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# Domicile

## 1. Definition of domicile

There is no simple definition of the legal term "domicile". It is a concept which is distinct from residence, ordinary residence, nationality and citizenship. In very simple terms, a person is domiciled in the territory with which the law regards him as having his most permanent connection. The law of domicile can, however, produce strange results.

Where the concept of domicile connects a person with a legal system, that legal system then regulates a number of personal matters, for example succession to property on a person's death and certain taxation implications.

## 2. The difference between domicile, residence and nationality

*Residence* indicates a degree of physical presence in a territory, but a person may be domiciled in a territory in which he does not reside, which he never visits, and to which he has never even been. Although a person may have more than one *nationality*, or none at all, and may be treated as resident in more than one place at any one time, he **must** have a place of domicile and can only have **one** such place at any one time. Furthermore that place of domicile may be different from his place(s) of nationality and/or residence.

## 3. Types of domicile

A person's domicile at any given time will have been acquired in one of three ways. He will either have a domicile of *origin*, a domicile of *dependency*, or a domicile of *choice*.

### (1) Domicile of origin

At birth every individual acquires a "domicile of origin". This is usually the domicile of his father at the time of the birth; it is, therefore, not necessarily the individual's country of birth.

A domicile of origin is of fundamental significance and is retained until such time as there is clear evidence that another domicile has been acquired. If a domicile of choice is subsequently abandoned without another being acquired, the domicile of origin revives.

### (2) Domicile of dependency

Children under the age of 16 automatically have the domicile of their father (or in certain circumstances their mother) as a "domicile of dependency".

Under UK law, prior to 1 January 1974 a woman automatically acquired on marriage the domicile of her husband, regardless of her domicile of origin or any domicile of choice which she might otherwise have acquired. For marriages on or after 1 January 1974 a married woman's domicile is determined on the same basis as that of any other individual. Her husband's status and future intentions may be a factor to be taken into account, but they are not conclusive of her position.

### (3) Domicile of choice

It is possible at any time for an individual over the age of 16 at least temporarily to shed his domicile of origin, and to acquire a "domicile of choice" in a different territory.

To establish a domicile of choice an individual must sever most or all ties with his domicile of origin and settle in the territory in which he wishes to establish a domicile, with a clear intention of making his home there on a permanent basis.

If a person wishes to establish a domicile of choice, he has the onus of proving that this has occurred, and that in consequence the domicile of origin has been displaced. Until this is proved, it is assumed that the domicile of origin is retained.

There are a number of factors to which an individual can point to show that he has established a domicile of choice, but there are two overriding prerequisites:

- (a) a genuine wish to adopt the new territory as his only or his main home either permanently, or at least indefinitely, with no intention of establishing his main home elsewhere, and
- (b) a physical presence in that territory.

If the first condition is established, then a long period of residence is not necessary to establish the new domicile of choice. (Conversely if it is absent, a period of

continuous residence, for however long, will not be sufficient.)

The following are pointers towards having adopted a new domicile though probably none of them is conclusive taken by itself:

- a long period of residence in the new territory;
- the acquisition there of permanent residential accommodation (freehold or long leasehold) of reasonably substantial value for occupation;
- the acquisition of citizenship and passport of the new territory;
- the making of a new Will subject to the laws of the new territory;
- the acquisition there of a burial plot;
- the exercise of political (e.g. voting) rights;
- the payment of local and state taxes;
- development of local business interests, e.g. directorships;
- membership of local clubs and associations;
- establishment of local banking and financial facilities;
- establishment of local business contacts.

Further evidence can be produced by making a formal written declaration of future intention regarding residence, etc. This will not be conclusive, but would provide useful evidence in the case of early accidental death.

#### 4. The deemed domicile rules for inheritance tax ("IHT")

The UK IHT legislation contains rules which treat certain persons who are not legally domiciled within the UK as being so domiciled for most IHT purposes. These rules do not affect a person's domicile for income tax or capital gains tax. Under the extended IHT definition of domicile, a person is treated as domiciled in the UK at the relevant time:

- (1) if he has been *resident* in the UK in not less than 17 of the previous 20 tax years. This means that a long-term UK resident cannot shake off UK domicile for IHT purposes until he has lived outside the UK for at least three complete **tax** years following the year of departure; or

- (2) if he was *domiciled* (under the general law) in the UK within the previous three **calendar** years.

#### 5. Domicile and IHT

If a person dies domiciled or deemed domiciled in the UK then, subject to certain exemptions and reliefs and subject to any double taxation conventions there may be, IHT is payable on the whole of his or her estate throughout the world.

If, on the other hand, a person dies domiciled outside the UK, IHT will only be chargeable on the death on such of the assets in the UK as are subject to IHT. For example, certain British Government securities are exempt from IHT so long as a person is neither domiciled (under the general law) nor ordinarily resident in the UK. It follows that, if a person is likely to be domiciled outside the UK, then, apart from exempt British Government securities, he or she should try to ensure that assets in the UK do not exceed the IHT threshold so as to prevent them falling within the ambit of IHT.

#### 6. Domicile and testamentary arrangements

If a person is domiciled outside the UK, then it is desirable to take advice from lawyers in the relevant countries as to the most satisfactory arrangement for a Will or Wills. This is particularly important if a person owns land abroad. Under English law the validity of a Will of immovable property such as land is governed by the law of the country or state where the land is situated. The law may contain strict provisions as to whether or not a person is obliged under his or her Will to leave the land to particular beneficiaries. If a person is domiciled abroad, then the normal arrangement would be to have the main Will drawn up by a lawyer in the foreign country. This Will would deal with the person's worldwide property other than property in other countries where he or she has separate Wills. Thus, for example, a person domiciled in Florida might have his main Will in Florida dealing with his worldwide property other than his property in England. He would then have a separate English Will for the purpose of disposing of his estate here.

The main advantages of separate Wills are:

- (1) Each Will can be quickly and independently proved in each of the countries concerned.
- (2) As mentioned earlier, the validity of a Will of immovable property (e.g. land) is governed by the law of the land where the property is situated. This law may contain restrictions on how a testator may dispose of his property.

- (3) Each Will can be drafted to take into account the tax position in the country concerned, both as regards the testator and also as regards the intended beneficiaries. This may avoid unnecessary taxation resulting from a single Will, which may be tax-effective in one country but not in another.
- (4) Each Will can be drafted to include administrative powers and provisions which are appropriate to the country concerned and which can be readily construed according to the law of the country concerned. This may obviate unnecessary inconvenience and expense resulting from administrative provisions which are appropriate in one country but not in another.
- (5) Each Will can clearly define the responsibility of each set of executors. This should, for example, be clear as to which set of executors should pay particular expenses and taxes.

## **7. Review**

Over the last few years, the English law of domicile has been under review. In 1993, the Government announced that it had no present intention to introduce any changes, but the concept of domicile is known to be one area of the law which may be subject to amendment at any time.

## **8. Disclaimer**

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed.

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