



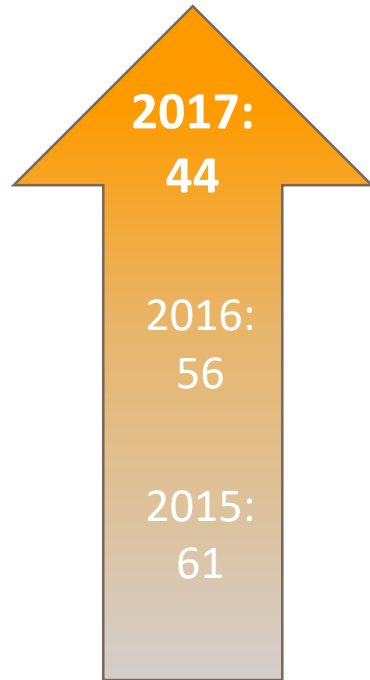
Dead Taxing: Inheritance Tax Planning

13 September 2018

IHT: It's Here, Thursday

- Introduction
- IHT for domicile versus non-domicile
- Tax planning opportunities and reliefs
- Ten common pitfalls
- Questions

BKL in numbers

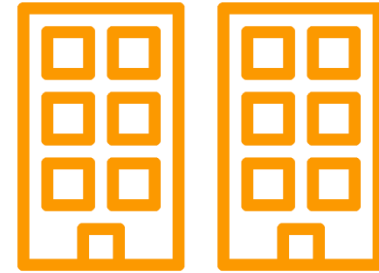


A growing and ambitious
Top 50 firm of accountants
and tax advisers

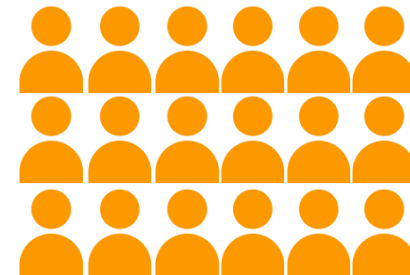
Established in
1980



Partners



Two offices: London and
Cambridge



More than
190 staff

Our services



Audit and Assurance

We treat audit as a powerful diagnostic tool rather than a statutory requirement, and are a significant audit firm for the ICAEW.



Management accounting, payroll and outsourcing

Free up your business and enjoy expert service on demand, including access to the latest software such as Xero.



Corporate finance

Our team has a strong reputation, achieving great results for raising finance and selling businesses.



Business tax

Our tax team is one of the most highly regarded in the country and covers our key sectors in great depth.



Private clients

We act for many high net worth individuals, be they domiciled in the UK or overseas. We specialise in wealth preservation and are highly experienced in managing complex tax and dynamic planning (including IHT).

Our sectors



Property

Property is a cornerstone of BKL. It can be time pressured and a tax minefield, and it requires calmness and clear understanding for effective decision making.



Technology and digital businesses

Up-to-date advice for a fast moving industry. We understand technology and its impact on the marketplace and those that succeed in this sector.



Financial services

We understand the complex issues which financial traders and brokers deal with daily, and the value of the right business structure for maximising returns.



Farms and family estates

We are building an enviable reputation for helping landowners old and new enjoy their assets and get the best from them.



Hospitality

We understand the stresses, risks and opportunities of the industry through many years of hands-on experience.



IHT for domicile versus non-domicile

Geraint Jones



Death and taxes

“

It's not that I'm afraid to die, I just don't want to be there when it happens.

Woody Allen

Inheritance tax and domicile

Inheritance tax is a domicile based tax.

The estate of a UK domiciled individual will be liable to inheritance tax on worldwide assets.

The estate of a non-UK domiciled individual will be liable to inheritance tax on UK assets only.

What is domicile?

Domicile is a general legal concept. It describes the country that you consider to be your home or the country where you have your permanent home. It is not the same as nationality, citizenship or residence.

Domicile is a connecting factor which links a person with a particular legal system, and the law of his domicile is his personal law. (Dicey & Morris)

Thus domicile connects an individual to either a country or, in the case of federal countries, a state.

What is domicile?

- Domicile of origin

Father if legitimate

Mother if illegitimate

- Domicile of dependency

Follows dependent parent

Married women pre 1 January 1974 (not USA)

What is domicile?

