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IHT Issues for Norwegians living in the United Kingdom

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Private Client Partners Alice Palmer and Freddie Bjørn summarise some of the traps and planning opportunities

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Although the UK is regarded by Norwegians as an attractive place to live not only culturally and linguistically but also tax wise, there are tax traps for the unwary which arise out of the mismatch in tax concepts between the two countries and the different ways in which each country chooses to impose Inheritance Tax.

UK Inheritance Tax is payable in principle on transfers made on death or gifts during lifetime. Where the individual is not domiciled in the UK at the date of transfer (whether that be on his death or the date of the gift), the payment of Inheritance Tax is restricted to assets situated in the UK. The tax rate is a flat rate of 40%.

The English law concept of domicile is very different from that in Norway. To determine a person's domicile, one needs to establish his domicile of origin and then ascertain if he has displaced this by a domicile of choice; this could only happen if he moved to a new country with the intention of settling there permanently. Many Norwegians, despite living in the UK for many years, have managed to retain their Norwegian domicile for UK tax purposes on the basis that they have no intention to settle here permanently. They are UK resident but not UK domiciled. The fact that for Norwegian tax purposes they are treated as UK domiciled (and having shed their Norwegian domicile) is immaterial.

For UK Inheritance Tax purposes, there is however a special rule (known as the deemed domicile rule), which means that non-UK domiciliaries who have lived here for at least 17 out of the last 20 tax years are treated as if they were domiciled here.

Where an individual makes a gift to another individual, this is known as a *Potentially Exempt Transfer* and Inheritance Tax only becomes payable if the donor dies within 7 years of making the gift.

In Norway, the equivalent of Inheritance Tax (*Arveavgift*) is also in principle payable on death or on the making of a gift. Unusually, Norway levies this tax (at a rate of 10% or 15%) if the deceased or donor was either resident or a citizen of Norway at the relevant time. This gives rise to the potential for tax in both Norway and the UK for Norwegian citizens living here but can also give rise to situations where

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there is tax in one of the two countries but not in the other and the full impact of this is often not appreciated.

Example 1

Olaf dies having lived in the UK for 10 years. He leaves his estate equally to his three children. To the extent that the value of his UK assets exceeds the tax free band (currently £325,000), UK Inheritance Tax will be payable at 40%. Being a Norwegian national, his non UK assets will be subject to *Arveavgift* at 10%. The reason why *Arveavgift* is not chargeable on his UK assets is because an exemption is given where an equivalent tax is paid in the country of residence.

Example 2

Another Norwegian national, Christoffer has been living in the UK for 20 years when he unexpectedly dies. Some 10 years ago, he established a trust into which he transferred some non-UK based investments. As the trust was established at a time when he was not yet *deemed domiciled*, the trust assets are not liable to UK Inheritance Tax on his death, despite the fact that he is the primary beneficiary. All his personally owned, non-trust assets (including those situated outside the UK) are however fully liable to UK Inheritance Tax. Although *Arveavgift* is not payable on the personally owned assets (for the reason given in Example 1), it is most probably payable on the trust assets because these are not subject to UK tax and because the earlier transfer into trust will probably not have succeeded in extracting the assets from Christoffer's estate for Norwegian tax purposes. This may well be a charge which Christoffer was not expecting.

Example 3

Mikkel has also been living in the UK for 20 years and makes a gift of some Swiss based investments to his granddaughter Malena. Although Mikkel is no longer domiciled in Norway for Norwegian tax purposes, *Arveavgift* will be payable at 15% due to his Norwegian nationality. No Inheritance Tax is due because the gift will be treated as a *Potentially Exempt Transfer*. Sadly, Mikkel dies 4 years later. As he failed to survive the requisite 7 year period, UK Inheritance Tax is now payable on the gift at the reduced rate of 32% and a credit will need to be claimed for the *Arveavgift* already paid.

Example 4

Lene moved to the UK to study 19 years ago; since graduating, she has been working in London. Four years ago she met and married Haakon, who had himself just relocated from Oslo to London. Lene has just died, leaving her whole estate to Haakon as they have no children. No *Arveavgift* is payable as Lene is fully liable to Inheritance Tax in the UK and in any event spouse exemption would be available so that no *Arveavgift* would be payable. For the reason that Lene was deemed domiciled here but Haakon was not, spouse exemption from UK Inheritance Tax is restricted to £325,000 and so Inheritance Tax is payable at 40% on Lene's worldwide estate to the extent its value exceeds £650,000. It would be open to Haakon to elect to be treated as domiciled so as to benefit from spouse exemption on Lene's death but the ongoing tax implications for him would need to be considered first.

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Forced heirship rules apply in Norway, providing that spouses and children are entitled to a certain share of a deceased's estate. As these rules do not prevent Norwegians making gifts, these may be an attractive way of circumventing the Norwegian succession rules. There are no equivalent rules in England, although spouses and children can make a claim under the Inheritance (Provision for Family and Dependants) Act 1975, if reasonable provision has not been made for them but only if the deceased was a UK domiciliary.

The above examples have not sought to address more complicated scenarios where, for example, a Norwegian national lives in the UK and owns property in some third country, which itself levies tax on those assets or has its own forced succession rules. These types of situations can give rise to conflicts between the laws of the different countries and expert professional advice is recommended to avoid unforeseen taxes and other legal consequences. The Norwegian matrimonial regime chosen by the couple also needs to be considered as this will affect the way they can leave their assets.

The mismatch of the Norwegian and UK rules can create problems as well as planning opportunities, if the issues are spotted and addressed in advance of any transfer taking place.

We have considerable experience of advising Scandinavian based clients in connection with the structuring of their affairs and on UK tax and estate planning matters generally. We are happy to work in conjunction with the client's established advisors in their home country but, if there is no such advisor, have an informal network of lawyers with whom we have previously worked and whom we can consult on the client's behalf, as required, to produce a solution which works in both countries.

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For advice in this area and in the event that you do not have a usual contact at Payne Hicks Beach, please contact the author Freddie Bjørn by email.

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