

Guide to Private International Law



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Owning property abroad remains a popular and attractive way of planning for your retirement. However, it is important to consider the implications this could have on death both for your children, and in terms of inheritance tax.

Property and other assets you have in a foreign country (including bank accounts and shares) could be subject to tax in the country where they are located as well as in the UK, and even if you have made the decision to move abroad permanently, your estate could still be subject to UK taxation when you die.

The whole subject of private international law is complex and whilst this guide is not intended to be country specific, it will give you an outline of the issues that need to be considered in owning property in another country. Obviously it is preferable to consider these issues before you purchase your dream retirement home abroad, but rest assured that it is never too late to start!

Domicile

For the purposes of UK law, your liability to pay taxes in this country on your estate will depend on your “domicile” at the time of your death, and simply moving abroad does not change your domicile for inheritance tax purposes.

Every person receives at birth a domicile of origin. This depends mainly on the domicile of the father. So, usually, where your father was domiciled at your birth, will be your domicile of origin. Where you are born is not relevant. Unless you take steps to change this, the presumption will be that you have retained your domicile of origin.

Consequently, even though it seems reasonable to assume that if you choose to retire abroad your estate would no longer be subject to the UK tax regime, this isn't the case and your executors may find that your assets are still subject to inheritance tax in this country.

It is possible to change your domicile and reap the benefits of a more favourable tax regime, but only if you can show that you have severed most, if not all ties with this country.

The case of *Gaines-Cooper v Commissioners for HM Revenue & Customs*, illustrates the difficulties that can be faced in attempting to supplant your 'domicile of origin' with a new 'domicile of choice'. In this case Mr Gaines-Cooper argued that he had abandoned his domicile of origin in favour of a new domicile of choice (the Seychelles). However, after considering a number of factors the courts decided that he had retained his UK domicile. These factors included:

- retaining British citizenship
- spending a substantial amount of time in the UK
- retaining a house and business interests in the UK
- having correspondence sent to a UK address

This is by no means an exhaustive list, and each set of circumstances needs to be examined closely.

It is clear that substantial steps must be taken in order to change your domicile. Indeed, it is possible that you could still be deemed as domiciled in the UK if you were to die within three years of leaving the country.



Wills

If you decide not to make a final break with the UK, the next logical question is whether you need a single Will dealing with your worldwide assets, or separate ones for each country where you own property.

Unfortunately, there is relatively little common ground between the law in different countries, meaning that each situation will have to be considered in light of its individual facts and you need to consider very carefully the law of each country in which your assets are held.

Countries which base their legal systems on 'common law', such as England and Wales, Ireland and many Commonwealth countries, often recognise the concept of domicile as outlined above. So, for example, your executors could end up paying tax in the UK on the sale of a property in Ireland.

Common law countries do not tend to restrict who you can leave your property to, but some states which base their legal systems on 'civil law' can impose restrictions on who can inherit an estate.

For example, French law has a concept of 'forced heirship' which prevents someone from disinheriting their close relatives. Similar restrictions can also be seen in some countries which base their legal systems on religious law, such as Sharia.

Revocation

Standard English Wills generally contain a clause which revokes all prior Wills, and if you have a single, worldwide Will this should revoke all previous English Wills as well as any made in a different country.

If you are intending to have a Will dealing with your assets in a particular country, it is important that the revocation clause applies only to previous Wills in that country. Incorrectly drafted Wills could lead to a situation where, despite having made several separate Wills, they are revoked 'accidentally'.

If you intend to have a Will in more than one country, it is important to indicate clearly which assets are dealt with in which Will, and to ensure that all your advisers are communicating with each other.

Personal Representatives

In common law countries, your estate will be dealt with by your executors on your death. They are responsible for paying your debts and distributing your assets in accordance with your Will.

In civil law countries, it is usual for your estate to vest in your heirs, who then perform a similar function. In many cases they will require the assistance of a notary (lawyer) to attend to the legal and tax formalities.

Even if your executors do not have a duty to deal with your property in another country, they certainly need to be aware of it; specifically its value for inheritance tax purposes if you are domiciled in the UK.

There may be situations where it is appropriate to appoint separate executors to deal with property in another country, especially if they are resident in that country, but keep in mind that their authority to deal with assets situated in civil law jurisdictions could be extremely limited.

Factors which executors will need to consider when dealing with assets located abroad will include the following:

- Is there a relevant matrimonial property regime (which could affect who inherits the family home)?
- Are there any forced heirship provisions?
- Does a beneficiary have to elect between his rights under the Will and any rights he may have outside the Will?
- Which law applies to the estate?

What if I die without a Will?

If you die without a Will, you are said to have died “intestate”, and someone will have to apply to court to administer your estate in accordance with the law of the country where your property is located. In the UK, your property would be distributed to your nearest surviving relatives, but this may not be the case in every jurisdiction.

There may be circumstances where you are happy to rely on a country’s rules regarding intestacy, but a Will (or Wills) provides peace of mind and certainty for your surviving relatives and friends. You can then be confident that your affairs will be looked after properly after your death.

Taxation

If you do have assets in more than one jurisdiction, as we have already indicated the tax position can be very complex. If you are domiciled in the UK, Inheritance Tax will be payable on your worldwide estate wherever it is situated, and there may also be local taxes payable.

This could lead to a situation where you are effectively charged tax twice on the same asset. This can be relieved by “double taxation agreements” which the UK has entered into with the following countries:

- France
- India
- Italy
- The Netherlands
- Pakistan
- Republic of Ireland
- South Africa
- Sweden
- Switzerland; and
- USA

If there is no such treaty, your estate could still benefit from unilateral relief – a credit against UK taxation for tax paid overseas.

How we can help you

If you are considering investing in property abroad or already hold assets in foreign countries, asb law can help you plan your affairs and understand the relevance of the issues referred to in this guide.



We cannot advise you on foreign law, but as a member of Eurolegal, a network of lawyers throughout Europe, we can work with many contacts overseas to advise you accordingly, so that any potential problems can be dealt with during your lifetime.

If you would like to discuss your own situation in more detail or have any queries, please contact **James Mackenzie** in our Crawley office on **01293 603600** or by email at **james.mackenzie@asb-law.com**.

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