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Award in Taxation 2026/2027
Module A – Lecture 1

Interpretation of income tax
law and Malta's jurisdiction to
tax

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Date: **1 October 2026**



AGENDA

- Jurisdiction to tax
- Residence-based connecting factors
- Source-based connecting factors
- Interpretation of income tax law



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JURISDICTION TO TAX

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JURISDICTION TO TAX

Basic principles

- In the tax legislative process, policy-makers must decide on **four** fundamental principles:
 - What is the subject of the charge?
 - Who is the person liable for the charge?
 - How is the charge measured?
 - How is the charge to be collected / recovered by the State?



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The imposition of the charge

- The **objective** of the Income Tax Act, Chapter 123 of the Laws of Malta, is "To impose a Tax upon Incomes". (**Explanatory Note on p.1, ITA**)
- Describing the United Kingdom Income Tax Act of 1918, Lord Dunedin in **Whitney v IRC [1926] AC 37, 10 TC 88** said:

My Lords, I shall now permit myself a general observation. [...] Now, there are three stages in the imposition of a tax: there is a declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person is liable to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay.
- **Further reading:** Malcolm Gammie, 'The Origins of Fiscal Transparency in UK Income Tax' in John Tiley (ed), Studies in the History of Tax Law, vol 4 (Hart Publishing 2010) 33–66.



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JURISDICTION TO TAX

What does “jurisdiction to tax” mean?

- **Jurisdiction to tax** is the expression used to describe the legal authority or “power” of a State to impose tax obligations on persons.
 - “*Jus*” – “law”
 - “*Dictio*” – “saying / pronouncement”
 - In Latin, the term literally means “a saying of the law” or “the administration of justice”
- This authority to tax is typically based on a recognised connection between the income, the person, and the State asserting such authority.
- Income may be taxable under the tax laws of a country because of a nexus between that country and the activities that generated the income. According to international usage, a jurisdictional claim based on such a nexus is called “**source jurisdiction**”. (Arnold, p. 15)
- A country may also impose a tax on income because of a nexus between the country and the person earning the income. This is called “**residence jurisdiction**”. (Arnold, p. 15)
- In summary:
 - **Source jurisdiction:** Nexus between Malta and the income;
 - **Residence jurisdiction:** Nexus between Malta and the person earning the income.



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JURISDICTION TO TAX

Why the distinction between “source” and “residence”?

- Distinction evident in English Statutes as early as the 16th century

[E]very person ... which at time of the said assessing or taxation [...] shall be out of this Realm, and shall have goods and chattels, lands or tenements, fees or annuities within the same realm out of the places before reprised in this act, shall be charged for the same by certificate of the inhabitants in the parts where such goods chattels lands tenements or other the premises then shall be, or in such other place where such person or his factor deputy or attorney shall have his most resort unto within this realm [...] (6 Hen. VIII. c. 26)
- **Context:** difficulty for the State to enforce revenue laws cross-border. Ease of “deduction of tax at source”; revenue collectors would call upon the “residence” of the Crown’s subjects to “assess” their tax liability.
- **Further reading:**
 - Peter Harris, *Income Tax in Common Law Jurisdictions: From the Origins to 1820* (Cambridge University Press 2012) 59



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JURISDICTION TO TAX

Expression in the ITA?

- How do the concepts of “source jurisdiction” and “residence jurisdiction” find expression in the ITA?



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JURISDICTION TO TAX

Point of Departure: Article 4(1) ITA, “Charge of Income Tax”

Art. 4(1) ITA: Subject to the provisions of this Act, **income tax shall be payable** at the rate or rates specified hereafter for the year of assessment commencing on 1st January, 1993 but only with respect to any capital gains made on or after the 25th November, 1992 and for each subsequent year of assessment upon the **capital gains** as defined in article 5 **accruing or derived from Malta or elsewhere, and whether received in Malta or not**, and for the year of assessment commencing on 1st January, 1949 and for each subsequent year of assessment **upon the income of any person accruing in or derived from Malta or elsewhere, and whether received in Malta or not in respect of...**

- **Simplified:**
 - Income tax shall be payable [...] upon the income of **any person** accruing in or derived **from Malta or elsewhere**, and **whether received in Malta or not in respect of...**
- **In short: every person**, wherever located, is taxable on **all** income, wherever arising.
- **Further reading:**
 - *Edwin A. Vella and Marvin Gaerty, 'Chapter 2' in Renald Micallef (ed), Direct Taxation Manual, Part I (Malta Institute of Taxation 2009), at p. 40.*



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JURISDICTION TO TAX

Exception | Proviso to Article 4(1) ITA

Art. 4(1) ITA: Provided that:

- i) in the case of **income arising outside Malta** to a person who is not ordinarily resident in Malta or not domiciled in Malta, the tax shall be payable on the amount received in Malta.
- ii) no tax shall be payable on **capital gains arising outside Malta** to a person who is not ordinarily resident in Malta or not domiciled in Malta.

Simplified:

- The effect of the proviso is to limit worldwide taxation (i.e., on all income and chargeable capital gains, wherever arising) to persons who are **both ordinarily resident and domiciled** in Malta.
- The proviso constitutes the statutory basis for the “source and remittance” basis of taxation.
- In this capacity, Malta exercises both:
 - “Source jurisdiction” (i.e., over income arising in Malta), and
 - **Limited** “residence jurisdiction” (i.e., over income arising outside Malta)



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JURISDICTION TO TAX

Further limitation | Article 13 ITA

Art. 13 ITA: Tax shall not be payable in respect of any **income arising outside Malta** to any person who is in Malta for **some temporary purpose only** and **not with any intent to establish his residence** therein and who has not actually resided in Malta at one or more times for a period equal in the whole to six months in the year preceding the year of assessment.

-
- A combined reading of **article 4(1)** (incl. proviso) and **article 13 ITA** precludes the taxation of a person not resident in Malta on any income arising outside of Malta (regardless of whether such income is received in Malta).



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JURISDICTION TO TAX

Schematic representation

- Assessing these rules collectively produces the framework of Malta's jurisdiction to tax:

Residence-based factors	Basis of taxation (person is liable to tax in Malta on...)
Not resident in Malta and not domiciled in Malta	Income and (chargeable) capital gains arising in Malta
Not resident in Malta, but domiciled in Malta	Income and (chargeable) capital gains arising in Malta (arguably by virtue of article 13 ITA)
Resident in Malta, but not domiciled in Malta	Income and (chargeable) capital gains arising in Malta, income arising outside Malta and received in Malta
Resident in Malta and domiciled in Malta	Income and (chargeable) capital gains arising in Malta, income arising outside Malta and received in Malta
Ordinarily resident in Malta, but not domiciled in Malta	Income and (chargeable) capital gains arising in Malta, income arising outside Malta and received in Malta
Ordinarily resident and domiciled in Malta	Income and (chargeable) capital gains, wherever arising



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JURISDICTION TO TAX

Schematic representation

- Simplified:

Residence-based factors	Basis of taxation (person is liable to tax in Malta on...)
Not resident in Malta and not domiciled in Malta	Malta exercises source jurisdiction
Not resident in Malta, but domiciled in Malta	Malta exercises source jurisdiction
Resident in Malta, but not domiciled in Malta	Malta exercises source jurisdiction , and limited residence jurisdiction
Resident in Malta and domiciled in Malta	Malta exercises source jurisdiction , and limited residence jurisdiction
Ordinarily resident in Malta, but not domiciled in Malta	Malta exercises source jurisdiction , and limited residence jurisdiction
Ordinarily resident and domiciled in Malta	Malta exercises source jurisdiction , and unlimited residence jurisdiction

Further reading:

- Edwin A. Vella and Marvin Gaerty, 'Chapter 2' in Renald Micallef (ed), *Direct Taxation Manual, Part I* (Malta Institute of Taxation 2009), at p. 40.
- Robert Attard, 'Jurisdiction to Income Tax' in *Principles of Maltese Income Tax Law* (Malta Institute of Management 2019) ch 6



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JURISDICTION TO TAX

Recurring terminology

The jurisdictional framework is dictated by a number of key terms:

1. 'resident in Malta'
2. 'ordinary resident'
3. 'domicile'
4. income 'arising in Malta' (alternatively, in places: derived from Malta)
5. income 'arising outside Malta'
6. connected to (5): 'received in'

Question: How many of these terms are defined by the ITA?

