

# Changes to Excluded Property Trusts



**With the COVID-19 pandemic continuing to dominate agendas of businesses and government alike, Finance Bill 2020 may not have received as much attention as it would in normal years, but important changes have been introduced which may impact trustees and their trusts.**

## Background

Trusts created by non-UK domiciled individuals which hold non-UK assets are generally referred to as excluded property trusts and the assets in such a trust are broadly outside the scope of UK Inheritance Tax (IHT).

The Finance Bill 2020, which received Royal Assent on 22 July 2020, introduced two clauses in connection with excluded property trusts which may impact the trustees and settlors of trusts created by an individual when they were non-UK domiciled but are now either UK domiciled or are deemed UK domiciled (having been a UK resident for 15 out of the previous 20 tax years).

## Additions to Excluded Property Trusts by deemed domiciled/ UK domiciled settlors

The first new clause deals with additions to an excluded property trust when the settlor is domiciled in the UK or deemed UK domiciled.

Although not legislated, it was generally understood that adding assets to an excluded property trust after the settlor became UK domiciled or deemed domiciled, meant that those added assets did not qualify as excluded property and were therefore subject to IHT, albeit, some trustees and advisors took a different approach. Finance Bill 2020 introduces legislation to confirm this treatment, clarifying that the settlor's domicile is tested when each transfer is made to the trust, not just when the settlement was created.

These provisions also apply to transfers already made, in respect of IHT charges that fall due after Royal Assent. Therefore if additions have already been made to an excluded property trust when the settlor was deemed domiciled or UK domiciled, such additions will be subject to 10 year and exit charges. If the settlor can also benefit from the trust, the non-excluded property additions will also be subject to an IHT charge on the death of a settlor under the 'gift with reservation' (GWR) provisions.

## Transfers between Trusts

The second clause introduced is in connection with transfers of assets between trusts and the impact on excluded property status after the transfer. HMRC's historic guidance on transfers between trusts at a point the settlor was deemed UK domiciled or UK domiciled stated that the non-UK assets remained excluded property, provided both trusts were set up when the settlor was non-UK domiciled and it was the trustees who undertook the transfer with no requirement for settlor consent.

Finance Bill 2020 introduces legislation such that if a transfer takes place between two trusts which were set up when the settlor was non-UK domiciled, and the transfer takes place at a time the settlor is UK domiciled or deemed domiciled, then the assets that are the subject of the transfer will no longer be excluded property.

This means the assets would be relevant property and subject to 10 year and exit charges. If the settlor remains a beneficiary of the trust, the assets would also be subject to the GWR rules on the death of the settlor.

## Summary and steps to take

Both these clauses are complex and we urge you to consider them carefully if you believe you may be impacted by these changes.

We recommend that trustees take the following steps in light of the introduction of these clauses:

- Review your trusts to identify any instances where additions or transfers were made when the settlor was UK domiciled or deemed domiciled, including any additions or transfers that took place prior to 2020.
- Check whether the settlor is named as a beneficiary of the trust and if it would be appropriate to exclude them going forward.

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