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Cross Border Legacies

Most estates left to charities only include property located in England and Wales. There is, however, an increasing trend for people to buy property abroad, either as a second home, a holiday home, or as a retirement home. It is likely that the number of estates which include property in more than one jurisdiction (cross-border estates) will increase in the future.

Cross-border estates present particular issues. Firstly, all countries have different systems for dealing with deceased persons' estates. In England and Wales, there is the probate system whereby executors are appointed under a person's Will to administer their estate. There is complete freedom to leave property exactly as one chooses. In some other countries, however, property passes directly to the beneficiaries without an executor to make sure that the estate is properly administered; any administration is left to the beneficiaries themselves. In addition, some countries have "forced heirship" laws which direct that a certain percentage of a deceased's estate must pass to his descendants, regardless of what the Will says. For example, an entire estate can be left to charity under a Will, therefore disinheriting the family. If property is owned in a country which has forced heirship laws, the charity may find that a proportion of that property must pass to his relatives by law, leaving the charity with a smaller legacy than anticipated.

Secondly, although charities do not pay inheritance tax on legacies of UK property, they do generally pay inheritance tax on gifts of foreign property. For example, if a testator domiciled in England and Wales left his or her estate to charity, including a French property, the charity would pay inheritance tax on this French property. This reduces the value of the legacy to the charity. In order to obtain tax relief, charities can set up a "Friends of" organisation in other countries to receive the money. The "Friends of" organisation will benefit from the tax relief afforded to local charities and can then gift the monies across to the English charity.

The European Union is proposing to introduce laws to make the administration of cross-border estates easier. Progress is slow, however, and it is likely to be some years before they are in force. In addition, the current proposals do not deal with inheritance tax. For the time being, therefore, cross-border estates will present interesting challenges for charities.

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