1 'resident in Malta' (Art. 2(1))
(but only partially!)

4/5 Miscellaneous rules concerning
source (i.e. whether income
arises in or outside Malta)



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SOURCE-BASED CONNECTING FACTORS

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SOURCE-BASED CONNECTING FACTORS

Introduction

- Key, but undefined terms:
 - Accruing in Malta
 - Derived from Malta
 - Arising in Malta
 - Arising outside Malta
- Reliance on special statutory provisions, case law, and generally accepted principles



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SOURCE-BASED CONNECTING FACTORS

Art. 4(1)(a) | Gains or profits from a trade or business

Art. 4(1)(a) ITA: [...] gains or profits from any trade, business, profession or vocation, for whatever period of time such trade, business, profession or vocation may have been carried on or exercised [...]

- cf. with (old) UK Income Tax charging provision in relation to a “trade carried on in the United Kingdom” (**Income Tax Act 1918 c. 40, First Schedule, para 1**)
- Relevant rules:
 - Mere purchase of goods does not amount to trading (**Sulley v Attorney General [2 TC 149]**)
 - Place where contract is made (established in **Erichsen v Last [TC 351 and 4 TC 422]**; quoted with approval by Board of Special Commissioners in **Case 130 of the BSC**)
 - However, place of contract is not decisive (**Smidh & Co v Greenwood [8 TC 193]**); modern-day pivot towards the place where operations take place from which the profits in substance arise.
 - “Trading in” versus “trading with” the United Kingdom, distinction established by the House of Lords in **Grainger v Gough [3 TC 311 and 462]**. However, note that in **Case 130 of the BSC**, the Board held that the expressions “trading within Malta” and “arising in Malta” are not coterminous (with the former being more restrictive than the latter).



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SOURCE-BASED CONNECTING FACTORS

Art. 4(1)(a) | Gains or profits from a trade or business

Smidth & Co v Greenwood [8 TC 193] at 204

"It (the place of contract) is obviously a very important element in the enquiry and if it is the only element the assessments are clearly bad. The contracts in this case were made abroad. **But I am not prepared to hold that this test is decisive.** I can imagine cases where a contract of resale is made abroad, and yet the manufacture of the goods, some negotiation of the terms, and complete execution of the contract take place here under such circumstances that the trade was in truth exercised here. I think that the question is, where do the operations take place from which the profits in substance arise."



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SOURCE-BASED CONNECTING FACTORS

Special source rules for profits from specified activities

- The ITA contains a number of special rules governing the "source" of gains or profits derived from specific activities:
 - **Art. 4(3):** source rule for gains or profits derived by "productive undertakings"
 - **Art. 28:** source rule for gains or profits derived by non-resident shipowners
 - **Art. 29(2):** source rule for gains or profits from the aviation activities



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SOURCE-BASED CONNECTING FACTORS

Special source rule for “productive undertakings”

Art. 4(3) ITA: Where a person carries on in Malta an **agricultural, manufacturing or other productive undertaking**, the following provisions shall have effect, that is to say:

(a) if such person **sells any product** of the undertaking, **in a wholesale market, outside Malta or for delivery outside Malta**, whether the contract is made within Malta or outside Malta, **the full profits arising from the sale shall be deemed to be income of such person accruing in or derived from Malta**:

- Gains or profits from the sale of products resulting from a productive undertaking carried on in Malta are deemed to **arise in Malta** (notwithstanding the *Erichsen v Last* rule).
- Limited to “products”, i.e., n/a to profits derived from services
- **Proviso:** [...] if it is shown to the satisfaction of the Commissioner that the profit has been increased through **treatment of the product outside Malta** other than handling, grading, blending, sorting, packing or disposal, such increase of profits **shall not** be deemed to be income accruing in or derived from Malta.
 - i.e., a portion of a person's gain or profit from a trade or business may be deemed to **arise outside of Malta** where value-add treatment occurs.



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SOURCE-BASED CONNECTING FACTORS

Art. 4(1)(b): Income from employment

Art. 4(1)(b) ITA: [...] gains or profits from any employment or office, including the value of any benefit provided by reason of any employment or office:

- When does income from employment arise in Malta?
- Income derived from employment [...] **arises in Malta** if the activities are performed in Malta. (**Guidance Note on The Remittance Basis of Taxation, at s. 4.1**)
- **Rule 3A of the Fringe Benefits Rules:** Where a benefit is deemed to arise by reason of an employment or office, the income represented by the value of that benefit **shall be deemed to arise in the country** where the services in terms of the relative contract of employment or office are wholly or principally performed.
- However, consider other factors previously adopted by the Maltese and UK courts (e.g., place where the work is performed, where the payment comes home to the employee, etc.).
- See *Walter Cutajar, 'Chapter 3' in Renald Micallef (ed), Direct Taxation Manual, Part I (Malta Institute of Taxation 2009), at pp. 145-148.*



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SOURCE-BASED CONNECTING FACTORS

Art. 4(1)(c): Dividends, premiums, interest or discounts

Art. 4(1)(c) ITA: [...] dividends, premiums, interest [...] or discounts

- **Dividends** are normally treated as arising in the country where the paying company is incorporated ([Guidance Note on The Remittance Basis of Taxation, at s. 4.4](#))
 - **Consider:** what if the residence of the company making the distribution is different from the country of incorporation?
- [...] **interest** is treated as arising in the country where the debtor is resident ([Guidance Note on The Remittance Basis of Taxation, at s. 4.4](#))
 - Contrast with the position under UK income tax as established by the House of Lords in **National Bank Of Greece S.A. Appellants Bank Executor And Trustee Co. (CHANNEL ISLANDS) Ltd** [1971] A.C. 945 (confirmed by **Ardmore Construction Limited v HMRC** [2018] STC 1487), i.e., multifactor test:
 - the residence of the debtor and the location of his/her assets;
 - the place of performance of the contract and the method of payment, i.e., the substantive (not immediate) origin of the funds out of which the interest was paid;
 - the competent jurisdiction for legal action and the proper law of contract;
 - the residence of the guarantor and the location of the security for the debt.



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SOURCE-BASED CONNECTING FACTORS

Others?

- Rent and other income from immovable property arises where the property is located.
- Rent or other compensation for the use of tangible or intangible movable property is usually treated as arising in the country where the lessee is resident or carries on his business.

([Guidance Note on The Remittance Basis of Taxation, at s. 4.4](#))



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RESIDENCE-BASED CONNECTING FACTORS

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RESIDENCE-BASED CONNECTING FACTORS

Only “persons” are liable to tax in Malta

- The ordinary meaning of the term ‘**person**’ includes an individual or a natural person.
- ‘**Body of persons**’ means any body corporate, including a company, and any fellowship, society or other association of persons, whether corporate or unincorporate, and whether vested with legal personality or not.
- ‘**Company**’ means:
 - A limited liability company constituted under the Companies Act or under the Commercial Partnerships Ordinance or any other company constituted as such under any other law in force in Malta;
 - Any partnership *en nom collectif* and any partnership *en commandite* under the Companies Act or under the Commercial Partnerships Ordinance;
 - Any body of persons constituted, incorporated or registered outside Malta, and of a nature similar to the aforesaid companies/partnerships; and
 - Any cooperative society duly registered as such under the appropriate law for the time being in force in Malta.



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RESIDENCE-BASED CONNECTING FACTORS:

“RESIDENT IN MALTA” | NATURAL PERSONS

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“RESIDENT IN MALTA” | NATURAL PERSONS

Definition in Art. 2(1) ITA

Art. 2(1) ITA: ‘Resident in Malta’ when applied to an individual means an individual who resides in Malta except for such temporary absences as to the Commissioner may seem reasonable and not inconsistent with the claim of such individual to be resident in Malta, [...]

