Private Client 2021

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Getting The Deal Through

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Lexology Getting The Deal Through is delighted to publish the ninth edition of *Private Client*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Bermuda, Cayman Islands, Cyprus, Guernsey, Switzerland and the United States.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Anthony Thompson and Nicole Aubin-Parvu of Forsters LLP, for their continued assistance with this volume.

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TAX

Residence and domicile

1 | How does an individual become taxable in your jurisdiction?

Principal factors

An individual's place of domicile and residence are the principal factors in determining how he or she may be taxed in the United Kingdom (UK). The situs of assets will also be relevant in respect of certain taxes.

Domicile

Broadly speaking, an individual's domicile is where he or she has a 'permanent home' and intends to live permanently or indefinitely. Long-term residence may be a factor in determining domicile but is insufficient in itself.

At birth, an individual's domicile of origin will be based on the domicile of his or her parents (primarily his or her father). A domicile of origin can be displaced by the acquisition of a domicile of dependency (if an individual's parents acquire a new domicile while he or she is under 16 years) or, after the age of 16 years, a domicile of choice (if an individual resides in another country with the intention of residing there permanently or indefinitely). However, if an individual loses a domicile of choice in a country by leaving it, not intending to return to it, and moving to a different country without forming the intention of living there permanently or indefinitely, his or her domicile of origin will revive unless and until it is replaced by a new domicile of choice.

Strictly, an individual is not domiciled 'in the UK' but in one of the jurisdictions that make up the UK: England and Wales, Scotland or Northern Ireland. However, we use the shorthand 'domiciled in the UK' to refer to an individual who is domiciled within one of these jurisdictions.

Deemed domicile

From 6 April 2017, new deemed domicile rules came into effect that apply across inheritance tax (IHT), income tax and capital gains tax (CGT). The general rule is that a person who is not otherwise domiciled in the UK will be deemed to be domiciled in the UK if he or she has been resident for at least 15 of the 20 tax years immediately preceding the relevant tax year. If a non-UK domiciled person subsequently leaves the UK and spends at least six consecutive complete tax years outside the UK, he or she will no longer be deemed domiciled for income tax and CGT purposes. For IHT purposes, he or she would cease to be deemed domiciled if he or she is non-resident for four consecutive complete tax years, with the deemed domicile status falling away at the beginning of the fourth tax year of non-residence.

Non-UK domiciled individuals who were born in the UK with a UK domicile of origin are subject to stricter rules since 6 April 2017. Such individuals will be treated as deemed domiciled for income tax and CGT purposes on any occasion when they are tax-resident in the UK, even if they continue to have a domicile overseas for general law purposes. For IHT purposes, a non-UK domiciled person who was born in the UK will be deemed domiciled in the UK if he or she was resident in the UK for the relevant tax year and for at least one of the two tax years immediately preceding the relevant tax year. Assuming he or she has not become deemed domiciled under the general deemed domicile rules (ie, resident in the UK for 15 out of the preceding 20 tax years), such an individual will no longer be deemed UK-domiciled from his or her first tax year of non-residence.

Residence

Tax residence in the UK is based on a statutory residence test. This test combines a test of presence in and connections with the UK. It applies only to individuals and covers income tax, CGT and, where relevant, IHT and corporation tax. It supersedes all existing legislation, case law and guidance for tax years following its introduction.

The test is divided into three parts, as follows:

- the automatic overseas tests: the satisfaction of one of these for a tax year means that the individual concerned is automatically non-UK resident for that year. There are five tests (two of which relate to individuals who have died during the relevant tax year). Three of the five tests focus on the number of days spent by an individual in the UK in the relevant tax year, combined with his or her residence in preceding years, and the other two focus on work overseas, combined with days spent in the UK in that tax year, or the individual's residence status in preceding years. If none of these tests applies to an individual, then;
- the automatic residence test must be considered: this is divided into four automatic UK tests (one of which relates to individuals who have died during the relevant tax year). The first test provides that an individual is UK-resident for any tax year in which he or she spends at least 183 days in the UK (the old statutory test). Two of the other tests focus on time spent by an individual in a home in the UK compared with any homes overseas, and one focuses on work in the UK. The satisfaction of any one of these tests for a tax year means that the individual is automatically UK-resident for that year. If neither automatic test applies to an individual, then;
- the sufficient ties test will determine the position: this test compares the number of days during a tax year spent by an individual in the UK with the number of 'ties' the individual has with the UK during that year. These 'UK ties' relate to family, work, accommodation, days spent in the UK in earlier tax years (90-day tie) and (for those who have been UK-resident for one or more of the previous three tax years) days spent in the UK in the relevant tax year compared with other countries (country tie).

There are specific tests that apply to determine the residence status of international transport workers. There is also a set of split-year rules determining how an individual's residence for years of departure from

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or arrival in the UK may be determined in different situations, as well as a number of anti-avoidance and transitional provisions.

For tax years prior to 6 April 2013, there was no statutory test of residence. Instead, the concept of residence was based primarily on physical presence in the UK, so that if an individual spent 183 days or more in the UK during the tax year, or an average of 91 days or more in a tax year in the UK over four years, he or she would be tax resident in the UK (as mentioned above, the 183-day test is retained in the new statutory test). However, spending less time in the UK would not automatically have led to the conclusion that an individual was not a UK resident, as other factors linking the taxpayer to the UK were also considered, namely:

- the frequency and duration of an individual's periods of presence in the UK;
- the purpose and pattern of his or her presence; and
- his or her connections to the UK.

Ordinary residence

The concept of ordinary residence was scrapped in the UK with effect from 6 April 2013, other than in very limited circumstances. Transitional provisions, put in place for certain individuals who already benefited from a particular tax treatment due to being not ordinarily resident in the UK, expired after tax year 2015-2016.

Remittance basis

Under the existing rules, an individual who is resident but not domiciled in the UK, or deemed to be domiciled for tax purposes, is entitled to elect to be taxed on the remittance basis in respect of his or her foreign income and capital gains. In this case, the individual is only liable to tax on foreign income and gains that are brought into, or 'remitted' to, the UK.

Subject to certain exemptions (including an exemption for minors) and de minimis limits, for individuals who have been resident in the UK in at least seven of the preceding nine tax years, there is an annual charge of £30,000 to claim the benefit of the remittance basis. The annual charge increases to £60,000 for individuals who have been resident in the UK in 12 of the preceding 14 tax years. Prior to 6 April 2017, there was also a £90,000 annual charge for individuals who had been resident in the UK in 17 of the preceding 20 tax years. This charge no longer applies because, with effect from 6 April 2017, an individual who has been resident in the UK for at least 15 of the preceding 20 years is deemed to be domiciled in the UK for all tax purposes and not entitled to claim the remittance basis.

In most cases, an individual who claims the remittance basis loses his or her entitlement to the personal allowance for income tax and the annual exemption for capital gains tax.

The changes enacted in Finance (No. 2) Act 2017, with effect from 6 April 2017, provided for a CGT rebasing relief for certain non-UK domiciled individuals who became deemed domiciled for the first time on 6 April 2017, and who had paid the remittance basis charge in at least one prior tax year. Where the conditions for the relief are met, personally held non-UK assets are treated as having been acquired at their market value on 6 April 2017. In general, the 2017 changes to the rules for non-UK domiciled individuals are complex and local legal advice on these provisions should always be sought.

Income

2 | What, if any, taxes apply to an individual's income?

Income tax is levied on an individual's income from all sources: employment, profits of a trade or business, savings and investments.

Under the existing rules, a UK-resident individual who is domiciled outside the UK may claim, or be automatically entitled to, the remittance basis of taxation in relation to his or her foreign income. Otherwise, UK-resident individuals are taxable on their worldwide income as it arises, subject to any double tax treaty relief where foreign income has been taxed at source.

An individual who is resident outside the UK is taxable only on his or her UK income and, if that income is also taxed in the individual's country of residence, he or she may be entitled to relief under a double taxation treaty if there is one in force between the UK and the country of residence.

