



# Residence, Ordinary Residence & Domicile

## Residence

In Ireland the tax year is on a calendar year basis. An individual is tax resident in Ireland if he is present in Ireland for 183 days or more in a tax year, or for a total of 280 days or more between the relevant tax year and the previous tax year.

A person will not be tax resident in any tax year in which he spends 30 days or less in Ireland, and such a 30 day period will be ignored for the purpose of the 280 day test.

Up to 2009 a person was deemed to be present in Ireland if he was in the country at midnight (the "Cinderella" test) so effectively it was nights spent in Ireland that counted.

For 2009 and later years a "day" counts if the taxpayer is present in the State at any time during that day, with very limited exceptions for individuals in transit or forced to be present due to force majeure circumstances outside their control. See Revenue e-Brief 03/09 ([here](#)).

## Ordinary Residence

An individual will be ordinarily resident in Ireland for a tax year if he has been resident for the three preceding tax years. In addition, he will remain ordinarily resident until he has been "non-resident" for three consecutive tax years.

## Domicile

"Domicile" is not defined in the tax legislation. It is a legal concept based on the notion of a person's permanent home.

There are a considerable number of cases on domicile, from which the following principles emerge:-

- Every person has a domicile, and it is not possible to have more than one domicile.
- An existing domicile continues until a new domicile is acquired.
- Every person is born with a domicile (the "domicile of origin"), which normally is the same as his father's domicile.

- If the parents are living separately and the child lives with the mother he will take his domicile of origin from her.

## Domicile of Dependence

If the parent who a child is living with, changes domicile while the child is a minor (under 18 years) the child's domicile also changes (to a "domicile of dependence"), mirroring the parent's position.

## Domicile of Choice

Once a person is an adult he can acquire a new domicile ("domicile of choice") by moving to a new country with the intention of remaining there permanently. If a domicile of choice is abandoned, it must be displaced by a new domicile of choice, or the domicile of origin revives automatically.

The intention of moving somewhere permanently is an inherent part of acquiring a new domicile of choice. If a person only intends to reside in a country for a fixed period, he lacks the element of intention required to acquire a domicile of choice, however long that fixed period may be.

A domicile of origin is difficult to displace. Long residence without the intention of remaining permanently in the new jurisdiction will not result in a change of domicile.

In the UK Court of Appeal case of IRC v. Bullock in 1976 the taxpayer lived in England for a long time (circa 40 years), but he gave evidence that this was only because his wife was English and insisted on living here. He indicated that his preference would have been to return to Canada, and he would return to Canada if he outlived his wife. The Court of Appeal held that the domicile of origin was retained, notwithstanding the long residence.

There are a number of factors Revenue may look at when considering the question of domicile, to establish a "pattern of living". These may include factors such as properties owned, ongoing social and family links, the impact of work arrangements, and retirement plans.

O'Hanlon Tax Limited can assist in identifying the relevant factors and advising on domicile and residence issues for Irish taxation purposes.

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