

Briefing document

Law of domicile

Introduction

Domicile is a key concept for UK taxation purposes, and can determine the extent to which an individual's non-UK income and gains are taxable in the UK (i.e. potentially only on remittance to the UK – the 'remittance basis'), and the extent to which an individual's non-UK assets are within the scope of inheritance tax. Legal non-UK domicile can be overridden for most tax purposes (deemed UK domicile).

This note explains the relevance of domicile to UK taxation, sets out an overview of how domicile is legally determined under the law of England and Wales and summarises when individuals are deemed UK domiciled for tax purposes. Different rules apply to determine legal domicile in Scotland and in other jurisdictions.

Domicile and taxation of non-UK domiciliaries is a complicated area and this document is not comprehensive. Where relevant, you should take suitable advice with regards to both your domicile and tax position.

Relevance of domicile to UK taxation

In addition to determining the availability of the remittance basis and the extent to which an individual's non-UK assets are within the scope of inheritance tax, legal domicile is also relevant to individuals who are not formerly domiciled residents (see below) in respect of:

- Rebasing of the value of foreign assets to 5 April 2017, which is relevant to individuals who became deemed UK domiciled on 6 April 2017 due to long-term UK residence (only), who satisfy various conditions, including the individual remaining legally non-UK domiciled but deemed UK domiciled until disposal of the asset(s).
- Individuals who have established trusts that are within the rules that apply to trusts settled by individuals who were both legally non-UK domiciled and non-UK domiciled for tax purposes at the date of settlement.

The concept of domicile

Normally, an individual is legally domiciled in the jurisdiction which he or she regards as his or her permanent homeland. An individual cannot have more than one legal domicile at any one time. However, an individual may also be domiciled in another jurisdiction under its law.

Domicile of origin

Individuals acquire a domicile of origin at birth. An individual's domicile will be that of their father if their parents are heterosexual and married, or their mother if their parents are not married. The domicile position of children of same-sex couples is not clear.

A domicile of origin will only change if a person is adopted. It is otherwise retained for life.

A domicile of origin may be overridden if a domicile of dependency or choice is acquired (see below). If a domicile of choice or dependency is acquired and later lost, the domicile of origin will automatically revive.

Domicile of dependency

Children

Until the age of 16, a child's domicile generally follows that of the person on whom he or she is legally dependent. Where the child's parents are married, the child's domicile will normally follow that of the father.

However, if the child's parents are living apart and the child lives only with the mother, the child's domicile will follow that of their mother until the age of 16.

Married women

Women who married before 1 January 1974 acquired a domicile of dependency on marriage, in that their domicile followed that of their husband (except for US citizens, who were not within the scope of this rule).

The law changed on 1 January 1974 and this point is not relevant to women who married on or after this date. Women who were already married on 1 January 1974 retained their husband's domicile as a domicile of choice, which remains in place until and unless their circumstances change and the domicile of choice is lost (in which case the individual's domicile of origin revives).

Domicile of choice

Individuals can acquire a domicile of choice from the age of 16 upwards. The previous domicile of dependency is normally retained as a domicile of choice. In order to have a different domicile of choice, the individual must settle in a new jurisdiction and intend to reside there indefinitely. The individual must also sever ties with the jurisdiction in which he or she was previously domiciled.

Challenging domicile

If a domicile is challenged, it is person who asserts a change of domicile who must prove the change has occurred. Assessing domicile involves detailed examination of an individual's background, lifestyle, habits and intentions over the course of their lifetime.

The HMRC manuals contain an extensive list of factors for HMRC officers to consider when enquiring into domicile. These include nationality; citizenship; location of family; the individual's relationship history; business and social interests; the law governing the individual's will; burial arrangements and any changes in the individual's parents' domicile or marital status during the individual's minority. Given that an individual's domiciles of origin and dependency are determined based on the position of one or both of his or her parents, any enquiry may also consider the same facts with regards to lineal ancestors (i.e. parents and grandparents).

Strong evidence would be required to prove to HMRC that a UK domicile has been lost and a foreign domicile of choice acquired. This would typically involve severing ties with the UK.

Despite long-term residence being insufficient, on its own, to establish a domicile of choice, it is notable that HMRC's manuals state that "*In the absence of indications to the contrary residence creates a presumption of domicile, the strength of which grows with the length of residence*". This indicates that HMRC may seek to enquire into whether long-term UK residents have acquired a UK domicile of choice.

Deemed UK domicile

Individuals who are deemed to be UK domiciled for income tax, capital gains tax and inheritance tax purposes are within the scope of inheritance tax on worldwide assets and are generally ineligible for the remittance basis (unless they have less than £2,000 of unremitted foreign income and gains in a given tax year, in which case the remittance basis applies automatically). Individuals are deemed UK domiciled for all three taxes if:

- 1) They were UK resident in at least 15 of the previous 20 tax years (**'long-term UK residence'**); and/or
- 2) They are UK resident, were born in the UK and have a UK domicile of origin (**'formerly domiciled residents'**). Such individuals are only deemed UK domiciled for inheritance tax purposes under this rule if they were UK resident in either or both of the two previous tax years.

In addition, individuals are deemed UK domiciled for inheritance tax purposes only if:

- i) They are married or in a civil partnership with an individual who is UK domiciled (whether legally or deemed so for inheritance tax purposes) and elect to be deemed UK domiciled for inheritance tax purposes; and/or
- ii) They were UK resident for 17 out of the 20 tax years ending with the current tax year, and have been non-UK resident continuously since 2017/18. The last tax year in which this could be relevant to individuals was 2019/20; and/or
- iii) They were legally UK domiciled at any point within the last three years.

Find out more...

This note reflects the law in force as at 6 April 2020. Please be aware that it does not cover all aspects of this subject. To find out more about any aspect of the above, please discuss with your usual Deloitte contact. If you do not have a usual contact, please contact Michelle Robinson (michellerobinson@deloitte.co.uk).

For further information visit our website at www.deloitte.co.uk.

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