Rates

The income tax rates applicable vary according to the source and level of income received by the individual in any tax year.

In tax year 2020-2021, the income tax rates applicable are as follows.

Savings income	Up to £5,000: 0% in certain circumstances (see below)	Above £5,000: rates are as for non-savings income		
Dividend income	Up to £2,000: 0%	£2,001 to £37,500: 7.5%	£37,501 to £150,000: 32.5%	Over £150,000: 38.1%
Other income		Up to £37,500: 20%	£37,501 to £150,000: 40%	Over £150,000: 45%

The personal allowance for income that can be earned in any tax year before income tax is paid is £12,500 for individuals with an annual income of £100,000 or less. Above that limit, the allowance is reduced by £1 for every £2 of extra income, until it is exhausted when income exceeds £125,000. There are certain other allowances for blind people, and for individuals and married couples over the age of 65 or 75, although age-related allowances are also subject to income limits.

As set out in the table above, for dividends, there is a tax-free dividend allowance. Under this allowance, in tax year 2020-21, there is no tax on the first £2,000 of dividend income regardless of what non-dividend income is available. However, any dividends received over £2,000 are taxed at 7.5 per cent within the basic rate band, 32.5 per cent within the higher rate band, and 38.1 per cent within the additional rate band.

As indicated in the table above, savings income of up to £5,000 may be taxable at zero per cent if non-savings income is under £17,500. Every £1 of non-savings income above the personal allowance of £12,500 reduces the starting rate for savings income by £1.

There is also a personal savings allowance of £1,000 available for savings income for basic rate taxpayers and £500 for higher rate taxpayers.

Capital gains

3 | What, if any, taxes apply to an individual's capital gains?

CGT is levied on the taxable gains of individuals resident in the UK. Individuals resident outside the UK are not liable to tax in the UK on their capital gains, UK or otherwise, other than in respect of gains on disposals of residential property in the UK made on or after 6 April 2015, of gains on disposals of non-residential property in the UK, and of certain indirect interests in either type of property made on or after 6 April 2019. Companies, including non-UK resident companies with effect from 6 April 2019, pay corporation tax rather than CGT in respect of their gains.

A UK-resident individual who is domiciled outside the UK under the general law and is not deemed to be domiciled in the UK for tax purposes may claim or be automatically entitled to the remittance basis of taxation in relation to his or her foreign gains. Otherwise, UK-resident individuals are taxable on their worldwide capital gains, subject to any double tax treaty relief applicable.

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Capital gains realised on the disposal of an asset, which includes a sale or a gift, are taxed as the top slice of income and, in tax year 2020-2021, are levied at a rate of 10 per cent for basic rate taxpayers (18 per cent on upper rate gains, which include carried interest and residential property) and otherwise at 20 per cent (or 28 per cent on upper rate gains). There is an annual exemption from tax on gains up to £12,300 (£6,150 for trustees).

Transfers of assets between spouses or civil partners are not liable to CGT, and neither are disposals of a main residence as a result of principal private residence relief (PPR). PPR may be claimed by UK residents disposing of a UK or non-UK residential property, and non-UK residents disposing of a UK residential property provided that, in either case, the property qualifies as a main residence for the purposes of the relief.

Other CGT deferrals and reliefs may be available, including business assets disposal relief (known as entrepreneurs' relief prior to 6 April 2020) on the sale of certain business assets owned for at least two years (other than in certain, specific situations), the effect of which is to reduce the rate of tax to 10 per cent on gains up to a lifetime limit of £1 million (reduced from £10 million) for qualifying disposals made on or after 11 March 2020). Similarly, the Finance Act 2016 introduced investors' relief that reduces the rate of tax to 10 per cent on lifetime gains of up to £10 million. This relief is available on the disposal of ordinary shares in unlisted trading companies by individuals other than officers and employees, or trustees in certain circumstances, and is subject to a three-year ownership period. The shares must have been issued on or after 17 March 2016. In both cases, there are detailed conditions that must be satisfied to qualify for the relief.

Lifetime gifts

4 | What, if any, taxes apply if an individual makes lifetime gifts?

There is no gift tax in the UK.

Gifts of cash made between individuals give rise to no immediate tax consequences. Gifts of other assets may be liable to CGT if standing at a gain.

Gifts into trust (other than of excluded property) are liable to IHT as 'immediately chargeable transfers' at a rate of 20 per cent, to the extent that they exceed the available nil-rate band of the individual (a maximum of £325,000 in tax year 2020-2021).

However, if an individual dies within seven years of making a gift (including one into trust) then, unless the gift is subject to an exemption or relief, IHT or additional IHT may be payable in certain circumstances.

Inheritance

5 | What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

IHT

IHT is payable by reference to an individual's domicile and the situs of assets. UK-domiciled individuals (actual or deemed) are subject to IHT on their assets worldwide (subject to any applicable double tax treaty relief). Generally, non-UK domiciled individuals are only liable to IHT on their UK situs assets as non-UK situs assets are treated as excluded property for inheritance tax purposes. With effect from 6 April 2017, UK residential property held by non-UK domiciled individuals through certain offshore entities (typically an offshore company) has been brought within the scope of IHT.

On an individual's death, IHT is payable at 40 per cent on the value of any property he or she then owned or is deemed to have owned that exceeds the available nil-rate band, at present £325,000. The residence nil-rate band (RNRB) for 'qualifying residential interests' (usually the family home, but certainly one that has at some point been a residence of the deceased) left to one or more of a specified class of lineal descendants is available for estates valued below a specified threshold if the deceased died on or after 6 April 2017.

The RNRB takes, or has taken effect, as follows:

- £100,000 in tax year 2017-2018;
- £125,000 in tax year 2018-2019;
- £150,000 in tax year 2019-2020; and
- £175,000 in tax year 2020-2021.

It will then increase in line with the Consumer Prices Index from tax year 2021-2022 onwards. It is possible to transfer any unused RNRB to a surviving spouse or civil partner, as is the case with the original nil-rate band (see below).

There is a tapered withdrawal of the RNRB for estates with a net value of more than £2 million at a withdrawal rate of £1 for every £2 over this threshold. Accordingly, in tax year 2020-2021, estates valued at £2.35 million or more are unable to take advantage of the RNRB.

Provision has also been made for situations where the deceased downsized or ceased to own a residence before death.

IHT may also be payable on property the deceased gave away within the seven years preceding death to the extent that the value of such gifts and the estate of the deceased together exceed the nil-rate band available at his or her death. Taper relief reduces IHT liability in respect of gifts made between three and seven years before death.

In addition to his or her own nil-rate band, if the deceased survived his or her spouse or civil partner, and the nil-rate band of the first of the spouses or civil partners to die was not entirely used up at their death, any unused nil-rate band may be claimed, generally by the deceased's personal representatives (PRs), and added to the deceased's own nil-rate band to reduce the IHT payable on his or her estate. This is known as the transferable nil-rate band and, as mentioned above, also applies to the RNRB, where relevant.

A number of IHT reliefs and exemptions exist, which include:

- legacies to a spouse or civil partner: generally, such legacies are fully exempt from IHT. However, this exemption is limited to the annual nil-rate band, at present £325,000, on a transfer of assets to the non-domiciled spouse or civil partner of a UK-domiciled individual. However, it is possible for a non-UK domiciled spouse (or, where relevant, their PRs on their behalf) to elect to be treated as being UK-domiciled for IHT purposes, in which case he or she will be entitled to the full spouse exemption. At the same time, however, his or her estate will be chargeable to IHT in the same way as any other UK-domiciled individual;
- an exemption for legacies to charity;
- business property relief and agricultural property relief, which may apply at 50 per cent or 100 per cent on relevant business or agricultural assets;
- an annual exemption of £3,000;
- gifts in consideration of marriage or civil partnership, the value of which varies between £1,000 and £5,000 depending on the relationship between the donor and recipient;
- an annual exemption for small gifts to any one person not exceeding £250 (provided that person does not also benefit from the whole or part of the £3,000 exemption); and
- normal expenditure out of income: regular gifts made out of surplus income may be made tax-free. Regularity does not mean the amount has to be the same each year; the test is that such a gift does not adversely affect the donor's standard of living.

