CORNERSTONE
WILLS

BRIEFING NOTE – DOMICILE

An individual's domicile is relevant to determine liability to income tax, capital gains tax (CGT) and inheritance tax (IHT).

Under English law every individual has a domicile in a territory, which is subject to a single system of law. For example, an individual is not domiciled in the United States but is domiciled in one of those states, each state having its own single system of law.

Under English law three types of domicile are recognised - domicile of origin, domicile of choice and domicile of dependence.

Domicile of Origin

A domicile of origin is the domicile acquired by a person at birth. It is usually the same as that of their father but if an individual is, say, illegitimate that individual will take his or her mother's domicile. Thus, at present, a person could have a domicile of origin in a country with which they have very little connection - perhaps even a country in which the individual has never set foot. An individual never loses their domicile of origin. It can be superseded by a domicile of choice or dependence. However, if either of these "fall away" the domicile of origin, in effect, revives.

Domicile of Choice

This is the domicile acquired by a person over the age of 16 (or who is under that age but married) who goes to live in a foreign country. They must be physically present in that country and must have a fixed and settled intention to live there permanently.

To establish a new domicile of choice in place of his existing domicile (of choice, origin or dependence) an individual must demonstrate that:-

(a) They have deliberately and voluntarily ceased to reside in one country (the country of their former domicile) as a matter of fact;
(b) They have a final and deliberate intention never to reside there again in the future; and
(c) They have a fixed and settled intention to live permanently in the "new" country.

However, it is extremely difficult for a person to dislodge his domicile of origin because of two further rules. The first is that the standard of proof required to establish a domicile of choice is very high and is similar to the standard required in criminal law, namely "beyond reasonable doubt".

The second is that if an individual does establish a domicile of choice in another country, and that domicile of choice is abandoned for any reason, their domicile of origin automatically revives to fill the gap. The domicile of origin then remains their domicile until they have a fixed and settled intention to acquire another domicile of choice.

Case Study 1

In the case of Anderson (Executor of Muriel S Anderson) v IR Commrs the issue arose as to whether the Inland Revenue had proven the acquisition of a domicile of choice in England at the time of Mr Anderson's death.

Mr Anderson had lived all his life in Scotland, and at the age of 64 he retired and moved to Cornwall, where he died eight years later. His ashes were spread in Scotland.

His Will had been executed and retained in Scotland, where all his relatives (except his daughter who joined him in Cornwall) were still based. During his lifetime he had expressed no view as to whether he wished to return to Scotland or not.

The Special Commissioner held that it was not inconsistent that an elderly Scottish man would wish to move to England for his retirement, but would have no intention of giving up his Scottish domicile. Moreover, the fact that his Will was still held in Scotland, and his ashes were spread in Scotland (as was his wish) demonstrated his desire to stay a Scottish domiciliary.

Although for the purpose of UK taxation it does not matter whether the individual is domiciled in Scotland, England, Wales or Northern Ireland, an individual's domicile will be relevant for legal reasons. In this particular case the question was whether legal rights (applicable under Scots law) which grant children of the deceased certain specific rights against the deceased's property could be enforced - this will be the case if the deceased were Scots domiciled. If the decision were that he had been in fact domiciled in England at the time of death, his estate would have been subject to English rather than Scots law, in which case no legal rights could be claimed by the children.

Apart from the legal point, the reasoning of the Special Commissioner is interesting as it might give further guidance for those who may wish to claim acquisition of new domicile of choice. Significant here was the fact that period of eight years was considered short. It was stated that the purchase of a house or estate coupled with a long residence and non-retention of a home in the domicile of origin might be sufficient to prove the intention to acquire a new domicile. The emphasis was on the words "long" and "might".

It is worth remembering that in IHT planning it is essential to establish domicile first and it is very hard to "shake off" domicile of origin. This case and others prove that.

Case Study 2

The Executors of Moore (deceased) v Inland Revenue Commissioners is another case that illustrates the difficulties that may be encountered in determining an individual's domicile. The facts were as follows:

Mr Moore (M) was an American citizen who was born in Missouri. He later moved to New York. In the 1980s he spent time both in England and the United States. In 1986 he told his lawyer that he was giving up working in New York to spend more time in London. In the early 1990s M ceased to maintain any form of residence in New York. In 1991 M was granted consent to enter the UK for the limited purposes of his employment as an artist. He told an immigration officer that, "I am planning to use the UK as a base and to travel to the continent regularly". M bought a flat in London. In 1992 M accompanied his partner to New York where he underwent treatment for cancer.

