

Foreign Nationals owning assets in the UK Legal and tax issues on death

Introduction

There are many individuals who are not United Kingdom (UK) resident or domiciled but who own assets situated in the UK. Such individuals may not always appreciate the fact that ownership of UK assets will bring into play a range of UK tax and legal issues when the owner dies. Such issues make it important for these individuals to consider how best to deal with their UK assets, whether through a Will or by means of a trust.

The starting point for any such consideration must be the value of the assets, and the form in which they are owned. These factors will then determine:

- 1 how the assets can be dealt with following a death;
- 2 which tax compliance requirements are likely to apply; and
- 3 what UK tax may be payable.

Types of Ownership

1 Trust ownership

If an asset is held in some form of trust, control is in the hands of the trustees. They will be able to deal with the asset notwithstanding the death of the individual concerned, who may be the settlor of the trust and also a beneficiary. There may be tax implications, but there will be no requirement to obtain a grant of representation.

2 Joint ownership

If an asset is owned by two individuals as 'joint tenants', then following the first death

the asset will vest automatically in the survivor and there will be no requirement to obtain a grant of representation to deal with it.

3 Individual ownership

If an asset is owned by one individual, or by more than one as 'tenants in common', then on death the asset (or tenancy in common share) is in effect frozen. It cannot be dealt with other than by the legal personal representatives. This means the executors where there is a Will, and the administrators of the estate where there is not.

Advantage of a Will

Apart from providing an opportunity to appoint executors with specified administrative powers in relation to an individual's UK assets, a valid Will can ensure that those assets pass on death to chosen beneficiaries. This is particularly the case with immovable property (land and buildings) located in the UK. For other types of asset, the Will should take account of the rules of succession in the testator's place of domicile.

In the absence of any kind of Will, the assets may (and in the case of land will) fall to be distributed in accordance with the rules of intestacy among the deceased's blood relations in a specified order, but in a way which may not be entirely appropriate. A valid Will can help avoid these rules, and also means that dealing with the assets themselves should be more straightforward.

Tax Compliance

The legal personal representatives have to submit an Account to HM Revenue & Customs (HMRC) in respect of UK

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Inheritance Tax (IHT) whether or not any is actually payable.

HMRC will require full details of all assets and liabilities of the deceased's estate, and the personal representatives will be under a duty to provide accurate and detailed information. Collecting the relevant details to complete the Account may be a time consuming process.

It should be noted that if IHT is due, at least some of the tax has to be paid before the grant of representation is issued. Bearing in mind that assets are effectively frozen until the grant of representation has been obtained, this means in effect that no action can be taken in relation to the assets until that tax has been paid.

It should be understood that where an asset is owned personally rather than by a trust, it will not be possible to deal with it unless and until the Account has been submitted and the tax due has been paid. There are legal obligations in relation to the tax, and it will not normally be possible to transfer the asset to the heirs until these have been addressed.

What IHT may be Payable?

Each individual has a tax exemption of £325,000. Assets passing to a spouse* or to a UK charity are tax free but nearly all other gifts on death are subject to tax at 40%.

Depending on the way in which assets are to devolve, this generally means that there is no tax to pay on the death of the first spouse, but possibly significant tax liabilities on the surviving spouse's death.

Trusts and offshore companies can be used both to mitigate the overall tax liability, and also to hold the assets in an appropriate form for the intended beneficiaries.

Non-UK domiciled individuals should therefore consider buying assets through an offshore company owned by an offshore trust rather than in their personal name, and should do so at the time of purchase. Transferring immovable property to a company/trust at a later stage may involve a second charge to Stamp Duty Land Tax.

Acquiring a UK Domicile

It is important to remember that a 'deemed' UK domicile can be acquired for IHT purposes if a person is resident in the UK for seventeen out of the twenty previous tax years. This is based on the definition of residence for UK Income Tax. Accordingly, someone who has been resident in the UK for that length of time could acquire a deemed domicile for IHT purposes, even if they still intend to return in due course to their place of domicile under the general law. For more commentary on domicile, please refer to our information sheet of the same name.

Acquiring a deemed domicile would result in all of the individual's worldwide assets being subject to IHT. There are tax planning steps that can be taken before a deemed domicile is acquired. In particular, a trust can be used to shelter assets from IHT, while still having them fully available to the individual and his family.

Conclusion

It is important that non-UK domiciliaries

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should consider carefully the way in which they hold their UK assets.

An offshore company owned by a trust will generally be the optimum solution. If for any reason a trust is not appropriate, individuals are strongly advised to put in place an effective Will dealing with UK assets.

Disclaimer

This information sheet has been prepared to highlight some key issues. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at 1 July 2010 and may be affected by subsequent changes in the law. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

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* Any reference to the term 'spouse' includes a registered civil partner as defined by Section 1 of the Civil Partnership Act 2004.