A conditional exemption on heritage property is a deferral of tax available on land, buildings, any collection or individual picture, book, manuscript, work of art or scientific object; or anything else the Secretary of State considers pre-eminent for its national, scientific, historic, or artistic interest. To claim the relief, the owner must undertake to HMRC that

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they will (1) keep the object in the UK; (2) ensure that it is adequately preserved; and (3) allow 'reasonable public access' the definition of which must be agreed with HMRC.

Additionally, outright gifts that the donor survives by at least seven years are potentially exempt from IHT.

Care must be taken with lifetime gifts to ensure that the donor does not continue to benefit from the asset transferred, for example, by continuing to live rent-free in a house he or she has given away. If the donor does continue to benefit in such a way, the asset remains in his or her estate. Such gifts are referred to as 'gifts with a reservation of benefit'.

Liabilities of a deceased may generally be deducted from the assets of his or her estate before calculating IHT due. However, rules introduced in 2013 limit such deductions in certain situations. These include restrictions to the deductibility of liabilities attributable to financing the acquisition of, or the maintenance or enhancement of, the value of excluded property or of relievable property (ie, business property, agricultural property or woodlands), and of liabilities that are not discharged on or after death, other than in certain specified circumstances.

Other taxes

On death, there is a tax-free uplift to market value of the deceased's assets for CGT purposes, so that there is no tax liability on their deemed disposal on death.

CGT and income tax will be payable by the PRs of the deceased on any gains realised or income accruing during the administration of the estate.

Real property

6 | What, if any, taxes apply to an individual's real property?

Stamp duty land tax

When real property is transferred in England (and Northern Ireland), stamp duty land tax (SDLT) is payable by the purchaser. SDLT does not generally apply to a gift made by an individual unless the property is subject to a mortgage.

NB: the general rules stated below are moderated for acquisitions of residential property made during the period between 8 July 2020 and 31 March 2021 inclusive. During this period SDLT is zero rated up to £500,000. If the purchase price is over £500,000, the balance over that value is taxable at the rates set out below for the relevant value band. This concession was introduced by the Chancellor in Summer 2020 in order to stimulate the residential property market during the covid-19 pandemic. It also applies to acquisitions of residential property by companies provided that higher rate SDLT at 15 per cent (discussed below) is not payable.

Under the general rules, a purchaser of residential property pays SDLT at the following rates, each rate being applicable to the part of the price within the relevant band:

- £0 to £125,000: zero per cent;
- £125,001 to £250,000: 2 per cent;
- £250,001 to £925,000: 5 per cent;
- £925,001 to £1,500,000: 10 per cent; and
- £1,500,001 and over: 12 per cent.

Under general rules, a purchaser of a new residential leasehold property pays SDLT on the purchase price of the lease (lease premium) at the rates above. If the total rent over the life of the lease is more than £125,000, SDLT is also payable at 1 per cent on the portion over £125,000 unless the purchaser buys an existing assigned lease. Between 8 July 2020 and 31 March 2021, the zero rate band for both SDLT charges is increased to £500,000.

Under general rules, first-time buyers purchasing properties at £500,000 or less can claim relief from SDLT up to £300,000. They pay a rate of 5 per cent on the portion of the purchase price between £300,001 and £500,000. From 8 July 2020 to 31 March 2021, these rules are replaced by the £500,000 zero rate band.

If a purchaser of residential property valued at £40,000 or over already owns another property, he or she may have to pay an additional 3 per cent SDLT on the value of the new property. This higher rate will not apply if the new property is being acquired to replace a main residence that is being sold. A company will usually have to pay the higher SDLT rate regardless of whether it owns any other property. In certain circumstances, trustees may also have to pay the higher rate. Higher rate SDLT continues to be payable throughout the period from 8 July 2020 to 31 March 2021.

For residential property costing over £500,000 and acquired for private use through a company or other relevant non-natural person (such as a collective investment scheme or partnership with at least one corporate partner), SDLT at 15 per cent is payable on the entire purchase price. However, if an appropriate relief applies, for example, if the residential property is used for a property rental or development business, the standard residential rates above apply instead. If the 15 per cent rate is payable on an acquisition, the higher 3 per cent rate will not be payable.

With effect from 1 April 2021, a surcharge of 2 per cent will be introduced for acquisitions of residential property in England and Northern Ireland by purchasers resident outside the UK. This charge will be known as 'non-resident SDLT' (NRSDLT). The surcharge will be payable in additon to any other SDLT charge payable – standard residential rates, the 3 per cent higher rate charge for additional properties and the 15 per cent rate for companies and other non-natural persons. The charge is potentially payable by individuals, companies, trustees, partnerships, joint purchasers and, in certain circumstances, married couples, among others. The rules are complex and provide for different tests for residence status depending on the nature of a purchaser, and the circumstances in which acquisitions by more than one entity (eg, joint purchasers, partnerships etc) may fall within the charge, in addition to a number of exemptions and reliefs.

Land transaction tax, rather than SDLT, is payable for transfers of property in Wales.

CGT

A disposal of real property may give rise to a charge to CGT if a gain is realised on the disposal. The rules under which such a charge arises, the gains to which it applies, and the rates at which it is levied will vary according to the nature of the property (eg, whether it is residential or commercial). The applicable rules will also vary according to the nature and residence status of the individual, trustees, company, partnership or other entity that makes the disposal. Reliefs and exemptions may be available to mitigate a charge in appropriate circumstances. For example, in the case of an individual's main residence, PPR should apply to relieve the gain from tax.

With regard to non-UK residents, individuals who dispose of UK residential property are liable to CGT on any gains realised since 6 April 2015. Individuals who dispose of non-residential UK property on or after 6 April 2019 are liable to CGT in respect of any gains arising on or after 6 April 2019.

Non-resident individuals are also taxable on gains made on certain indirect disposals of UK land (residential and non-residential) on or after 6 April 2019. The indirect disposal rules apply where a person makes a disposal of an entity that derives 75 per cent or more of its gross asset value from UK land. There is an exemption for investors in such entities who hold an interest of less than 25 per cent.

Detailed rules apply to the taxation of non-residents in these circumstances, and exemptions may be available in certain situations.

There are also anti-avoidance provisions in place that attribute gains made by non-resident companies to their UK-resident members.

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Similar provisions apply to attribute gains made by non-resident trustees to settlors and beneficiaries in certain circumstances. While the rules above for non-residents disposing of direct and indirect interests in UK property take precedence over such provisions in respect of the gains to which they apply, the provisions will still be relevant to tax gains not caught by these rules.

Income tax

Any rental income arising from a UK property will be from a UK source and, therefore, always taxable in the UK at the individual's marginal rate of tax.

Council tax

Council tax on residential property is payable annually to the local authority.

Annual tax on enveloped dwellings

An annual tax is payable on high-value residential property in the UK held through a company (other than one holding the land as trustee), a collective investment scheme or a partnership in which a company is a partner. It also applies to high-value residential property in joint ownership where such a company, collective investment scheme or partnership holds the property jointly with one or more individuals.

This annual tax is the 'annual tax on enveloped dwellings' (ATED) and applies to interests in UK residential property valued over £500,000. For the first five years from introduction of the tax on 1 April 2013, the charge was based on the market value of the property on 1 April 2012 or on the date of acquisition, if later. Subsequent revaluations are made every five years. The first revaluation date was 1 April 2017 and, for the five years from 1 April 2018, the charge is based on the market value of the property on 1 April 2017. For the present period of account (1 April 2020 to 31 March 2021) the charge is being levied at the following rates:

- over £500,000 and up to £1 million: £3,700;
- over £1 million and up to £2 million: £7,500;
- over £2 million and up to £5 million: £25,200;
- over £5 million and up to £10 million: £58,850;
- over £10 million and up to £20 million: £118,050; and
- over £20 million: £236,250.

