



Finance (No. 2) Act 2017

2017 CHAPTER 32

PART 1

DIRECT TAXES

Domicile, overseas property etc

29 Deemed domicile: income tax and capital gains tax

- (1) In Chapter 2A of Part 14 of ITA 2007 (income tax liability: domicile), after section 835B insert—

“835BA Deemed domicile

- (1) This section has effect for the purposes of the provisions of the Income Tax Acts or TCGA 1992 which apply this section.
- (2) An individual not domiciled in the United Kingdom at a time in a tax year (“the relevant tax year”) is to be regarded as domiciled in the United Kingdom at that time if—
 - (a) condition A is met, or
 - (b) condition B is met.
- (3) Condition A is that—
 - (a) the individual was born in the United Kingdom,
 - (b) the individual's domicile of origin was in the United Kingdom, and
 - (c) the individual is UK resident for the relevant tax year.
- (4) Condition B is that the individual has been UK resident for at least 15 of the 20 tax years immediately preceding the relevant tax year.
- (5) But Condition B is not met if—
 - (a) the individual is not UK resident for the relevant tax year, and

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(b) there is no tax year beginning after 5 April 2017 and preceding the relevant tax year in which the individual was UK resident.”

(2) Schedule 8 contains—

- (a) provision applying section 835BA of ITA 2007, and
- (b) further provision relating to this section.

30 Deemed domicile: inheritance tax

(1) In section 267 of IHTA 1984 (persons treated as domiciled in the United Kingdom), in subsection (1)—

- (a) in paragraph (a), omit the final “or”;
- (b) after that paragraph insert—
 - “(aa) he is a formerly domiciled resident for the tax year in which the relevant time falls (“the relevant tax year”), or”;
- (c) for paragraph (b) substitute—
 - “(b) he was resident in the United Kingdom—
 - (i) for at least fifteen of the twenty tax years immediately preceding the relevant tax year, and
 - (ii) for at least one of the four tax years ending with the relevant tax year.”

(2) In that section, omit subsection (3).

(3) In that section, in subsection (4), for “in any year of assessment” substitute “ for any tax year ”.

(4) In section 48 of that Act (settlements: excluded property)—

- (a) in subsection (3)(b), for “and (3D)” substitute “ to (3E) ”;
- (b) in subsection (3A)(b), for “subsection (3B)” substitute “ subsections (3B) and (3E) ”;
- (c) after subsection (3D) insert—

“(3E) In a case where the settlor of property comprised in a settlement is not domiciled in the United Kingdom at the time the settlement is made, the property is not excluded property by virtue of subsection (3) or (3A) above at any time in a tax year if the settlor was a formerly domiciled resident for that tax year.”

(5) In section 64 of that Act (charge at ten-year anniversary), in subsection (1B), after “was made” insert “ and is not a formerly domiciled resident for the tax year in which the ten-year anniversary falls ”.

(6) In section 65 of that Act (charge at other times), after subsection (7A) insert—

“(7B) Tax shall not be charged under this section by reason only that property comprised in a settlement becomes excluded property by virtue of section 48(3E) ceasing to apply in relation to it.”

(7) In section 82 of that Act (excluded property)—

- (a) for subsection (1) substitute—

“(1) In a case where, apart from this section, property to which section 80 or 81 applies would be excluded property by virtue of section 48(3)

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- (a) above, that property shall not be taken to be excluded property at any time (“the relevant time”) for the purposes of this Chapter (except sections 78 and 79) unless Conditions A and B are satisfied.”;
 - (b) in subsection (2), for “the condition in subsection (3) below” substitute “Condition A ”;
 - (c) in subsection (3), for “The condition” substitute “ Condition A ”;
 - (d) after subsection (3) insert—
 - “(4) Condition B referred to in subsection (1) above is—
 - (a) in the case of property to which section 80 above applies, that the person who is the settlor in relation to the settlement first mentioned in that section, and
 - (b) in the case of property to which subsection (1) or (2) of section 81 above applies, that the person who is the settlor in relation to the first or second of the settlements mentioned in that subsection,was not a formerly domiciled resident for the tax year in which the relevant time falls.”
- (8) In section 272 of that Act (interpretation)—
- (a) for the definition of “foreign-owned” substitute—

““foreign-owned”, in relation to property at any time, means property—

 - (a) in the case of which the person beneficially entitled to it is at that time domiciled outside the United Kingdom, or
 - (b) if the property is comprised in a settlement, in the case of which the settlor—
 - (i) is not a formerly domiciled resident for the tax year in which that time falls, and
 - (ii) was domiciled outside the United Kingdom when the property became comprised in the settlement;”;
 - (b) at the appropriate place insert—

““formerly domiciled resident”, in relation to a tax year, means a person—

 - (a) who was born in the United Kingdom,
 - (b) whose domicile of origin was in the United Kingdom,
 - (c) who was resident in the United Kingdom for that tax year, and
 - (d) who was resident in the United Kingdom for at least one of the two tax years immediately preceding that tax year;”.
- (9) The amendments made by this section have effect in relation to times after 5 April 2017, subject to subsections (10) to (12).
- (10) The amendment to section 267(1) of IHTA 1984 made by subsection (1)(c) does not have effect in relation to a person if—
- (a) the person is not resident in the United Kingdom for the relevant tax year, and
 - (b) there is no tax year beginning after 5 April 2017 and preceding the relevant tax year in which the person was resident in the United Kingdom.

