



Art Estate Planning: advantages and barriers

***Mr Alessandro Umberto Belluzzo
Belluzzo & Partners LLP
Managing Partner***

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Individuals - UK Residence vs UK Domicile

UK Residence

From 6 April 2013 a Statutory Residence Test (SRT) applies to determine an individual's residence status for UK tax purposes:

- a) Automatic residence/overseas test
- b) Sufficient ties test

UK Domicile

Domicile of origin - country that your father considered to be his real or permanent home at the date of your birth

Domicile of choice – country where the individual settle permanently changing his previous country of domicile

Deemed domicile – individual resident in UK for 17 out of 20 fiscal years. Applicable only for inheritance tax purposes

Individuals Trading Vs Investment

Trading (art dealer)

Income Tax (20%-40%-45%)

If non-UK resident

UK Income Tax only on UK sales

If UK resident

a) if UK Domiciled - UK Income Tax on worldwide income

b) if Non-UK Domiciled (remittance basis) – UK Income Tax on sale UK assets, but UK Income Tax on non-UK sales only if proceeds remitted to UK

Individuals Trading Vs Investment

Investment (individual collector)

Capital Gain Tax (18%-28%) with an **annual exempt amount** for the year 2014-15 of GBP 11,000 (not applicable for UK resident not domiciled opting for the remittance basis)

If non-UK resident

No UK CGT on UK sales

If UK resident

- a) if UK Domiciled - UK CGT on worldwide income
- b) if Non-UK Domiciled (remittance basis) – UK CGT on sale UK assets, but UK CGT on non-UK sales only if proceeds remitted to the UK.

Individuals - Capital Gain Tax

Artworks sale for consideration < £ 6,000 = No UK CGT

CGT also levied if transferred as gift or consideration less than market value

Possible reliefs:

- Disposals made in satisfaction of inheritance tax liabilities (exempted from CGT)
- Donation to recognized charities or specific national institutions (e.g. National Gallery...)

N.B. Outright gifts to other individuals during their lifetime are not subject to UK IHT (Potentially exempt transfer), if the donor survives the gift by seven years

Individuals - Remittance

In addition to the UK taxation in case of remittance of foreign income and gains, an artwork bought abroad using foreign income or gains and brought to UK is considered as remittance and subject to UK tax

There are exemptions if the artwork is brought into the UK for:

1

Less than 9 months
(e.g. display in art
galleries)

2

Repair or restoration

3

Public display in
approved public
locations (e.g.
museums)

No taxes are due on artworks acquired before March 2008 with untaxed foreign income.

Individuals – Inheritance Tax

UK Inheritance
Tax (IHT)

40%

of the estate value
(nil-rate band £ 325,000)

Exemptions:

- Gifts between spouses and civil partners
- Gifts to UK-registered charities

UK domiciled:

IHT levied on worldwide assets

Non-UK domiciled:

IHT levied **only on UK assets**

Residence is not relevant to IHT = a non-UK resident, not domiciled might be subject to UK IHT on his artworks kept in UK.

N.B. Non-UK domiciled, resident in UK for long time (17 years) can be considered “deemed domiciled” for IHT purposes.

Individuals – Inheritance Tax

Tax incentives with reference to donation of cultural properties to UK public institutions)

1

Acceptance in Lieu: enables taxpayers to transfer at full market value important artworks into public ownership in order to pay any due IHT. The artworks are then made available to public museums

2

Cultural Gifts Scheme: in return for donations of important artworks to public institutions, the taxpayer receives a tax return

3

A donation of 10% estate to charity might reduce the overall IHT rate to 36%

Individuals – Inheritance Tax

IHT planning for individuals holding artworks depends on the domicile of the individual.

Possible options to
mitigate the IHT impact:

Life insurance (written in trust)

Borrowing against the artworks
(reducing the tax base)

Holding assets through a non-UK
corporate vehicle

Holding assets through a non-UK
trust

A combination of the above

Corporation Tax

UK resident companies

Corporation Tax (CT):

20% (Profits up to £ 300,000)

21% (Profits above £ 300,000)

Both income and gains are subject to CT.

Non-UK resident companies

- If trading artworks (not investing) in UK, having a UK presence (permanent establishment) = UK CT
- If investing in UK artworks with no permanent establishment, UK proceeds from sale not subject to UK CT

VAT

Sale of artworks is subject to VAT in UK at 20% rate.

Art dealers can apply for the “margin scheme” taxing the difference between what they paid for an artwork and what they sold it for, rather than the full selling price.

Margin scheme invoice requirements are different from the general VAT invoice (e.g. VAT is not shown on the buyer’s invoice..)

Reduced VAT rate of 5% is due on import of artwork into the UK from a non-EU country (imports from EU are exempted from VAT).

Some exemptions:

- ✗ Importing under Temporary Admission (artworks intended to be re-exported shortly)
- ✗ Importing for an exhibition in a museum
- ✗ Importing for a charity
- ✗ Importing inherited artworks

Trust

Continuity



Whatever happens to the settlor, the collection will be managed by the trustees according to the terms of the trust

Estate
planning



The trustees will manage the collection in the interest of beneficiaries even in case of death of the settlor

Asset
protection



In some cases holding artworks in trust might provide protection against bankruptcy, divorce and creditors issues

Trust

Settling artworks into trust is a lifetime gift subject to 20% UK IHT if:

- ✓ The settlor is UK domiciled
- ✓ The settlor is UK deemed domiciled
- ✓ The artworks are in UK

A UK resident not domiciled who settle artworks situated outside UK into a foreign trust is not subject to 20% IHT.

Trust

Trusts are subject to a special IHT regime:

6% IHT on ten-year anniversary of the trust and proportionate rate on capital distributions. The special IHT regime applies to the value of UK situated assets held by the trust.

Anyway

If an intermediary non-UK company is established between trust and artworks the UK situated assets are outside the scope of the special IHT regime.

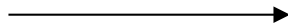
Trust

Some aspects should be carefully considered:

- 1 Establishment of a “dry trust”. The trust produces income or gains only on sale of the artworks
- 2 Specific consideration should be made in case the artworks remain at disposal of the settlor or beneficiaries (reservation of benefits). The enjoyment of the artwork might be a taxable benefit in kind
- 3 If correctly structured, the sale of artworks from a trust established by Non-UK domiciled should not generate any CGT until distribution to UK beneficiaries

Trust

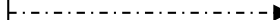
Settlor - UK Res Non Dom



Non-UK Trust



Consignment
agreement



**LLP or LTD
(UK)**



A black and silver pen is positioned diagonally on the left side of a white rectangular piece of paper. The paper has a subtle texture and a soft shadow beneath it.

Thank you



Stradone San Fermo, 14
37121 **Verona**
T+39 045 8005353
F+39 045 8012788
studio@belluzzo.net



Via Cordusio, 2
20123 **Milano**
T+39.02.365.696.57
F+39.02.365.698.29
studio@belluzzo.net



38, Craven Street
WC2N 5NG **London**
T+44 20 70042660
F+44 20 70042661
london@belluzzo.net

www.belluzzo.net

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