

# Domicile: what does it mean?

It is mandatory for taxpayers to include details of their residence, ordinary residence and domicile status as part of their personal details when filing their annual income tax return. The requirement to return domicile status was introduced in 2017. A taxpayer's domicile can be a determining factor in whether an individual is liable to Irish taxes such as income tax, capital gains tax and capital acquisitions tax.



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*Mark and John examine the concept of domicile and relevant case law on the matter and write about how an individual can determine their domicile status*

## BACKGROUND

Domicile is a concept of general law and a connecting factor between a person and the legal system that will apply to them in specific contexts, such as matrimonial causes, legitimacy, succession and taxation.

Domicile may, broadly speaking, be interpreted as meaning residence in a particular country with the intention of residing permanently in that country.

There are three types of domicile:

- Domicile of origin;
- Domicile of dependence; and
- Domicile of choice.

## DOMICILE OF ORIGIN

Everyone acquires a domicile of origin at birth that remains with

them until such time as a domicile of dependence or choice is acquired. Lord Westbury, when passing his judgement on *Udny v Udny* (1869) LR 1 Sc & Div 441 in a seminal ruling on domicile, expressed;

*“That no man shall be without a domicile, and to secure this result the law attributes to every individual as soon as he is born the domicile of his father, if the child be legitimate, and the domicile of the mother if illegitimate.”*

This is borne out under Irish law where a legitimate child born during the life of their father acquires a domicile of origin in the jurisdiction in which their father was domiciled at the time of their birth. Therefore, a legitimate child born in Ireland to a UK domiciled father would acquire a UK domicile at birth.

Domicile of origin has a special characteristic, although it can be replaced by a domicile of choice or dependence it is never lost permanently, but becomes dormant. Where a domicile of choice is abandoned without acquisition of another domicile of choice, the domicile of origin is revived. Establishing the correct domicile of origin is important because of this revival rule.

## DOMICILE OF DEPENDENCE

A domicile of dependence arises in respect of children under 18 years and certain persons suffering with a mental disorder. Their domicile will generally be the same as, and will change in accordance with, the domicile of the person on whom they are deemed to be legally dependent. Therefore, a legitimate child's domicile until they turn 18 will depend on the domicile of their father during the father's lifetime and (in general) on that of their mother after their father's death.

The domicile of an adult person suffering from a mental disorder would appear to be that which they held before becoming ill (if they lack the capacity to determine their domicile).

## DOMICILE OF CHOICE

There are two elements to the acquisition of a domicile of choice, both of which must be present:

- residence in the new jurisdiction, and
- an intention to reside there permanently.

Lord Westbury, when ruling on *Udny v Udny*, described a domicile of choice as:

*“a conclusion or inference which the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with the intention of continuing to reside there for an unlimited time. This is a description of the circumstances which create or constitute a domicile, and not a definition of the term. There must be a residence freely chosen, and not prescribed or dictated by any external necessity, such as the duties of office, the demands of creditors, or the relief from illness; and it must be residence fixed not for a limited period or particular purpose, but general and indefinite in its future contemplation. It is true that residence originally temporary, or intended for a limited period, may afterwards become general and unlimited, and in such a case so soon as the change of purpose, or animus manendi, can be inferred the fact of domicile is established.”*

Therefore, in considering whether or not a domicile of choice has been acquired, it is necessary to consider both the concept of residence in the context of domicile and also consider the issue of intention.

### Residence

Consideration needs to be given to whether or not a prolonged

period of residence in a particular jurisdiction would also serve to satisfy the “intention” requirement. Taxpayers resident in a country (other than the country of the domicile of origin) for a significant period of time and whose interests are centred in that country are at risk of taking up a domicile of choice in that country.

An important UK case on the impact of intention on prolonged residence was *Commissioners of Inland Revenue v Bullock* 51 TC 522 (“*IRC v Bullock*”). This case concerned a Canadian domiciled individual who travelled to England in the 1930’s and lived there following his marriage to an English woman. In 1973 HMRC contended that Mr Bullock had obtained an English domicile due to his continued residence in England.

It was held that Mr. Bullock was not domiciled in England on the grounds that Mr. Bullock’s residence in England was accompanied at all times by a clear and definitive intention to return to Canada and that was sufficient to counteract the effect of the element of time, i.e. the prolonged period of residence in England.

Evidence in support of this included:

- several trips to Canada made by Mr Bullock and his wife in the intervening period,
- a will made by Mr Bullock under Canadian law, in which he declared that his domicile was and would continue to be in Canada and that he would return and remain there upon his wife’s death,

- the retention of his Canadian nationality and passport (he never obtained a British nationality or passport),
- a refusal to vote in local or parliamentary elections, and
- the maintenance of close contact with Canadian relatives and friends.

A recent UK case, *Proles v Kohli* [2018] EWHC 767, upheld the view expressed by Lord Westbury in *IRC v Bullock*. In this case Mr Kohli passed away while visiting India (his domicile of origin) after a long period of residence in the UK. It was held that due to the nature of his business interests and on-going lifestyle commitments Mr Kohli had acquired a domicile of choice in the UK. Furthermore, contemporaneous evidence indicated that the deceased intended to return to the UK following a visit to his domicile of origin and had not abandoned his domicile of choice.

Thus, where an individual has a prolonged period of residence in another country then contemporaneous evidence indicating the individual’s intention to return to their domicile of origin would be needed to avoid the presumption that a domicile of choice had displaced that individual’s domicile of origin.

### Intention

As can be ascertained from the above, the courts have attached great significance to the intentions of the individual when determining domicile. Therefore, it is the intention of the person in question that is the key point when determining domicile. As expressed

by Lord Westbury, in order for a domicile of choice to be acquired an individual must reside in a country with the intention of residing there for an unlimited time. During his ruling in IRC v Bullock regarding intention, Lord Westbury stated:

*“I do not think that it is necessary to show that the intention to make a home in a new country is irrevocable or that the person whose intention is under consideration believes that for reasons of health or otherwise he will have no*

*opportunity to change his mind. In my judgement the true test is whether he intends to make his home in the new country until the end of his days unless and until something happens to make him change his mind.”*

## CONCLUSION

Given that a persons domicile is now returned annually on their income tax return, domicile status may become a line of enquiry during future Revenue

interventions. Practitioners should ensure that they have sufficient and appropriate information gathered from their client with regards to their domicile, particularly their intentions, so as to ensure full compliance.

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