M´s leave to remain in the UK expired in 1995. He continued to live in London. There was never any attempt made by the UK immigration authorities to have him deported. In 1995 M´s partner died. M remained an American citizen and travelled on a United States passport. He made United States tax returns and no UK tax returns. In 1996 he made a Will disposing of his American estate, which he executed in London. Also in 1996 he made a Will disposing of the rest of his estate which was also executed in London. M died in 1997 in London where his funeral took place. In 1999 the Inland Revenue issued a notice of determination that M had died domiciled in England. The executors of his United Kingdom Will appealed.

The Special Commissioner said that M had had a domicile of origin in Missouri but had probably acquired a domicile of choice in New York (in the United States, domicile is by reference to an individual state). The issue was whether he had acquired a domicile of choice in England. That required that he had had a fixed and determined purpose to make England his permanent home. The intention did not have to be unchangeable but an intention to make a home in a new country merely for a limited time or for some temporary or special purpose was insufficient. Importantly, the burden of proof was on the Inland Revenue to show on the balance of probabilities that M had acquired a domicile of choice in England.

The Special Commissioner considered that the facts suggested that stopping work in New York in 1986 was not part of a move to England. More probably M wanted to retire from the pressures of work to give him more time for travel. He continued to have a flat in New York for another five years. A more major change occurred in the early 1990s when the centre of his life moved to England. His only property was then in London. But his answer to the immigration officer did not suggest that he wanted to make England his permanent home. His partner's going to New York for cancer treatment accompanied by M suggested that they had not given up their New York connections. M had remained a US citizen and taxpayer. By 1995 M and his partner had both been quite ill. Being an illegal immigrant from 1995 would not have prevented M from acquiring or continuing a domicile of choice in England but it was clearly relevant to determining his intention.

The Special Commissioner said that looking at all the evidence M´s living solely in London had been determined more by ill health than by a desire to make England his permanent home. His nomadic existence just happened to end up in London rather than being the result of his forming the intention to stay there, as was illustrated by his short term immigration status. He had never really given up his New York connections. His investments, comprising 29% of his net assets on death (and 44% of his assets apart from his London flat and its contents) were managed in New York. There was no clear evidence that he really had had the necessary intention to acquire a domicile in England and quite a lot of evidence that he had kept up his connections with New York.

This case as for most domicile cases turned substantially on the facts. It makes clear that no one issue is a sole determinant in deciding domicile status. Having said this, restriction of "choice" of where to live by ill health does seem to have been a significant factor.

Taxpayers domiciled in any part of the UK will be potentially subject to IHT on worldwide assets. Both planning and provision should be considered. Non-domiciles are only subject to IHT on UK sited assets and for these individuals. Life policies written under seal and "excluded property" trusts will look particularly attractive on IHT planning grounds.

Mere residence in another country is thus insufficient. Even an expression of determination never to return to a country and arrangement of a burial plot in the new country will not, of itself, be sufficient to demonstrate a new domicile of choice (Ramsay v Liverpool Royal Infirmary [1930]).

A person will lose domicile of choice if and when:

1. they cease to reside in the country of his domicile of choice, and

2. they cease to intend to reside in that country.

It is not necessary for that person to have a positive intention never to return to that country. It is worth noting that where a person returns to the country of domicile of origin with only a vague and indefinite intention of returning to the country of his domicile of choice, the domicile of origin may revive - it´s that tenacious!

Finally, if domicile of choice is abandoned his domicile of origin revives until he obtains a new domicile of choice.

Case Study 3

The application of these rules is demonstrated by the Special Commissioner's decision in Civil Engineer v. Inland Revenue. The taxpayer was born in England and his domicile of origin was English. The taxpayer went to live and work in Hong Kong in 1960 and stayed there for approximately 30 years. Throughout his stay he lived in rented accommodation. In 1976 he ceased to own any residential or business property in the UK. On subsequent occasions his wife wanted to purchase property in England but he always refused to do so. He left Hong Kong in 1989 and returned to the UK. He then went to Jersey in 1990 and stayed there for three months. While in Jersey he set up two trusts in the Channel Islands and transferred property to them. In April 1990 the taxpayer and his wife purchased a house in England and returned to England.

