

Domicile

Introduction

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 assets on the person's death and treatment of the person for certain tax purposes.

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 a given time. Furthermore, that place of domicile may be different from his place(s) of nationality and/or residence.

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".

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.

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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.

Establishing a New Domicile

The following are pointers towards having adopted a new domicile in another territory, although probably none of them is conclusive taken by itself:

- 1 a long period of residence;

- 2 acquisition of permanent residential accommodation of reasonably substantial value for occupation;
- 3 acquisition of citizenship and a new passport;
- 4 making a Will subject to the local law;
- 5 acquisition of a burial plot;
- 6 exercise of local political (e.g. voting) rights;
- 7 payment of local taxes;
- 8 development of local business interests (e.g. directorships);
- 9 membership of local clubs and associations;
- 10 establishment of local banking and other financial facilities;
- 11 fostering of local business contacts;
- 12 a formal written declaration of future intentions which, while not being conclusive, may provide useful evidence in the case of early death.

Deemed Domicile

The Inheritance Tax (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 if:

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- 1 he or she has been resident in the UK in not less than 17 of the previous 20 tax years, which means that a long-term UK resident cannot shake off a UK domicile for IHT purposes until he or she has lived outside the UK for at least three complete tax years following the year of departure; or
- 2 he or she was domiciled (under the general law) in the UK within the previous three calendar years.

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 death on such of his or her assets in the UK as are subject to IHT. For example, certain British Government securities are exempt from IHT so long as the owner 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 his or her assets in the UK do not exceed the IHT threshold.

Domicile and Wills

If a person is domiciled outside the UK, then it is desirable that he or she takes advice

from lawyers in the relevant territory as to the most satisfactory arrangement for a Will or Wills. This is particularly important if the person owns land abroad. Under English law, succession to immovable property such as land is governed by the law of the country or state where the land is situated. This law may contain strict provisions as to whether a person is obliged under his or her Will to leave the land to particular blood relatives.

If a person is domiciled abroad, then the normal arrangement would be to have his or her main Will drawn up by a lawyer in the foreign territory. This would deal with the person's worldwide assets other than property in other countries where he or she has separate Wills. The main advantages of separate Wills are:

- 1 each can be dealt with independently in the jurisdiction concerned;
- 2 a Will of immovable property can take account of the local law;
- 3 each can be drafted to take account of the local tax position and may avoid unnecessary taxation resulting from a single Will, which may be tax-effective in one country but not in another;
- 4 each can be drafted to include administrative powers and provisions which are appropriate to the territory concerned and which can be readily interpreted according to the local law;
- 5 each can clearly define the responsibilities of each set of executors, for example, in relation to payment of particular taxes and expenses.

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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. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

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