

DOMICILE ENQUIRIES

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For some time the Capital Taxes Office have been developing a more structured approach in their consideration of domicile issues. The scope and nature of their enquiries have significantly increased which in principle is entirely appropriate. It is both reasonable and necessary for them to build up as full a picture as they can of the taxpayer's circumstances and his intentions so as to reach an accurate conclusion regarding his domicile. After all

“there is no act, no circumstance in a mans life, however trivial it may be in itself, which ought to be left out of consideration in trying the question whether there was an intention to change the domicile”

Drevon v Drevon (1864)

and the conclusion has far reaching consequences both for the taxpayer and the Exchequer.

In my experience most of the enquiries are soundly based but one question in their standard repertoire causes me concern and bewilderment. This is their request for the taxpayer to provide statements from friends and relatives to support their express intention to reside permanently in a particular territory. In my view this request is bizarre and of no value in determining whether of an individual has acquired a domicile of choice.

It is inevitable that such statements will be completely self serving. The taxpayer is obviously only going to submit statements which support his position. With the best will in the world he is not going to forward to the Inland Revenue a statement which contradicts his point of view and which he believes to be wrong. It is not that the client would seek to conceal evidence to the contrary, it is just that he would simply never approach a person likely to make an erroneous

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statement in the first place. Accordingly, the only statements ever likely to be provided as a result of the request will be those which entirely support his express intentions of remaining in the particular territory. What on earth is the point of that – and what probative value can such statements possible have to the point in issue.

The Inland Revenue say that the Special Commissioners are experienced at receiving and weighing evidence and are aware of the possibility of evidence being self serving. That is undoubtedly correct but the point is not whether the evidence put forward may possibly be self serving and the Commissioners will be able to identify it and discount the evidence accordingly. It is that the statements will inevitably be self serving because the taxpayer will not submit a statement which does not support his case. He will not ask a number of people at random and hope that they will answer the questions in a helpful manner nor will he give the Inland Revenue a list of all his friends and acquaintances so that they can ask all or any of them as they choose. It is the taxpayer who will be assembling this evidence and he cannot be expected to submit evidence which he believes to be wrong. I do not suggest that any of the witnesses would do other than deal with matters entirely honestly. Witnesses are usually honest but they do not all see matters in the same way and cross examination is the way in which uncertainties, inconsistencies or misunderstandings are able to be resolved.

Perhaps of equal importance is the fact that the friends or relations will only know about the individuals intentions as a result of what he has told them. They can have no independent appreciation of his intentions other than by drawing an inference from all the factors surrounding his lifestyle; the Inland Revenue is quite capable of drawing any inferences itself. In any event, as far as domicile is concerned, lifestyle is only really relevant to the past and the immediate future; what really matters is the long term intentions of the taxpayer and whether for example he intends to stay or leave the country on retirement. It is difficult to see why the Inland Revenue should feel that the inference drawn by the friends and relations should be superior to their own. Indeed I would suggest that if the Inland Revenue were to draw a different conclusion from the surrounding facts they would certainly disregard the inferences drawn by the friends and relations none of whom are likely to have any appreciation of the law of domicile. It is possible of course that the taxpayer has for years been widely broadcasting his specific intention of remaining permanently resident in the territory during the whole of his working life and into his retirement but this is both unusual and unlikely. In any event all that would mean is that the individual has said before what he is saying now and although it has the advantage of consistency, the evidential weight would be small, even in such an extreme case.

In support of their request, the Inland Revenue suggest that these statements could be put in evidence in the event that an assessment were to be raised and the question of the clients domicile were to be taken to appeal. It is hard to believe that this could really be the case. The statements are obviously hearsay and although the Special Commissioners are expressly permitted to receive hearsay evidence by Regulation 17(6) of the Special Commissioners Regulations 1994, it is for the Commissioners to determine the weight to be given to such statements. More importantly perhaps, it is difficult to see why the Inland Revenue would allow such statements to be admitted on their own. If the statements have any value and are accepted at face value there would clearly be no dispute. The only reason for a hearing would be because the statements were not accepted in which case the Revenue would obviously want to hear from the person making the statement to test their evidence by cross examination. It is absurd even to contemplate that friends or relatives in a distant country would fly here for an indefinite period to give self serving hearsay evidence on the individuals behalf and it would be unreasonable (to say the very least) for the Inland Revenue to make such a request.

The only thing which can be said in support of the submission of such statements is that there exist persons willing and able to make them. It may say something about the taxpayers assertions if nobody can be found to provide any support. However, the taxpayer may quite properly be reluctant to involve his relatives or friends in his personal financial arrangements and in particular with his discussions with the UK Inland Revenue. Indeed, some will put the point more strongly; they are entitled to complete confidentiality about their affairs and their dealings with the Inland Revenue. For the Inland Revenue to insist that they involve third parties in their tax affairs by requiring them to disclose information concerning their personal circumstances which they are entitled to keep confidential is objectionable and possibly unlawful if by failing to comply with such a request they are disadvantaged. Of course I do not suggest that the Inland Revenue would breach any confidentiality themselves. They certainly would not. But they would be asking the taxpayer to make revelations about their tax affairs to third parties, and there should be no obligation on them to do so. The Inland Revenue may say that they are not requiring any disclosures or any breaches of confidentiality. The taxpayer does not have to provide such statements if they do not want to – but they should be aware of the adverse consequences of failing to do so. This can hardly be adequate justification. I am reminded of the robber who says “Give me the jewels: I am not threatening you with this gun but I would like you to be aware of the adverse consequences of failing to do so”.

For these reasons, I would suggest that a request by the Capital Taxes Office for such statements in support of the taxpayers assertion that he has acquired a domicile of choice in a particular territory serves no useful purpose and ought to

be quietly withdrawn. In practice however although it is reasonable for the taxpayer to complain that there is no purpose served by the provision of such statements and they should not be requested in principle, it can be easier and cheaper to submit them rather than argue about it.

It is to be hoped that the Capital Taxes Office will take an opportunity to review this particular request which is both irritating and costly to taxpayers and can have no possible value in determining an individual's domicile.