- Residence does not depend on nationality or any other civil status but is a question of fact. A person may be resident in Malta if he is also resident for tax purposes in another country. ([Guidance Note on The Remittance Basis of Taxation, at s. 2.1](#))
- Presence in Malta for more than 183 days in any particular year amounts to residence in Malta for that year, regardless of the purpose and nature of the individual’s stay in Malta. An individual who comes to Malta to establish his residence here becomes resident from the date of his arrival, regardless of the duration of his stay in Malta. ([Guidance Note on The Remittance Basis of Taxation, at s. 2.2](#))
- **Contrast with** the “temporary purpose exception” in **Art. 13 ITA**.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant UK authorities

Parties	Case ref.	Summary
<i>Cooper v Cadwalader</i>	5 TC 101	The court concluded that Cadwalader was "residing in the United Kingdom" for tax purposes due to his substantial and continuous occupation of Millden Lodge, his intent to return annually, and the maintenance of the property in readiness for his use. The legal reasoning emphasised that residency for tax purposes did not require a permanent or sole residence in the UK; maintaining a significant presence and connection to a property in the UK was sufficient.
<i>Loewenstein v de Salis</i>	10 TC 424	The case clarified that maintaining a property in the UK, even without formal ownership, could establish residency for tax purposes if the property was regularly used and available for the individual's occupation. This case highlights the importance of the practical availability and use of a property in determining residency for tax purposes, reinforcing that substance and regularity of use can outweigh formal ownership arrangements.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant UK authorities | *Cooper v Cadwalader* (5 TC 101)

Key facts:

- Mr. Cadwalader rented a house and shooting rights in Scotland from the Earl of Dalhousie. The lease was for three years starting from 1st February 1900, with a yearly rental of £1500. The lease included Millden Lodge, furniture, and fishing rights. The property was maintained by the owner, who also paid for the housekeeper, housemaid, gamekeeper, and watcher. Cadwalader resided at Millden Lodge for about two months each year during the grouse shooting season. He brought his valet from America and employed a caterer from London. The house was kept ready for his return at any time, even when he was not present.

Tax assessment:

- Mr. Cadwalader was assessed £3000 under Schedule D of the Income Tax Acts for the year ending 5th April 1904.
- He contested the assessment, arguing he was not "residing in the United Kingdom" within the meaning of the Income Tax Acts.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant UK authorities | Cooper v Cadwalader (5 TC 101)

Definition of residence:

- The court focused on whether Cadwalader was "residing in the United Kingdom" within the meaning of Schedule D of the Act of 1853, Section 2. The term "residing" was interpreted broadly, without distinction between ordinary, temporary, or partial residence.
- Cadwalader's occupation of Millden Lodge was deemed substantial and continuous, not casual or temporary.
- He resided at Millden Lodge for two months each year during the shooting season, and the property was maintained and ready for his return at any time.
- The court acknowledged that a person could have more than one residence. Cadwalader maintained a residence in New York and another in Scotland. The presence of a residence in the UK, even if not the primary domicile, was sufficient to establish residency for tax purposes.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant UK authorities | Cooper v Cadwalader (5 TC 101)

Temporary purpose exception:

- Section 39 of the Income Tax Act, 1842, provided an exemption for those in the UK **for a temporary purpose only, without intent to establish residence**. The court found that Cadwalader did not qualify for this exemption as his stay was not merely temporary; he had a lease and maintained a residence in Scotland with the intent to return annually.

Constructive residence:

- The court considered the concept of constructive residence, where maintaining a property and intending to return constituted residency. Cadwalader's lease and the continuous availability of Millden Lodge for his use indicated an intent to establish a residence in the UK.

Conclusion:

- The court concluded that Cadwalader was "residing in the United Kingdom" for tax purposes due to his substantial and continuous occupation of Millden Lodge, his intent to return annually, and the maintenance of the property in readiness for his use. The legal reasoning emphasised that residency for tax purposes did not require a permanent or sole residence in the UK; maintaining a significant presence and connection to a property in the UK was sufficient.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant UK authorities | Loewenstein v De Salis (10 TC 424)

Key facts:

- Loewenstein had a residence in Brussels. He regularly visited the UK and stayed at "The Pinfold," a hunting box in Thorpe Satchville, owned by the Belgian Breeding Stock Farm Company Limited, where he held over 90% of the shares and was a director. The Pinfold included various amenities such as stables, gardens, and a garage, and was maintained by the company. Loewenstein could use The Pinfold without formal permission and stayed there for the fox hunting season, typically for less than six months each year.
- Loewenstein's servants, including gardeners and household staff, were present at The Pinfold year-round, with their wages paid by the company and reimbursed by Loewenstein. He was accompanied by his private secretaries and household servants during his stays, and sometimes by family and friends. The property was chosen for retention due to its location in a prime fox hunting area.

Tax assessment:

- Loewenstein was assessed £10,000 under Schedule D, Case V, of the Income Tax Act, 1918, for the years ending 5th April 1924 and 5th April 1925. He appealed the assessments, arguing he was not resident in the UK and was in the country for temporary purposes only.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant UK authorities | Loewenstein v De Salis (10 TC 424)

Key outcomes:

- The High Court held that Loewenstein was chargeable to Income Tax as a person residing in the UK. The court found that The Pinfold was *de facto* available for Loewenstein's occupation whenever he came to the UK, making him a resident despite not owning or leasing the property.

Basis of decision:

- Availability and use:** The High Court emphasised that the availability of The Pinfold for Loewenstein's use, along with the presence of his servants and personal belongings, constituted a residence.
- Substance over form:** The High Court looked at the substance of the arrangement rather than the formal ownership, noting that the property was effectively at Loewenstein's disposal.
- Regular habits:** Loewenstein's regular visits to the UK for fox hunting were seen as part of his ordinary habits of life, not merely temporary purposes.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant UK authorities | Loewenstein v De Salis (10 TC 424)

Implications

- Loewenstein was liable to pay the assessed income tax for the years in question.
- The case clarified that maintaining a property in the UK, even without formal ownership, could establish residency for tax purposes if the property was regularly used and available for the individual's occupation.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant Maltese authorities

Case reference	Summary
Case 60 of the BSC	Residence is a matter of fact to be decided on a case-by-case basis. Referred to the principle that a person is not less resident in a place because they leave it temporarily for business or pleasure, and even more so for health reasons. The Board noted that the ITA defined a resident as someone who resides in the Island except for temporary absences deemed reasonable by the Commissioner. The appellant's absence for health reasons was considered reasonable and consistent with his claim of residence in Malta.
Case 69 of the BSC	The Board determined that physical presence and the establishment of a home are critical factors in determining residency. Short visits, such as A.B.'s six-week stays in 1950 and 1956, do not establish residency.
Case 104 of the BSC	The ITA does not provide a complete definition of "resident." The Board referred to article 9 (today article 13), which exempts income from foreign sources for temporary residents who have not spent more than six months in Malta. The Board held that to qualify as a resident for personal deductions, an individual must have spent at least six months in Malta. The Board emphasised the need for consistency in the application of the law, noting that it would be incongruent to consider someone a non-resident for tax purposes on foreign income while considering them a resident for personal deductions.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant Maltese authorities | Case 60 of the BSC

Facts:

- The appellant was absent from Malta for an entire basis year (1953) due to health reasons, staying in a sanatorium in Switzerland. The Commissioner of Inland Revenue denied the appellant personal deductions* for basis year 1954, arguing that the appellant was not resident in Malta during that basis year. The appellant argued that his temporary absence for health reasons did not preclude him from being considered resident in Malta.

Issues:

- Whether the appellant could be considered as resident in Malta for basis year 1953 despite his absence.
- Whether the appellant was entitled to personal deductions under the Income Tax Act (article 22 of the Income Tax Act 1948 only allowed personal deduction with respect to “individual[s] resident in the Island”.

***Note to readers:** Until 1996, the ITA contemplated several “personal deductions” that could be claimed against a natural person’s taxable income (that would otherwise be taxed on a gross basis). The regime generally required the claimant to be an individual “resident in Malta”. Part VI of the ITA was repealed by Act XX of 1996.

