

Where am I domiciled for tax purposes?

Different countries have different systems for dealing with personal law matters such as wills, succession, and marriages. Discretionary Domicile is a concept used by the courts to determine which of these systems should apply to individuals with links to more than one country.

The concept of domicile is also used in UK tax legislation to modify an individual's exposure to income tax, capital gains tax (CGT) and inheritance tax (IHT). Many countries tax purely on a residence basis (so if you were resident in that country, you would have to pay tax there like any other citizen). However, in the UK both residence and domicile are relevant.

For example: if you're resident in the UK but are not domiciled/deemed domiciled here, you will be subject to tax on UK sources of income and gains on an arising basis (that is, you are taxable in the year in which the income or gains arise). For foreign source income and gains, however, you may be able to elect to be taxed only if you bring them (or assets purchased from them) into the UK.

What is domicile?

Domicile has a specific legal meaning beyond the simple definition of 'place of Residence'. This legal meaning has developed through a succession of court cases.

We sometimes refer to domicile as 'actual domicile' to distinguish it from the statute law concepts of 'deemed domicile' and 'elected domicile' (which are discussed below).

Your domicile is not necessarily the country of your nationality or where you happen to be living. For example: a person can be resident in the UK for many years and hold British citizenship but still be domiciled elsewhere. The concept of domicile can be summarised as the country you consider to be your permanent home, though this can be subject to certain rules on how you can change your domicile.

In this context 'permanent home' means the country you intend to reside indefinitely; that is, you do not have any plans to change your residence at some point in the future.

Where a country is comprised of several different legal jurisdictions (such as the USA or Australia, where each state has its own legal jurisdiction), domicile would relate to that particular state (or jurisdiction). For example, an individual would be domiciled in Queensland (Australia).

Similarly, in the UK an individual would be domiciled in England, Wales, Scotland or Northern Ireland, not the UK. Despite this, certain legislation (for example UK tax

legislation) does contain references to domicile 'in the UK'. In this context, it means a domicile in any of the legal jurisdictions that make up the UK.

How do I acquire a domicile?

You can acquire your actual domicile in one of three ways:

- A domicile of origin
- A domicile of dependency
- A domicile of choice

These are general law concepts which are imported into UK tax law.

Everyone has a domicile. Initially, this will be a domicile of origin at birth. Unlike residence, you can only have one domicile at a time. Should you choose to do so, your domicile of origin can be displaced in favour of either a domicile of dependency or a domicile of choice. However, this only causes your domicile of origin to lie dormant; you can choose to return to your domicile of origin status at any point.

Which of these three types of domicile you have does not matter for tax purposes: they are all treated the same. The principal question for tax purposes is whether you're domiciled in the UK or abroad.

Domicile of origin

Everyone has a domicile of origin at birth:

- If you were born during your father's lifetime to parents who were married, you take the domicile of your father at the time of your birth
- If you were born to unmarried parents (even if they subsequently married), or if your father died before you were born, you take the domicile of your mother at the time of your birth
- If you were adopted, you take the domicile of your adoptive father at the time of your adoption. If you were adopted by a single woman or a same sex couple, we'll be able to advise on your domicile of origin

Domicile of dependency

If the domicile of your father (or, where appropriate, your mother) changed while you were under the age of 16, you would have acquired a domicile of dependency based on your father's (or mother's) new domicile.

The rules are more complicated where parents separate or die while their children are under 16. If this is an issue that affects you, we will need to discuss your personal circumstances before we can advise you on this.

Women who married before 1 January 1974 would have taken their husband's domicile as a domicile of dependency when they married. On 1 January 1974 the rules changed so that women who married on or after that date no longer had to take their husband's domicile; they could either retain their own domicile of origin or acquire their own domicile of choice. With this law change, women who were married before 1974 retained their husband's domicile, but this was subsequently treated as a domicile of choice, not of dependency.

If you acquired a domicile of dependency while you were under the age of 16 (for example, because you and your parents emigrated permanently with no intention ever to return to your country of origin) your domicile of dependency would continue until you chose to leave that country. On departure, your domicile of origin would revive until you acquired a new domicile of choice.

Domicile of choice

It's possible to lose your domicile of origin (or a domicile of dependency or choice) and to acquire a new domicile of choice, by taking the following steps:

Establishing your chief residence in a new country (there is no minimum time requirement for this)

Having the intention to live in the new country permanently or indefinitely

If you can't fulfil both these elements (or can't provide sufficient evidence of it) then your domicile of origin will remain.

If you're seeking to lose a domicile of choice and replace it with another, then unless you fulfil both these requirements, your domicile of origin revives. For example: though you may leave your old domicile of choice with the intention never to return, if you only intend to stay in the new country temporarily (such as for a fixed period of time, until you finish a particular employment, or until you retire) your domicile of origin revives.

What is deemed domicile?

In addition to the case law concept of 'actual domicile', there are several statutory provisions that treat (deem) an individual as having a UK domicile in certain circumstances and for certain tax purposes (deemed domicile).

From 6 April 2017, the general concept of deemed domicile applies for income tax, CGT and IHT, having previously applied only to IHT. In broad terms:

- UK resident but non-domiciled individuals who were born in the UK with a domicile of origin are deemed domiciled whenever they are UK resident (subject to a one-year grace period for IHT purposes)
- UK resident but non-domiciled individuals who were not born in the UK with a domicile of origin are deemed domiciled once they have been UK resident for at least 15 of the preceding 20 tax years

These deemed domicile rules apply only when the individual does not have an actual UK domicile. They do not affect the individual's actual domicile.

As a note of warning: it's possible to be resident in the UK for the requisite 15 tax years even if you have spent only a little more than 13 years in the UK. For example, if you arrived in the UK late in the tax year 2004-05, you would become deemed domiciled on 6 April 2018 (the start of the tax year 2018-19), even though you have only been present in the UK for just over 13 years.

In these cases, we'd suggest talking to your solicitor about this no later than 12 years after your arrival in the UK. There may be steps that can be taken before you become deemed domiciled that would structure your affairs so as to mitigate your exposure to UK tax.

If you're planning on emigrating with the intention of leaving the UK permanently or indefinitely, you should seek tax advice at the earliest opportunity. This is because you may remain deemed domiciled in the UK for a number of years following your departure and may therefore still be subject to UK tax obligations.

What is elected domicile?

If you are not UK domiciled but you have a spouse or civil partner who is UK domiciled, it may be possible – and potentially advantageous – for you to elect to be treated as domiciled in the UK for IHT purposes.

How do other countries treat domicile?

Although the main determinant for IHT is domicile, other countries may not use domicile to determine liability for their equivalent tax (for example, they may use residence) or if they do, they may have a different definition of domicile.

Therefore, a situation may arise whereby both the UK and another country seek to impose tax on a gift or an estate on death. If so, there may be a double tax treaty in force to determine which country has primary taxing rights and to give a credit to avoid double taxation.

If there is no relevant tax treaty in force, the UK may still give credit for foreign tax paid or due.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice

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