The Inland Revenue served a determination on the taxpayer to the effect that the transfers to the trusts were chargeable transfers for inheritance tax. The taxpayer appealed. He contended that he was not domiciled in the UK at the time of the transfers.

The Inland Revenue contended that the taxpayer never acquired a domicile of choice in Hong Kong, or if he did so, he lost it by leaving Hong Kong before making the transfers to the trusts. A person did not acquire a domicile of choice if he intended to return to his country of origin on a clearly foreseen and reasonably anticipated contingency e.g. cessation of employment or self-employment or following Chinese rule from 1997.

Furthermore, the taxpayer's daughters were educated in England, he paid annual visits to England and he and his wife bought a house in England where they lived since 1990.

The Special Commissioner dismissed the taxpayer's appeal and confirmed the determination to inheritance tax. A person did not acquire a domicile of choice in Hong Kong if he had in mind returning to England, his country of origin. Despite the taxpayer's 30 years living and working in Hong Kong, the issue for his domicile was his intention, particularly his intention for the future. Leaving Hong Kong with the intention of not returning would result in the immediate revival of his English domicile of origin even if he had acquired a domicile of choice in Hong Kong during the 30 years spent there. On the evidence, the taxpayer was domiciled within the UK at the time of the transfers.

Case Study 4

Contrast this with the case of Surveyor v Inland Revenue. The appellant was born in England in 1958 and acquired a domicile of origin from his father. In 1986, he took a job based in Hong Kong, where he took a lease of a residential property. He returned to the United Kingdom only once or twice a year for holidays. In 1990, the appellant's sister and brother-in-law moved to Hong Kong, and during that year, the appellant married a United Kingdom national. They were married in England, but returned to live in Hong Kong where all three of their children were born. In 1992, the appellant had the option of returning to the United Kingdom, but chose to remain in Hong Kong, and was later appointed a director of the company for which he worked. In 1997, when the hand-over of Hong Kong to China became imminent, the appellant successfully applied for permanent resident status there, although he retained his British passport. The appellant and his wife also owned a house in Thailand for holiday and investment purposes.

In 1999, the appellant established a discretionary trust in Jersey for the benefit of his family. The trustees were based in Jersey, and £247,000 was transferred into the trust. The appellant's adviser applied for a formal ruling from the UK Inland Revenue that the appellant was not domiciled in the UK. The Capital Taxes Office refused this saying that the appellant had retained his domicile of origin.

The Special Commissioner said that the evidence, at the time of the transfer to the trust in 1999, showed that the appellant intended to reside permanently in Hong Kong. Residence was not intended to be for a limited period, but generally and indefinitely. He had family there, rights of permanent abode there, and his business future was there. The fact that he had a house in Thailand did not lead to the conclusion that he intended to reside in more than one country.

The appellant had acquired a domicile of choice in Hong Kong, and abandoned his domicile of origin in England. Accordingly the appeal was allowed.

Domicile of Dependence

A child under the age of sixteen has a domicile of dependence. It follows the domicile of their father or, in some cases, their mother. On attaining sixteen, that domicile of dependence becomes the child's domicile of choice or, if it is the same, his domicile of origin.

Before the Domicile and Matrimonial Proceedings Act 1973, a married woman had a domicile that followed that of her husband. The Act came into force on 1st January 1974, and enables a woman to have a domicile different from that of her husband. It converted her existing domicile of dependence on that date, derived from her husband's domicile, into her own separate domicile of choice.

Proof of Domicile

In every case, the task of proving that a new domicile has been acquired or an existing domicile has changed, falls on the individual concerned. That task varies according to the domicile in question. If an individual seeks to replace his domicile of origin with a domicile of choice, the standard of proof is very high. If, however, a person merely wishes to replace a domicile of choice with another domicile of choice, he only has to do so on "the balance of probabilities". If it is sought to establish that a domicile of dependence has been abandoned, the standard is somewhat lower.

As mentioned above, where a person is seeking to establish a new domicile of choice he will have to show that he has a fixed and settled intention to live permanently in another country.

Some indications of an intention to reside permanently elsewhere are as follows

- A period of residence in the new country;
- The purchase of a house in the new country;
- Disposal of property in the old country;
- Development of a business in the new country;
- The local education of children;
- Citizenship in the new country;
- Severance of all ties with the old country.

It is important to note that no one of these factors in isolation is a determinant and that each case will be determined on its own facts.