Today, personal deductions are found in Art. 14A to 14G ITA. However, claims are not restricted based on the residence of the claimant.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant Maltese authorities | Case 60 of the BSC

Board’s decision:

- The Board decided in favour of the appellant, declaring that he remained resident in Malta during basis year 1953 and was therefore entitled to personal deductions.

Analysis:

- The Board emphasised that the concept of residence is a matter of fact to be decided on a case-by-case basis. The appellant had his family and commercial interests in Malta and was temporarily absent for health reasons with the intention of returning as soon as his health permitted.
- The Board referred to the principle that a person is not less resident in a place because they leave it temporarily for business or pleasure, and even more so for health reasons.
- The Board noted that the ITA defined a resident as someone who resides in the Island except for temporary absences deemed reasonable by the Commissioner. The appellant’s absence for health reasons was considered reasonable and consistent with his claim of residence in Malta.
- The Board referenced UK case law, particularly **Rogers vs Inland Revenue** (1879 SLR 16 682), where it was held that a sea captain remained a resident of Scotland despite being away for the entire year. The criteria for establishing residence for tax purposes were deemed applicable for determining eligibility for tax exemptions.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant Maltese authorities | Case 69 of the BSC

Facts:

- A.B. lived in Malta with her father until 1948 when she married an Englishman and moved to England. After her marriage, A.B. did not establish a home in Malta and only visited Malta twice between 1948 and 1956, each time staying for about six weeks at her father's house. The Commissioner of Inland Revenue decided that A.B. was not resident in Malta for basis year 1957 and therefore not entitled to personal deductions.

Issues:

- Whether A.B. could be considered resident in Malta for the tax year 1957 despite her limited visits.
- Whether A.B. was entitled to personal deductions under the Income Tax Act.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant Maltese authorities | Case 69 of the BSC

Board's Decision:

- The Board agreed with the Commissioner that A.B. was not resident in Malta during the year in question. The Board concluded that A.B.'s brief visits in 1950 and 1956 did not constitute residency. Consequently, A.B. was not entitled to the personal deductions provided for in Part VII of the Income Tax Act.

Legal Reasoning:

- **Temporary Visits:** Short visits, such as A.B.'s six-week stays in 1950 and 1956, do not establish residency.

Conclusion:

- The Board upheld the Commissioner's decision, denying A.B.'s appeal and confirming that she was not a resident of Malta for basis year 1957. As a result, A.B. was not entitled to personal deductions, and the appeal was dismissed with costs against her.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant Maltese authorities | Case 104 of the BSC

Facts:

- A.B. and C.D. were employed by the company X.Y. and worked in Malta from April 27, 1960, to July 28, 1960. The Commissioner asserted that they were not “resident in Malta” during basis year 1960 and therefore did not qualify for personal deductions under the Income Tax Act.

Issues:

- Whether A.B. and C.D. were considered persons “resident in Malta” for basis year 1960 and thus entitled to personal deductions.



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“RESIDENT IN MALTA” | NATURAL PERSONS

Relevant Maltese authorities | Case 104 of the BSC

The Board's decision:

- The Board upheld the Commissioner's decision, concluding that A.B. and C.D. were not persons “resident in Malta” during basis year 1960. Consequently, they were not entitled to personal deductions.

Legal Reasoning:

- The Income Tax Act did not provide a complete definition of “resident.” The Board referred to Art. 9 (today Art.13), which exempts income from foreign sources for temporary residents who have not spent more than six months in Malta. The Board held that to qualify as a resident for personal deductions, an individual must have spent at least six months in Malta.
- The Board emphasised the need for consistency in the application of the law, noting that it would be incongruent to consider someone a non-resident for tax purposes on foreign income while considering them a resident for personal deductions.

Conclusions:

- The Board concluded that A.B. and C.D., who spent only three months in Malta, could not be considered residents for the purposes of personal deductions. The appeal was dismissed, and the Commissioner's decision was confirmed.



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RESIDENCE-BASED CONNECTING FACTORS: **ORDINARY RESIDENCE | NATURAL PERSONS**

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ORDINARY RESIDENCE | NATURAL PERSONS

Use in the Income Tax Act

- **Undefined by the ITA**; but clearly considered different enough to warrant a fundamental change in treatment.
- Ordinary residence implies a narrower concept than mere residence. It implies repeated/successive (voluntary) residence over several years.
- Exceptionally a person may be ordinarily resident in Malta in a given year without being resident in Malta that year.
- Locally equated with habitual residence and is considered to be that country which forms part of the taxpayer's life's natural order of things.

ORDINARY RESIDENCE | NATURAL PERSONS

Use in the Income Tax Act

- Use in the context of the Income Tax Act (non-exhaustive)
 - Proviso to paragraph 1 of **Art. 4** (limitation to Malta's jurisdiction to tax)
 - Paragraph 1 of **Art. 6** (Investment Services and Insurance Expatriates)
 - Proviso to sub-paragraph (c) of paragraph (1) of **Art. 12** (exemption from tax on income or gains derived by non-resident persons)
 - Several paragraphs in **Art. 27D** (concerning trusts)
 - Proviso to paragraph (c) of **Art. 41** (concerning definition of "recipient" in investment income)
 - Paragraph 6 of **Art. 43** (concerning claw-back rules)
 - **Art. 56** (concerning rates)
 - Sub-paragraph (ii) of paragraph (a) of **Art. 61** (concerning untaxed dividends)



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ORDINARY RESIDENCE | NATURAL PERSONS

Guidance Note on the Remittance Basis of Taxation under the Income Tax Act

- **Section 2.3:**
 - A person who lives in Malta on a **permanent or indefinite basis** is ordinarily resident in Malta.
 - A person who is in Malta for a temporary purpose may become ordinarily resident in certain circumstances. This would apply, for example, to individuals who are in Malta for more than 183 days in each year over a long period - say, for three consecutive years.
 - It can also apply to individuals who do not stay in Malta for more than 183 days in any year but who come to Malta regularly over a long period - say, over a period of three years – and establish personal and economic ties with Malta.
- **Section 2.4.**
 - An ordinary resident loses his residence status if he leaves Malta permanently or indefinitely.
 - If he is temporarily absent from Malta, he continues to be considered as resident here unless his absence is or becomes inconsistent with a residence status.
 - This depends on the circumstances of each case and, in particular, on the personal and economic ties that the individual may have retained with Malta.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | Summary

Parties	Case ref.	Summary
Levene v CIR	13 TC 486	The term "ordinarily resident" was interpreted as residing in a place with some degree of continuity, apart from temporary absences. The House of Lords acknowledged that a person could have more than one residence.
Reid v CIT	10 TC 673	The term "ordinarily resident" was interpreted to mean residing in a place in the customary course of events, not necessarily for the majority of the year. Reid's regular return to the UK for part of each year, her family ties, and her business connections in the UK were significant factors in determining her ordinary residence. A person can be ordinarily resident in more than one place, including both the UK and abroad.
Lysaght v CIT	13 TC 511	Viscount Sumner: "'The word 'ordinarily' may be taken first. The Act on the one hand does not say 'usually' or 'most of the time' or 'exclusively' or 'principally,' nor does it say on the other hand 'occasionally' or 'exceptionally' or 'now and then,' though in various Sections it applies to the word 'resident,' with a full sense of choice, adverbs like 'temporarily' and 'actually.' I think the converse to 'ordinarily' is 'extraordinarily,' and that part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinarily.'"



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | Levene v CIR (13 TC 486)

Key facts:

- Until March 1918, Levene leased a house in London. In March 1918, he surrendered the lease and sold his furniture, deciding to "live abroad." From March 1918 to December 1919, he lived in hotels in the UK. From December 1919 to January 1925, he had no fixed abode and stayed in hotels both in the UK and abroad. In January 1925, he leased a flat in Monte Carlo for nine years.
- Levene spent between four and five months each year in the UK from 1920 to 1924. Reasons for visits included medical advice, visiting relatives, religious observances, and dealing with Income Tax affairs.