ATED returns and payment for each year are generally due 30 days after the start of a period of account (ie, 30 April each year).

There are a number of reliefs and exemptions from ATED, including, among others, relief for property developers, property traders and property rental businesses, as well as for providers of social housing, and charitable companies that do not fall within the 'ownership condition' for the purposes of the tax. These exemptions and reliefs are also applicable to the higher rate of SDLT (15 per cent) for acquisitions of residential property over £500,000 by companies, collective investment schemes or partnerships in which a company is a partner. In certain circumstances, it is possible to claim a refund of the ATED charge if the property is sold or is otherwise outside the scope of ATED after the return has been filed.

Non-cash assets

7 | What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

The UK left the European Union (EU) with effect from 1 January 2020. However, the rules that applied to the UK as members of the EU will not change until the end of the transition period on 1 January 2021. As such, a purchaser of goods brought into the UK from an EU member state continues to pay acquisition value added tax (VAT) (as under EU law, there is no 'import' or 'export' of goods or services between member states).

One or more of UK customs duty, excise duty or import VAT may be payable on certain assets imported to the UK from a country outside the EU. In the case of import VAT, it may also be payable on imports from certain EU 'special territories', including the Aland Islands, Canary Islands, Channel Islands, French Overseas Departments of Guadeloupe, French Guiana, Martinique, Reunion and Mount Athos (also known as Agion Oros).

There are certain reliefs, including a relief for personal belongings of a certain class or value and private motor vehicles from outside the EU, and for sailing pleasure craft to and from the UK. Imported works of art, antiques and collectors' items may be entitled to a reduced valuation at importation for the purposes of duty and import VAT.

In practice, there are no export taxes, duties or levies payable on goods being exported from the EU. VAT is levied on a supply of goods from the UK (whether to a place inside or outside the EU) but is zero-rated (charged at zero per cent).

Once the transition period ends on 1 January 2021, customs declarations will be required for imports of goods to the UK from the EU, and duty and import VAT are likely to be payable unless an exemption or relief is available. Customs declarations will also be necessary to export goods to the EU, and export licences may also be required. However, once the terms of the UK's departure are clear, additional rules may apply.

Other taxes

8 | What, if any, other taxes may be particularly relevant to an individual?

There is no wealth tax in the UK.

VAT is payable on many goods and services at the rate of 20 per cent. In some circumstances, a reduced rate or exemption may apply.

Stamp duty is payable at 0.5 per cent on transfers of shares for value in UK companies. It does not apply to shares in non-UK companies if transferred abroad, nor to gifts of shares.

Stamp duty reserve tax (SDRT) is payable on paperless transactions relating to:

- shares in a UK company;
- shares in a foreign company with a share register in the UK;
- an option to buy shares;
- rights arising from shares already owned; and
- an interest in shares, such as an interest in the money made from selling them.

Certain transactions are now outside the scope of SDRT following court decisions to that effect. The position should be reviewed in respect of a specific transaction. Where SDRT is payable, it is charged at 0.5 per cent rounded up or down to the nearest penny.

Trusts and other holding vehicles

9 | What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

Trusts are recognised in England and Wales. A trust is not a separate legal entity. It is a relationship that can be defined as an equitable obligation binding a person (the trustee) to deal with property over which he or she has control (the trust property) for the benefit of persons (the beneficiaries) of whom he or she may him or herself be one, and any one of whom may enforce the obligation.

While a trust is not a legal entity, it is a taxable entity, and UK-resident trustees are responsible for completing tax returns and paying tax.

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IHT

For IHT purposes, the treatment of a trust varies according to whether the trust is a relevant property trust. Relevant property trusts include:

- discretionary trusts, where no beneficiary has a fixed interest in the trust assets unless and until the trustees make an appointment in his or her favour; and
- life interest (or interest in possession) trusts created during the settlor's lifetime on or after 22 March 2006. A life interest trust is one in which one or more beneficiaries have an immediate right to the income of the trust. (In certain circumstances, life interest trusts created prior to 22 March 2006 may subsequently qualify as relevant property trusts.)

Relevant property trusts are liable to IHT on each 10-year anniversary at a rate of up to 6 per cent of the value of any assets in excess of the nil-rate band. An exit charge or 'proportionate charge' of up to 6 per cent is also imposed when property leaves the trust. There are rules in place to prevent individuals avoiding IHT through the use of multiple trusts, each with its own nil-rate band. The rules apply to settlements created on the same day ('related settlements') and, with certain limited exceptions, now also apply to two or more relevant property trusts created on different days where, on or after 10 December 2014, property is added to each of them on the same day and after the commencement of those trusts.

There are no IHT charges on life interest trusts that do not qualify as relevant property trusts because the assets are treated as forming part of the life tenant's taxable estate on death. The life tenant's death is not a taxable event in the case of a relevant property trust.

Certain trusts created on the death of a parent from which a minor or young person under the age of 25 can benefit are also treated differently for IHT purposes.

Trusts established by individuals domiciled outside the UK may be excluded property trusts for the purposes of IHT to the extent that property held within them is situate outside the UK. Such property is not subject to either 10-year anniversary charges or exit charges. Under existing law, property situate in the UK other than residential property is outside the scope of IHT, provided that it is not held directly by the trustees but instead through a non-UK situated company or other vehicle. For UK residential property held through offshore vehicles (whether owned by trustees or individuals) this changed with effect from 6 April 2017, so that such property no longer escapes a charge to IHT. Excluded property trusts established by non-UK domiciled individuals who were born in the UK with a UK domicile of origin are also treated as relevant property trusts for IHT purposes during any period in which such individuals are resident in the UK.

Income tax and CGT

Trustees of UK-resident discretionary trusts pay income tax at the relevant rate applicable to income (currently 38.1 per cent for dividend income and 45 per cent otherwise for trust income over £1,000) and CGT (at 20 per cent generally or 28 per cent for carried interest and residential property) on their worldwide income and gains.

Trusts are treated as UK-resident for both taxes if all the trustees are UK-resident, or if at least one of the trustees is UK-resident and the settlor was UK-resident or domiciled or deemed to be so domiciled for tax purposes when he or she created the trust (on death or otherwise) or subsequently added funds to it.

A trustee who is not otherwise UK-resident will be treated as such if the trustee acts as such in the course of a business that the trustee carries on in the UK through a branch, agency or permanent establishment.

Trustees of non-UK resident trusts pay income tax only on UK income. On disposals of UK residential property held directly by the trustees, they pay CGT on gains arising after 5 April 2015. On disposals of non-residential property in the UK held directly by the trustees, they pay CGT on gains arising after 5 April 2019.

Trustees of non-UK resident trusts are also taxable on certain indirect disposals of UK land (residential and non-residential). The indirect disposal rules apply where trustees make a disposal of an entity that derives 75 per cent or more of its gross asset value from UK land. There is an exemption for investors in such entities who hold an interest of less than 25 per cent.

As for non-resident individuals, detailed rules apply to the taxation of the trustees of non-UK resident trusts in these circumstances, and exemptions may be available in certain situations.

There are also complex anti-avoidance rules in place that, in appropriate circumstances, attribute for tax purposes other income or gains of such trusts and their underlying companies to UK-resident settlors or beneficiaries.

Stamp Duty Land Tax and other property-related taxes

Trustees are liable to Stamp Duty Land Tax (SDLT) on acquisitions of real property, whether residential or non-residential, on the same basis as individuals. This will include non-residental SDLT, where relevant, for acquisitions made on or after 1 April 2021.

Taxes including council tax, ATED, VAT and Stamp Duty may also be relevant to trustees.

Charities

10 | How are charities taxed in your jurisdiction?

Broadly speaking, charities are taxable in the same way as other entities of the same type, for example, companies, trusts or unincorporated associations. However, organisations that are recognised as charities in the UK are subject to a number of exemptions and reliefs from tax on most types of income and on their capital gains, and on the profits of certain activities, provided that the money is used for charitable purposes only.