Agreeing domicile with the Inland Revenue

It should be borne in mind that the Inland Revenue will consider the question of an individual's domicile only where this is relevant in computing a current tax liability. This should be carefully borne in mind for those persons who are contemplating planning on the basis of their current domicile (or perhaps in the case of non-UK resident individuals, after a change in domicile status) and who require reassurance that the Inland Revenue agree their domicile status. In particular it should be remembered that when making gifts of capital, a return of a potentially exempt transfer will not need to be made at the time of the gift.

In particular, for expatriate investors (to whom UK income tax and capital gains tax may not be relevant) who are planning on the basis that they have lost their previous UK domicile, it is obviously important that this aspect is clarified with the Inland Revenue before any excluded property trust is established. This may mean that they would need to make a chargeable transfer (not a potentially exempt transfer) and make a suitable return to the Capital Taxes Office before any major planning is implemented. In all cases professional advice should be sought in advance.

If an individual wishes to substantiate that they are no longer UK domiciled they should seriously consider the following action checklist:

(a) Ensuring that the individual concerned is able to clearly demonstrate when he will be leaving the UK. This should be on the happening of a definite future event and there should be a real possibility of that event occurring. For example, a person should document that, although he is working in a country, he definitely intends to leave on his retirement or when service terminates.
(b) The individual should collect as much evidence as possible to substantiate that the foreign country rather than the UK is the country with which the individual is most closely connected. Each case will depend on its own facts but the following would seem important matters:
(c) Accommodation in the country of foreign domicile is a very helpful factor. It should be available for the individual's use, furnished and occupied by him some time during each year.
(d) Passport, identity cards, etc. for the foreign country should be retained and preferably no UK or other passport sought.
(e) Nationality of the foreign country should be retained and UK or other nationality not sought.
(f) A burial plot in the foreign country should be available.
(g) Membership of a club or clubs in the foreign country should be retained and UK memberships avoided.
(h) Bank accounts should be maintained in the foreign country and not in the UK if possible.
(i) Credit cards should be issued from an institution in the foreign country with a foreign country address.
(j) Insurances should be through insurers in the foreign country (subject to the UK tax position).
(k) Pensions should be in the foreign country if possible.
(l) A foreign country driving licence (rather than a UK licence) should be used if possible together with an international licence if required.
(m) Wills should be made periodically under the law of, and in accordance with the requirements of, the foreign country and English form Wills not made.
(n) The non-UK domiciliary should register at the foreign country embassy.
(o) The non-UK domiciliary should join an ex-pat group.
(p) Votes should be exercised in the foreign country if possible.
(q) A diary of time spent in the foreign country should be kept.
(r) A foreign declaration of domicile in that country should be made.
(s) A documented plan to return to the foreign country should be made.
(t) Family and other roots in the foreign country should be maintained so as to show where "one's home is".

Although these are all "helpful" factors, this should not be regarded as an exhaustive list. Clearly this is a highly subjective issue.

In the Inland Revenue Tax Bulletin Issue 29, an article was published explaining how the Inland Revenue intend to continue to give guidance and advice on residence status and domicile; the action they will take on receipt of completed forms P85, P86 and initial non-UK domicile claims; and when Section 9A Taxes Management Act (TMA) 1970 enquiries on residence status and domicile aspects may be made.

The Subscription Rate Method

At the end of the 1980s the Inland Revenue quietly introduced the Subscription Rate Method (SRM) of taxation for non-UK domiciled individuals. The existence of the SRM was not widely publicised. It was aimed at wealthy non-domiciled individuals who are resident in the UK. If they approached the Inland Revenue they it was possible to negotiate agreements to pay a fixed amount of tax (also known as a "forward contract") each year up to a maximum of six years. They still had to file a tax return. Instead of entering into complicated tax mitigation/tax avoidance tactics aimed at ensuring that overseas income and capital gains are not remitted to the UK (thus avoiding UK taxation), they paid a fixed amount of tax each year, or tax at a fixed percentage in respect of foreign source income and gains. The fixed percentage was commonly one half the basic rate of income tax - a compromise figure to take account of the mixture of capital and income typically remitted from overseas. Any remittances in excess of the disclosed total wealth would be taxed on the statutory basis. The Inland Revenue would normally require full disclosure of the individual's worldwide assets. When the agreement expired, a "taxed capital account" was calculated which excludes from UK taxation any overseas accrued unremitted capital gain or income arising.