Tax assessment

- Levene claimed he was neither resident nor ordinarily resident in the UK for the years 1920-21 to 1924-25.
- He sought exemption from Income Tax under Rule 2(d) of the General Rules applicable to Schedule C and Section 46(1) of the Income Tax Act, 1918.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | *Levene v CIR* (13 TC 486)

Key outcomes

- The House of Lords held that Levene was resident and ordinarily resident in the UK during the years in question.
- It found that his regular and substantial presence in the UK, despite his intention to live abroad, constituted residency. The court defined "reside" as having one's settled or usual abode, which can include living in hotels if done regularly.
- The term "ordinarily resident" was interpreted as residing in a place with some degree of continuity, apart from temporary absences. The court acknowledged that a person could have more than one residence and be considered resident in both places.
- The House of Lords found that Levene's stays in the UK were not for temporary purposes but were part of his regular life pattern.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | *Reid v CIT* (10 TC 673)

Key facts

- Prior to May 1916, Reid shared a house in Glasgow with her two sisters but spent most of the year travelling abroad for health reasons, returning to the UK only for the summer months. In May 1916, the house was given up, and Reid lived in hotels in Glasgow and London until July 1919. From July 1919 to June 1920, she travelled extensively across Europe, staying in various hotels. From June 1920 to October 1920, she stayed at a hotel in London before returning to Europe, where she remained until after April 1921.
- Reid had no fixed residence in the UK or reserved apartments during her travels. She maintained a banking account in London, stored personal effects there, and had family ties in the UK.

Tax assessment

- Reid claimed she was not ordinarily resident in the UK for the years ending 5th April 1920 and 5th April 1921, seeking exemption from Income Tax on income from British Government Securities. The Special Commissioners decided she was ordinarily resident in the UK for the years in question, and this decision was upheld by the Court of Session.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | Reid v CIT (10 TC 673)

46. Securities issued free from tax.

(1) Where the Treasury have before the commencement of this Act issued or may thereafter issue any securities which they have power to issue for the purpose of raising any money or any loan, with a condition that the interest thereon shall not be liable to tax or super-tax, so long as it is shown, in manner directed by the Treasury, that the securities are in the beneficial ownership of persons who are not ordinarily resident in the United Kingdom, the interest of securities issued with such a condition shall be exempt accordingly.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | Reid v CIT (10 TC 673)

Decision of the Court of Session

- The Court of Session held that there was sufficient evidence for the Special Commissioners to conclude that Reid was ordinarily resident in the UK during the years in question.

Legal reasoning

- The court emphasised that "residing" in the UK does not require a fixed abode; it can include living in hotels or being a wanderer within the UK.
- The term "ordinarily resident" was interpreted to mean residing in a place in the customary course of events, not necessarily for the majority of the year. Reid's regular return to the UK for part of each year, her family ties, and her business connections in the UK were significant factors in determining her ordinary residence. The court acknowledged that a person could be ordinarily resident in more than one place, including both the UK and abroad.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | *Lysaght v CIT* (13 TC 511)

Key facts

- Until 1919, Lysaght lived in England and was engaged in business as a director and managing director of John Lysaght, Limited. In 1919, he partially retired, sold his English residence, and moved his family to Ireland. He retained the position of advisory director and continued to visit England monthly for directors' meetings and business consultations, staying for about a week each time. Lysaght had no fixed abode in England, staying in hotels or at his brother's house during visits. He owned a field in England, had a small bank account in Bristol, and the registered address of his securities was in Ireland.
- Lysaght spent 101 days in England in the year ending 5th April 1923, 94 days in the year ending 5th April 1924, and 84 days in the year ending 5th April 1925. His visits were solely for business purposes, and his wife never accompanied him.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | *Lysaght v CIT* (13 TC 511)

Tax assessment

- Lysaght claimed he was neither resident nor ordinarily resident in the UK for the years 1922-23 and 1923-24, seeking exemption from Income Tax on income from foreign and colonial securities and British Government securities.

Court of Session (Lord President Clyde)

- "What is meant by saying that a person is 'resident' in the United Kingdom? - and when is a person properly said to be 'ordinarily resident' there? ... The expression 'resident in the United Kingdom' and the qualification of that expression implied in the word 'ordinarily' so resident are just about as wide and general and difficult to define with positive precision as any that could have been used."
- "From the point of view of time, 'ordinarily' would stand in contrast to 'casually.' But the Appellant is not a 'casual' visitor to her home country; on the contrary, she regularly returns to it, and 'resides' in it for a part - albeit the smaller part - of every year. I hesitate to give the word 'ordinarily' any more precise interpretation than in the customary course of events."



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | *Lysaght v CIT* (13 TC 511)

Lord Blackburn

- "I do not think there is any great difficulty as to the meaning of the words 'ordinarily resident in the United Kingdom.' It is obvious that a person may be ordinarily resident in the United Kingdom without having any particular house or spot in the United Kingdom which could be described as his 'ordinary residence.'"

Viscount Sumner

- "The word 'ordinarily' may be taken first. The Act on the one hand does not say 'usually' or 'most of the time' or 'exclusively' or 'principally,' nor does it say on the other hand 'occasionally' or 'exceptionally' or 'now and then,' though in various Sections it applies to the word 'resident,' with a full sense of choice, adverbs like 'temporarily' and 'actually.' I think the converse to 'ordinarily' is 'extraordinarily,' and that part of the regular order of a man's life, adopted voluntarily and for settled purposes, is not 'extraordinarily.'"



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | *Lysaght v CIT* (13 TC 511)

Viscount Cave, L.C.:

- "It is unnecessary for me to repeat the observations which I have made in the previous case as to the meaning of the expressions 'reside' and 'ordinarily reside'; and it is enough to say that, on the view which in that case I have taken as to the meaning of those expressions, there appears to me to be no reason whatever for holding that the Respondent is resident or ordinarily resident in this country."

Implications

- These passages collectively illustrate the court's interpretation of "ordinarily resident" as a concept that encompasses regular, habitual presence in the UK, even if not for the majority of the year, and does not necessarily require a fixed abode.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Summary

Case ref.	Summary
Case 82 of BSC	The Board distinguished between the terms "resident" and "ordinarily resident," noting that "ordinarily resident" has a more restricted meaning. Quoting Simon's Income Tax Volume I: "The definition of residence as 'habitual physical presence in a country' is perhaps a sufficient definition, but it leaves the term 'ordinarily resident' very hard to define: Perhaps a good definition of the latter term as any is 'resident in the ordinary or regular course of one's life' or 'resident from year to year'. Probably in considering whether a person is 'ordinarily resident' over an indefinite and lengthy period of time, physical presence in a country may not be necessary for any particular year, if the absence is an exception to, or a temporary break in a person's ordinary mode of life."
Case 99 of BSC	The Board distinguished between the terms "resident" and "ordinarily resident", noting that "ordinarily resident" has a more restricted meaning. The Board concluded that A.B.'s absence from Malta was temporary and motivated by employment necessity. A.B.'s contract stipulated that if his employment in Libya was not renewed, he would return to his original contract in Malta, indicating an intention to return. However, the Board noted that A.B.'s intention not to return to Malta after his contract ended did not affect his residency status during basis year 1959.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Summary

Case ref.	Summary
Case 109 of BSC	"The definition of residence as 'habitual physical presence in a country' is perhaps a sufficient definition, but it leaves the term 'ordinary resident' very hard to define; perhaps as good a definition of the latter term as any is 'resident in the ordinary or regular course of one's life' or 'resident from year to year'. Probably in considering whether a person is 'ordinarily resident' over an indefinite and lengthy period of time, physical presence in a country may not be necessary for any particular year, if the absence is an exception to, or a temporary break in a person's ordinary mode of life."
Case 144 of BSC	The Board examined the meaning of "ordinarily resident" and distinguished it from merely being "resident". The term "ordinarily resident" implies a habitual and regular presence in a country, not just occasional or temporary residence. A.B. had been living in Malta continually since 15th October 1956, except for brief periods abroad for holidays. This continuous presence established him as "ordinarily resident" in Malta before 1st January 1958. The fact that A.B. was sent to Malta by his employer and had a residence permit did not negate his ordinary residence status. Moreover, having a bank account in London did not nullify his residence in Malta.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 82 of BSC

Facts

- A.B. graduated in Medicine from the University of Malta in 1946 and moved to Oxford at the end of that year, returning to Malta in 1949. In December 1950, A.B. married and moved to England with his wife, leaving his job in Malta. From December 1950 to September 1953, A.B. lived continuously in England, working as a research fellow with a salary of £900 and £200 for research expenses, from which UK income tax was deducted. A.B. returned to Malta in 1953 after being informed that he would be appointed as a professor if he was present in Malta by September 1953.

