions in the will is generally governed by the law of the deceased's domicile. In the case of the UK, this means the law of the *situs* of the assets will be relevant where real estate is concerned and the law of the deceased's domicile will be relevant in the case of other assets.

If there is no valid will at death, then the deceased is intestate and his or her estate passes under the statutory rules of intestate succession. Where there are cross-border issues, the Conflicts of Law provisions will be relevant, which are beyond the scope of this chapter.

The intestacy rules are different depending on whether the individual is domiciled in England, Wales or Scotland on their death. The following tables set out the current rules:



## Intestacy rules in England and Wales

	Spouse or registered civil partner and children* survive you	Spouse or registered civil partner and parents survive you but no children, grandchildren or great-grandchildren	No spouse or registered civil partner survives you
<b>Personal effects</b>	Spouse or registered civil partner	Spouse or registered civil partner	–
<b>Legacies</b>	£250,000 to spouse or registered civil partner		–
	** (a)		
	One-half To spouse or registered civil partner outright	To spouse or registered civil partner outright	► Whole estate in order of priority to the exclusion of all others:
	** (b)		► Children or grandchildren (at 18 years old or when married if before)
	One-half To children in equal shares at 18 years old (or when married if before) and on trust until that time (surviving grandchildren take the share of a deceased child)		► Parents
		If none:	► Brothers and sisters (nephews and nieces, if they have predeceased)
		To brother/sisters outright (or their children)	► Half-brothers and half-sisters (their children, if they have predeceased)
		If none:	► Grandparents
		To spouse or registered civil partner outright	► Uncles and aunts (their children, if they have predeceased)
			► Half-brothers and half-sisters of your parents (and their children)
			► The Crown

\* Children of a predeceased child of the intestate parent take their parent's share.

\*\* A trust is created and the assets are held for the benefit of the beneficiaries by third parties who are trustees of the fund. In the case of the trust at (a) above, the spouse receives only the income and the children eventually receive the capital. In the case of the trust at (b) above, statutory provisions require that the funds are held on behalf of the children or other issue until they reach the age of 18 or marry under that age. They then receive the assets outright.



United Kingdom

## Intestacy rules in Scotland

	Spouse or registered civil partner and children* survive you	Spouse or registered civil partner survives you but no children*	Children* survive you but no spouse or registered civil partner	Neither spouse nor registered civil partner nor children* survive you
<b>1. Dwellinghouse right</b>	To spouse or registered civil partner up to a value of £473,000. Balance per #5 below.	To spouse or registered civil partner up to a value of £473,000. Balance per #5 below.	–	–
<b>2. Furniture and plenishings</b>	To spouse or registered civil partner up to a value of £29,000, balance per #4 then #5 below.	To spouse or registered civil partner up to a value of £29,000, balance per #4 then #5 below.	–	–
<b>3. Financial provision</b>	£50,000 to spouse or registered civil partner.	£89,000 to spouse or registered civil partner.	–	–
<b>4. Legal rights</b>	One-third of net moveable estate to spouse or registered civil partner. One third to children.	One-half of net moveable estate to spouse or registered civil partner.	One half of net moveable estate to children.	–
<b>5. Balance of estate (heritable and moveable) s2 of 1964 Act (i.e. Succession (Scotland) Act 1964)</b>	To children	One-half to surviving parents and one-half to surviving siblings.  If no surviving parents, all goes to siblings. If no surviving siblings, all passes to parents. If no surviving siblings or parents, all passes to spouse or registered civil partner.	To children	One-half to surviving parents and one-half to surviving siblings. If no surviving siblings, all passes to parents. If no surviving parents, all passes to siblings. If none of the aforementioned, all passes to aunts and uncles. If no aunts and uncles, all passes to grandparents. If no grandparents, all passes to brothers and sisters of grandparents. If none of the aforementioned, all passes to remoter relatives and if none of those, ultimately to the Crown.**

\* Where a child would have had a claim had he or she not died before the intestate parent, his or her descendants may claim that child's share.

\*\* Where a relative would have had a claim under these rules had he or she not died before the intestate individual, that relative's descendants may claim that relative's share. In this way, an intestate's nieces and/or nephews could have a claim if the estate (or part of it) was due to pass to the intestate individual's brothers and sisters but one or more of the brothers or sisters died before the intestate leaving children.



In England and Wales, the granting of probate (where there is a will) or letters of administration (where there is no will) and, in Scotland, the obtaining of Confirmation, allows the personal representatives to administer the deceased's estate and for the assets to be passed to the beneficiaries as named in the will or by the laws of intestacy. Probate will only be granted when the tax due under the estate has been settled or, in limited circumstances, where an installment option has been agreed with the authorities. The payment date for tax due is six months after the end of the month in which death occurred (see #3 above) after which interest will be charged on the outstanding sum. In England, the estate can be distributed as soon as a grant has been received. In Scotland the personal representatives (Executors) must wait six months from date of death before distributing in order to deal with any creditor claims.

### 11.1 Unilateral rules

## 11.2 Double-taxation treaties

### Additional reading materials

Edited by Timothy Lyons (2000) *Capital Taxes and Estate Planning in Europe*, Thomson Tax: Great Britain