

Domicile and Death

Domicile generally means the territory you consider to be your permanent home. This might be different from your country of origin, or even the country in which you are living. Domicile is an important concept and has an implication for succession law and for UK Inheritance Tax (IHT). Where you (and your spouse) are domiciled will impact on what territory's succession laws apply whether or not IHT is paid in the UK after death.

What is Domicile?

Under English law, everyone has one domicile at a particular time. There are three types:

1. **Domicile of Origin** - this is normally your father's domicile at birth;
2. **Domicile of Dependency** - this generally applies to children under 16 if their father acquires a new domicile; and
3. **Domicile of Choice** - This is a domicile chosen by an individual after the age of 16. It can displace a Domicile of Origin or Dependency and any previous Domicile of Choice with another Domicile of Choice, depending on the circumstances and the intention of the individual. The two key elements are the person's physical presence in the jurisdiction and their intention to remain there permanently. If either element is missing, the person will not acquire a Domicile of Choice.

Deemed domicile

There is also the concept of "deemed domicile" which is specifically used for IHT purposes. If you have been resident in the UK for 15 out of the last 20 tax years ('the 15 year rule'), you have acquired a Deemed Domicile in the UK. Once the person who has become deemed domiciled under the 15 year rule leaves the UK and spends more than 5 tax years outside the UK they will at that point lose their deemed tax domicile ('the 5 year rule').

Formerly Domiciled Residents

This Deemed Domicile rule applies exclusively to non-UK domiciled individuals who were both born in the UK and who had a Domicile of Origin in the UK at the time of their birth. This category is residents known as "formerly domiciled residents" given that they are likely to have left the UK but have returned.

A formerly domiciled individual will acquire a Deemed UK Domicile for IHT purposes from the start of their second tax year of continuous UK residence but would lose their Deemed Domicile status from the start of their first tax year of non-residence.



Is Residence different to Domicile?

Domicile differs to residence. Residence is where someone lives, whereas domicile is where someone lives and/or intends to remain.

What impact does Domicile have on succession law?

English law specifies that a person's worldwide movable estate (essentially all their non-real estate assets and liabilities) will pass under the succession law of their domicile. Therefore, English succession law will claim to apply to the overseas movable assets (e.g. US investments / Swiss bank accounts French company shares etc) of a person who dies English domiciled. Equally where a person dies non-English domiciled holding English movable assets (E.g. English shares / bank accounts held at an English bank branch), English succession law will specify that these assets pass according to the law of domicile of that deceased person.

Real estate is different. English law specifies that this always passes in accordance with the succession law of the place where the real estate is located.

What impact does Domicile have on IHT?

Domicile is relevant for IHT:

1. Individuals domiciled in the UK are subject to IHT on their worldwide assets; and
2. Individuals not domiciled in the UK are subject to IHT on their UK assets only.

What if spouses have different domiciles?

As a general rule, transfers between spouses (whether made during lifetime or on death) are exempt from IHT. Where spouses have different IHT domiciles, the spouse exemption can be restricted.

A limited spouse exemption of £325,000 applies in relation to transfers from a UK domiciled individual to a non-domiciled spouse.

There is no limit on the exemption for gifts between spouses with any other combination of domiciles, for example for a transfer from a non-UK domiciled individual to a UK domiciled individual.

What is an Election?

It is possible for a spouse who is domiciled outside the UK to make an election to be treated as domiciled in the UK for IHT purposes. This allows them to benefit from an unlimited IHT spousal exemption in respect of gifts and bequests received from the UK-domiciled spouse. From the date the election takes effect the worldwide assets of the elector will be subject to IHT, rather than just those situated in the UK.

The decision to make an election and the date from which it is to take effect requires careful consideration of:

- The size of the individuals' respective estates.
- The value of the non-domiciled spouse's overseas assets and the possibility of them receiving future inheritances or gifts from outside the UK.
- The availability of any IHT reliefs and or exemptions, such as Business Property Relief and Agricultural Property Relief, relief for charitable gifts.
- Whether the non-domiciled spouse has received any gifts from their spouse within the last seven years.
- Whether there are reliefs available under a double tax treaty concluded with the home country of the non-domiciled spouse.

When can an election can be made?

An election may be made by a non-UK domiciled individual either during the lifetime of their UK domiciled spouse or within two years of the deceased's death, as long as the spouse was domiciled in the UK for the seven years ending with the date of death.

When an election is made, the person making the election will be treated as domiciled in the UK from the date stated in the notice of election submitted to HMRC.

When does an election end?

An election is irrevocable so long as the elector remains UK resident for tax purposes.

An election will automatically cease to have effect if the elector is non-UK resident for four successive tax years, beginning at any time after the election has been made.

What happens if the estate pays inheritance tax twice on the same asset?

Two countries could potentially be tax the same property. The UK has currently concluded 12 double taxation treaties (France, Italy, India, Pakistan, Ireland, South Africa, USA, Netherlands, Sweden and Switzerland) with inbuilt mechanisms for relief. Double taxation conventions generally set down a test for which of the two countries has the primary taxing rights. That primary taxing country then generally has the right to tax the worldwide assets of the deceased person, but must give credit for tax charged in the other country on assets agreed to be within its taxing rights e.g. real estate located in the secondary taxing country.

If there is no double taxation agreement with a country, relief could still be applied for to HMRC on any property on which tax has already been paid - this is known as Unilateral Relief.



Joseph Austin TEP
HEAD OF PROBATE

jaustin@kingsleynapley.co.uk
+44 (0)20 7369 3799



Diva Shah TEP
ASSOCIATE | PRIVATE CLIENT

dshah@kingsleynapley.co.uk
+44 (0)20 7566 2932

December 2022

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+44 (0)20 7814 1200 | www.kingsleynapley.co.uk | info@kingsleynapley.co.uk

Kingsley Napley LLP, 20 Bonhill Street, London, EC2A 4DN

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