



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 liability to UK income tax and capital gains tax.

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. It will prevail unless displaced by a domicile of dependency or the acquisition 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 an individual must sever his ties with the jurisdiction that is his 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'ts" 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, in most cases 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 she had 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 that apply to any other individual.

Deemed Domicile

An individual can be deemed to be domiciled in the UK, even if they are not domiciled there under general law.

Prior to 6 April 2017, the concept of deemed domicile only applied for inheritance tax purposes. However, it is now the case that an individual's deemed domicile status will apply for all taxes i.e. income tax, capital gains tax and inheritance tax.

From 6 April 2017, there are two categories of deemed domicile status that apply to all taxes as follows:

– Formerly Domiciled Resident

This applies to an individual who has a non-UK domicile of choice in relation to any tax year in which he is UK resident if he was born in the UK and has a UK domicile of origin.

For inheritance tax purposes only, there is an added condition that the individual must have been resident in the UK in one of the previous two tax years. This means that an individual returning to the UK will have a one year "grace period" before becoming deemed domiciled for inheritance tax purposes.

– 15 Year Rule

An individual is deemed to be domiciled in the UK for income tax, capital gains tax and inheritance tax if they have been resident in the UK in at least 15 of the previous 20 tax years.

The consequence of being UK deemed domiciled for Income Tax and Capital Gains tax purposes is that an individual is unable to claim the remittance basis of taxation. The consequence of UK deemed domiciled for inheritance purposes 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 2019/20). There can also be implications for any offshore trust structures settled by the individual.

The 15 year rule will not apply to an individual who has not been resident in the UK at any time since 5 April 2017, even if they were a long term UK resident prior to that.

There is one further category of domicile that applies only inheritance tax purposes:

– 3 Year Rule

An individual who is domiciled in the UK under general law but then loses that domicile, will be treated as deemed domiciled in the UK for inheritance tax purposes for three years from the date of the change.

For further information on the subject covered in this document and the other services provided by LTS Tax Limited, please contact:



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