

The domicile rules on tax are illegal discrimination on...

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I wrote the [blog reproduced below in March 2007](#), but nothing of substance has changed on this issue since then. Except that the [government has now announced a review of the domicile laws](#) as they relate to taxation - promising token gesture changes in exchange for a guarantee that non-doms will then be left alone. Except, as this blog and the related report shows that should not be the case: the domicile laws are illegal discrimination on the grounds of national origin. The time when accidents of childbirth created difference in tax treatment should be history: it's to the shame of this government that it intends to perpetuate them.

Tax Research LLP has today published a new report in association with the Tax Justice Network in the UK. Entitled '[National Origin, Equality and the UK's Domicile Law as it relates to Taxation](#)' this is a contribution to the protracted debate on the future of the UK's domicile laws.

Put simply, the report makes clear there is no basis for that debate. These laws discriminate between people living in the UK on the grounds of their national origin because that is the basis on which a person's domicile is determined. Since 2003 discrimination on this basis has been illegal under the Race Relations Act. It should however be stressed that 'national origin' is not the same as race, ethnicity or nationality. It is defined by the [Commission for Racial Equality](#) as:

'National origins' are not limited to 'nationality' in the legal sense of sense of citizenship of a nation state. The Scottish Court of Session has defined 'national origins' as '... identifiable elements, both historically and geographically, which at least at some point in time reveal the existence of a nation'.

This is the precise point about domicile. This term is not defined in [UK law](#), but broadly speaking a person is domiciled in the country in which they have their permanent home. That is their place of national origin, irrespective of their race, ethnicity or nationality. It is the fact that both terms rely on this differentiation from race, ethnicity and nationality that makes clear they relate to the same concept — a person's natural home and community of association. Indeed, it is precisely these factors that the

revenue looks for in determining domicile.

In so doing HM Revenue & Customs contravenes (even if unwittingly to date) the terms of the Race Relations Act 1976 and the [Race Relations Act \(Amendment\) Regulations 2003](#). In law this constitutes unlawful indirect race discrimination which takes place in the UK if a public authority provides a service that affords a person of one national origin a social advantage over a person of another national origin unless there is a legitimate and proportionate objective that justifies that different treatment.

The provision of agreeing a person's tax liability to be lower than that which might otherwise be the case is the service that affords a person of national origin outside the UK with a social advantage over a person whose national origin is in the UK. We doubt very much that people will disagree with the idea that paying less tax is a social advantage and although discrimination against a majority might seem odd, it has a clear precedent. Women are, after all, in that position.

According to [reports](#) of the Revenues own estimates the tax saved is at least £1 billion and their own calculations suggest that this is an average reduction of at least 16% on the tax bills of those not domiciled. Many believe the estimate of the tax saved far too low: there is no reason for a non-domiciled person to report this data to the Revenue and as such any data they hold is bound to be an underestimate. The loss to the UK could, therefore, be much higher.

Awareness of this situation presents the government with three options:

1. It can seek to ignore its own law, and continue to discriminate as it is clearly doing at present;
2. Those of UK domicile must be provided with the same basis of taxation as those who are not domiciled in the UK; or
3. Those who are not domiciled must be given the same tax status as those who are domiciled in the UK.

The first option can at best be a short term solution, and hardly a desirable one at that. The second could not be afforded so the third option is the only one available.

The domicile laws must go.