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Domicile of choice - Court of Appeal decides

International businessman Robert Gaines-Cooper failed to persuade the Court of Appeal that he changed his UK domicile to that of the Seychelles. It is understood that Mr Gaines-Cooper was born in the UK of British parents and hence acquired a UK domicile of origin at birth.

The concepts of domicile, residence and ordinary residence are of significant importance for UK taxes.

Mr Gaines-Cooper's case originally centred on his residency status, but the latest appeal focused on the wider issue of his domicile. Despite living in the Seychelles for over 30 years and wishing to have his ashes scattered there when he dies, his ties with the UK remain too strong. He has been, and is still, a frequent visitor to the UK. Even though he has spent years travelling the world and building a number of overseas businesses, he was not considered to have made a clean break and the fact that he maintained a house and 27 acre estate in the UK, where his second wife and son live, added weight to the argument that he retained his UK domicile. He is also reported to have an extensive collection of paintings, classic cars and guns in the UK.

The Judge sitting in the Court of Appeal in London, dismissed the appeal as "nothing more than an illegitimate attempt to reargue the facts".

Implications for UK domiciled individuals

The case is of great interest to UK domiciled persons moving abroad as it demonstrates just how difficult it is for someone with a UK domicile of origin to shake it off and establish domicile overseas.

Anyone who is UK domiciled and wishing to change their domicile through choice must be aware that this may prove very difficult to achieve, but not impossible with the right advice and planning. HM Revenue and Customs is likely to fight any claim for a loss of UK domicile vigorously, and often such a battle does not take place until after the individual's death, when they are unable to defend their domicile position.

Losing a UK domicile of origin requires severing virtually all ties with the UK, and having residence in a foreign country with a permanent or indefinite intention to remain there. It could include actions such as selling any UK businesses and properties, writing wills under the new jurisdiction and acquiring citizenship in the new country.

Foreign visitors – potentially good news

Equally, this ruling could mean good news for foreigners coming to the UK who wish to retain their foreign domicile of origin for tax purposes, in that if it is difficult to shake off a UK domicile, it must be difficult to acquire one as well!

Mr Gaines-Cooper now faces tax demands for 1993 to 2004.

For further information on how this ruling may affect you, please contact partner Martin Peddie at mpeddie@menzies.co.uk.