

## An Introduction to Domicile



No individual can be without a domicile. However, converse to nationality a person cannot have dual or multiple domicile; a person can only have one domicile. A person's domicile is important because it establishes the system of law to which that person is subject. It therefore determines certain rules of law which apply to that person and can affect the applicable tax system.

There are two main types of domicile:

1. Domicile of Origin; and
2. Domicile of Choice

A third domicile of dependence is the domicile of a child as determined by that of his parents. The domicile of dependence of a wife (determined by that of her husband) was abolished with effect from 1975.

### Domicile of Origin

Every individual has a domicile of origin at birth. A child (whether natural or adopted) will inherit the domicile of his father if he is born to a married couple. He will inherit the domicile of his mother if born to an unmarried couple. An adopted child will have the domicile of the person who adopted them if adopted by a single person.

A person's domicile will be his domicile of origin unless and until it is replaced with a domicile of choice. His domicile of origin will also be revived if he abandons his domicile of choice without

acquiring another domicile of choice.

The burden of proving that one's domicile of origin has been succeeded by a domicile of choice is significant and demands evidence.

### Domicile of Choice

A person of full mental capacity becomes able to acquire a domicile of choice at the age of 16. In order to acquire a domicile of choice one must satisfy a two-part test:

1. Residence within a country or legal territory; and
2. An intention of remaining there permanently.

Although the two aspects must exist at the same time, they need not come about at the same time. In other words a person may move to a country without the intention to remain there permanently, but may later develop such an intention.

Alternatively, a person may form the intention to remain in a country permanently before they ever reside there. However, the two-part test is only satisfied once the both parts are present at the same time.

1. Residence

Residence for domicile purposes means physical presence in a territory. This is easy to establish. However one must show actual inhabitancy rather than mere visitation, regardless of the period of time. Where a person has dual or multiple residency, a

domicile of choice can only be established in the chief place of residence assuming the relevant intention to remain in the chief place of residence exists. Although the length of time a person has been residing within a territory does not affect the residence aspect of the test, it may help establish a person's intention to remain in that territory permanently.

## 2. Intention

In order to establish a domicile of choice a person must show an intention to remain permanently in the territory in which he resides. Permanence in this context has been given the meaning 'indefinitely'. Thus the intention must not be to reside in the territory for a limited period.

A period of time may be limited not only in time but due to a contingency e.g. until the death of my mother. However this will not apply if the contingency is unlikely to occur or is ambiguous e.g. winning the lottery. A contingency will only prevent a person acquiring domicile of choice if the contingency is a real possibility.

When deciding whether a person had an intention to reside permanently any evidence (no matter how incidental) may be taken into account. All relevant evidence must be meticulously examined. This may include hearsay evidence. The aim is to find out the actual intention of the person in question rather than the conclusion which may be drawn from inference. It is up to the person claiming that a domicile of choice has been acquired to prove that this is the case. This can be hard to prove, particularly where the claim is that a person's domicile of origin has been replaced with a domicile of choice. It is likely to be less onerous to prove that one domicile of choice has been replaced with another.

A domicile of choice will come to an end if:

- (a) It is replaced with a new domicile of choice. Once a domicile of choice has been established, it may be replaced by a new domicile of choice if the necessary intention and residence are established in another jurisdiction. *Or*
- (b) It is abandoned. A domicile of choice may be abandoned if

the both components of residence and intention to remain permanently are lost.

Should a new domicile of choice not be established immediately upon abandonment a person's domicile of origin will prevail until another domicile of choice is acquired.

## Domicile of Dependence

Both children and persons lacking mental capacity will have a domicile of dependence.

### ● Children

Although a child cannot acquire a domicile of choice of his own until the age of 16, he may acquire the domicile of choice of his parents. The domicile of a child born to married parents will change on any change in the domicile of his father. However, where a child is born to a married couple who are alive and living apart at the time of birth, the child would acquire the domicile of the parent with whom he lives. The domicile of a child born to unmarried parents will change on the change of domicile of his mother. These rules apply whether or not the child resides in the same country as the relevant parent.

### ● Persons lacking mental capacity

A person lacking mental capacity will acquire a domicile of origin at birth like any other child. The dependency rules relating to children would also apply to the mentally incapable person until the age of 16.

Where the mental disorder occurred in childhood and continues beyond the age of 16, his domicile will continue to change with that of his relevant parent. However, if the mental disorder occurred after the age of 16 his domicile will become unchangeable from the time he became mentally disordered.

Should you have any questions or requests for further information please contact:

**John Rimmer**  
**Partner**  
**[jrimmer@applebyglobal.com](mailto:jrimmer@applebyglobal.com)**

Bahrain  
Bermuda  
British Virgin Islands

Cayman Islands  
Hong Kong  
Isle of Man

Jersey  
London  
Mauritius

Seychelles  
Zurich