Donations made through the Gift Aid scheme by individuals who are UK taxpayers enable a charity to claim basic rate tax from Her Majesty's Revenue and Customs (HMRC) on income received. Charities are also exempt from tax on donations received from companies, although no tax may be reclaimed as companies (unlike individuals) do not have tax deducted at source. Again, however, for any charitable tax exemption to apply, the money must be used for charitable purposes only.

There are also reliefs available for SDLT on the purchase of property by a charity and, in certain circumstances, from VAT on goods and services (eg, most cultural, medical and educational supplies).

Profits made by a charity from trading activities are likely to be taxable unless the activities are very closely aligned to the charitable purposes of the charity. For example, there are exemptions on profits from fundraising events and for activities carried out by the beneficiaries of the charity.

Many charities undertake taxable trading activities through a trading subsidiary that is taxable in the same way as any other company. If the subsidiary transfers some or all of its profits to the charity as a donation, the subsidiary is able to claim tax relief. Provided that the charity uses the income for charitable purposes, it will also be exempt from tax on that income.

Rental income from properties in the UK or overseas held by charities is exempt from UK tax, provided that the income is used for charitable purposes. However, profits made from developing property or land do not attract an exemption from UK tax.

Charitable companies are not liable for ATED in respect of any interest they hold in UK residential property that would otherwise be caught, provided that the interest in the property is held for qualifying charitable purposes.

Gifts made to charities are also exempt from IHT.

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Anti-avoidance and anti-abuse provisions

11 | What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

A general anti-abuse rule (GAAR) was introduced in the UK with effect from 17 July 2013. The principal taxes it applies to include income tax, CGT, IHT, corporation tax, petroleum revenue tax, SDLT, ATED, diverted profits tax and national insurance contributions.

The GAAR is intended to target abusive tax arrangements. HMRC guidance on the rule states that it will only come into effect when the course of action taken by the taxpayer aims to achieve a favourable tax result that Parliament did not anticipate when it introduced the tax rules in question and, critically, where that course of action cannot be regarded as reasonable. There are a number of safeguards built into the legislation to ensure that the taxpayer receives the benefit of any reasonable doubt.

In addition to the GAAR, there are many specific anti-avoidance rules written into the legislation relating to the taxes covered by the GAAR. Some of these are referred to as targeted anti-avoidance rules (TAARs), and some may take the form of less explicit anti-avoidance protection. The GAAR effectively sits above these rules and may be used to target an abusive course of action that itself exploits a TAAR or other anti-avoidance rule.

Certain anti-avoidance rules are mentioned in the previous questions dealing with individual taxes. However, in many cases, the level of complexity involved puts discussion of anti-avoidance provisions beyond the scope of this publication, and specialist advice should be taken.

TRUSTS AND FOUNDATIONS

Trusts

12 | Does your jurisdiction recognise trusts?

Trusts are recognised by and may be established under the law of England and Wales.

Trusts established under the laws of other jurisdictions are recognised in England and Wales both under the general law and under the Hague Convention on the Law Applicable to Trusts and on their Recognition, 1 July 1985, which is applicable in the UK.

In certain circumstances, an express trust (one where there is a clear and expressed intention to create a trust, usually within a written document) must be registered on the UK trust register and specified information provided regarding the trust and its settlor and beneficiaries. UK-resident express trusts must be registered where there is a tax liability for any trust income or assets under any of the following taxes:

- Capital Gains Tax (CGT);
- income tax;
- Inheritance tax (IHT);
- Stamp Duty Land Tax (SDLT); and
- Stamp Duty Reserve Tax (SDRT) or stamp duty.

Non-UK resident express trusts must be registered where there is a tax liability for any of the above taxes in respect of UK source income or UK assets. The deadline for registration will depend on the tax liability that triggers the registration requirement.

The scope of the requirement for trustees to register their trust has been extended under the terms of the EU's Fifth Money Laundering Directive (5MLD) which came into force on 9 July 2018, and was transposed into UK law with effect from 10 January 2020. Its provisions relating to the expansion of the requirement to register trusts came into force on 6 October 2020.

From this date, unless a trust is specifically exempted, all UK express trusts are subject to the requirement to register. The requirement also extends to non-UK trusts that either acquire an interest in UK land or that have at least one UK trustee and enter into a business relationship with a relevant person in the UK, for example, a lawyer or accountant. Furthermore, access to information on the register will be extended to persons who demonstrate a 'legitimate interest' in the beneficial ownership of a trust. In respect of certain trusts, information must also be made available to a person who makes a written request, regardless of whether they have demonstrated a legitimate interest.

The deadline for registration of trusts that fall within the extended registration requirements before 9 February 2022 will be 10 March 2022. From 9 February 2022 onwards, registration will be required within 30 days of the event that triggers registration.

Private foundations

13 | Does your jurisdiction recognise private foundations?

There is no specific law of private foundations in England and Wales. Neither is there any specific legislation dealing with the recognition of foreign private foundations. Under the general law, foundations governed by the laws of other jurisdictions may be recognised by the courts of England and Wales and they are likely to be treated according to whether their characteristics are most closely aligned to companies or trusts.

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

14 | Does your jurisdiction have any form of legally recognised same-sex relationship?

The Civil Partnership Act 2004 provides for same-sex couples to form (and to dissolve) a legally recognised civil partnership. Civil partners are treated in the same way as spouses for the purposes of tax and succession law.

Following the introduction of the Marriage (Same-Sex Couples) Act 2013, same-sex couples have been able to marry since 29 March 2014. Since 10 December 2014, civil partners who wish to do so have been able to convert their civil partnership into a marriage. Civil partnership will continue to be an option for same-sex couples alongside marriage.

Heterosexual civil unions

15 | Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

With effect from 31 December 2019, couples of the opposite sex may enter into a civil partnership in England and Wales. Just as for same-sex couples, opposite-sex civil partners are treated in the same way as spouses for the purposes of tax and succession law.

Uner the existing law of England and Wales, it is not possible for a married couple to convert their marriage into a civil partnership.

SUCCESSION

Estate constitution

16 | What property constitutes an individual's estate for succession purposes?

Under the law of England and Wales, an individual's estate for succession purposes comprises all property he or she owns in his or her sole name. It also includes the deceased's interest in any property owned

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jointly with others under a 'tenancy in common'. With a tenancy in common, each co-owner has a fixed share in the property, succession to which is determined by their will or intestacy rules.

The estate also comprises assets over which the deceased had power to control their use and determine their destination, known as a general power of appointment, together with assets in the estate of an individual who predeceased him or her to which the deceased is entitled.

For these purposes, a deceased's estate does not include jointly owned property held under a 'joint tenancy' in which the co-owners each own an indivisible share. In these circumstances, on the death of a co-owner, the rule of survivorship applies to vest his or her interest in the property in the other joint tenants.

Disposition

17 | To what extent do individuals have freedom of disposition over their estate during their lifetime?

Under the law of England and Wales, individuals have freedom of disposition over their entire estate during their lifetime. There is no marital property or forced heirship regime to place restrictions on an individual's freedom of disposition.

In the event of a divorce, the dissolution of a civil partnership or a legal separation, the English court has wide discretion to order the distribution of assets between a couple in order to achieve fairness in accordance with the principles of need, contribution and sharing, which may effectively restrict an individual's freedom to deal with his or her assets as he or she chooses. In doing so, following case law in this area, the court will generally give effect to a valid marital property agreement entered into by parties to a marriage provided that, in all the circumstances, it is fair to do so. This is notwithstanding the fact that under the existing law of England and Wales, marital property agreements are not contractually enforceable.

18 | To what extent do individuals have freedom of disposition over their estate on death?

Under the law of England and Wales, individuals have complete freedom of disposition over their estate. There is no system of forced heirship, nor are there any provisions for clawback of lifetime gifts.

The rules relating to jointly owned property will affect an individual's ability to dispose of such property.

Individuals with specified relationships to a deceased may make a claim for provision or increased provision from his or her estate if they consider they have not been adequately provided for. However, this does not restrict the individual's testamentary freedom.