Issues:

- Whether A.B. was "ordinarily resident" in Malta during his time in England.
- Whether A.B.'s foreign income earned while in England was subject to Maltese income tax.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 82 of BSC

Board's decision:

- The Board decided in favour of A.B., declaring that he was not "ordinarily resident" in Malta during the period he was in England. Consequently, A.B.'s income earned in England that was not received in Malta was not subject to Maltese income tax.

Legal reasoning:

- The Board distinguished between the terms "resident" and "ordinarily resident," noting that "ordinarily resident" has a more restricted meaning. Quoting Simon's Income Tax Volume I:

"The definition of residence as 'habitual physical presence in a country' is perhaps a sufficient definition, but it leaves the term 'ordinarily resident' very hard to define: Perhaps a good definition of the latter term as any is 'resident in the ordinary or regular course of one's life' or 'resident from year to year'. Probably in considering whether a person is 'ordinarily resident' over an indefinite and lengthy period of time, physical presence in a country may not be necessary for any particular year, if the absence is an exception to, or a temporary break in a person's ordinary mode of life."



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 82 of BSC

Legal reasoning:

- The Board concluded that A.B.'s move to England with his wife and his continuous stay there for nearly three years indicated a change in his ordinary way of life, rather than a temporary break.
- The appellant's "ordinary way of life": The Board emphasized that A.B.'s ordinary way of life during the period in question was to live in Oxford for an indefinite period, with a minimum of two years.
- The appellant's intention to return: The Board noted that the intention to return to Malta does not affect the determination of residence, which is different from domicile where the intention to return is essential.

Conclusion:

- The Board concluded that A.B. was not "ordinarily resident" in Malta during his time in England. Therefore, his income earned in England that was not brought to Malta was not subject to Maltese income tax. The appeal was accepted, and a reassessment was ordered based on this decision.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 99 of BSC

Facts:

- A.B. worked in Libya under various contracts and was absent from Malta for an extended period. A.B. was domiciled in Malta and desired to be classified as "ordinarily resident" with a view to being taxable on a worldwide basis. A.B. had a contract with a company in Malta but worked in Libya from September 1958 onwards. In October 1958, A.B. married in Malta and moved to Benghazi with his wife the following month. A.B. did not have a permanent home in Malta after his marriage and visited Malta for short periods in 1959, 1960, and 1961.

Issues:

- Whether A.B. was "resident" or "ordinarily resident" in Malta during basis year 1959.
- Whether A.B.'s income earned abroad was subject to Maltese income tax.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 99 of BSC

The Board's decision:

- The Board upheld the Commissioner's decision, concluding that A.B. was "ordinarily resident" in Malta during basis year 1959. Consequently, A.B. was taxable on his worldwide income, not just income arising in Malta.

Legal reasoning:

- The Board distinguished between the terms "resident" and "ordinarily resident", noting that "ordinarily resident" has a more restricted meaning.
- The Board concluded that A.B.'s absence from Malta was temporary and motivated by employment necessity.
- A.B.'s contract stipulated that if his employment in Libya was not renewed, he would return to his original contract in Malta, indicating an intention to return. However, the Board noted that A.B.'s intention not to return to Malta after his contract ended did not affect his residency status during basis year 1959.

Conclusion:

- The Board concluded that A.B. was "ordinarily resident" in Malta during basis year 1959.
- Therefore, his income earned abroad was subject to income tax in Malta.
- The appeal was dismissed, and the Commissioner's decision was confirmed.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 109 of BSC

Facts:

- The appellant, A.B., spent significant periods abroad (England, Australia, and America) between 1947 and 1957 for employment purposes. He returned to Malta permanently in 1957 due to family reasons. The appellant contested the tax assessments for the years 1954 to 1961, arguing that he was not "ordinarily resident" in Malta during that period.

Issues:

- Whether the appellant was "ordinarily resident" in Malta from 1954 to 1957.
- Whether the tax assessments for the years 1954 to 1959 should be annulled and those for 1960 and 1961 reduced.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 109 of BSC

Board's decision:

- The Board revoked the tax assessments for the years 1954 to 1958, declaring the appellant not subject to tax for these years. The Board confirmed the tax assessments for the years 1959 to 1961.

Legal reasoning:

- Quoting Lord Simon on the meaning of "ordinary residence":

"The definition of residence as 'habitual physical presence in a country' is perhaps a sufficient definition, but it leaves the term 'ordinary resident' very hard to define; perhaps as good a definition of the latter term as any is 'resident in the ordinary or regular course of one's life' or 'resident from year to year'. Probably in considering whether a person is 'ordinarily resident' over an indefinite and lengthy period of time, physical presence in a country may not be necessary for any particular year, if the absence is an exception to, or a temporary break in a person's ordinary mode of life."



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 144 of BSC

Facts:

A.B. was born in Scotland and employed as an engineer with a UK oil company. He was seconded to Malta on 15th October 1956 as an installation manager. A.B. remained employed in Malta until September 1966, when he retired. He applied for and was granted a residence permit in Malta in 1966. A.B. claimed tax benefits available to residence permit holders, arguing he was not "ordinarily resident" in Malta before 1st January 1958.

Issues:

Whether A.B. was "ordinarily resident" in Malta before 1st January 1958, which would affect his eligibility for certain tax benefits under sections 22(4)(a) and 25(2)(a) of the Income Tax Act, 1948.



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant Maltese authorities | Case 144 of BSC

Board's decision:

- The Board rejected A.B.'s appeal and confirmed the decision of the Commissioner of Inland Revenue.

Legal reasoning:

- The Board examined the meaning of "ordinarily resident" and distinguished it from merely being "resident". The term "ordinarily resident" implies a habitual and regular presence in a country, not just occasional or temporary residence.
- A.B. had been living in Malta continually since 15th October 1956, except for brief periods abroad for holidays. This continuous presence established him as "ordinarily resident" in Malta before 1st January 1958. The fact that A.B. was sent to Malta by his employer and had a residence permit did not negate his ordinary residence status. Moreover, having a bank account in London did not nullify his residence in Malta.

Conclusion:

- A.B. was "ordinarily resident" in Malta before 1st January 1958. Therefore, he was not entitled to the tax benefits he claimed. The Board rejected the appeal and confirmed the Commissioner's decision, with each party bearing its own costs.



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RESIDENCE-BASED CONNECTING FACTORS: RESIDENT IN MALTA | BODIES OF PERSONS

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“RESIDENT IN MALTA” | BODIES OF PERSONS

Definition in Art. 2(1) ITA

Art. 2(1) ITA: ‘resident in Malta’ when applied to a **body of persons**, means any body of persons **the control and management of whose business are exercised in Malta**, provided that a company incorporated in Malta on or after 1st July 1994 shall be resident in Malta and any other company incorporated in Malta shall be resident in Malta from 1st January 1995 where the management and control of the business of the company is exercised outside Malta.

