

## UK and US *situs* Tax

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It is commonly known that the tax levied in South Africa on deceased estates is called estate duty. Perhaps not so commonly known is that taxes levied in the United Kingdom (UK) on estates of deceased persons is called inheritance tax (IHT) and taxes levied in the United States of America (USA) on estates of deceased persons is called estate tax. These taxes are generally levied in the UK and USA on assets which are classed as UK or US *situs* assets even when these so-called *situs* assets are owned by non-residents.

*Situs* is Latin for position or site. The *situs* of an asset is therefore generally the place where an asset is treated as being situated or located for legal purpose, for example, the location of immovable property, the place where a share register is maintained or where a company has been incorporated.

The rules pertaining to *situs* tax are complex. These are also further complicated by Double Taxation Agreements with respect to taxes on estates of deceased persons. South Africa signed such agreements with the United Kingdom on 22 June 1979 and with the United States of America on 15 July 1952. The terms of these agreements generally allow the countries in which the assets are located to tax such assets. The good news therefore is that your estate will not be faced with double estate taxes.

What follows is a high-level comparison of the taxes levied in South Africa, the UK and the USA on deceased estates of persons who were resident in South Africa and non-resident and non-domiciled in the UK and/or non-resident and not a citizen in the US at the time of their death but who held *situs* assets in either the UK or US at the time of their death. Thus, this high-level comparison looks at the deceased estate of a person who was a South African resident at the time of his/her death and who had utilised his/her permissible foreign capital allowance during his/her lifetime and invested in either UK or US *situs* assets.

Country	South Africa (SA)	United Kingdom (UK)	United States of America (USA)
Name	Estate Duty (ED)	Inheritance Tax (IHT)	Estate Tax (ET)
Rate	20%	40%	40% (maximum)
Threshold	R3,5 million	£325,000	US\$60,000
Roll-over relief between spouses	Yes, therefore R7 million upon death of surviving spouse	Yes, therefore £650,000 upon death of surviving spouse	The surviving spouse may make use of a unified credit of up to \$13,000. Property passing to a qualified domestic trust (QDOT) is also excluded.
Immovable Property	Subject to ED in SA	Subject to IHT in UK	Subject to ET in USA
Equities	Subject to ED in SA if Company issuing the shares was incorporated in SA	Subject to IHT in UK if Company issuing the shares was incorporated in UK	Subject to ET in USA if Company issuing the shares was incorporated in USA
Unit Trusts	Subject to ED in SA if register of unit holders kept in SA	Subject to IHT in UK if register of unit holders kept in UK	Subject to ET in USA if incorporated in the USA
Foreign Collective Investment Schemes	N/A	Generally excluded from IHT in UK	Generally excluded from ET in USA

Assets held by a trust	<i>South African Registered Trust:</i> The assets are generally excluded from the founder's estate. The value of assets settled on the trust by way of loan account is generally pegged	<i>Offshore Registered Trust:</i> 10 year charge on UK <i>situs</i> assets. This is usually overcome by incorporating an offshore company (the shares of which are owned by the offshore trust) to acquire the UK <i>situs</i> assets	<i>Offshore Registered Trust:</i> Generally excluded from ET in USA, provided there are no US resident beneficiaries
Assets held by an offshore company	N/A	Excluded from IHT in UK	Generally excluded from ET in USA
Assets held in an offshore life policy (life wrapper)	N/A	Excluded from IHT in UK	Excluded from ET in USA

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