THE NEW LAW OF DOMICILE - CONSEQUENCE OF INCONSEQUENCE?

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There is considerable evidence that the many foreigners resident in the UK currently claiming a domicile of origin abroad view the likelihood of the new Domicile Act with anxiety/fear bordering on panic.

Their anxiety is understandable.

It is therefore surprising that the views of James Kessler in Volume 1, Issue 2, was to the contrary. He writes, for example, "thus the test of acquiring a new domicile will not be changed by the new law" (although he does to a degree contradict this in the analysis of *IRC v Bullock* in stating "the proposed reform would affect many foreign domiciliaries who are long term UK residents").

Under the present law, as highlighted in such cases as *IRC v Bullock* [1975] STC 512, a domicile of origin is very clinging and tenacious so that it requires but little resolve for an individual who has lived in the United Kingdom for many years to retain his domicile of origin. For example, an Iranian individual living in the UK who would return to his motherland if the political situation became stable again, is likely at present to retain his domicile of origin. In this context one must, of course, be very much aware of the provisions of Inheritance Tax Act 1984 s.267, whereby residence in the UK for 17 out of 20 years of assessment constitutes deemed domicile for IHT purposes.

Conversely, under the present law, a UK domiciled individual who wishes to acquire a domicile of choice abroad must strive strenuously and decisively to achieve his aim.

The main reason for this contrast is the strict test that has been applied by the courts in respect of establishing a change of domicile, whether of origin or choice. As highlighted in the words of the Earl of Halsbury LC in the leading case of *Winans v Attorney-General* [1904] AC 287 "it is necessary to prove that the person who is alleged to have changed his domicile had a fixed and determined purpose to make the place of his new domicile his permanent home". The onus is therefore on the party asserting the change, be it on the Revenue claiming that an individual has changed his domicile of origin to one of choice or on the taxpayer in claiming the non-UK domicile of choice.

As has been well publicised, the law of domicile is likely to undergo a dramatic change in the near future following a joint report in September 1987 of the Law Commission as accepted by the Government in October 1991. The change may be

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enacted with effect from 1st January 1993 although no reference was made in the last Queen's Speech and no further government indications have been given since October 1991. An excellent article on this subject appeared in *Taxation* on 9th January 1992 under the title "Short Sharp Shock?" by Malcolm Gunn including in it the draft Bill which lives up to that title.

In brief, the new rules would provide that an adult acquires a domicile in another country if (a) he is present there, and (b) he intends to settle there for an indefinite period. Whether or not an individual taking up residence in a particular country intends to settle for "an indefinite period" will be decided on the balance of probabilities - a much less strenuous onus than at present. Thus an intention to settle in a country indefinitely will suffice, contrasted with the present additional requirement of an intention to reside permanently.

With this proposed change it seems to the writer that a domicile of origin will in future be far less clinging/tenacious; and the acquisition of a domicile of choice, e.g., by a UK domiciled adult, should become far easier.

As stated, the new Domicile Act may become law as soon as 1st January 1993, which means one is already in the year of assessment. In that context are Mr Kessler's words "so that there will be plenty of notice before these changes take place" in fact correct? One hopes that appropriate transitional provisions will be included in the Act otherwise there could be a serious drain on Sterling!