

Domicile

The concept of domicile is one of the key factors in determining the extent of an individual's exposure to UK inheritance tax. It is also key for non UK nationals who become resident in the UK (so-called non-doms) in respect of their UK income tax, capital gains tax and inheritance tax in the UK.

An individual's domicile is a question of general law. Broadly, an individual is domiciled in the jurisdiction in which they have their permanent home.

Under English Law, there are three categories of domicile: domicile of origin, domicile of choice or domicile of dependency. However, an individual can have only one domicile at a time.

Domicile of Origin

A domicile of origin is usually acquired from a father at birth. An illegitimate or posthumous child, however, assumes their mother's domicile.

A domicile of origin need not be the country in which you were born. An example of this is where a child was born in France whilst the father was working there temporarily but the father's permanent home was in England. The child's domicile of origin, in this instance would be England as opposed to France.

A domicile of origin is extremely adhesive and the most difficult to displace and it will prevail unless displaced by a domicile of dependency or the establishing of a domicile of choice.

Domicile of Dependency

Until an individual has the legal capacity to change their domicile of origin (on attaining the age of 16) their domicile will follow that of the person on whom they are legally dependent. If the domicile of that person changes, they automatically acquire the same domicile (a domicile of dependency), in place of their domicile of origin.

Domicile of Choice

An individual who is not legally dependent on another may change their domicile and acquire a domicile of choice.

To shed a domicile of origin one must sever their ties with the jurisdiction that is their domicile of origin and reside in another jurisdiction. It is necessary to be able to prove a permanent and indefinite intention of making a permanent home in that new jurisdiction.

A long period of residence in another jurisdiction is not enough to prove that an individual has acquired a domicile of choice there. Furthermore, nationality is not conclusive as to the question of domicile.

Case law illustrates the difficulties when trying to prove the displacing of a domicile of origin. Unfortunately there is not an exhaustive list of "do's and don't's" available to individuals and each case is decided upon its merits.

It should also be noted that the onus of proof rests with the party that is asserting the change in domicile.

Married Women

Until 31 December 1973 a woman automatically acquired the domicile of her husband on marriage as a domicile of dependence.

After marriage this domicile would change at the same time as the husband's domicile changed. If the marriage ended, the woman would retain the husband's domicile until such time as she could prove to have acquired a domicile of choice.

However, for post 1st January 1974 marriages, this ceased to be the case and the domicile of a married woman is determined by reference to the same factors as in the case of any other individual.

Deemed Domicile – Inheritance Tax

For the purpose of inheritance tax only, a taxpayer can be deemed to be domiciled in the UK, even if they are not domiciled there under general law.

A taxpayer is deemed to be domiciled in the UK if they:

-  **have been resident in the UK in at least 17 of the previous 20 tax years; or**
-  **have been domiciled in the UK at any time in the previous three years.**

The consequence of deemed UK domicile status is that the individual's estate is exposed to IHT with the potential tax rate of 40% being applicable to worldwide assets in excess of the nil rate band (£325,000 in 2016/17).

Changes to domicile rules

It is proposed that from 6 April 2017 the deemed domicile rules will change. Under the new rules, UK resident non-domicile individuals who have a non-UK domicile of origin and who have been resident in the UK for 15 out of the previous 20 tax years, will be deemed domiciled in the UK for all tax purposes, not just IHT. Furthermore, UK residents who have left the UK and acquired a domicile of choice elsewhere, then return to the UK, will be deemed domiciled on their return to the UK. These changes will be legislated in the Finance Act 2017.

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