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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, when a person's interest in certain trusts comes to an end, and when 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 transfers for IHT purposes. These are:

Exempt transfers

As noted in Section 4, certain transfers, in a 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 use 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 when an individual is non-UK domiciled and not UK deemed domiciled (as set out in Section 2.2) as special rules apply.

Significant changes have been proposed to the taxation of non-UK domiciled individuals. These were expected to be effective from 6 April 2017; however, the proposals were dropped from the 2017 Finance Bill following the announcement of a general election to be held on 8 June 2017. The expectation is that the dropped provisions will return in a later Finance Bill after the election, regardless of who wins the election, but there is some uncertainty as to the date from which the rules will take effect. Where relevant, these proposals are referred to as the "proposed new non-dom rules" below.

UK residential property held via offshore structures

When the proposed new non-dom rules come into force, a qualifying interest in a non-UK close company or partnership will generally be subject to UK IHT to the extent that the value of the interest is directly or indirectly attributable to a UK residential property. Interests in loans provided in relation to the acquisition, maintenance or enhancement of a UK residential property or to acquire a qualifying interest in a close company or partnership that owns UK residential property will be within the scope of IHT for the creditor. Such debts are generally deductible for the debtor, and restrictions on the deductibility of connected party debts have been removed. Under the proposals, when a UK residential property has been sold following the introduction of the changes, the proceeds will continue to be within the scope of IHT for two years after the sale. When the UK residential property is held within a non-UK trust (with, say, a non-UK company between the trust and property), the trust will be treated as holding "relevant property," meaning the trust falls within the scope of the 10 yearly charges and exit charges. When a company is in place, that company may also be paying the annual tax on enveloped dwellings charges.

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 that 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, when 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 when 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

Stamp Duty Land Tax (SDLT)

SDLT is charged on transfers of land and buildings located in England, Wales and Northern Ireland and certain partnership transactions, at rates ranging from 0% to 15% (the highest rate payable on certain purchases of residential property).

SDLT on residential property

For transfers of residential property, the tax is progressive, with consideration being charged at the percentage applicable to each of the bandings. SDLT is a liability of the purchaser of the land or property.

Since 1 April 2016, the UK Government introduced higher SDLT rates on purchases of additional residential property (and any purchases of residential property by corporate buyers) that complete on or after 1 April 2016 (subject to transitional provisions). The new rates are 3 percentage points above the standard SDLT rates, thereby increasing the maximum SDLT rate to 15%. Transactions under £40,000 are not subject to the higher rates and residential properties, including a tenancy or lease of a residential property, worth less than £40,000 are not taken into account when determining if the higher rates apply. As well as this, subject to certain exclusions, a flat SDLT rate of 15% is payable on certain acquisitions 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 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.

In cases where the property is acquired by way of a grant of a new lease, SDLT also applies at a rate of 1% on the net present value of the rent in excess of £125,000.

SDLT on nonresidential or mixed use property

As regards the acquisition of nonresidential or mixed use property, SDLT is charged on the VAT inclusive consideration. With effect from 17 March 2016 (and subject to transitional arrangements), SDLT is charged at new progressive rates up to 5%. In addition, for new leases of nonresidential (including mixed use) property granted on or after that date, a new 2% rate will be charged on the amount of the net present value (NPV) that exceeds £5 million (below this threshold, the rate applying on the net present value of the rent in excess of £150,000 is 1%). Gifts of land and buildings for no chargeable consideration do not, however, generally incur a charge, although a charge by reference to the market value of the property may arise in certain circumstances (e.g., on the transfer of land and buildings to a connected company, exchanges of land and in relation to certain partnership transactions). There are special rules with regard to leases.

Land and Buildings Transaction Tax (LBTT)

From 1 April 2015, transfers of land and buildings situated in Scotland and certain partnership transactions involving Scottish property are 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%. As with SDLT, a supplemental rate of 3% may be added to each of the rates in certain cases — see below. However, the bandings differ to SDLT. The acquisition of non-residential property is also taxed on a progressive basis and the rates range from 0% to 4.5%. LBTT is also charged on the VAT inclusive consideration. Similar to SDLT, there are special rules for leases.

In line with the higher SDLT rates on additional residential properties purchased in England, Wales and Northern Ireland that apply from 1 April 2016 (see above), the Scottish Government introduced similar higher rates for the purposes of LBTT. The higher LBTT rates apply to purchases of additional residential property (and certain first purchases of residential property by corporate buyers) in Scotland that complete on or after 1 April 2016, subject to transitional measures. The LBTT higher rates apply only to transactions of £40,000 or more.

