

## **2. Domicile and residence status of PRs – an overview**

### **2.1 Background**

The residence and domicile status of the deceased (at the time of death) needs to be determined. The residence status of the personal representatives also needs to be determined but not their domicile status as no tax issues hinge on this.

See **Chapters 3** and **4** respectively for detailed commentary on residence and domicile. This chapter provides an overview.

### **2.2 Personal representatives – tax definitions**

#### **2.2.1 Introduction**

The definition of “personal representatives” differs depending upon the tax concerned (i.e. capital gains tax (CGT)/income tax and inheritance tax (IHT)). Nothing significant, however, turns on the slight differences for tax purposes.

#### **2.2.2 Income tax and capital gains tax**

The definition of “personal representatives” for income tax and CGT purposes is the same and provides:

“ ‘personal representatives’, in relation to a person who has died, means–

- (a) in the United Kingdom, persons responsible for administering the estate of the deceased, and
- (b) in a territory outside the United Kingdom, those persons having functions under its law equivalent to those of administering the estate of the deceased.”

**Law:** TCGA 1992, s. 288 (see CTA 2010, s. 1119); ITA 2007, s. 989

### **2.2.3 Inheritance tax**

The IHT definition of “personal representatives” provides:

“ ‘personal representatives’ includes any person by whom or on whose behalf application for a grant of administration or for the resealing of a grant made outside the United Kingdom is made, and any such person as mentioned in section 199(4)(a).”

Section 199(4)(a) in turn refers to:

“any person who takes possession of or intermeddles with, or otherwise acts in relation to, property so as to become liable as executor or trustee (or, in Scotland, any person intromits with property or has become liable as a vitious intromitter).”

**Law:** IHTA 1984, s. 199, 272

## **2.3 Personal representatives – liability to tax**

### **2.3.1 Income tax and capital gains tax**

PRs are liable to income tax and CGT on income and capital gains arising during the so-called “administration period”. The administration period is the rather ill-defined period during which the PRs are settling the deceased’s estate. It starts on the day following death and ends when the PRs have taken all steps necessary to complete the administration of the deceased’s estate.

In practice, it is often very difficult to determine the precise date when the administration period ends. However, despite the possible difficulties, it is extremely important, in particular because for CGT purposes the assets of the estate held by the PRs on this date are no longer held *qua* PRs but as bare trustees for the relevant beneficiaries under the deceased’s will (or intestacy) and/or *qua* trustees of any substantial trust set up under the deceased’s will. This in turn gives rise to different CGT consequences, depending upon whether any disposal is made by the PRs *qua* PRs or by the PRs *qua* trustees. Under the former, any CGT liability is that of the PRs whereas, under the latter, such liability is that of the beneficiary or beneficiaries (or, in the case of a substantial trust, that of the trustees).

It is because of this difference that prior to effecting any disposal the PRs should consider whether any CGT liability may be mitigated by

assenting any asset to one or more beneficiaries prior to the disposal (see **Chapter 14** and particularly **14.8.3**).

With respect to income tax, the PRs are liable on income which arises to them on estate assets during the administration period, albeit in a representative capacity. Income arising thereafter is subject to income tax on the part of the beneficiary or beneficiaries entitled to such income (see **Chapters 11 and 12**).

To ascertain the extent of the PRs' liability to income tax and CGT during the administration period, it is necessary to determine the residence (albeit not the domicile) status of the PRs for this period.

### **2.3.2 Inheritance tax**

PRs are liable to IHT chargeable on the deceased's estate and must submit an appropriate IHT account or return in respect of the estate (see **Chapters 8, 9 and 10**).

### **2.3.3 Deceased's tax liability before death**

The PRs also have responsibility to settle the deceased's outstanding income tax and CGT liabilities as at the date of death (i.e. with respect to income and capital gains arising before death) (see **Chapter 11**).

**Law:** TMA 1970, s. 74

## **2.4 Domicile**

The domicile status of PRs is basically irrelevant for all three taxes.

