

Divorce and Domicile (Lecture P1387 – 25.08 minutes)

The recent case involving Jeremy Coller put the spotlight back on questions of domicile and, in particular, how and whether separation and divorce effect one's domicile status.

Since 1974, husbands and wives have had independent domicile. There is no requirement that the domicile of one's spouse should be reflected in the domicile of the other. However, inevitably marriage changes people's decisions about where to live and their family connections and often divorce will do the same.

A quick reminder of the main determinants of domicile is in the list below: -

- the main family home,
- relatives, friends and other connections,
- club memberships and,
- Where given certain circumstances they wish to settle permanently and ultimately their final days. In this context an individual's will and indeed burial plot can sometimes be decisive.

Clearly separation and divorce will normally effect family connections, but it tends to have an impact on all three elements: -

- Permanent Residence
- Family
- Settled existence?

Domicile of Origin

It is however important to note that if one has acquired a domicile of origin in the UK then it is notoriously difficult to prove that one's domicile has changed even after spending a number of years outside the UK. In addition, the rules regarding former UK domiciles returning (FDR's) make relatively short stays back to the UK potentially costly, if the taxpayer is basing his tax strategy on remaining non-UK domicile.

FDRs will typically be British individuals who left the UK and acquired a foreign domicile either by choice or dependency, but who have since returned to live in the UK whilst preserving their non-UK domicile status under common law.

Anyone born in the UK with a UK domicile of origin will always be an FDR if they resume residence in the UK irrespective of how many years they have lived abroad or whether they have any connections to the UK.

Deemed Domicile

The rules since 2017 have introduced the concept of a deemed domicile position for tax purposes in addition to the legal domiciles of origin, dependency, and choice. It is therefore possible to maintain a legal domicile outside the UK but acquire a tax domicile inside the UK.

- Non- UK domiciled individuals who have been UK resident for at least 15 of the previous 20 tax years are deemed to be domiciled in the UK for all tax purposes.
- This is known as the “15/20 rule” and means that non-domicile status cannot be permanent for tax purposes. ITA 2007, s.835BA (4) For an individual who has been continuously UK resident, deemed domicile is triggered under the 15/20 rule with effect from the start of their 16th tax year.
- An individual does not need to have 15 consecutive years of UK residence to trigger the 15/20 rule.
- Two or more separate periods of residence could be counted.

Clore and Collier

Forty years separate the Clore and Collier cases but some of the issues remain relatively similar. Both individuals were divorced which implied the opportunity to change the central connections of their lives.

Sir Charles Clore did actually move to Monaco and took steps to weaken some of his connections to the UK. However, as in the detail below, reproduced from Tolley’s Tax Cases, his Executors were unsuccessfully in proving his non UK domicile status at the time of his death and it remains a cautionary tale on how not to let tax planning dominate one’s life to the exclusion of everything else.

- Sir Charles Clore had parents who, before his birth, fled Czarist Lithuania to escape persecution and settled in England: they never joined their relatives in the United States of America. About three years before his death, Sir Charles’ father went to live in Palestine.
- Towards the end of his life Sir Charles spent part of each year abroad and after 13 February 1977 he was regarded by the Revenue as neither resident nor ordinarily resident in England. Later Sir Charles gave instructions for the sale of his properties in England. In leaving England he was following his advisers' recommendations in order to mitigate his tax liability.

On 5 April 1978 Sir Charles was redesignated as resident in Monaco for exchange control purposes; he bought an apartment there to which he moved some of his furniture and gave instructions for a large part of his United Kingdom assets to be removed to Jersey. Sir Charles resigned from the chairmanship of his main company, although he remained a director, and he became an overseas member of his club. He also resigned from Lloyds.

As well as purchasing a property in Monaco Sir Charles showed interest in purchasing properties in Israel, France, the United States of America and Switzerland; during the last two and a half years of his life he spent more time in Paris than anywhere else, although he never settled in any one place after leaving England.

Sir Charles died in London on 26 July 1979. On the questions whether Sir Charles' domicile of origin was English and if so whether, before his death Sir Charles had acquired a domicile of choice in Monaco. There had to be convincing evidence that Sir Charles had formed a settled intention permanently to reside in Monaco before the court could hold that he had lost his domicile of origin and since, on the evidence, it could not be said that Sir Charles had ever formed that intention it followed that Sir Charles died domiciled in England

Coller

In the Coller Case, he got divorced in 2012 but failed to take sufficient steps to weaken his ties to the UK and strengthen them elsewhere. He also failed in his assertions that either of his parents were not domiciled in the UK at the time of his birth and therefore he had acquired a UK domicile of origin. A precis of the case is shown below.

The taxpayer's father came to England in 1938 from Austria to escape Nazi persecution. The taxpayer's mother was born in Ireland but had lived in England since 1953. The taxpayer was born in England and lived here all his life. A dispute arose as the taxpayer's domicile. He claimed in essence that he had never decided to make the UK his home – he was a 'global person' and could settle in other countries, in particular the US or Israel. HMRC said he was domiciled in the UK. It seemed clear that he had no intention to move to Israel until after his divorce in 2012. So irrespective of the domicile of his parents, the taxpayer was UK domiciled at birth and had not lost that domicile. The taxpayer's appeal was dismissed.

Conclusion

In conclusion although divorce offers the opportunity to reconsider one's domicile position, it needs to be followed up by concrete steps to weaken ties to the UK and strengthen them elsewhere on a consistent basis for an individual to lose his UK domicile status.

Contributed by Jeremy Mindell