- Domicile of choice

From age of 16

Acquisition and abandonment

- Returning formerly domiciled individuals

UK resident, born in UK with UK domicile of origin

- Deemed domicile

Resident in the UK for 15 of the last 20 years

Three year tail from losing domicile of choice

If no longer resident in the UK and abandons a domicile of choice in the UK then only need to be non-resident for three years

Unusual situations

Illegitimate individuals: follows mother

Adopted individuals: follows adoptive parents

Foundlings: follows place where found

Divorcing parents: no change. However, see adoptive parents above

Sharia law: forced inheritance tax $\frac{2}{3}$ to son $\frac{1}{3}$ to daughter

Examples

Jane born in UK, with a UK domicile of origin, marries a Frenchman in 1969. She continues to live in the UK until 1980 when they move to New South Wales, Australia. They live a happy and long life.

Jane has a domicile of origin in the UK. She acquires a domicile of dependency from her husband in France and then acquires a domicile of choice in New South Wales.

Examples

UK domicile of origin. Moves to East Coast of the US at 45 years of age. Moves between Massachusetts, New York State and Maine. Never spends more than seven years in any one. Dies prematurely in a car crash.

Probably still UK domiciled. Did not spend enough time in any one state to create a domicile of choice.

Examples

Baby found on the steps of the Spanish Embassy in Rome. Adopted by a French couple.

Baby has initial domicile of origin in Spain (check where sovereign territory begins and ends). Domicile then switches to adoptive father.

Inheritance tax planning

“

He's spending a year dead for tax reasons.

Douglas Adams, The Hitchhiker's Guide to the Galaxy



Planning opportunities and reliefs

Terry Jordan



Where there's a will...

- Inland Revenue
- Estate Duty Office/Capital Taxes Office
- Management Division
- Policy Division
- The Great Escape of 1988

Inheritance tax and domicile

- Domicile based
- General law domicile and deemed domicile
- Spouse/CP exemption
- NB lifetime transfers and estate on death
- Normally unlimited
- Except on transfer from UK domicile to non-UK domicile
- Exemption then £325,000
- Can be used against lifetime transfers
- PET & GROB rules may need to be considered

What does a non-domicile look like?



What about this one?



Domicile election

- Election for UK domicile
- Corollary is worldwide assets within scope of IHT
- Election is irrevocable but falls away after four years' non-residence
- What if already non-resident when election made?
- Interpretation of IHTA 1984 s 267 ZB (10)

Wills

- Will planning with spouses
- Outright gift?
- IPDI?
- Overriding power of appointment
- Stealing the spouse's nil rate band

Instruments of variation

- Within two years of death
- Fiscal fictions
- In reality lifetime gifts by original beneficiary
- Retrospective treatment for IHT & CGT
- Can elect for both or either
- Obtain spouse exemption
- The *Lau* case
- “Killing-off” discretionary will trusts

Promises, promises...



Residence nil rate band

- The residence nil rate band (RNRB)
- In force at £125,000 (£150,000 then £175,000)
- Transferable in (roughly) same way as NRB
- Doesn't matter when first spouse died
- Doesn't matter if (s)he owned property
- Tapers if estate exceeds £2m
- Available to benefit stepchildren



Ten common pitfalls

Lindsay House



House style

- Specialist in field of trusts, landed estates, probate and charities
- Long career with two of the Big Four
- Member of STEP
- Director of trusts team at BKL

1. Gifts out of income – or a lack of...

- Income from ISAs is included in the calculation

2. Deathbed planning

- Mitigation of CGT

3. ISA

- AIM ISA – 100% IHT exemption on investments held for two years

4. Missed opportunities

- Director's loan accounts – rights issues

5. Residence nil rate band

- Property passing into a discretionary trust

1. FA2006 – 18-25 Trusts

- Appointment prior to age 18

2. IHT exempt investments

- Missed opportunities

3. Missed ten year charges

- Misinterpretation of trust terms
- Terry's synopsis

4. Missed exit charges

- Restriction of income to avoid 'tax pool' charge

5. Accumulation of income

- Undistributed income – five year plus

How BKL can help

- Team of experienced trust and estate practitioners entirely dedicated to trust and estate work
- We have the latest technologies but work in the 'traditional way'
- Over 40 years' experience combined
- Speak to Michael Perin or me after the presentation

Thank you



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