

BRUSSELS IV AND THE IMPACT ON UK EX-PATRIATES

There is currently a lot of talk about, and misunderstanding of, the EU regulation relating to the nomination of jurisdiction regarding the distribution of an estate on death and the impact on inheritances.

Quite simply, whilst from 17 August 2015 we may be able to choose the succession rules of our country of nationality (UK), this will not change the inheritance tax rules that apply, ie. if at the time of your death you are a French resident, it is still the French inheritance tax rules that apply. This means that the amount of French inheritance tax that your beneficiaries have to pay (this is a personal liability not a charge on the estate) will depend on their relationship to you.

EU regulation 650/2012 (Brussels IV) was adopted on 4 July 2012 (please note the UK has opted out of this regulation). The purpose of the regulation is to facilitate the free movement of persons within the EU by removing the obstacles faced by EU citizens in asserting their rights in the context where the deceased's assets are situated in different countries.

A UK citizen, habitually resident in France, could make a French will determining UK law to apply and by so doing avoid French inheritance rules applying to their estate (but not tax liabilities – these are still determined in the country of residence). Any choice of law provision would need to state UK law as that is the state relating to the nationality of British subjects. However, as there are differences between English, Scottish and Northern Irish law, you should also specify which of these are to apply. In any event, the nomination must be made prior to death.

The 1963 Double Taxation Treaty (DTT) between Britain and France specifies that the deceased's total estate will be devolved and taxed in accordance with the person's place of residence at the time of death, with the exception of any property assets that are situated in the other country. Therefore, a UK property owned by a British citizen who is resident in France, may be subject to UK inheritance tax with this tax charge taken into consideration against any French liability. The property value may be included by a French notaire for the purposes of succession tax due from the heirs.

In summary:

Yes - by way of a pre-death nomination in your will from 17 August, you can have your assets treated under UK law for purposes of inheritance (ie. you can leave what you want to who you want).

No – this does not remove the obligation to pay French succession tax so you may well leave your assets to your favourite stepchild – but they will still only have a tax free allowance of just under 1600 euros with tax being levied at 60% on the remainder of the inheritance. This is a personal liability of the beneficiary.

Assurance Vie is still a very effective way of lessening the burden of succession taxes on nominated beneficiaries.

Best option – take professional financial advice before making a decision.

If you would like any further information on this topic or have any other financial query, please feel free to contact:

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