

An introduction to domicile - the basics

If you have come to the UK from abroad, you may already be familiar with the concept of "domicile". You may have heard people talking about the tax benefits of being "non-UK domiciled". This note briefly explains what the concept of domicile means in English law and how it is acquired and lost.

What is domicile not?

Domicile is not:

- the house you inhabit or the address at which you live (as the equivalent word in many foreign languages would suggest);
- the place where you may at any given time be income tax resident; or
- the place of which you are a national or citizen (whether or not a passport holder).

That is not to say that none of these may in fact coincide with or influence your domicile status; it is simply that the concept is more nebulous, but (like an elephant) you should be able to recognise it when you see it.

So what is domicile?

To identify your domicile, we need to find out the legal system (or "jurisdiction") with which you are most closely connected. You can only be domiciled in one jurisdiction at any one time.

Personal history

We therefore have to analyse the history of your life from birth, possibly going back to look in some detail at the history of your parents and discuss with you where you think your life is heading in the future.

Look at the legal system, not the country

Domicile is linked to jurisdiction, as opposed to a country as such. For instance, this means that you would not be domiciled in the USA, but in one of the fifty states: if you remember that in some states there is an Anglo-Saxon legal system, while others descend from Roman/Civil Code systems, the distinction may make sense (even if tax concepts typically hang more on the larger international entity, such as the UK or the USA).

Types of domicile

The investigation of your personal biography referred to above is aimed at helping us slot you into one of three principal categories of domicile.

Domicile of origin

You acquire a domicile of origin at birth. Normally this is your father's domicile at the date of your birth. A child born illegitimate (to unmarried parents) or after his father's death, however, starts with the domicile of his mother. This often, but not exclusively, coincides with nationality/ the passport held: in a common case, you will have been born in country B to a father from country A while he was temporarily working in B; he will be domiciled in A and you will derive your domicile from that, unless (on the contrary) your father's stay was not temporary as he had decided to settle in B. This starting form of domicile is hard to lose, which is helpful for those arriving in the UK for the first time.

Domicile of dependency

Until a child reaches the age of about 16, he may have another form of domicile, a domicile of dependency: this again is normally your father's domicile during that period. This is only relevant usually if there were any changes to the father's domicile after your birth (under the domicile of choice principle below).

Imagine the example above; if your father kept up the domicile in A but then moved to C when you were five years old and he settled in C, you would take (with him) a domicile in C.

The mother's domicile becomes relevant to the equation here if the parents of a minor child are alive but separated or divorced: in that case, the child will take the domicile of his mother if he has his home with her and not with his father.

Domicile of choice – the subjective, mental element

On reaching 16, you retain your domicile of origin or any domicile of dependency acquired in the interim, until you acquire a domicile of your own choice. In fact, any domicile of dependency converts into a domicile of choice.

You also acquire a domicile of choice when you:

- move to and settle in a jurisdiction other than your previous domicile (of dependency or origin); and
- with the intention of remaining there permanently or indefinitely.

Because a change of domicile has a wide-ranging impact, mere residence in the new jurisdiction (even long-term) will not of itself change your domicile.

If you abandon your domicile of choice by leaving the relevant country with the intention of not returning, but you do not acquire another domicile of choice (because, for example, you are undecided where you want to settle or you don't take adequate steps to settle) your domicile of origin automatically "revives" until you acquire a new domicile of choice. Under present law, it is difficult to lose your domicile of origin, which means in practice that non-UK people can live in the UK for many years without becoming UK domiciled. Conversely, it is not easy for a UK person to show that he has acquired a domicile of choice elsewhere.

An historic relic: the domicile of married women

Under an old historical rule in force till the end of 1973, a woman automatically took her husband's domicile on marriage. A woman who married before 1 January 1974 is treated as retaining her husband's domicile as a domicile of choice from that date until it is lost (either through the acquisition of a new domicile of choice or the revival of her domicile of origin).

Since 1 January 1974, the acquisition of her husband's domicile on marriage is no longer automatic. A married woman may retain a different domicile from that of her husband.

Deemed domicile

For tax purposes only, an individual may be deemed to be domiciled in the UK. This will be the case if they have been UK resident for 15 out of the previous 20 years or if they are UK resident and were born in the UK with a UK domicile of origin.

Losing your domicile

If you are domiciled in the UK and move abroad, you will not lose your UK domicile unless you intend to live in the new country on a permanent basis and effectively never return to the UK (other than for a temporary purpose). Changing to a new domicile of choice will certainly be assisted if you find employment, acquire freehold accommodation, join clubs and make other social ties in the country of your destination, while at the same time selling UK property and generally severing your ties with the UK.

Why do I care?

Domicile helps us to determine which system of law is relevant when it comes to working out who has a right to inherit your assets when you die, and therefore the form of your testamentary dispositions. If you are domiciled in California but die in the UK, for our purposes, Californian law will tell us who inherits (for example if you have no will). This is most relevant for countries which have very rigid rules on who can inherit (e.g. France).

Domicile may also affect how much tax you or your heirs should be paying in the UK.

Contact details

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