Land Transaction Tax (LTT)

It is expected that from 1 April 2018, transfers of land and buildings situated in Wales and certain partnership transactions involving Welsh property will be subject to Land Transaction Tax (LTT). It is still too early to give any concrete details about this tax and, therefore, the progress of the legislation should be monitored in respect of relevant transactions.

Annual Tax on Enveloped Dwellings (ATED)

An ATED starting at £3,500, but increasing depending of the property value (but capped at a maximum of £220,350 per annum (p.a.) in 2017/18), applies to those interests held by non-natural persons (as defined above) in a UK dwelling (broadly, an individual residential unit) over £500,000. This charge is separate to SDLT or LBTT and applies to residential properties situated anywhere in the UK. The tax is subject to certain reliefs (e.g., property developers, property rental businesses). When this tax applies, the disposal of the relevant dwelling is also within the charge to ATED-related CGT.

1.4. Endowment tax

There is no endowment tax in the UK.

1.5. Transfer duty

In addition to the potential charge to SDLT/LBTT in relation to the acquisition of UK real estate mentioned above, UK stamp duty is chargeable on documents transferring stock or "marketable securities" (broadly, shares and certain debt instruments) and transfers of certain partnership interests; duty is generally charged at the rate of 0.5% on the consideration given. If no consideration is given, there is no charge to stamp duty.

UK stamp duty reserve tax (SDRT) arises on an agreement to transfer "chargeable securities" (broadly, shares, stock and loan capital) and is also charged at the rate of 0.5% on the consideration paid. It is essentially an alternative tax to stamp duty and, subject to meeting certain conditions, when the relevant document of transfer is duly stamped, this will cancel the charge to SDRT that would otherwise arise on the agreement to transfer the relevant chargeable securities. SDRT is therefore generally payable when the chargeable securities are transferred electronically.

With appropriate implementation, these taxes broadly do not apply in practice to transfers of shares in non-UK incorporated companies.

There is not otherwise any specific transfer duty in UK law, 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, the annual ATED charge (mentioned in Section 1.3) applies from April 2013 for certain residential properties 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 a person who was not domiciled in the UK. Non-domiciled here means also not deemed domiciled (see below). Lifetime gifts may also be subject to IHT on the same basis for UK domiciliaries and non-UK domiciliaries. The decedent's personal representative (i.e., the person charged with administering his or her estate under the terms of his or her will or under the intestacy laws) or the donor of a lifetime gift is normally liable for payment of IHT (rather than the donee), but various provisions exist for recovery of unpaid tax from other persons (e.g., the recipients of gifts or the trustees of settlements). However, in the case of a potentially exempt transfer (see below), where tax only arises if the donor dies within the following seven years, the donee is the person primarily liable to pay the tax. When the tax arises on trust assets, it is normally the trustees who are liable to make payment.

2.1 Residency

From 6 April 2013, a statutory residence test (SRT) has been implemented in the UK. The SRT is a three-part test:

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

The sufficient ties test will determine when a person is considered to be UK resident by virtue of analyzing the number of days spent in the UK and the number of connecting factors he or she has with the UK. Examples of connecting factors are the availability of accommodation, where his or her family live and UK employment. Broadly, the greater number of connecting factors an individual has to the UK, the fewer days he or she is able to spend in the UK before being treated as a UK resident.

2.2 Domicile

- Under English Law, an individual's domicile is the country considered to be their permanent home, even though they may be resident in another country. Every person is born with a domicile of origin, which is normally that of their father at the date of their birth. The fact that a person does not live in the country he or she regards as his or her permanent home for many years does not preclude him or her from being domiciled there under English law, provided he or she has not formed an intention to make any other country his or her permanent home.

