

Focus on Domicile – International Private Client

HM Revenue and Customs (HMRC) have recently redoubled their efforts in raising enquiries into individuals who claim to be non-UK domiciled, with a new department set up for this purpose. This is despite the introduction of a new statutory provision in 2017 which deems a non-domiciled individual as UK domiciled once they have been UK resident for more than 15 out of the previous 20 years (the “15-year rule”).

Despite the numerous changes that have been introduced to this area of the law, being non-UK domiciled still brings significant UK tax advantages (such as the remittance basis of taxation), particularly whilst that individual is not caught by the 15-year rule. However, even before an individual has satisfied the 15-year rule, it is possible for them to acquire a domicile of choice under common law whilst resident in the UK; if they have the intention to reside in the UK permanently or indefinitely.

A domicile enquiry can be more detrimental to a taxpayer than other types of HMRC enquiries because of the very personal nature of the enquiry. Information relating to family members and friends often comes within the remit of the enquiry. Furthermore, as the entire life of the taxpayer is considered relevant to the enquiry, the time period for which information is required to be disclosed can be considerably longer than other enquiries.

Even when an individual has obtained domicile advice in the past, this may not help to protect them in an enquiry. The key danger with domicile advice is that as it relies on the intention of the individual, it needs to be updated regularly, as an

individual's intentions and circumstances change over time. An individual may only receive domicile advice when they first come to the UK, or just before they establish an offshore trust. This is unlikely to be sufficient if they wish to rely on their non-UK domicile position for a longer period of time.

Individuals wishing to claim non-UK domicile status should be aware of the requirement to keep evidence of links to the country/state of their domicile on an on-going basis, and have a clear idea of when they intend to leave the UK. The burden of proof is on the individual claiming to be non-UK domiciled, not on HMRC.

It should be noted that HMRC will not necessarily close an enquiry when an individual leaves the country, as this is not always accepted as proof that the individual had no intention to remain in the UK permanently or indefinitely. Similarly, HMRC accepting an individual's non-UK domicile in one year does not prevent them from inquiring into the individual's domicile position in another year. A particularly difficult situation can arise if HMRC take the position that the individual obtained a UK domicile of choice at a specific moment in time, even if this has subsequently been lost.

Factors that potentially raise the risk of a person being considered to have acquired a domicile of choice in the UK include getting married and raising a family in the UK, and remaining in the UK after retirement. Individuals claiming non-domicile in these situations should obtain specialist advice to ensure their domicile position is as robust as possible.

Our Private Client team regularly advises clients subject to domicile enquiries; helping them to successfully navigate information requests from HMRC, and apply to the Tribunal for a closure notice to bring the enquiry to an end. It is not unusual for domicile enquiries to last for years, and so having experienced advisors who can help bring this stressful period to a close is essential.

For further information, please contact:



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