Information

Domicile

Introduction

There is no simple definition of the English legal term "domicile". It is a concept which is distinct from 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.

A person's tax residence in the UK is determined by the Statutory Residence Test.

It is important to note that, for succession purposes, a person cannot be UK domiciled; he is either domiciled in England, Wales, Scotland or Northern Ireland. However, for tax purposes, anyone who is domiciled (or deemed domiciled) in one of those four jurisdictions will be UK domiciled and subject to UK tax.

Types of domicile

A person's domicile under the general law affects both succession and tax. A person's domicile under the general law 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. However, if the child's parents are unmarried or the father passes away before birth, then the child's domicile of origin will be that of his mother.

An individual's domicile of origin 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

Unmarried children under the age of 16 automatically have the domicile of their father (or their mother where the child's parents are unmarried or the father has died) as a "domicile of dependency". Therefore, if the domicile of the father (or mother) changes after the child's birth then the domicile of the child will change from his domicile of origin to his father's new domicile.

Head Office
Heathervale House
2-4 Vale Avenue
Tunbridge Wells
Kent TN1 1DJ
T 01892 510000
F 01892 540170

Thames Gateway
Corinthian House
Galleon Boulevard
Crossways Business Park
Dartford
Kent DA2 6QE
T 01322 623700
F 01322 623701

Domicile

(continued)

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.

If the individual moves to a new territory (which is neither the territory of his domicile of origin nor his domicile of choice), his domicile will revert back to his domicile of origin until such time as a new domicile of choice has been acquired.

Establishing a new domicile

The following are pointers towards having adopted a new domicile in another territory, although generally none of them are conclusive when taken individually:

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.

Domicile

(continued)

Deemed domicile

UK tax legislation contains rules which treat certain persons who are not legally domiciled within the UK as being so domiciled for tax purposes. Prior to April 2017, the deeming rules only applied for inheritance tax (IHT) purposes, but these rules have now been both amended and extended to cover income tax and capital gains tax (CGT).

The new rules on deemed domicile are now much more complex and what is set out below is only a brief overview.

Becoming deemed domiciled for UK tax purposes does not mean that a person has acquired an English (or other UK jurisdiction) domicile of choice under general law (although the length of residency may be indicative of such an intention).

1 Formerly domiciled residents

A person is considered to be a formerly domiciled resident (a FDR) if he was born in the UK with a UK domicile of origin.

A FDR will be considered deemed domiciled in the UK for income tax and CGT from the start of the first tax year in which they return to and become resident in the UK.

The rule for IHT purposes is slightly different. If a person was born in the UK with a UK domicile of origin then he will be considered deemed domiciled in the UK for IHT purposes if:

a He is resident in the UK during the tax year in question; and

b He has been resident in the UK during at least one of the two tax years immediately preceding the tax year in question.

The second limb of the test provides a slight grace period for IHT purposes as the IHT implications of a short period of deemed domicile could be more significant than for income tax or CGT purposes.

These rules mean that, even if a FDR has acquired a domicile of choice in a country other than the UK under the general law, he can still be treated as domiciled in the UK for tax purposes.

2 Fifteen year rule

All persons who are not FDRs are considered domiciled in the UK for income tax and CGT purposes if they have been resident in the UK for at least 15 of the 20 tax years immediately preceding the tax year in question.

Again the rule for IHT purposes is slightly different. All persons who are not FDRs are considered domiciled in the UK for IHT purposes during the tax year in question if:

a They have been resident in the UK for at least 15 of the 20 tax years immediately preceding the tax year in question; and

b They have been resident in the UK for at least one of the four tax years ending with the tax year in question.

Additionally, a person will be considered deemed domiciled in the UK for IHT purposes if he was domiciled (under the general law) in the UK within the previous three calendar years.

This means that, for all tax purposes, a person will be treated as deemed domiciled in the UK from the start of his sixteenth tax

Domicile

(continued)

year of continuous residence. However, split years (years in which a person arrives in or departs from the UK) count toward the fifteen year rule and so, in some cases, a person may become deemed domiciled after just over 13 years of residence. Years spent in the UK as a child also count.

How long it will take to lose deemed domiciled status will depend on the circumstances and the taxes in question.

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 estate throughout the world.

If, on the other hand, a person dies neither domiciled nor deemed domiciled in the UK, then IHT will only be chargeable on death on such of his 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 not domiciled in the UK under the general law. Additionally, if a person is neither domiciled nor deemed domiciled in the UK then holdings in authorised unit trusts and shares in open ended investment companies (OEICs) are also exempt from IHT.

It follows that if a person is likely to be domiciled outside the UK and is not deemed domiciled in the UK then, apart from exempt British Government securities, authorised unit trusts and shares OEICs, he should try to ensure that his assets in the UK do not exceed the IHT threshold.

Domicile and Income Tax and CGT

Most people who are tax resident in the UK pay income tax and CGT on their worldwide income and capital gains by reference to the tax year in which the income or gains arise. This is known as the arising basis.

However, if a person is neither domiciled nor deemed domiciled in the UK then he may choose to be taxed on the remittance basis.

Under the remittance basis of taxation, a person's UK source income is still subject to UK income tax on an arising basis but his foreign source income is only subject to UK income tax if that income is remitted to the UK.

Equally, any capital gains realised on UK assets will be subject to UK CGT on an arising basis but any gains realised on foreign assets are only subject to UK CGT if the gains are remitted to the UK.

The meaning of the term remitted is complex, but it very broadly means brought into the UK. Electing to be taxed on the remittance basis means that a person does not need to pay UK tax on his foreign income and capital gains unless the income or gains are brought into the UK. Therefore, becoming deemed domiciled in the UK and losing the ability to be taxed on the remittance basis can have significant tax implications.

Due to the complexity of this area of taxation it is important that full tax advice is taken as early as possible.

Domicile and wills

If a person is domiciled outside England and Wales (under the general law), then it is

Domicile

(continued)

desirable that he 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, the succession of 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 will to leave the land to particular blood relatives.

If a person is domiciled abroad, then the normal arrangement would be to have his 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 has separate wills. If a person is English domiciled but owns immovable assets abroad, he should have his main will drawn up by a lawyer in England and take advice as to whether to sign a will(s) in the jurisdiction(s) where those immovable assets are located.

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.

Following the introduction of EU Succession Regulation (EU 650/2012), known as Brussels IV, it is now possible for a person to elect for the law of his nationality to apply to his whole estate even if there are immovable assets located in other European jurisdictions. This is particularly useful for UK nationals who own properties in jurisdictions such as France and Spain which would otherwise impose forced heirship rules. However, a separate will is still most likely to be appropriate for the reasons set out above in addition to making the election.

Disclaimer

This information sheet is written as a general guide and relates to the English law concept of ‘domicile’ and ‘deemed domicile’ only. 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.

It is based upon our understanding of the legal position as at January 2022 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Nicola Plant, Clare Morison or Sarah Nettleship on 01892 510000 or by email at:

nicola.plant@ts-p.co.uk
clare.morison@ts-p.co.uk
sarah.nettleship@ts-p.co.uk