

STRATEGIC TAX PLANNING

UK & International Tax Lawyers

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DOMICILE DISPUTES **Written by Daniel Feingold, Tax Barrister**

Many Personal Tax enquiries can turn on a Person's Domicile because assets are held in Offshore Trusts, Pension Funds or Companies.

The Liechtenstein Disclosure Facility /the Swiss Tax Deal and other HMRC Settlement deals are current examples of where Domicile status may be critical to establishing a Client's Tax Liability.

Yet, when HMRC challenge Domicile, they often discover that the Client has had skimpy and unsupportive advice from their Adviser.

Often all there is, is a few lines in a file-note, (from a meeting) confirming that the Client is "probably Non Domiciled" and highlighting one or two vague facts that support this conclusion, instantaneously. This will be a green light for HMRC to make a challenge!

We have had vast experience of Domicile Disputes and Challenges. We have never had to Litigate any cases and have always had successful outcomes. That is the position, even if we have to concede on the facts, that a Client has acquired UK Domicile at some point.

The reason is that Domicile is a question of International Law and the English Courts interpretation of it based on established Case Law. Many factors determine Domicile and no one factor alone decides a Client's Domicile.

It is essentially a deeply Legal issue on which the experience of a Tax Lawyer is invaluable and can often produce radically different outcomes to others, who rely instead on HMRC rulings; rather than the real facts and the Law.

Equally, when reviewing many Clients cases who have been "told" or "advised" they have a "good chance" of claiming "Non Domicile" status by Advisers; the reality is that they have a very poor case on Domicile and that basing their tax planning on this status, will just lead to a huge liability (there is often another route to achieve the same desired planning).

The best way to be sure of a Client's Domicile is to get a clear and detailed Legal Opinion from a Tax Lawyer before either engaging in tax planning, or making claims to HMRC.

It may be that a Client can strengthen their position sufficiently to succeed in a claim, or realise that this status will not be a solution to their issues.

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Either way, the Client will be in the best position going forward. A well documented and clearly advised Client with a good case on Domicile will nearly always be able to resist a HMRC challenge and save substantial amounts of UK Tax!