

# NT

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## Domicile

**Where you are resident is not the only criteria when considering possible tax liabilities, especially if you have historic connections with the United Kingdom.**

### Why does my domicile matter?

Domicile is a concept used by the courts to determine which system of personal law (for example in relation to marriage, wills, succession) applies to an individual, where that individual has links with more than one country.

The concept of domicile is imported into UK tax legislation in order to modify an individual's exposure to income tax, capital gains tax and inheritance tax ("IHT"). Many countries tax purely on a residence basis, which is based purely on the extent of an individual's physical presence in the country. In the UK, however, both residence and domicile are relevant.

For example, if you are resident but not domiciled in the UK, you are subject to tax on UK sources of income and gains on an arising basis (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 make an election to be taxed only if you bring them (or assets purchased from them) into the UK.

Further, an individual who is not domiciled in the UK, and is not deemed domiciled for IHT purposes in the UK (see below), is only subject to IHT in respect of their UK assets.

### What is domicile?

Domicile has a specific legal meaning, beyond the simple dictionary definition of "place of residence". The definition is not contained in statute law, but rather has developed through a long line of cases.

Your domicile is not necessarily the country of your nationality or in which you happen to be living; for example, a person can be a British citizen who is resident in the UK for many years and yet have a domicile elsewhere. Subject to certain rules on how you can change your domicile, domicile can be summarised as your "permanent home".

In this context "permanent home" means the place where 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 a number of 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 and Wales, not the UK. However, certain legislation such as UK tax legislation contains references to domicile in the UK. In this context it means a domicile in any of the legal jurisdictions that make up the UK, being England and Wales, Scotland or Northern Ireland.

## How do I acquire my domicile?

You can acquire your domicile in one of four ways, as:

- A domicile of origin.
- A domicile of dependency.
- A domicile of choice.
- A deemed domicile.

The first three of these are general law concepts, which are imported into UK tax law. Everyone has a domicile, starting with the domicile of origin at birth. Unlike residence, you can only have one domicile at a time. 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 and it can be revived.

How you acquire your domicile does not matter as they are all treated the same for tax purposes. The principal question is whether you are domiciled in the UK or abroad.

The fourth concept, deemed domicile, has been created specifically for the purposes of the IHT legislation and does not affect your domicile under general law.

### Domicile of origin

Everyone has a domicile of origin at birth, which is determined as follows:

- If you were born during your father's lifetime and to parents who were married, you take the domicile of your father at 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 adopted father at the time of your adoption.

### 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. This is a complex area and if this is relevant to your circumstances, you should ensure that you raise this with your tax adviser.

If you are a woman who married before 1 January 1974, you would have taken your husband's domicile (as a domicile of dependency) when you married. On 1 January 1974 the rules changed, so that women who married on or after that date no longer take their husband's domicile; they retain their own domicile of origin and can acquire their own domicile of choice. Women who were married before that date retained their husband's domicile as at that date, but this is treated as a domicile of choice, not 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 to a new country, with no intention ever to return to the old country) your domicile of dependency will continue until you choose to leave that country. On departure, your domicile of origin will revive until you acquire a new domicile of choice.

### Domicile of choice

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

- Establishing your chief residence in the new country (even on arrival or after just one day).
- With the intention to live in the new country permanently or indefinitely.
- If you cannot fulfil both these elements (or cannot provide sufficient evidence of it) then your domicile of origin will remain.

If you are 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, even 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 (for example, for a fixed period of time, or until you finish a particular employment, or until you retire) your domicile of origin revives.

## Deemed domicile for IHT

If you have lived in the UK for at least 17 out of the previous 20 tax years, then you are deemed domiciled in the UK for IHT purposes only. This means that your worldwide assets are within the IHT net. You can lose your deemed domicile status by ceasing UK residence for at least four complete tax years (at the beginning of the fourth tax year you will have lost your deemed domicile status, provided you do not recommence residence in the UK during that tax year). As a note of warning, it is possible to be resident in the UK for the requisite 17 tax years, even if you have only been resident in the UK for about 15 calendar years. For example, if you arrived in the UK on the 5 April 1994 (which is in the tax year 1993/1994), you will become deemed domiciled on 6 April 2009 (the tax year 2009/2010).

Similarly, if having been domiciled in the UK under the general law you emigrate with the intention of leaving the UK permanently and indefinitely, you will remain domiciled in the UK for IHT purposes for the tax year of departure and the following three tax years.

## 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 give credit for foreign tax paid or due in any event.

## Example one

Rob, who has lived in the UK (England) all his life, decides to emigrate to Florida, USA. He sells all his UK assets and leaves for Florida on 7 April 2009. He arrives in Florida, purchases a property soon after and decides that he will remain there for the rest of his life. On making that decision, Rob displaces his UK (English) domicile of origin for a USA (Florida) domicile of choice.

For IHT purposes, however, Rob will be deemed domiciled in the UK for the tax year of departure and the following three tax years, namely: 2009/2010; 2010/2011; 2011/2012 and 2012/2013. He will lose his deemed domicile status on 6 April 2013 (assuming he remains domiciled outside the UK).

## Example two

Rosa was born in Spain to Spanish parents and lived there all her life. In 1997 her company asked her to set up a new London office and in August 1997 she arrived in London and took up residence. Although her intention was to return to Spain as soon as the office was up and running, the company asked her to stay on as director of the London office, which she agreed to do. Rosa intends to return to Spain when she retires, or sooner, if her financial position would allow it.

Rosa has retained her Spanish domicile of origin, however for IHT purposes only Rosa will become deemed domiciled on 6 April 2013 assuming she remains resident in the UK.

## Example three

David was born in Queensland, Australia, to a UK (English) domiciled father. His parents moved to Australia for employment purposes and they intended to return to England in due course. David therefore had a UK (English) domicile of origin. When he was eight, his parents decided that they would make Queensland their permanent home, at which point David acquired a domicile of dependency in Australia (Queensland). At the age of 25, David decided to leave Queensland for good. On leaving Queensland he lost his domicile of dependency and his UK (English) domicile of origin revived. He travelled around the world for a few years, before arriving in Newfoundland, Canada, where he decided to settle and make his permanent home. At that point he displaced his UK (English) domicile of origin in favour of a domicile of choice in Canada (Newfoundland).

Please note that this factsheet is provided for information purposes only. Nerine does not provide tax advice, and you should refer to your tax adviser for advice on your domicile and how that might impact on your liability to UK taxation.