

Shah v HMRC: the court's approach to the domicile status of long-term UK residents

Synopsis: The considerations that the courts will take into account when determining an individual's domicile status under general law. This case provides a useful reminder.

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The case

Mr Shah was born in Karachi in 1929 (which was then in India) where he spent his childhood, which means he had a non-UK domicile of origin.

Mr Shah studied in the UK from 1954 to 1957. Then he worked and lived in Tanzania and India, before returning to the UK in around 1973 with his wife and children. Mr Shah worked as a pharmacist for a number of years, selling his business in 1994 (but continuing to work until 1997). Following a period of poor health, Mr Shah died in the UK in 2016.

Mr Shah's son argued that Mr Shah had been non-UK domiciled at the time of his death, having failed to acquire a domicile of choice in England and Wales at any time during his period of UK residence. This was on the basis that he had always intended to return to India at some future time, with his initial move to the UK being prompted by the need to find a job. It was suggested that Mr Shah had originally intended to leave the UK following his retirement, although this was subsequently delayed for various reasons (including the deaths of his daughter and wife in 2010 and 2011 respectively and his subsequent poor health).

The outcome

A number of factors were examined by the Tribunal (the First-tier Tribunal), including the frequency of Mr Shah's trips to India; his family connections in both India and the UK; his Indian social and religious connections in the UK; his citizenship status (Mr Shah had taken the opportunity to acquire British citizenship in 1961 and relinquished his Indian citizenship at that time, although he acquired overseas citizenship status from India in 2014); and the steps he had taken to return to India.

HMRC argued, successfully, that Mr Shah's actions were inconsistent with his son's contentions that he intended to move permanently to India, saying that Mr Shah had only visited India twice during the 43 years that he lived in the UK and, given his age, state of health and family connections in the UK in particular, it was not realistic to infer that he planned to move away from close family and the country in which he was settled, to a part of India that he did not know and where he had no family.

In considering the evidence across Mr Shah's life, the Tribunal found that Mr Shah had not shown an intention to return to India and so was domiciled in England and

Wales at the time of his death by virtue of having formed a domicile of choice in the UK at some point after 1973.

Comments

The case demonstrates that the courts will look at a number of factors across an individual's life when making a domicile assessment, and so those seeking to maintain their non-UK domicile status (particularly in circumstances where they may be seeking to rely on the terms of an estate tax treaty such as the UK estate tax treaties with India or Pakistan – as with this case) should consider their position carefully and have suitable evidence to support their position.

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