- **Incorporation test** for companies incorporated under the Companies Act (Cap. 386 of the Laws of Malta);
- **Control and management test** for companies all other bodies of persons.
 - “Control and management”, vs “central management and control”?
 - **Consider:** Model Income Tax Ordinance, Laws of Cyprus and Palestine ...
 - Original usage to assert jurisdiction over railway enterprises in the 19th century. Further reading: *John F Avery Jones, ‘Jurisdiction to Tax Companies: the Influences of the Courts and of European Thinking’ in John Tiley (ed), Studies in the History of Tax Law, vol 4 (Hart Publishing 2010) 163-212*



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ORDINARY RESIDENCE | NATURAL PERSONS

Relevant UK authorities | Summary

Parties	Case ref.	Summary
Calcutta Jute Mills Co Ltd v Nicholson – Joint case with Cesena Sulphur Co Ltd v Nicholson	(1876) 1 ExD 428	A company is resident for tax purposes where its real business is carried on.
De Beers Consolidated Mines v Howe	[1906] AC 45	A company is tax resident where its central management and control is exercised, regardless of its place of incorporation.
Swedish Central Railway Company v Thompson	[1925] AC 495 (HL)	Multiple residence of companies is possible. If, in the context of the company's business, what is done in the UK amounts to part of the management and control, the company is arguably resident here.
Unit Construction v Bullock	(1960) AC 351	The actual place of management, not the place where it ought to be managed according to the company's constitution, determines the company's residence.
Wood v Holden	(2006) BCLC 210	The court distinguished between cases where the company's constitutional organs (board of directors) exercised control and cases where control was usurped by outsiders.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | *Calcutta Jute Mills Co Ltd v Nicholson* – Joint case with *Cesena Sulphur Co Ltd v Nicholson* (1876) 1 ExD 428

Facts:

Cesena Sulphur Company:

- Incorporated under the Companies Acts of 1862 and 1867 in England. Registered in Italy for the purpose of carrying on the business of sulphur mining, manufacturing, and selling. Managed by a board of directors in England, with practical operations carried out by an Italian delegation. All profits were earned in Italy, with only dividends for English shareholders sent to the UK.

Calcutta Jute Mills Company:

- Incorporated under the Companies Acts of 1862 and 1867 in England. Operated jute mills in Bengal, India, with all business activities and profits generated in India. Managed by a board of directors in England, with a director and agents in India overseeing operations. No property or business operations in the UK, except for the distribution of dividends to English shareholders.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | *Calcutta Jute Mills Co Ltd v Nicholson* – Joint case with *Cesena Sulphur Co Ltd v Nicholson* (1876) 1 ExD 428

Issues:

- Whether the companies were liable to pay income tax on the entirety of their profits, or only on the proportion of profits received in the United Kingdom:
- *The assessments were made under sched. D. of the Acts 5 & 6 Vict. c. 35, s. 1, and 16 & 17 Vict. c. 34, s. 2. By sched. D. of the latter Act duties are imposed "for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any kind of property whatever, whether situate in the United Kingdom or elsewhere, and for and in respect of the annual profits or gains arising or accruing to any person residing in the United Kingdom from any profession, trade, employment, or vocation, whether the same shall be respectively carried on in the United Kingdom or elsewhere, and to be charged for every twenty shillings of the annual amount of such profits and gains. ..."*



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | *Calcutta Jute Mills Co Ltd v Nicholson – Joint case with Cesena Sulphur Co Ltd v Nicholson (1876) 1 ExD 428*

Decision of the Court of the Exchequer:

- Both companies were deemed to be "residing in the United Kingdom" under the relevant tax statutes. They were liable to pay income tax on the whole of their profits, regardless of where the profits were earned.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | *Calcutta Jute Mills Co Ltd v Nicholson – Joint case with Cesena Sulphur Co Ltd v Nicholson (1876) 1 ExD 428*

Legal reasoning

The whole question turns on the interpretation of "residence" as applicable to a company. The tax is only imposed upon a "person residing within the United Kingdom," and a corporation for the purpose of paying income tax is a "person." The use of the word "residence" is founded upon the habits of a natural man, and is therefore inapplicable to the artificial and legal person whom we call a corporation. But for the purpose of giving effect to the words of the legislature an artificial residence must be assigned to this artificial person, and one formed on the analogy of natural persons. There is not much difficulty in defining the residence of an individual; it is where he sleeps and lives. I adopt Mr. Matthews' suggestion, that 16 & 17 Vict. c. 34, when it speaks of "residing" does not mean an artificial residence. It means an actual residence. Mr. Matthews argues, therefore, that when you deal with a trading corporation it means the place not where the form or shadow of business, but where the real trade and business is carried on, and that definition seems to be almost conceded by all the counsel. There is a German expression applicable to it which is well known to foreign jurists - der Mittelpunkt der Geschäfte; and the French term is "le centre de l'entreprise," the central point of the business.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | *Calcutta Jute Mills Co Ltd v Nicholson – Joint case with Cesena Sulphur Co Ltd v Nicholson (1876) 1 ExD 428*

Legal reasoning (Huddleston B)

True, it is nowhere said that the directors must hold their board meetings in London, but it is obvious that the books must be kept at the office, and the office, according to the articles of association, must be in London; and the inference, from the facts found in the case and from the articles of association, is that the directors are to meet in London. It seems, indeed, that almost every act of the company connected with the administrative part of the business is to be done in London. No doubt the manufacturing part was done in Italy, and the company might have found sulphur in another country, and carried on the manufacturing part of the business in that other country, but the administrative part would be carried on at the place from which all the orders flowed, where officers and agents were appointed and recalled, where their powers were granted and revoked, where whatever money was sent was received, and where the dividends were declared and were payable. All these acts were performed in London. I think, therefore, that the main place of business of the company is in England, and that there is at Cesena merely an agency, as it were, of the principal house, that agency being confined to the manufacture and sale of the sulphur, but under the direction of the principal house.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | *De Beers Consolidated Mines v Howe [1906] AC 45*

Facts

- De Beers Consolidated Mines, Limited was incorporated in South Africa. The company's head office was formally located in Kimberley, South Africa, where general meetings were held. The company's business involved mining diamonds in South Africa and selling them under contracts to a syndicate, with profits divided between the company and the syndicate. Some directors and life governors resided in South Africa, and directors' meetings were held both in Kimberley and London. The majority of directors and life governors resided in England, and significant business decisions were made in London.

Issues:

- Whether De Beers Consolidated Mines, Limited should be considered resident in the United Kingdom for income tax purposes.
- Whether the company was liable to pay income tax on its worldwide income.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | De Beers Consolidated Mines v Howe [1906] AC 45

Analysis

- The House of Lords held that the residence of a company for tax purposes is not determined solely by its place of incorporation.
- The decisive test is where the company's central management and control actually abides.
- Lord Loreburn LC stated:

“A company resides, for purposes of income tax, where its real business is carried on... and the real business is carried on where the central management and control actually abides.”
- The House of Lords examined the facts and found that although De Beers was incorporated in South Africa, its board of directors made key decisions in London, and its central management and control were exercised from the UK.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Swedish Central Railway Company v Thompson [1925] AC 495 (HL)

Facts

- The Swedish Central Railway Company, Limited was incorporated in England in 1870 under the Companies Acts of 1862 and 1867. Its objective was the construction and operation of a railway in Sweden. Its registered office was located in London, England. In October 1920, the company's articles were altered to transfer the control and management of the business from England to Sweden.
- A committee was appointed in 1920 to handle formal administrative tasks in the UK, such as share transfers, affixing the company seal, and signing cheques on the London banking account. Since 1920, no company meetings were held in the UK. All general meetings and board meetings were held in Sweden, and dividends were declared in Sweden.
- The annual rent was paid to the company in Sweden, and only dividends for UK shareholders were transmitted to the UK.

Issue:

- The company was assessed for income tax under Case V of Schedule D for the years ending April 5, 1921, and April 5, 1922, based on the rent received from the lease.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Swedish Central Railway Company v Thompson [1925] AC 495 (HL)

Decision of the House of Lords

- A registered company can have more than one residence for the purposes of the Income Tax Acts.
- The fact that the company was registered in England and had certain administrative functions in the UK supported the conclusion that it was resident in the UK for tax purposes.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Unit Construction v Bullock (1960) AC 351

Facts

- Unit Construction Co. Ltd. was a wholly-owned subsidiary of Alfred Booth & Co. Ltd., an English company. Three other subsidiaries of Alfred Booth & Co. Ltd. (Booth & Co. (Africa) Ltd., Booth & Co. Ltd., and Bulleys Tanneries Ltd.) were incorporated in Kenya and had their registered offices in Nairobi. The articles of association of these African subsidiaries stipulated that directors' meetings could be held outside the United Kingdom. Due to poor performance, the management of the African subsidiaries was taken over by the directors of Alfred Booth & Co. Ltd. in London. The boards of the African subsidiaries did not function as boards, and the real control and management were exercised by the parent company in London. Unit Construction Co. Ltd. made payments to the African subsidiaries and claimed these as deductible subvention payments for income tax purposes.

