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Probate and Estate Administration in England and Wales

Where a person (**'the deceased'**) dies owning assets in England and Wales, then, regardless of their residence or domicile, it may be necessary for a Grant of Representation to be obtained in order to deal with the deceased's English estate after their death. A Grant of Representation is a document obtained from the Court proving the legal authority of the person(s) entitled to deal with the deceased's estate. In certain circumstances (for example, where the only assets are bank accounts of low value) it may be possible for the deceased's next-of-kin to deal with the estate without such a Grant. In general, however, where there are assets of significant value a Grant of Representation will be needed.

There are different types of Grant of Representation depending on the circumstances.

Where a person owns assets in England and Wales, as a general rule it would be sensible for that person to make a Will under English law appointing persons of his choice ('executors') to deal with those assets after his death. In such circumstances the executors would apply for a 'Grant of Probate' to deal with the deceased's estate in England and Wales.

Different rules would apply if the deceased did not appoint executors under the Will; this would lead to an application for a 'Grant of Letters of Administration with Will Annexed'. If the person did not make a Will valid under English law, a 'Grant of Letters of Administration' would generally need to be obtained. The order as to who is entitled to apply for the Grant, and who is entitled to the deceased's estate, in these circumstances is set under English law. Broadly speaking this would be the deceased's spouse in the first instance, then his or her children or grandchildren, then his or her parents, and then his or her siblings. The person(s) appointed by the Court in this type of Grant are called 'administrators'.

The probate application process

There are two separate, but linked processes involved in obtaining a Grant of Representation:

1. An application for the relevant Grant is made to the Probate Service. This involves completing an online or paper application and submitting the relevant paperwork to the Probate Service (including the original English Will, if there is one).
2. A tax return reporting details of the assets and liabilities in the deceased's estate, and their value at the date of death, for UK Inheritance Tax (**'UK IHT'**) purposes is completed and submitted to the UK tax authority, Her Majesty's Revenue and Customs (**'HMRC'**). The Grant of Representation will not be issued until HMRC has sent the Probate Service a stamped receipt showing that all UK IHT due has been paid, or that there is no UK IHT due.

Reporting the estate to HMRC

The extent to which the deceased's estate has to be reported to HMRC, and will be subject to UK IHT, depends on the circumstances of the deceased.

Where the deceased was domiciled or deemed domiciled in the UK, then UK IHT applies to their worldwide estate. This means that all of their worldwide assets will need to be reported to HMRC, and UK IHT will apply to the worldwide estate.

Where the deceased was not domiciled in the UK, only their assets in the UK need to be reported to HMRC, and UK IHT will apply accordingly. Detailed information supporting the claim that the individual was not domiciled nor deemed domiciled in the UK will need to be submitted to HMRC.

Domicile under English law is a complex concept. We are happy to advise clients on their domicile position if required.

UK IHT, and double tax treaties

Unlike the position in many other jurisdictions, UK IHT is charged on the deceased's estate as a whole, rather than on the heirs receiving a benefit from the estate. Broadly speaking, UK IHT is charged on the total value of the deceased's estate at death plus any non-exempt gifts made in the seven years before death at the following rates (as at January 2022):

- 0% on the first £325,000 (the Nil Rate Band).
- 0% on an additional £175,000 if the estate included a property which was the deceased's residence at some stage and that property is left to the deceased's lineal descendants (the Residence Nil Rate Band).
- 40% on the remainder of the estate (or 36% where at least 10% of the estate has been left to a qualifying charity or charities).

There are a number of exemptions and reliefs which apply to UK IHT, for example:

- Any gifts to a spouse / civil partner, or to a qualifying charity, are free from UK IHT.
- Relief may be available for certain agricultural or business assets (Agricultural Property Relief and Business Property Relief).
- The value of lifetime gifts may be reduced by the application of certain exemptions, for example the annual exemption of £3,000 per year, small gift exemption to any one individual of £250 per year, the wedding / civil partnership exemption (the amount of which varies depending on the closeness of the relationship between the donor and donee) and the normal expenditure out of income exemption.

UK IHT due on assets other than real estate or certain business assets is payable by the end of the sixth month after the deceased's date of death. UK IHT on the remaining assets may be paid in ten yearly instalments, with the first instalment becoming payable by the end of the sixth month after the deceased's date of death and each subsequent instalment on the same day the following year. Interest will be charged by HMRC on any UK IHT outstanding after the deadline, including where the instalment option is being used. The current rate of interest is 2.75% per annum.

Where inheritance tax is also payable in a different jurisdictions, it may be possible to offset the foreign tax against UK IHT or vice versa, depending on the circumstances (for example, whether a double tax treaty applies, or whether relief is available under UK law).

Estate administration

Once a Grant of Representation has been issued, the executor(s) or administrator(s) can collect in the assets of the estate (for example, sell / cash in assets, or have them transferred into their own names). At the same time, they will need to continue liaising with HMRC in relation to the UK IHT position, responding to any enquiries HMRC may raise, and ultimately obtaining UK IHT clearance.

Depending on the value of the estate, annual tax returns for the estate, reporting income tax arising and any capital gains during the administration period, may need to be submitted to HMRC, and separate tax clearance obtained from HMRC in relation to these. Once all these matters are dealt with, the executor(s) / administrator(s) will be in a position to distribute the estate (whether in cash or *in specie*). This will be done in accordance with the English Will, if there is one, or the laws governing succession if there is no Will.

Hunters' expertise

Hunters Law LLP are specialists in dealing with Probate and Estate Administration, for UK and non-UK individuals resident or domiciled in England or elsewhere. We routinely deal with complex, high value estates, often involving foreign assets and trans-border issues, and we have extensive experience in dealing with the legal and practical aspects of administering estates of all sizes and every degree of complexity. We also advise how best to maximise tax reliefs during the period of administration of the estate, for example claiming business and agricultural property relief on landed estates, conditional exemption on works of art, loss relief where assets have fallen in value since the date of death and deeds of variation of Wills and the intestacy rules. We can also advise on probate disputes where relevant.

Contacts

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