

CB PROBATE CROSS-BORDER ESTATE ADMINISTRATION

AN OVERVIEW

PROBATE CROSS-BORDER ESTATE PLANNING

ESTATES WITH CROSS-BORDER ASPECTS CAN PRESENT VARIOUS COMPLEXITIES TO BE NAVIGATED. WHEN SUCH ISSUES ARISE, PERSONAL REPRESENTATIVES SHOULD PAUSE FOR THOUGHT AND TAKE ADVICE RATHER THAN SIMPLY PROCEEDING AS THEY WOULD WITH A PURELY UK-CENTRIC ESTATE.

The first major question to ask is: what succession laws apply to the assets in the estate? From an English law perspective, real property passes under the law of the jurisdiction where the property is located, whereas everything else passes under the law of the domicile of the deceased. However, other countries may take a very different view of what succession law should apply, and resolving conflicts of law may not be straightforward. The EU Succession Regulation, which says that the law applying to assets in an EU country is that of the "habitual residence" of the deceased, or national law if an election was made, has helped to a degree, but the Regulation is not without its problems.

You must then consider whether any Will is valid and deals with assets in an acceptable way under the relevant laws. English succession law allows freedom of testation, but many countries have forced heirship rules, meaning that a certain proportion of the estate must be left to particular family members. So, an English Will purporting to deal with foreign assets may not be fully effective.

The next big question is: what taxes apply to the estate, and how do taxes in different countries interact? The worldwide estate of a UK domiciled person is subject to UK inheritance tax, but if there were assets elsewhere (or if the deceased was a US citizen), there may also be foreign tax. If so, which country has primary taxing rights and will there be double tax relief?

There are numerous other knotty questions and issues that can arise in cross-border estates, for example:

- What are the procedures to release estate assets in the different jurisdictions and how many grants of probate are required?
- Are executors responsible for foreign assets and liable for foreign taxes?
- Which country's court has jurisdiction over the estate and over any disputes or claims against the estate?
- Do certain types of foreign asset pass by Will or under their own terms?
- Even if a foreign asset can pass under English law, there could be adverse consequences if that asset is held on trust under the Will.

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