

# FINANCE ACT 2012

---

## EXPLANATORY NOTES

### INTRODUCTION

#### *Section 210: Settled Property: Effect of Certain Arrangements*

##### Summary

1. [Section 210](#) amends the inheritance tax (IHT) settled property provisions. Where a UK-domiciled individual acquires an interest in settled property, which as a result of certain arrangements gives rise to a reduction in the value of that individual's estate, a charge to IHT will arise. In addition if the settled property was formerly excluded property it will cease to have that status.
2. The charge will largely replicate the tax treatment that a UK-domiciled individual would have incurred if the assets within the offshore trust, which are in some cases 'excluded property' and which would otherwise be ignored for IHT purposes, had instead been transferred to a UK trust.
3. The changes will have effect from 20 June 2012 in relation to arrangements entered into on or after that date.

##### Details of the Section

4. Subsection 1 provides for amendments to the Inheritance Tax Act 1984 (IHTA).
5. Subsection 2 inserts new sections (1)(d) and (3D) into section 48 IHTA which deals with excluded settled property, and amends a cross reference in section 48(3). Settled property is excluded property if it is situated outside the UK and held in a trust which was set up by a person who was domiciled outside the UK when the settlement was made.
  - New section 48(1)(d) provides that where the conditions in paragraphs (a), (b) and (d) of new section 74A(1) are met but the arrangements do not give rise to a reduction in the individual's estate, a reversionary interest will only qualify as excluded property where that is the only interest in settled property that the individual is beneficially entitled to.
  - New section 48(3D) ensures that once the conditions in new section 74A(1) are met, the settled property cannot be excluded property by virtue of section 48(3)(a) and it cannot revert to that status at any later time.
6. Subsection 3 inserts new sections 74A, 74B and 74C into IHTA.
7. New section 74A gives conditions for the section to apply to arrangements involving the acquisition of an interest in settled property, and explains the treatment of those arrangements.
  - New section 74A(1) contains the conditions for the new section 74A to apply. One or more persons have to enter into arrangements during the course of which a UK domiciled individual acquires an interest in settled property, consideration has to

*These notes refer to the Finance Act 2012 (c.14)  
which received Royal Assent on 17 July 2012*

be given, and the arrangements have to give rise to a 'relevant reduction' in the value of that individual's estate. In addition, there is a requirement that condition A or B is met.

- New section 74A(2) sets out condition A which is met where the settlor was not domiciled in the UK at the time the settlement was made, and the settled property is situated outside the UK at any time during the course of the arrangements.
  - New section 74A(3) sets out condition B which is met where assets are settled by a corporate settlor other than a close company and condition A is not met.
  - New sections 74A(4) to (6) apply where the arrangements give rise to a 'relevant reduction' in an individual's estate which is attributable to the value of settled property to which that individual is treated as beneficially entitled under section 49(1) by reason of the individual being entitled to an interest in possession. Where a 'relevant reduction' occurs, IHT is charged as if a part of the individual's interest in possession equal to the 'relevant reduction' had come to an end.
  - New sections 74A(7) and (8) apply where the arrangements give rise to a 'relevant reduction' in an individual's estate other than one which is attributable to the value of settled property to which the individual is treated as being beneficially entitled under section 49(1). They provide that IHT is to be charged as if the individual had made a transfer of value equal to the 'relevant reduction'.
8. New section 74B makes supplementary provision to new section 74A.
- New section 74B(1) provides that a transfer of value arising under new section 74A is immediately chargeable to IHT.
  - New sections 74B(2)(a) and (b) disapply section 3(2) and section 10(1) of IHTA for the purposes of calculating the 'relevant reduction'. New section 74B(2)(c) prevents sections 102 to 102C of Finance Act 1986 applying to the transfer arising under new section 74A so that a reservation of benefit does not arise.
  - New sections 74B(3) and (4) provide that where in the course of the arrangements there is a transfer of value by reason of new section 74A ('the current transfer'), and there is also a 'relevant related transfer' which arises other than by reason of new section 74A, the value transferred by the current transfer is to be reduced by the value transferred by the relevant related transfer.
  - New section 74B(5) provides that section 268(3) of IHTA (Associated operations) does not apply to a transfer of value arising under new section 74A.
  - New section 74B(6) ensures that where a transfer of value has arisen under new section 74A and in the course of the arrangements the individual acquires an interest in possession in settled property which is treated as forming part of that individual's estate under section 5(1B) of IHTA, the transfer under new section 74A shall be cancelled.
9. New section 74C provides interpretations for the purposes of sections 74A and 74B.
- New section 74C(2) defines an interest in settled property. An individual has an interest in settled property if the property, or any 'derived property', can in any way be paid to, or benefit them, or their spouse or civil partner, or a close company of which they (or their spouse or civil partner) are a participator, or a company which is a 51 per cent subsidiary of such a company.
  - New section 74C(3) explains when a 'relevant reduction' occurs. This is when the value of the individual's estate is reduced as a result of the arrangements. New section 74C(4) explains how the amount of the relevant reduction is calculated.

*These notes refer to the Finance Act 2012 (c.14)  
which received Royal Assent on 17 July 2012*

- New section 74C(5) defines the terms: ‘arrangements’, ‘close company’, ‘derived property’, ‘operation’, ‘participator’, ‘the relevant time’ and ‘51 per cent subsidiary’.
10. Subsection 4 provides for consequential amendments to section 201 of IHTA (liability for tax: settled property). A new section 201(4A) ensures that the individual who acquires the interest in the settled property is liable for the new charge under section 74A, and any 10-year anniversary charges under section 64 of IHTA or charges when property ceases to be relevant property under section 65 of IHTA when the conditions in section 74A are met.
  11. Subsection 5 provides the commencement provisions. The amendments made by section 210 are treated as having come into force on 20 June 2012 and have effect in relation to any arrangements entered into on or after that date.

**Background Note**

12. IHT is normally charged on the value of a person’s estate at death after deducting reliefs and the nil-rate band. There is a separate relevant property regime that charges IHT on assets held in trusts, which are not included in a person’s estate. If a UK-domiciled individual settles assets into an offshore trust, the transfer into trust will be charged to IHT and the value of the trust assets above the nil-rate band will also be subject to IHT. IHT is not charged on those transactions undertaken by companies, other than close companies.
13. Where the settlor is not UK-domiciled, settled property situated outside the UK is excluded from the IHT charge and is referred to as excluded property. Anti-avoidance provisions ensure that where an ‘interest in possession’ (IIP) in such excluded property is purchased for value, the trust assets are subject to IHT as part of the purchaser’s estate. However, if a UK domiciled individual acquires an interest in excluded property which is not an IIP, there may be no charge to IHT when the interest is acquired. The settled property may escape any subsequent charge to IHT either as part of the individual’s estate or under the relevant property regime. In addition, the individual’s estate may be reduced by any debt where the acquisition is financed by a loan.
14. The amendments to the settled property provisions in section 210 will apply to avoidance schemes where arrangements exploit the excluded property rules by converting UK assets to ones that are excluded from the IHT charge and do not give rise to a transfer of value when that conversion occurs. A transfer of value will arise and the assets will no longer be treated as excluded property. Instead, the settled property will fall within the relevant property regime.
15. The scope of the new provisions also extends to arrangements where a UK corporate settlor has settled assets as part of an avoidance scheme and to certain arrangements where an individual retains a reversionary interest in settled property they have acquired.