Intestacy

19 | If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

The rules of succession on intestacy are set out in Part IV of the Administration of Estates Act 1925. In each case, minors inherit at the age of 18 and, until they reach that age, or marry or enter into a civil partnership earlier, their share is held on statutory trusts under which the income is either used for their maintenance, education or benefit, or is accumulated.

Intestates leaving a surviving spouse or civil partner

Since 1 October 2014, if an individual dies leaving a surviving spouse or civil partner but no issue (broadly, children or grandchildren, etc), the entire residuary estate passes to the surviving spouse or civil partner.

If the same individual leaves issue, the surviving spouse or civil partner takes the deceased's personal chattels, a fixed statutory sum of (currently) £270,000 plus interest from the date of death and half of the residuary estate of the deceased absolutely. The issue receives the other half of the estate on statutory trusts. The issue inherits on a per stirpital basis, a grandchild taking only if their parent has predeceased the intestate, for example.

If the same individual died before 1 October 2014, leaving a spouse or civil partner but no issue, and was survived by one or more of his or her parents, full siblings or issue of such siblings, the spouse or civil partner would have received the personal chattels, a fixed statutory sum of £450,000 and half of the residuary estate absolutely. The other half passed to the parents of the deceased absolutely, or in equal shares if one or both survived. If the parents had died, the other half passed to the full siblings of the deceased.

Intestates leaving no surviving spouse or civil partner

If a deceased leaves children or other issue but no surviving spouse or civil partner, his or her issue take his or her residuary estate in equal shares at age 18.

If the same individual leaves no issue but is survived by one or both of his or her parents, the parents take the residuary estate either alone or in equal shares absolutely.

If the same individual leaves no issue or parent, then his or her residuary estate passes to the following people in order of priority:

- full siblings and, if none, then;
- half siblings and, if none, then;
- grandparents and, if none, then;
- uncles and aunts (being full siblings of a parent of the deceased) and, if none, then;
- uncles and aunts (being half siblings of a parent of the deceased) and, if none, then;
- bona vacantia, to the Crown, the Duchy of Lancaster or the Duchy of Cornwall.

Adopted and illegitimate children

20 | In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

Adopted children

Adopted children are treated as the legitimate children of an adopter or adopters and of nobody else. Once they have been adopted, they do not have any rights of inheritance from the estate of their biological parents, other than any to which they became entitled prior to adoption. Before 1 October 2014, only interests to which the child had an unconditional entitlement ('vested in possession') would have been preserved. For adoptions made on or after 1 October 2014, an interest of a child in the estate of a deceased biological parent, which is a contingent interest other than one in remainder, will also be preserved. A contingency is a condition that must be fulfilled before the child has an absolute entitlement to the interest. For example, the interest may be contingent on the child attaining the age of 18 years. A contingent interest is in remainder and, therefore, not preserved by the rules introduced in 2014 if it is subject to the interest of another person. An example would be a gift in a will of a deceased's estate to a person for life and then to the child at 18 years. The child's interest is contingent on reaching 18 years but is in remainder to the above person's life interest and, therefore, not preserved by the new rules.

As a testator has complete testamentary freedom over his or her estate, no child has a right to inherit from a parent; however, if a will provides for a legacy to children without expressly naming individuals, adopted children would be entitled to inherit in the same way as biological children.

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Illegitimate children

No distinction is made between legitimate and illegitimate children. This rule applies to wills and trusts made on or after 4 April 1988 and to the intestacy rules where the intestate died on or after 4 April 1988.

Distribution

21 | What law governs the distribution of an individual's estate and does this depend on the type of property within it?

In England and Wales, the law of the place where the property is situated governs the distribution of immovable property. Movable property is governed by the law of domicile of the individual.

Formalities

22 | What formalities are required for an individual to make a valid will in your jurisdiction?

In England and Wales, a will must be made in writing and must be signed by the testator, testatrix or by some other person in his or her presence and by his or her direction. This signature must be made or acknowledged by the testator in the presence of two witnesses, who must be present at the same time. Each witness must either sign the will or attest their signature in the presence of the testator or testatrix, but not necessarily in the presence of another witness.

There is no requirement for a will to be dated unless it appoints guardians of a minor. However, if there is doubt regarding the date on which a will was executed, evidence may be required to establish it.

If a beneficiary under the will, or their spouse or civil partner, witnesses the will, the legacy to that beneficiary is void.

Formalities are relaxed for wills for servicemen on active service. These may be written in a paybook or even made verbally.

The Law Commission issued a consultation on the reform of the law of wills in England and Wales in July 2017, which proposes regulations to permit electronic wills or electronically executed wills. This reform is still awaited. However, temporary legislation came into effect on 28 September 2020, permitting wills executed between 31 January 2020 and at least 31 January 2022 to be witnessed virtually, where it is not possible to do so in person. This rule was introduced in recognition of the difficulties presented by social distancing and other rules for executing wills during the covid-19 pandemic.

Foreign wills

23 | Are foreign wills recognised in your jurisdiction and how is this achieved?

Foreign wills are recognised in England and Wales, provided that they comply with the law of a country in or of which the testator was domiciled, habitually resident or a national either at the time of the execution of the will or at the date of his or her death, or both.

A grant of probate or grant of representation will usually be required to administer property in England and Wales owned by a deceased person who died domiciled outside the jurisdiction. However, if the deceased was domiciled in a country to which the Colonial Probates Acts 1892 and 1927 apply, and a grant has been issued in that country, an application may be made for the grant to be resealed to administer the estate in England and Wales.

Administration

24 | Who has the right to administer an estate?

The personal representatives (PRs) of the deceased have the right to administer an estate in England and Wales. Where someone has left a valid will appointing PRs, they are called executors, and where the deceased died intestate or failed to appoint executors in his or her will, the PRs are appointed by the court and are called administrators. The court will also appoint administrators if validly appointed executors choose to renounce probate (ie, if they choose not to act as executors). The latter administer the estate according to the intestacy rules.

25 | How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

Where the deceased left a valid will, his or her estate vests in the executors at the date of death. Where a deceased dies intestate, the estate vests in the public trustee until a grant of administration is made by the court, at which point the estate vests in the administrators.

The grant of probate or administration (together a grant of representation) enables the PRs to obtain title to the assets of the deceased and to distribute them to his or her heirs.

Challenge

26 | Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

Under the Inheritance (Provision for Family and Dependants) Act 1975, the following categories of individuals can make a claim for reasonable financial provision from the estate of a deceased person if a will or the applicable intestacy rules do not do so:

- present or former spouses and civil partners (provided they have not entered into a subsequent marriage or civil partnership);
- cohabitees, whether same-sex or opposite-sex, who had lived with the deceased for two years prior to their death;
- a child of the deceased or anyone who was treated by the deceased as a child of a family in which the deceased stood in the role of parent; or
- any other person who was being maintained wholly or partly by the deceased immediately before his or her death.

Claims must be made within six months of the grant of representation being taken out; however, in relation to deaths after 10 October 2014, there is nothing to prevent an application being made before such a grant is taken out. Claims can only be made if the deceased was domiciled in England and Wales at the time of death.

Alternatively, a person with a potential interest in an estate can bring an action to challenge the validity of a will on the following grounds:

- it was not validly executed;
- the deceased lacked testamentary capacity at the time of its execution;
- the deceased did not know or approve its contents;
- in making it, the deceased was subject to undue influence; and
- it was forged or there was some other type of fraud involved.

CAPACITY AND POWER OF ATTORNEY

Minors

27 | What are the rules for holding and managing the property of a minor in your jurisdiction?

Under the law of England and Wales, a minor (children under 18) can hold most types of property in his or her own name, with the exception of legal title to land. Nonetheless, a minor has no capacity to contract and cannot give a valid receipt. Accordingly, assets left for a minor under a will may be held in bare trusts for them until the age of 18. Often, the terms of a will expressly provide for the interests of minors to be held in trust for them until they reach the age of 18 (or a later age).

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If a minor inherits property under the intestacy rules, he or she is entitled to his or her share of an estate on attaining the age of 18 or on an earlier marriage or civil partnership.