In Al Fayed and others v Advocate-General for Scotland the court held that these agreements were ultra vires (illegal). This decision was upheld on appeal. The making of forward tax agreements was held not to be a proper exercise of the Inland Revenue's duties of care and management as set out under Section 1 of the Taxes Management Act 1970. Under this provision the Inland Revenue is allowed discretion to enter into special arrangements. Examples of special arrangements are agreements with taxpayers, and the publication of extra-statutory concessions. The courts will only interfere where discretion has been exercised unreasonably or illegally. In a Written Parliamentary Answer, the Paymaster General has stated that the Revenue is no longer entering into forward contracts for future tax liabilities (Hansard, 17 July 2002).

These agreements were designed to make life easier for both taxpayer and the Inland Revenue. The taxpayer would otherwise enter into complicated offshore arrangements to ensure that the remittance (and constructive remittance) rules were not breached - thus saving tax. The Inland Revenue, on the other hand, would be trying to police each of these wealthy non-domiciled individuals to discover if they have fallen foul of the rules in order to generate extra tax from them. The agreements did appear to provide sensible simplification. They did, however, mean that whilst enjoying vast incomes the individuals concerned paid far less tax than their UK domiciled equivalents.

Deemed Domicile

It is important to appreciate that the concept of deemed domicile is relevant for inheritance tax only.

S267 IHTA 1984 provides that in certain circumstances a person not domiciled in the United Kingdom as a matter of general law is deemed to be domiciled in the United Kingdom. There are two rules; under the first, a person who has ceased to be domiciled in the United Kingdom as a matter of general law may still be deemed as domiciled in the United Kingdom. Under the second a person may be deemed as domiciled in the United Kingdom notwithstanding the fact that he has never been domiciled in the United Kingdom.

Under S267(1)(a) IHTA 1984, a person who was domiciled in the United Kingdom on or after December 10, 1974 as a matter of general law remains a United Kingdom domiciliary for three years after he ceased to be so domiciled under the general law. Thus, if Mr Moneybags, a United Kingdom domiciliary, left the United Kingdom on 31 December 1986 to live permanently in Italy he will retain his United Kingdom domicile under this head until 1 January 1990.

The 17 year rule

By section 267(1)(b) IHTA 1984 a person is deemed to be a United Kingdom domiciliary on a given date if

(a) he was resident in the United Kingdom on or after 10 December 1974, and
(b) he has been resident in the United Kingdom not less than 17 years of the 20 years of assessment ending with the year in which that date falls.

The effect of this provision is both to treat persons who have never been domiciled in the United Kingdom as United Kingdom domiciles, (provided that they have been resident in the United Kingdom for a sufficiently long period), and to treat as still domiciled in the United Kingdom those who have ceased to be domiciled in the United Kingdom as a matter of general law, (provided that they have been resident in the United Kingdom for a sufficient long period). It is important to note that under section 267(1)(b) a person may be deemed to be domiciled in the United Kingdom for more than three years after he ceases to be domiciled here as a matter of general law.

The residence test does not require that the taxpayer must have been resident for a complete period of 17 years. This is because the legislation is concerned with a person who is resident in a tax year and such residence may be acquired if the individual concerned comes to the United Kingdom at the very end of the tax year (e.g. on 1 April) with the intention of remaining indefinitely in the United Kingdom. In such a case the individual will be resident in the United Kingdom for that tax year (which is about to end) and that year will count as the first year of residence for the purpose of the 17 year test. Similarly, were he to leave the United Kingdom soon after the commencement of a tax year, then he may be treated as resident in the United Kingdom in that final tax year. Accordingly, in an extreme case an individual could arrive in the United Kingdom on 1 April in one year, remain for the next 15 years and then leave on 10 April in year 17 and yet be caught by the 17 year test even though he was only physically resident in the United Kingdom for a little over 15 years.

It is important to bear in mind that it is necessary to apply both the three year rule and the seventeen year rule to a United Kingdom domiciliary emigrating from this country if he has been a long-standing resident here. Assume that X, who has been domiciled and resident all his life in the United Kingdom, emigrated to Monaco on 31 December 1985. Under the three year rule he will retain his United Kingdom domicile until 1 January 1989. It might be tempting to suggest that he can then establish an "excluded property" settlement after leaving or even after 31 December 1988. However this would be incorrect because under the seventeen year rule he will retain his United Kingdom domicile until 6 April 1989.