Issue:

- Whether the African subsidiaries were "resident in the United Kingdom" for income tax purposes, despite being incorporated and registered in Kenya, due to the actual control and management being exercised in London.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Unit Construction v Bullock (1960) AC 351

Decision of the House of Lords

- The House of Lords reversed the decision of the Court of Appeal and held that the African subsidiaries were resident in the United Kingdom for income tax purposes.

Legal reasoning:

- The residence of a company for income tax purposes is determined by where its central management and control actually abides, as established in *De Beers Consolidated Mines Ltd. v. Howe*.
- The fact that the management and control of the African subsidiaries were exercised in London, despite the articles of association stating otherwise, was crucial.
- The actual place of management, **not the place where it ought to be managed according to the company's constitution**, determines the company's residence. The irregular or unauthorised nature of the management does not alter the fact that the real control and management were in London.
- The business was managed in London, and this factual management determined the residence.
- The admission that the African subsidiaries were resident in East Africa did not preclude them from also being resident in the United Kingdom. A company can have more than one residence for tax purposes, consistent with the decision in *The Swedish Railway Company*.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Unit Construction v Bullock (1960) AC 351

Conclusion:

- The House of Lords allowed the appeal, holding that the African subsidiaries were resident in the United Kingdom for income tax purposes due to the actual control and management being exercised by the parent company in London.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Wood v Holden (2006) BCLC 210

Facts

- Mr. and Mrs. Wood owned 96% of the shares in Greetings Ltd, a company operating a chain of card shops. In 1995, they engaged accountants to find a buyer for Greetings Ltd and devised a scheme to mitigate capital gains tax on the sale. They set up family settlements with non-UK resident trustees who incorporated CIL, a company registered in the British Virgin Islands (BVI). They transferred their shares in Greetings Ltd to Holdings, an off-the-shelf company, and then transferred 49% of their shares in Holdings to CIL. Due to amendments in tax legislation, another non-UK company, Eulalia (incorporated in the Netherlands), was inserted between CIL and Holdings. CIL sold its shares in Holdings to Eulalia, which then sold the shares to a third party.

Issue:

- Whether Eulalia was resident in the UK for tax purposes, which would make the capital gains taxable in the UK.
- Whether, if Eulalia was resident in the UK, CIL was also resident in the UK.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Wood v Holden (2006) BCLC 210

Decision of the Court of Appeal:

- The Court of Appeal upheld the decision of the judge, who had reversed the Special Commissioners' findings. The judge held that Eulalia was resident in the Netherlands, not the UK.

Legal reasoning:

- The court applied the test from *De Beers Consolidated Mines Ltd v Howe*, which states that a company is resident where its central management and control actually abides. The court distinguished between cases where the company's constitutional organs (board of directors) exercised control and cases where control was usurped by outsiders.
- The court found that Eulalia's directors made the decisions to purchase and sell the shares, even if influenced by advisors. These were effective decisions made in the Netherlands.

Conclusion:

- The Court of Appeal dismissed the Revenue's appeal, affirming that Eulalia was resident in the Netherlands for tax purposes. The amendments to the taxpayers' self-assessments were set aside.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Laerstate BV v HMRC (2009) UKFTT 209

Facts:

- Laerstate BV, a company incorporated and resident in the Netherlands under Dutch law, purchased shares in Lonrho plc. Dieter Bock, a German national, acquired the entire shareholding in Laerstate BV and was appointed a director.
- Bock arranged all transactions related to the Lonrho shares and used them as security for a personal loan
- . Bock became resident in the UK in April 1994 and conducted the business of Laerstate BV, with some assistance from Johannes Eduard Trapman, another director.
- There were no board meetings for a considerable time, despite significant management activities.



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- Bock arranged all transactions related to the Lonrho shares and used them as security for a personal loan
- . Bock became resident in the UK in April 1994 and conducted the business of Laerstate BV, with some assistance from Johannes Eduard Trapman, another director.
- There were no board meetings for a considerable time, despite significant management activities.
- In 1995, Laerstate BV applied for double taxation relief under the UK-Netherlands Double Taxation Convention for repayment of tax credits on dividends. In 1996, Bock negotiated the sale of Laerstate BV's shares in Lonrho to Anglo American Corporation.
- HMRC assessed Laerstate BV to corporation tax and advance corporation tax on the basis that it was resident in the UK for tax purposes.
- Laerstate BV appealed against the assessments and the refusal of tax credits, arguing that central management and control were exercised outside the UK.



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“RESIDENT IN MALTA” | BODIES OF PERSONS

Relevant UK authorities | Laerstate BV v HMRC (2009) UKFTT 209

Issue:

- Whether Laerstate BV was resident in the UK for tax purposes during the relevant period.
- If Laerstate BV was resident in the UK, where the place of effective management was for the purposes of the double taxation convention.

Decision of the UKFTT:

- The First-tier Tribunal dismissed Laerstate BV’s appeal, holding that the company was resident in the UK for tax purposes during the entire relevant period.

Legal Reasoning

- The UKFTT applied the test from **De Beers Consolidated Mines Ltd v Howe**, which states that a company is resident where its central management and control actually abides. The tribunal found that Bock’s activities in the UK went beyond ministerial matters and included policy, strategic, and management decisions. The tribunal distinguished between cases where the company’s constitutional organs exercised control and cases where control was usurped by outsiders.
- In this case, Bock, as a director, had the authority to bind Laerstate BV and made all significant decisions. The tribunal found that Bock made the decisions for Laerstate BV, and Trapman merely signed documents without considering their merits. This indicated that Bock was exercising central management and control in the UK.



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RESIDENCE-BASED CONNECTING FACTORS: DOMICILE

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DOMICILE

As applicable to natural persons

- Not defined by the ITA
- Derived from Maltese case law, which makes reference to the Common Law definition of domicile.
- At Common Law, domicile is regarded as equivalent to a person's permanent home.
- The test which determines a person's domicile must remain constant, no matter what the nature of the issue may be before the Court.
- Unlike residence, which can change frequently based on physical presence, domicile is more enduring and permanent, reflecting a person's long-term connection to a particular legal jurisdiction. This concept of domicile plays a crucial role in determining an individual's tax liability, particularly in cases where the person may be subject to taxation in multiple jurisdictions due to their global financial interests or frequent international travel.



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DOMICILE

As applicable to natural persons

- At birth, an individual acquires their domicile of origin, typically from their father, and if that is not ascertainable, from their mother or the place where they are found. This domicile of origin persists throughout life unless supplanted by a domicile of choice.
- Changing one's domicile involves both physical presence and a clear intention to permanently reside in a new jurisdiction, known as *animus manendi et non redeundi*.
- In their commentary on residence and domicile, **Dicey and Morris** have held that:
 - Residence entails more than physical presence – it involves being an inhabitant of a country other than a mere visitor
 - An individual can acquire a domicile of choice by both residing in a country AND having the intention of a permanent or indefinite residence there.



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DOMICILE

The Common Law rules on domicile

The fundamental rules of domicile can be summarised as follows (see Dicey & Morris):

1. A person is generally domiciled in that country in which he is considered to have his permanent home;
2. No person can be without a domicile;
3. No person can have more than one domicile;
4. An existing domicile is presumed to continue until it is proved that a new domicile has been acquired;
5. Every person receives at birth a domicile of origin;
6. Every person can acquire a domicile of choice by the combination of residence and intention of permanent or indefinite residence, but not otherwise;
7. Any circumstance which is evidence of a person's residence, or his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice in that country.



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DOMICILE

As applicable to bodies of persons

- Under the Common Law, a corporation is domiciled in the jurisdiction of its incorporation.
- What about unincorporated bodies of persons?



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Any Questions?

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