Age of majority

28 | At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

An individual attains his or her majority at the age of 18 and, therefore, legal capacity to hold and manage a legal interest in land.

Loss of capacity

29 | If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

When individuals lose capacity to manage their affairs, either their attorney or, if they do not have a validly appointed attorney, a deputy appointed by the Court of Protection, manages their affairs on their behalf.

Since 1 October 2007, it has been possible for someone to appoint an attorney by way of a lasting power of attorney (LPA) at a time at which he or she has full capacity. Prior to 2007, an attorney was appointed by way of an enduring power of attorney (EPA), and EPAs created prior to 1 October 2007 are still valid.

Two types of LPAs exist:

- a property and financial affairs LPA, under which an attorney can make decisions in relation to someone's property and financial affairs; and
- a health and welfare LPA, under which attorneys can make decisions in relation to issues such as the medical treatment a person should receive.

A property and financial affairs LPA may be made either to be used only when the donor of the power lacks capacity to make decisions, or at any time. Health and welfare LPAs can only be used at a time at which the donor lacks capacity. An LPA must be registered with the Office of the Public Guardian.

Attorneys appointed under an EPA may only deal with decisions relating to the donor's property and financial affairs.

Foreign equivalents of an LPA or the appointment of a deputy are recognised by the court in England and Wales as 'protective measures' if they are valid under the law of the country in which the donor is habitually resident. However, the court has the power to refuse to recognise such measures in certain circumstances where it considers that to do so would be unjust, against public policy, against a provision of the law of England and Wales, or inconsistent with a measure already taken in England and Wales in relation to the individual. In a 2018 case, the Court of Protection held that the reference to 'protective measures' in the Mental Capacity Act 2005 is intended to refer to arrangements that have been made or approved by a foreign court.

In relation to an LPA, a donor can specify that the law applicable to the power is that of any country of which he or she is a national, in which he or she was habitually resident or in which he or she has property.

IMMIGRATION

Visitors' visas

30 | Do foreign nationals require a visa to visit your jurisdiction?

The requirement for a visa depends upon the nationality of the visitor.

Visa nationals always require a visa in advance to visit the UK. A visa national is a citizen of a country that is listed in Appendix 2 of Appendix V of the Immigration Rules (these countries include China, India, Russia and the United Arab Emirates).

Non-visa nationals may visit the UK for less than six months without obtaining a visa in advance. Such nationals who wish to visit the UK for more than six months will require a visa however. A non-visa national is a citizen of a country that is not listed in Appendix 2 of Appendix V of the Immigration Rules (these countries include Australia, Brazil, Singapore and the United States). Nationals of countries in the European Economic Area (EEA) and Switzerland are expected to fall within the category of non-visa nationals following the end of the Brexit transitional period on 30 December 2020 when the UK formally leaves the European Union.

31 | How long can a foreign national spend in your jurisdiction on a visitors' visa?

Generally, visa and non-visa nationals can spend six months in the UK as a visitor (business or tourist).

High net worth individuals

32 | Is there a visa programme targeted specifically at high net worth individuals?

The Tier 1 (Investor) category is aimed at high net worth individuals (aged 18 or over) who are willing to make a substantial financial investment in the UK. The principal requirement is to demonstrate the ability to invest a minimum of £2 million in the UK. Once in the UK, the individual must invest their money in share capital or loan capital in active and trading UK-registered companies (ie, 'qualifying investments') within three months. Following changes that came into effect on 29 March 2019, it is no longer permissible to invest in UK government bonds as qualifying investments. As a result of these changes, for any individual who obtained their visa before 29 March 2019 who wishes to apply to extend their visa on or after 6 April 2023, their qualifying investments cannot include UK government bonds and planning should be undertaken in this regard. There is also a requirement to open an account with a UK-regulated financial institution (ie, bank or investment manager) for the purposes of making the investment in the UK prior to applying for the visa. In addition, an overseas criminal record certificate must be provided for any country the individual has resided in continuously or cumulatively for 12 months or more in the 10 years prior to their visa application.

Unlike the other visa categories available, there is an exemption for Tier 1 (Investor) applicants from demonstrating English language and financial maintenance requirements. Additionally, the visa allows the individual (and their dependants) to work or study in the UK with few restrictions.

Note that the pre-6 November 2014 visa category will continue to apply to individuals with a Tier 1 (Investor) visa granted before that date. One of the key differences is that under the previous rules, the minimum value category of qualifying investments was £1 million. However, owing to the 29 March 2019 changes, if these individuals wish to apply to extend their visas on or after 6 April 2020, they must meet the post-6 November 2014 requirements (ie, increase their qualifying investments to £2 million). If they further apply to extend their visas on or after 6 April 2023, they must also meet the post-29 March 2019 requirements, (ie, UK government bonds cannot be included in their qualifying investments).

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33 If so, does this programme entitle individuals to bring their family members with them? Give details.

Yes. Individuals are entitled to bring dependants (ie, their children under 18 years of age, or their spouse, civil partner, or unmarried or same-sex partner) with them to the UK. Dependants will normally be granted a visa in line with that of the main applicant, though a separate application form must be completed for each dependant. The overseas criminal record certificate requirement applies to adult dependants.

34 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Yes. To obtain indefinite leave to remain (also known as settlement), applicants must be continuously resident in the UK for a period of either two, three or five years (if they have invested either £10 million, £5 million or £2 million respectively in the UK). The applicant cannot be outside the UK for more than 180 days in a 12 month period. The way that this is calculated changed in January 2018. For leave granted before 11 January 2018, absences are calculated in separate 12-month periods. For leave granted after 11 January 2018, absences are calculated on rolling basis 12-month periods counting backwards from the date of the settlement application.

Applicants must have sufficient English language ability and knowledge of life in the UK to apply for settlement, unless they are under 18 or over 65.

Applicants must also be able to show that they have maintained their investment throughout the continuous period of residence and that they meet all the other requirements of the Immigration Rules.

Dependants can apply for settlement at the same time as the main applicant under the five-year continuous residence route. However, for the two- and three-year routes, only the main applicant is eligible for settlement after the two- or three-year period, and any dependants must still wait five years. From 11 January 2018, dependant spouses must satisfy the above-mentioned residence requirement (ie, not be outside the UK for more than 180 days in any 12 calendar months in their five-year continuous period of residence). Prior to this date, dependant spouses were exempt from this requirement. This new rule will not apply retrospectively (ie, only post-11 January 2018 absences will be taken into account for the purposes of this requirement). Dependant minor children continue to be exempt from this residence requirement although they are indirectly bound by it, as a key requirement for them to apply for settlement is that both their parents are capable of applying for (or have) settlement status themselves.

35 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

The earliest applicants may apply for British citizenship is 12 months after having been granted settlement. In addition, they must be over 18 years, of sound mind and have the intention to continue living in the UK. They must also satisfy the residential requirements, which means that they must have:

- been resident in the UK for at least five years (the residential qualifying period);
- been present in the UK five years before the date of the application;
- not spent more than 450 days outside the UK during the five-year period;
- not spent more than 90 days outside the UK in the last 12 months of the five-year period; and
- not been in breach of the Immigration Rules at any stage during the five-year period.

UPDATE & TRENDS

Key developments

36 Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

UK Immigration for EU Nationals from 1 January 2021

From 1 January 2021, nationals of countries in the EEA and Switzerland will require a visa to live, work or study in the UK for more than six months. Nationals of countries both inside and outside the EEA and Switzerland will therefore be subject to the same single UK immigration system from this date. The only exception to this are nationals of countries in the EEA and Switzerland who are eligible to make an application under the 'EU Settlement Scheme' by 30 June 2021 and are granted either 'pre-settled' or 'settled' status. Individuals with either status will continue to be able to have their EU free movement entitlements, including the right to live and work in the UK, protected after Brexit.

Hong Kong British National (Overseas) Visa from January 2021

On 22 July 2020, the UK government announced initial policy details on a new UK visa category for Hong Kong residents who are British National (Overseas) citizens, and their dependants. This new visa will launch in January 2021 and requires individuals to be able to accommodate and financially support themselves and their dependants in the UK for at least six months. No skills tests, minimum income or English language requirements will apply.