A joint meeting of The Immigration Law Practitioners' Association and The Society of Trust and Estate Practitioners (STEP) was held on 12 October 1995. The purpose of the meeting was to discuss the inter-relationship between immigration and nationality and tax domicile and residence.

Andrew Walmsley, head of the Nationality Division at the Home Office, explained that a foreign national does not have to be domiciled in the United Kingdom in order to obtain British citizenship. The Home Office is not interested in his (or her) domicile status. However, tax residence is highly relevant. The Nationality Division has a simple rule: an applicant for British citizenship cannot be resident in the United Kingdom for nationality purposes but not for tax purposes. Unless the applicant's Inspector of Taxes confirms that the applicant is resident in the United Kingdom for tax purposes and that his tax affairs are in order and up to date, the Home Office will not grant the applicant British citizenship.

In order to obtain British citizenship, the British Nationality Act 1981 requires the applicant to intend to have his home or his principal home in the United Kingdom if he becomes naturalised. This does not require the applicant to say that he will live in the United Kingdom forever. He will satisfy this requirement if he intends to have his home in the United Kingdom for the foreseeable future.

Regarding communication between the Home Office and the Inland Revenue, the Home Office does not pass information to the Revenue at its own initiative. It is, however, under a duty to assist any law enforcement agency which wishes to make enquiries and if it is thought that someone is evading tax it has a duty to assist.

David Hartnett, Controller of the Revenue's Financial Intermediaries and Claims Office (FICO), said that, at the least, whether a person had British citizenship was certainly relevant to his or her domicile status. He accepted that domicile and nationality were entirely separate subjects. An applicant could change his domicile without divesting himself of his nationality or acquiring British citizenship. The law does not require a person to change his domicile in order to become naturalised as a British citizen and the fact that a person does become naturalised as a British citizen does not necessarily in itself mean that he will acquire a domicile of choice in the United Kingdom. However in determining a person's domicile status it was relevant to consider if the person had become naturalised and his intentions regarding his future residence are important. The person's nationality is one factor to consider along with other factors.

When determining a person's domicile, FICO will ask the person to complete a Form DOM1. In appropriate cases they will seek further information. This may include asking for a copy of an application for British citizenship made to the Home Office or for authority to approach the Home Office. However, there are no under-the-counter arrangements between FICO and the Home Office.

Proposals for changes to the domicile rules

Following much press speculation that the UK Treasury is planning to change the rules permitting the remittance basis of assessment for non-UK domiciles, the Chancellor of the Exchequer announced a review of the residence and domicile rules in the 2002 Budget. This was followed by a "Background Paper" - Reviewing the residence and domicile rules as they affect the taxation of individuals published at the time of the 2003 Budget. There was (apparently) an unofficial deadline of 31 July 2003 for comments the paper. It has been reported that the Government is proposing giving new tax incentives to skilled workers from abroad. This could be in the context of a wider change to the current domicile and residence rules.

The Labour party first criticised the current system in 1994 when in opposition but did nothing when they won the general election in 1997. A report by the Inland Revenue commissioned by the Chancellor of the Exchequer, Gordon Brown, after the general election in 2001 showed that 60,000 individuals benefited from proven non-UK domicile status.

It has been put forward in the past that any reform could, if it wished, adopt a two tier system where individuals residing in the UK for up to four tax years (similar to the ordinary residence rules) could continue to enjoy non-UK domicile status, but longer-term residents would lose this status. Although individuals could avoid becoming resident in the UK by spending no more than 90 days in the UK (under the residence rules) this would mean an unsettled way of life and may not be a practical option for the majority of foreign individuals already residing in the UK.

The UK and Ireland are the only members of the European Union (EU) to grant a favourable non-domiciled status to foreigners and the recent press speculation comes at a controversial time with regard to developments abroad. Both the UK and Ireland are members of the Organisation for Economic Co-operation and Development (OECD) which has cracked down on offshore tax havens with the threat of economic sanctions e.g. scrapping favourable tax treaties. To co-operate with the OECD, offshore tax havens have to comply with the following standards:

1. Become more transparent (for taxation, finance and regulation);
2. Co-operate better with overseas investigators;
3. End practices that offer tax breaks to foreigners that are not available to residents.