However, HMRC (perhaps somewhat surprisingly) appear to take the view that where the deceased died possessing a non-UK domicile, UK resident PRs are not subject to income tax on foreign (i.e. non-UK) source income arising during the administration period. In *Notes on Trust and Estate Non-residence 12/20* (TNRN) (for the tax year ended 5 April 2021, and for many earlier tax years), HMRC write:

“If the personal representatives are resident in the UK, their taxable income will depend on the domicile of the deceased, whose estate is being administered, at the date of death.

If the deceased was domiciled in the UK, then the personal representatives will be taxable in the normal way on both UK and overseas income.

If the deceased was domiciled outside of the UK, they will be taxable only on UK income. In such circumstances, do not include overseas income. Please also tick box 6.6 of the ‘Trust and Estate Non-residence’ pages.”

There appears to be no authority for this approach.

It is also unclear whether the reference to “domicile” is a reference to the common law concept only or whether it also encompasses a deceased who was “deemed” domiciled for income tax purposes (a concept introduced in F(No. 2)A 2017, effective 6 April 2017) (see **Chapter 5**). It seems likely that the reference includes a deceased who was deemed domiciled.

**Law:** F(No. 2)A 2017

**Guidance:** TNRN 12/20, page TNRN 2

## **2.5 Residence**

### **2.5.1 Introduction**

The residence status of PRs needs to be determined for income tax and CGT purposes, although it has no relevance for IHT.

PRs are not “individuals” (although they are “persons”) and hence the remittance basis has no application to them (as only “individuals” are able to take advantage of the remittance basis of taxation).

PRs for CGT purposes are treated as a single and continuing body of persons, distinct from the persons who may from time to time constitute PRs. There is no equivalent definition for income tax but in practice it appears to be assumed that the same definition applies.

The importance of this definition is that PRs are considered to be an entity which is both separate and distinct from those who comprise the PRs.

### **2.5.2 Capital gains tax**

For CGT purposes, the PRs (as a single and continuing body of persons) are treated as possessing the same residence status (and domicile, ignoring deemed domicile) as the deceased at the date of death. Thus, the status of those comprising the PRs is irrelevant.

**Law:** TCGA 1992, s. 62(3)

### **2.5.3 Income tax**

For income tax purposes, the definition is more complex, requiring the identification of the residence status of the PRs individually (be they individual or corporate), and in part being dependent upon the status of the deceased at the date of death.

PRs are resident in the UK if they are all individually resident in the UK (the status of the deceased being irrelevant). PRs are not UK resident if all the PRs are individually not UK resident.

Where, however, at least one of the PRs is UK resident (albeit with others who are not resident) then the residence status of the PRs is UK resident if the deceased died UK resident or UK domiciled (or deemed domiciled).

If the deceased died both not UK resident and not UK domiciled (or deemed domiciled), and at least one of the PRs is not UK resident, then the PRs are treated as not UK resident.

The concept of ordinary residence has had no relevance for deaths since 6 April 2013.

Detailed comments by HMRC on determining the residence status of PRs for income tax (reflecting the above) are contained in TNRN 12/20, relating to SA 906 (and SA 900).

**Law:** ITA 2007, s. 834, 835BA

**Guidance:** TNRN 12/20

### **2.6 Double tax treaties – income tax and CGT**

It may be possible for PRs to make claims for relief under the UK's various double tax agreements with respect to foreign income and/or capital gains arising during the administration period. (In addition, the PRs may also claim with respect to foreign income and/or gains arising up to the date of death on behalf of the deceased).

HMRC comment in the *International Manual* as follows:

“You may receive claims under double taxation agreements from personal representatives on income arising during the administration period of an estate (for pre-death income; INTM 340040).

You will need to establish that-

- The person who has signed the declaration on the claim form is a personal representative, and
- All of the income claimed arose during the administration period of the estate (that is, after the date of death and before the ascertainment of the residue of the estate).

You will also need to establish that the personal representative fulfils any particular conditions laid down in the double taxation agreement under which they are claiming. Please check the country specific guidance to see if there is any specific information about claims by personal representatives.”

**Law:** ITA 2007, s. 56

**Guidance:** INTM 340040, 340050