- A person may, however, acquire a domicile of choice that displaces his or her domicile of origin by moving from one country of residence to another and living there with the intention to remain in the new location permanently. The onus of proving a change of domicile is on the person asserting the change, and the burden of proof when the assertion is the loss of a domicile of origin is onerous.
- For IHT purposes, the concept of domicile is extended to include certain persons who have been resident in the UK in any part of 17 or more of the previous 20 UK tax years (6 April to the following 5 April). This is known as deemed domicile. In reality, this may be less than 17 calendar years as the calculation is by reference to the number of tax years (or part) in which an individual has been UK resident for income tax purposes. In addition, a person who is domiciled or has become deemed domiciled in the UK, but leaves to reside permanently elsewhere, or otherwise acquires a non-UK domicile, will continue to be deemed to be domiciled in the UK for three calendar years thereafter.
- Under the proposed new non-dom rules, an individual with a non-UK domicile will be treated as deemed domiciled in the UK once he or she has been resident in the UK for 15 out of the previous 20 tax years. Split years will count as years of residence for this purpose. Individuals born in the UK with a UK domicile of origin ("Returning Doms") will be deemed domiciled in the UK when they are resident in the UK. Returning Doms will be "deemed UK domiciled" for any tax year in which they are UK resident provided they were also UK resident for at least one of the two preceding tax years.
- When one spouse is UK domiciled and the other is non-UK domiciled, there is a lifetime limit of the prevailing nil-rate band (currently £325,000) on the property which can be passed to the non-UK-domiciled spouse under the spouse exemption.

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 it would not, for example, prevent them from claiming the remittance basis). The election may be made either 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 under which 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%.

Under the proposed new non-dom rules, when 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 when 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 trust's 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:

6 April and 30 September	Payment is due on 30 April of the following year.
1 October and 5 April	Payment is due six months after the end of the 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. The UK Government currently proposes that in addition to the abovementioned £325,000 "general" nil-rate band, an additional "main residence" nil-rate band will be introduced for main home transfers on death. It is proposed that such "main residence" nil-rate band will be £100,000 from 2017–18, gradually increasing to £175,000 in 2020–21 (this relief is gradually phased out for main residencies worth more than £2 million). When two individuals are married or in a civil partnership, any percentage of the unused nil-rate band (and "main residence" nil-rate band once introduced) 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% (although 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 HM Revenue & Customs' (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.

In Scotland, the rules are slightly different. An inventory of the estate must be completed and presented to the local Sheriff Clerk or Commissary Office in Edinburgh for the issue of Confirmation (which is the equivalent of grant of probate) along with a C5 Form if the estate qualifies as either an excepted estate or an exempt excepted estate. If the estate does not qualify, a Form IHT400 must be submitted to HMRC. All the accounts should be sent in within 12 months of the end of the month in which death occurred.

Periodic and exit charges for trusts are reported on Form IHT100, and the form must be submitted within six months of the charge. Chargeable lifetime events (except those that are excepted transfers or settlements) must be reported on Form IHT100 within one year of the event.

6. Assessments and valuations

For UK IHT purposes, assets are valued at the price that it would be reasonably expected to fetch if sold in the open market.

There is specific guidance that applies to the valuation of shares and securities, where there are two possible valuation methods:

- The quarter-up method
- The average of the highest and lowest marked bargains

In addition, an adjustment will be required when the share or security is quoted ex-dividend or ex-interest.

In some circumstances, liabilities (e.g., loans secured on the asset) can reduce the value subject to IHT. It should be noted that the deductibility of loans is disallowed when they have been taken out to acquire or enhance excluded property, relievable property and where there is no intention to repay the loan on death (subject to limited grandfathering provisions).

From 2014, this rule has been extended to disallow the deductibility of borrowed funds deposited into a foreign currency account with a UK bank. Such accounts are now included in the definition of "excluded property."

7. Trusts, foundations and private purpose funds

From an estate planning point of view, trusts are often used as a means of making lifetime gifts to enable the donor to place constraints on the donee. Property will normally be gifted at a time when it does not attract an IHT liability, and any growth in value of assets held by the trust is outside of the donor's estate — provided that the donor and donor's spouse cannot benefit from the trust. Care needs to be taken when making gifts, as this can attract a capital gains tax liability on any unrealized appreciation in the asset.

Under the proposed new non-dom rules, the UK Government proposes to change the IHT regime for trusts (please see the summary of the key proposed changes below in this section).

Types of UK trust

Bare trust

A bare trust is the simplest form of trust where property is held effectively as nominee for another person. For legal purposes, the trustees have certain duties and obligations, but for UK tax purposes, the trust and gifts to it are treated as if the beneficiary were the owner of the assets themselves.

Interest in possession trust

An interest in possession trust, or life interest trust, is one that confers on one or more persons a right to receive the income with, in some cases, potential discretionary distributions of capital. From 22 March 2006, gifts to an *inter vivos* interest in possession trust follow that for discretionary trusts (see below), whereas those that are created as an immediate post-death interest will not be part of the relevant property regime (see below).

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 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 to be capital for the calculation of the charge. In 2015, legislation was introduced that targets the use of multiple trusts by the settlors on death thus preventing the use of the multiple nil-rate bands. 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 thus 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.