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In this subsection “relevant tax year” is to be construed in accordance with section 267(1) of IHTA 1984 as amended by subsection (1).

- (11) The amendment to section 267(1) of IHTA 1984 made by subsection (1)(c) also does not have effect in determining—
- (a) whether settled property which became comprised in the settlement on or before that date is excluded property for the purposes of IHTA 1984;
 - (b) the settlor's domicile for the purposes of section 65(8) of that Act in relation to settled property which became comprised in the settlement on or before that date;
 - (c) whether, for the purpose of section 65(8) of that Act, the condition in section 82(3) of that Act is satisfied in relation to such settled property.
- (12) Despite subsection (2), section 267(1) of IHTA 1984, as originally enacted, shall continue to be disregarded in determining—
- (a) whether settled property which became comprised in the settlement on or before 9 December 1974 is excluded property for the purposes of IHTA 1984;
 - (b) the settlor's domicile for the purposes of section 65(8) of that Act in relation to settled property which became comprised in the settlement on or before that date;
 - (c) whether, for the purpose of section 65(8) of that Act, the condition in section 82(3) of that Act is satisfied in relation to such settled property.
- (13) Subsections (14) and (15) apply if an amount of inheritance tax—
- (a) would not be charged but for the amendments made by this section, or
 - (b) is, because of those amendments, greater than it would otherwise have been.
- (14) Section 233 of IHTA 1984 (interest on unpaid inheritance tax) applies in relation to the amount of inheritance tax as if the reference, in the closing words of subsection (1) of that section, to the end of the period mentioned in paragraph (a), (aa), (b) or (c) of that subsection were a reference to—
- (a) the end of that period, or
 - (b) if later, the end of the month immediately following the month in which this Act is passed.
- (15) Subsection (1) of section 234 of IHTA 1984 (cases where inheritance tax payable by instalments carries interest only from instalment dates) applies in relation to the amount of inheritance tax as if the reference, in the closing words of that subsection, to the date at which an instalment is payable were a reference to—
- (a) the date at which the instalment is payable, or
 - (b) if later, the end of the month immediately following the month in which this Act is passed.
- (16) Subsection (17) applies if—
- (a) a person is liable as mentioned in section 216(1)(c) of IHTA 1984 (trustee liable on 10-year anniversary, and other trust cases) for an amount of inheritance tax charged on an occasion, and
 - (b) but for the amendments made by this section—
 - (i) no inheritance tax would be charged on that occasion, or
 - (ii) a lesser amount of inheritance tax would be charged on that occasion.

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- (17) Section 216(6)(ad) of IHTA 1984 (delivery date for accounts required by section 216(1)(c)) applies in relation to the account to be delivered in connection with the occasion as if the reference to the expiration of the period of 6 months from the end of the month in which the occasion occurs were a reference to—
- (a) the expiration of that period, or
 - (b) if later, the end of the month immediately following the month in which this Act is passed.

31 Settlements and transfer of assets abroad: value of benefits

Schedule 9 makes provision about the value of benefits received in relation to settlements and the transfer of assets abroad.

32 Exemption from attribution of carried interest gains

- (1) TCGA 1992 is amended as follows.
- (2) In section 13(1A) (attribution of gains to members of non-resident companies)—
 - (a) omit the “or” at the end of paragraph (a), and
 - (b) at the end of paragraph (b), insert “, or
 - (c) a chargeable gain treated as accruing under section 103KA(2) or (3) (carried interest gains).”
- (3) In section 86 (attribution of gains to settlors with interest in non-resident or dual resident settlements), after subsection (4ZA) insert—

“(4ZB) Where (apart from this subsection) the amount mentioned in subsection (1) (e) would include an amount of chargeable gains treated as accruing under section 103KA(2) or (3) (carried interest gains), the amount of the gains is to be disregarded for the purposes of subsection (1)(e).”
- (4) In section 87 (non-UK resident settlements: attribution of gains to beneficiaries), after subsection (5A) insert—

“(5B) Where (apart from this subsection) the amount mentioned in subsection (4) (a) would include an amount of chargeable gains treated as accruing under section 103KA(2) or (3) (carried interest gains), the amount of the gains is to be disregarded for the purposes of determining the section 2(2) amount.”
- (5) The amendments made by this section have effect in relation to chargeable gains treated as accruing under section 103KA(2) or (3) of TCGA 1992 at any time before, as well as after, the passing of this Act.

33 Inheritance tax on overseas property representing UK residential property

Schedule 10 makes provision about the extent to which overseas property is excluded property for the purposes of inheritance tax, in cases where the value of the overseas property is attributable to residential property in the United Kingdom.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. A1 para. 8(6)(b) omitted by [2022 c. 3 Sch. 1 para. 32\(b\)](#)
- Sch. A1 para. 8(2) substituted by [2022 c. 3 Sch. 1 para. 32\(a\)](#)