Although the UK is not generally regarded as a tax haven, its tax regime for individuals is lighter than that imposed by some countries e.g. in Scandinavia. The favourable status given to wealthy foreigners resident in the UK would appear to conflict with point 3 above.

Currently the combined benefit of the income tax and capital gains tax remittance basis provides an attractive platform for holding investments for non-UK domiciles. In some cases the chosen non-resident situs investment is an offshore (non-UK) fund. In this case it is worth remembering that the remittance basis does not apply to policy gains made under UK or non-UK bonds. This is not the case for collectives or portfolio management services/ "wrap" accounts. The relative attraction of any particular vehicle to any particular non-UK domiciliary will, of course, depend on the circumstances of the individual. Tax will be an important determining issue.

For IHT the excluded property provisions are particularly useful and continue to be so long after UK domicile status has been acquired under the general law or under the deeming legislative provisions. Holding non-UK situs assets in a trust (UK or offshore) established whilst the settlor was non-UK domiciled (even though the settlor may subsequently become domiciled) offers continuing IHT freedom for the assets provided the trust assets remain non-UK situs - and this is so even if the settlor can potentially benefit under the trust.

Any reform may need to strike a balance, curbing abuses of the present system without prompting foreigners already living in the UK to leave or without discouraging foreigners already living abroad from settling in the UK. In addition to this delicate economic issue, there is the issue of amending the technically complex tax legislation in this area. Both these issues could mean that any reform might take some time.

Indeed, there have been proposals to change the rules relatively recently, which came to nothing. In 1987 the Law Commission issued a Report on the Law of Domicile. This reached the form of a draft bill. The main proposals for change were as follows:

A. Children

It was proposed that a child was to be domiciled in the country with which he was for the time being most closely connected, thus abolishing the domicile of origin. Two rebuttable presumptions followed the general rule:

i. Where both parents (whether married or not) were domiciled in the same country and the child had his/her home with both or either of them then, unless the contrary was shown, the child was to be presumed to be most closely connected with the country in which his parents are domiciled and so be domiciled in that country.

ii. If his/her parents were domiciled in different countries and the child had his/her home with one but not the other then, unless the contrary is shown, the child was to be presumed to be most closely connected with, and so domiciled in the country of domicile of, the parent with whom the child had his home. In most cases this would have given the same result as the old rules but with the loss of the domicile of origin it may have been harder to establish a child´s non-UK domicile.

B. Domicile Of Adults

i. Where a person attained age sixteen he would have retained the domicile he had immediately before.

ii. An individual over sixteen could have acquired a domicile in a new country if

(i) he was present there; and

(ii) he intended to settle there for an indefinite period.

These were similar but not the same as the present requirements for the acquisition of a domicile of choice.

iii. An adult's domicile of choice would continue unless and until he acquired a new domicile. Thus on the abandonment of a domicile of choice the domicile of origin will not have automatically revived.

The proposed changes may have made it easier for the Inland Revenue to show that a person had acquired a domicile of choice in the UK and/or that his UK domicile was continuing.

C. Standard Of Proof

The standard of proof was to be on the balance of probabilities.

The Government, in 1996, decided not to take forward the reforms on the basis that, although they were desirable in themselves, they did not contain sufficient practical benefits to outweigh the risk of proceeding with them and to justify disturbing the present long-established body of case law on this subject.

It will be interesting to see whether this new review will result in action. To date no announcement has been made by the Government as to any changes which may arise as a result of this initiative but it is known that the Revenue has had a considerable number of comments from interested parties that they will now be reviewing. We have of course seen this type of situation in the past with previous consultative documents having been issued on this subject. These resulted in no material change to the tax position, probably, no doubt due to the fact that it is difficult for the Government to balance the desire to tax UK resident non-domiciles more heavily with the reality that if taxation becomes too onerous those non-UK domiciles may well leave the country. This could of course have a "net" detrimental commercial (and fiscal) impact on the UK. Despite this potential downside, judging by recent Revenue activity, the likelihood of a change in the rules of residence and domicile being introduced this year would seem to have increased.

The current review of the tax treatment of non-UK domiciles offers the adviser the opportunity to discuss a possible review of tax and financial planning opportunities with these individuals. Of course, in doing so it will be important to bear in mind that the tax rules may change so that any strategies implemented ahead of any changes should ideally be flexible enough to be adjusted or undone if any changes to the law make such subsequent changes necessary.

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