



# ICAEW REPRESENTATION 23/16

## TAX REPRESENTATION

### INHERITANCE TAX: REFORMS TO THE TAXATION OF NON-DOMICILES – Clause 43

ICAEW welcomes the opportunity to comment on the draft [\*Finance Bill 2016 clause 43\*](#) published by HM Revenue & Customs on 9 December 2015.

This response of 28 January 2016 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

We were represented at meetings with HM Treasury and HMRC jointly with other professional bodies in which we were able to put forward some key comments and concerns and discuss aspects of the proposals and our notes of those meetings can be found in [TAXGUIDE 8/15](#) and [TAXGUIDE 12/15](#).

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For more information, please contact ICAEW Tax Faculty: [taxfac@icaew.com](mailto:taxfac@icaew.com)

[icaew.com](http://icaew.com)

## MAJOR POINTS

### Key point summary

1. Clause 43 shortens the period an individual can be resident in the UK before they become deemed domiciled for inheritance tax (IHT) purposes from 17 out of 20 tax years ending with the tax year in question to 15 out of the 20 tax years immediately preceding the tax year in question.
2. The clause also introduces a new rule that a person born in the UK with a UK domicile who has since acquired a domicile of choice elsewhere will be treated as UK domiciled for IHT purposes if they are resident in the UK in at least one out of the two previous tax years.
3. The changes purport to treat all those born in the UK equally but at the same time they give individuals with more connection with the UK who were born abroad but live in the UK more favourable treatment than those born in the UK who left at birth and have lived outside the UK for their entire life.
4. The concerns and issues we raised in our response to the consultation document [TAXrepresentation 59/15](#) are still in point.

### General comments

5. As the 15 out of 20 years still refers to tax years a year will count even if the individual is only present for one day of the tax year thereby shortening the actual time a person can be in the UK before being deemed domiciled. We consider the six year period required to lose the deemed domicile status after leaving the UK to be too long and will be difficult to police; how will the estate of somebody who has died five years after leaving the UK be traced if they left no UK assets?
6. The original proposal was for an individual born in the UK who had acquired a domicile of choice elsewhere to lose their domicile of choice as soon as they returned to the UK. Whilst we welcome the change that means they have to be resident in the UK for at least one out of the previous two tax years we still have concerns we still do not think it appropriate for somebody to become liable to UK IHT so soon after arriving in the UK.

7. Consider the following examples:

An individual is born in the UK to parents who are married and the father has a UK domicile of origin. A year later the family emigrates to New Zealand. The individual becomes a citizen of New Zealand and lives there for 50 years. She only returns to the UK as an aunt has become very unwell and needs nursing. She does not envisage being in the UK for much longer than one tax year but she is caught by the new rules. The new provisions will mean that she cannot access the Remittance Basis and should she die her worldwide estate will be subject to IHT.

An individual is born in the UK to parents who are married and the father has a UK domicile of origin. A year later the family emigrates to Canada. The individual becomes a Canadian citizen and lives in Canada for 40 years. He gets seconded to London for an 18-month period at the end of which he expects to return to Canada. The new provisions will mean that he cannot access the Remittance Basis (including not being able to benefit from Overseas Workday Relief) and should he die his worldwide estate will be subject to IHT.

8. The fact that any trust created whilst the UK born individual was non-UK resident will cease to be an excluded property trust as soon as the individual becomes UK domiciled again could lead to some very complex ten year charge calculations.
9. There would seem to be a discrepancy between the original technical note on the deemed domicile rules and the draft IHT legislation included as part of the 2016 Finance Bill.

If 2016/17 is a person's 15<sup>th</sup> year of residence they would meet the 15 year rule in 2016/17 and so be deemed UK domiciled from 2017/18. According to the technical note issued at the time of the Summer 2015 Budget, to avoid becoming deemed domiciled in such circumstances a person would be able to become non-UK resident before 6 April 2017. It was stated in section 3.2:

*'The new rules will be effective from 6 April 2017 irrespective of when someone arrived in the UK. There will be no special grandfathering rules for those already in the UK. For those who leave the UK before 6 April 2017 but would nevertheless be deemed domiciled under the 15 year rule on 6 April 2017 the present rules will apply.'*

However, the draft IHT legislation simply says that if you are UK resident for 15 of the 20 tax years preceding the tax year in question you are deemed domiciled for that year. Therefore a person whose 15<sup>th</sup> year of residence is 2016/17 will meet the 15 year rule and so be deemed domiciled for 2017/18 (and 2018/19 to 2021/22 for that matter) regardless of whether they leave before 6 April 2017.

The legislation is therefore not in line with the announcement made in the summer and could be detrimental for those in this position.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).