



The Law Society

# **Election to be treated as domiciled in UK**

Response of the Law Society of England and Wales

February 2013



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## **Comments of Capital Taxes Sub-Committee of the Law Society of England & Wales**

### **Introduction**

1. The Law Society is the representative body for over 166,000 solicitors in England and Wales. It negotiates on behalf of the profession, and lobbies regulators, Government and others.
2. This response has been prepared on behalf of the Society by members of the Capital Taxes Sub-Committee, which is made up of senior and specialist tax lawyers practising in this field.

### **Comments**

3. We welcome the proposed changes to the legislation by which the Government intends to:
  - a. Increase the IHT -exempt amount that a UK –domiciled individual can transfer to their non-UK domiciled spouse or civil partner, and
  - b. Allow individuals who are domiciled outside the UK and who have a UK domiciled spouse or civil partner to elect to be treated as domiciled in the UK for the purposes of IHT.
4. Paragraph 3 of the draft legislation sets out a new Section 267ZA to IHTA 1984 which contains the conditions that must apply for an election to be made. There is no requirement that either the person making the election or their spouse/civil partner be resident in the UK when the election is made or at the time of the death of the spouse/civil partner. We agree that the election should be capable of being made by persons who are not resident in the UK as well as by those who are resident in the UK.
5. Condition B of Section 267ZA includes the requirement that the person's spouse/civil partner died on or after 6 April 2013. We see no reason why the legislation should not allow elections to be made by persons whose spouse/civil partner died on or after 11 December 2012 and consider that unfairness is otherwise created.
6. Paragraph 4 of the draft legislation sets out a new Section 267ZB to IHTA 1984 which contains provisions regarding the process of making the election. We should like the legislation to be amended to make it clear that it is possible for a person to make more than one election – i.e. that a death election can be made notwithstanding the fact that a person might have made a lifetime election (or more than one lifetime election) that might have lapsed (because of non-residence).
7. We should like sub-clause 267ZB(8) to be amended to provide that it shall be possible for a person who is not resident in the UK to elect for a lifetime election to continue to have effect notwithstanding the fact that that person has been non-resident in the UK for the period specified in sub-clause 267ZB(9)(a).