

Domicile

The concept of “domicile” in English law

Under English law, all individuals have what is called a “domicile”, and not more than one domicile, at any one time. A person’s domicile will usually be in the country or state where he or she is most closely connected, and this is generally, but not always, where the individual has his or her permanent home.

Domicile is of fundamental importance in estate planning as it affects both Inheritance Tax and the law governing succession to property following death. Establishing a person’s domicile is a question of fact and individual cases need to be considered very carefully.

An individual acquires a domicile of origin at birth. Usually, this will be his father’s domicile if he is legitimate and his mother’s domicile if he is illegitimate. However, if the child’s parents live apart he will acquire his mother’s domicile if he is living with her and he has no home with his father. If the child’s father (or the person on whom the child is legally dependent) changes his own domicile while the child is under 16 years of age, the child’s domicile will follow that of his parent and he will acquire a domicile of dependence.

Once an individual has attained 16 years of age he will be capable of acquiring a domicile of choice. To do this it is necessary to be physically present in another country or state and to have a definite intention to remain there either permanently or indefinitely. Long residence in another country does not itself mean that a domicile of choice has been acquired although it is an important factor. A domicile of choice is lost when an individual leaves the country in question and gives up the intention of making it his permanent home. When this happens the individual will either acquire another domicile of choice (ie if he is physically present in another country with the intention of remaining there permanently or indefinitely) or his domicile of origin will revive (even if he does not return to the country of his domicile of origin).

Badges of domicile

Typical “badges” of domicile would be the following:-

- Long residence in a country/state/province
- Country/state where arrangements have been made to pay pension
- Choice of country/state for burial
- Adoption of law of country/state (eg: system of law chosen for drafting of “main” will)
- Choice of country/state for education of children
- Statement made by an individual as to domicile

None of the above examples would provide conclusive evidence of domicile, either alone or together, as each case is decided on its own relevant facts. In order to establish a domicile it is

essential that detailed records of time spent in different countries are kept together with evidence of all relevant facts and badges of domicile.

Before 1 January 1974, upon marriage, a woman acquired her husband's domicile as a domicile of dependence. From 1 January 1974 a married woman may have a different domicile to that of her husband. Women who married before 1 January 1974 retain their domicile of dependence until such time after that date as they acquire a new domicile of choice or their domicile of origin revives.

Succession to property

The law of the situs governs the succession to immovable property whereas the law of the domicile governs the succession to movable property. A will may be ineffective if its provisions do not comply with the law of the domicile.

Taxation of property following death

Inheritance tax is charged on the value of a person's estate at his or her death. The estate of a person who is domicile or deemed domiciled (see below) in the U.K. is charged on the value of assets wherever they are situated; the estate of a person who is non-U.K. domiciled is charged on the value of assets situated in the U.K.

Spouses with different domiciles

Transfers between spouses are usually exempt from inheritance tax whether the transfer or gift was made during lifetime or on death. However, in cases where the donor spouse is U.K. domiciled and the recipient spouse is non U.K. domiciled the general exemption does not apply and there is a limited exemption of £55,000 (in addition to the nil rate band if available).

Deemed domicile

Under the provisions of the Inheritance Tax Act 1984 an individual will be deemed to be domiciled in the U.K. at the time he makes a transfer either on death or during life if:-

- He was resident in the U.K. for income tax purposes in not less than 17 out of the 20 years of assessment ending with the year in which the relevant time falls; or
- He was domiciled (under the general law) in the U.K. at any time during the three years immediately preceding the relevant time.

October 2006

This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.