



## *Cross Border Estate Planning*

The rules for Inheritance Tax in overseas locations differ greatly from those in the UK. While some forms of taxation in the European Union may have experienced different degrees of tax harmonization in recent years, the same cannot be said for Gift and Inheritance Tax. The process of Estate Planning for foreign residents with assets in different jurisdictions can be exceedingly complex and requires particular attention to structure and detail. Internationally, different national laws that govern asset succession are a confusing labyrinth:

- In some countries, real property is governed by situs law and personal property by the law of domicile.
- There are countries that will recognize foreign wills and entities such as trusts if drafted to comply with the statutes of country of domicile.
- Some Civil Law countries do not recognize trusts within the meaning of the law of equity, but may (or may not) recognize foreign trusts of non-resident foreigners or foreign domiciliaries.
- Some countries will apply the law of the deceased's domicile with respect to wills and estates, while others will apply the law of the country of Nationality.

### **Cross Border Estate Planning**

Cross Border Planning for individuals becomes important when assets and income are split between two or more jurisdictions. If you are a foreign resident, married to a foreigner, have foreign sources of income, or have assets in a foreign jurisdiction, Cross Border Planning may be necessary to avoid unforeseen harsh tax consequences. Anytime foreign legislation is introduced into a plan, complexity is the inevitable outcome because contradictory foreign laws must be accounted for. Because laws are so different in the international arena, planning in advance becomes essential for a satisfactory result.



Global Estate Planning involves connections between different countries. These connections typically arise when a citizen of one country resides in another, or owns property in a foreign country, or has beneficiaries such as a spouse, children or other beneficiaries who live abroad.

All foreign jurisdictions regulate the typical events in a human's life. Birth, death, marriage, divorce, bankruptcy, and the passing of property at death are governed by all modern societies. Regulations differ, adding complexity to any planning across borders. Typical differences exist among jurisdictions:

- Who is entitled to assets;
- How much the Revenue is entitled to;
- Legal definitions of seemingly identical terms;
- Legal validity of typical estate planning tools such as wills or trusts.

The legal structures by which nations have attempted to build predictability into the international system of resolving cross border disputes are a patchwork of conventions, treaties, and conflicting court opinions that change frequently. In the face of these divergences and conflicts, a global estate planner is expected to effect the individual's wishes for the distribution of assets, minimize red tape, such as probate and administration costs, mitigate taxes, and look into the future and predict the outcome of an individual's distribution scheme, and plan for unforeseen events. One needs to examine personal circumstances - domicile, residence and nationality - to determine which jurisdiction will regulate succession. It may be necessary to change one or more circumstances, to eliminate rival jurisdictions or choose a jurisdiction more sympathetic to your intentions.

It should come as no surprise then that Cross Border Estate Planning is an absolute essential for anyone living abroad.