Proposals for conversion of opposite-sex marriage into a civil partnership

The Government Equalities Office published a public consultation in July 2019 inviting views on its plans, among other things, to introduce a time-limited right for opposite-sex couples to be able to convert their marriage to a civil partnership, and subsequently to bring all conversion rights (for same-sex and opposite-sex couples) to an end. The consultation ended on 20 August 2019 and, at the time of writing, a response is awaited from the government.

Possible future changes on inheritance tax and the Taxation of Trusts: recent consultations

OTS review of IHT

In 2019, the Office of Tax Simplification published two reports on the responses it received to its review in 2018 on potential simplification of the rules of inheritance tax (IHT). In both reports, the OTS made a number of suggestions for reform of the legislation. Proposals, if any, by the government to take forward the OTS suggestions are still awaited.

The Taxation of Trusts: a review

The government consulted between 7 November 2018 and 28 February 2019 on the principles that government believes should underpin the taxation of trusts: transparency, fairness and simplicity, requesting views on potential areas for reform. A government response to the feedback from the consultation is still awaited.

APPG report - reform of inheritance tax

The All-Party Parliamentary Group for Inheritance and Intergenerational Fairness (APPG) published a paper in January 2020 proposing a complete overhaul of the existing IHT rules. Among other suggestions

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for change, this included a proposal to replace the current IHT regime with a tax on lifetime and death transfers of wealth, with very few reliefs and a low flat rate of tax. The paper also proposed a tax rate of between 10 per cent and 20 per cent (potentially, on death, the higher rate might apply to estates over £2 million). While the APPG is essentially a discussion reform, this paper highlights a trend in discussions for reform or overhaul of the existing UK IHT system.

OTS Capital Gains Tax review

In July 2020, following a request from the Chancellor of the Exchequer to do so, the OTS published a call for evidence seeking views on capital gains tax. This consultation is requesting comments on complexities in the present system, and suggestions for improvements. The review will close on 9 November 2020.

BREXIT

The UK left the European Union (EU) on 31 January 2020. This was followed by an 11-month transition period in which all laws and regulations governing the relationship between the UK and the EU remain unchanged. The transition period ends on 1 January 2021, and with effect from that date the UK will no longer be governed by EU law except to the extent that it has expressly been written into UK law or that an agreement has been reached between the two jurisdictions that EU law may apply and to what extent. Negotiations are ongoing in this regard.

Coronavirus

37 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

Please note that the list below includes significant covid-19-related measures relevant to high net worth individuals and introduced in the period between March 2020 and October 2020. While we have endeavoured to include all measures of significance, this list is not exhaustive.

UK Immigration

Visitors or those wishing to come to the UK to live, work or study for more than 6 months have faced significant travel disuption due to covid-19. In response, the UK government implemented a number of concessions to address any adverse UK immigration consequences caused by the pandemic. These measures have evolved with the ever-changing nature of the virus. As at the time of publication, the current key concessions can be summarised as follows:

- Those with visas that expired between 24 January 2020 and 31 July 2020 were able to request for their leave in the UK to be extended if they were prevented from returning to their home country for reasons relating to covid-19. This concession was subsequently extended to those whose leave expired before 31 August 2020. Individuals whose leave expired between 1 September 2020 and 31 October 2020 may apply for an 'exceptional assurance' from the UK Home Office's dedicated Coronavirus Immigration Team to remain in the UK. In all cases, such concessions result in the individuals not breaching the Immigration Rules by overstaying.
- Visitors or those on short-term visas unable to leave the UK could apply for long-term visas from within the country (rather than return to their home country to do so as required under normal circumstances) if their leave in the UK expires after 31 August 2020 and they are able to demonstrate an urgent need for the application.
- Successful applicants of long-term visas from outside the UK whose 30-day travel vignette stamped in their passport expired before they were able to travel to the UK can request a replacement vignette with revised validity dates free of charge. This is only available until 31 December 2020.

Individuals with long-term UK visas prevented from returning to the UK may have exceeded 180-days absences in a 12-month period and therefore unable to satisfy the residence requirement for settlement. A general exception to this requirement exists to disregard absences due to 'exceptional circumstances', which includes a 'natural disaster'. The Home Office has not confirmed if the pandemic falls within this definition but it is expected to. Therefore, UK absences caused by travel restrictions and border closures due to covid-19 are considered to be 'exceptional circumstances' and the Home Office's published guidance that an individual's UK immigration status will not be negatively affected by the pandemic supports this.

Statutory Residence Test: temporary workers in the UK for covid-19-related activities

In an effort to attract and retain those with expertise in fields that may help in fighting covid-19 in the UK, the Chancellor announced in April 2020 that the statutory residence test (SRT) would be relaxed for certain individuals for the period 1 March to 1 June 2020 (although the duration of the concessionary period was to be kept under review).

This was legislated in the Finance Act 2020 so that any day that a relevant individual who is resident outside the UK in a relevant tax year spends in the UK in the period 1 March to 1 June (or such longer period as the Chancellor subsequently decides) will not be considered a day of presence in the UK for the purposes of the SRT. This concession applies provided that the individual was present in the UK for an 'applicable reason' related to coronavirus, including as a medical or healthcare professional working in this field, or for purposes connected with the development or production of medicinal products (including vaccines), devices, equipment or facilities related to the detection, treatment or prevention of coronavirus. To date, there has been no extension of the initial period.

HMRC relaxes the public access requirements for the Conditional Exemption

HMRC temporarily relaxed the public access requirement for the IHT Conditional Exemption, and urged the owners of heritage property to follow the restrictions imposed by the UK government on business operation and public movement due to the Coronavirus outbreak. It indicated that it would expect property owners to re-open for public access once restrictions were lifted.

Higher rate SDLT for additional properties: Exceptional circumstances preventing disposal of interest in a main residence within three year period

In Finance Act 2020, the government introduced an extension to the three-year time limit in which to dispose of a previous main residence, and so qualify for a refund of the three per cent higher rate tax paid on acquisition of a second home, where exceptional circumstances that could not reasonably have been foreseen prevent the sale of the previous main residence within that period.

This temporary change only applies where the three-year time limit to sell the previous main residence ended on or after 1 January 2020.

While covid-19 is not specifically mentioned in the legislation, HMRC's statement at the time the proposed concession was announced made clear that it was the impact of coronavirus on the residential property market that was the principal driver for this change.

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Temporary permission for virtual execution of wills

A temporary rule came into effect on 28 September 2020, permitting wills executed between 31 January 2020 and at least 31 January 2022 to be witnessed virtually, where it is not possible to do so in person. This rule was introduced in recognition of the difficulties presented by social distancing and other rules for executing wills during the covid-19 pandemic.

HMRC relaxes appeals deadlines and 'reasonable excuse' test

In May 2020, HMRC announced that taxpayers would be allowed an extra three months to appeal HMRC's decisions or penalties, where they were unable to meet the usual 30-day deadline because of the covid-19 pandemic. Delayed appeals would be accepted against decisions or penalties dated as far back as February 2020. HMRC also updated its general guidance on applying the 'reasonable excuse' test where the pandemic affected a taxpayer's ability to meet their obligations, including financial institutions' information exchange duties under the International Tax Enforcement (Disclosable Arrangements) Regulations 2020.

Daily late filing penalties waived for 2018/19 self assessment

In October 2020, HMRC confirmed it would not impose daily penalties on taxpayers who were more than three months late in filing their 2018/19 self assessment tax returns due to the covid-19 pandemic. However, the £100 fixed penalty for missing the deadline will be charged, as will the six-month and 12-month late-filing penalties, where appropriate.

New registration of death requirements under Coronavirus Act 2020

The Coronavirus Act provides new requirements for registering a death, including how to provide information other than in person and dispensing with the signing of the register. The practicalities of registering a death in relation to the delivery of documents by alternative methods are also covered.

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