Under the proposed new non-dom rules, excluded property settlements established by non-UK-domiciled persons should retain their UK tax privileged status even when the non-UK-domiciled settlors become deemed domiciled for UK tax purposes (under the proposed "15 out of the 20 years" deemed domicile rule, please see section 2.2 above). However, trusts established by those with the UK domicile of origin returning to the UK (Returning Doms) and holding non-UK *situs* assets will no longer be excluded property (and therefore may be exposed to UK IHT on 10-year anniversaries and in distributions of capital from the trust) if the settlor is UK resident and deemed domiciled at the relevant time.

It is also possible to take advantage of the excluded property trust status when the assets are sited in the UK. This can be achieved by means of the trust owning the UK assets through a non-UK incorporated 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).

When the proposed new non-dom rules come into force, all UK residential property owned by non-UK companies and other entities (for example, partnerships or foundations) will be brought within the scope of UK IHT. The value of the interest in the entity holding the property will be within the scope of IHT to the extent it derives its value from UK residential property (less any relevant borrowings), thus negating the planning outlined above. Interests in loans provided in relation to the acquisition, maintenance or enhancement of a UK residential property or to acquire a qualifying interest in a close company or partnership that owns UK residential property will also be within the scope of IHT for the creditor. Such debts are generally deductible for the debtor, and restrictions on the deductibility of connected party debts have been removed. The relevant chargeable events for UK IHT purposes may include the following:

- The death of the individual, wherever resident, who owns the company shares

- A gift of the company shares into trust
- The 10-year anniversary of the trust
- Distribution of capital (such as company shares) out of trust
- The death of the donor within seven years of having given the company that holds the UK property away to an individual
- The death of the donor or settlor when he benefits from the gifted UK property or shares within seven years prior to his death.

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

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 takes 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 movable estate. It is difficult to completely defeat legal rights, however, as there is almost always some movable 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 sign at the end of the will in the presence of two witnesses, who 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 when 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. When 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 his or her death.

The following tables set out the current rules:

Intestacy rules in England and Wales

	Spouse or registered civil partner and children* survive decedent	Spouse or registered civil partner and parents survive decedent but no children, grandchildren or great-grandchildren	No spouse or registered civil partner survives decedent
Personal effects	Spouse or registered civil partner	Spouse or registered civil partner	–
Legacies	£250,000 and personal possessions to spouse or registered civil partner		–
	*		
	One-half of the rest 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:
			▸ Children (at 18 years old or when married if before) or grandchildren if they have predeceased
	One-half of the rest 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
			▸ Brothers and sisters (nephews and nieces, if they have predeceased)
			▸ Half-brothers and half-sisters (their children, if they have predeceased)
			▸ Grandparents
			▸ Uncles and aunts (their children, if they have predeceased)
			▸ Half-brothers and half-sisters of decedent's parents (and their children if they have predeceased)
			▸ The Crown

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

Intestacy rules in Scotland

	Spouse or registered civil partner and children* survive decedent	Spouse or registered civil partner survives decedent but no children*	Children* survive decedent but no spouse or registered civil partner	Neither spouse nor registered civil partner nor children* survive decedent
1. Dwelling house right	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	–	–
2. Furniture and plenishings	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	–	–
3. Financial provision	£50,000 to spouse or registered civil partner	£89,000 to spouse or registered civil partner	–	–
4. Legal rights	One-third of net movable estate to spouse or registered civil partner; one-third to children	One-half of net movable estate to spouse or registered civil partner	One-half of net movable estate to children	–
5. Balance of estate (heritable and movable) s2 of 1964 Act (i.e., Succession (Scotland) Act 1964)	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.**

** When 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.*

*** When 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.*

10.6 Probate

In England and Wales, the granting of probate (when there is a will) or letters of administration (when 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, when 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 Section 5 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 (otherwise, they may be legally liable for any unpaid debts).

11. Estate tax treaties

11.1 Unilateral rules

When an asset is subject to tax overseas in a jurisdiction that does not have an estate tax treaty with the UK, unilateral rules will apply. Unilateral credit is given when inheritance tax and overseas tax are chargeable by reference to the same event and attributable to the value of the same property. In addition, the overseas tax must be similar in character to inheritance tax. The amount of tax relief given is capped at the lower of overseas tax paid and UK tax due.

11.2 Double-taxation treaties

The UK has concluded estate tax treaties with France, India, Ireland, Italy, the Netherlands, Pakistan, South Africa, Sweden, Switzerland and the United States.