

# Cross Border Conference

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## Ireland

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# Process of Collection

## Grant of Probate/letters of administration

### Grant or not?

- Irish institution's discretion
  - value dependant
  - if no grant then indemnity may be required
- Strict position
  - require grant to release Irish situate assets



## Grant of Probate/letters of administration

Procedures to extract Irish grant to foreign Will/intestacy

- UK Wills currently accepted in Ireland now without need for an affidavit of law
  - Currently
    - exhibit in oath a sealed and certified copy of both Grant and Will
    - affidavit of law for intestacy
  - Future developments?
    - Require an affidavit of law for both testate and intestate
      - Entitlement to act
      - Formal validity of the Will
- Validity of will in Ireland
  - Two witnesses
  - No rules re virtual witnessing
  - Hague Convention 1961 on recognition of Wills
  - Ireland not signed up to Convention on International Wills



## Grant of Probate/letters of administration

- Revenue and Probate requirements
  - SA2 (equivalent of the UK Inheritance Tax Account)
    - recently updated and very detailed
    - online so not flexible
  - Oath Bond
  - Power of Attorney
  - Sealed and certified copy Will and Grant
  - Probate fees
    - Changed recently to simplify
    - range to €1m => up to €650
    - Over €1m => €400 per €500,000
  - Disclose trusts created by disponent, insurances etc.
  - Cannot limit to Irish situate assets only if there is an Irish beneficiary
- Social welfare/“Fair Deal” scheme
  - Notice to Social Welfare
  - Nursing home liability / charge on property

## Grant of Probate/letters of administration

### Tax considerations

- Final pre death return to be filed to get tax clearance for income/gains
- May need to file estate income tax/gain returns in Ireland
- Tax number (PPSN) required before filing papers
  - PPSN for deceased – procedural
  - PPSN for all beneficiaries taking >€12,000 even if no tax arising – more cumbersome
- Accountability of the personal representative / Irish solicitor for non resident beneficiaries' inheritance tax



## Grant of Probate/letters of administration

### Tax considerations contd.

- Inheritance tax and gift tax, together known as Capital Acquisitions Tax (“CAT”)
- CAT on a receipts basis (not estate basis)
- Depends on relationship of the beneficiary to the deceased
- Prior aggregable benefits (gifts and inheritances) since 5/12/01 reduces tax free threshold
- Tax free threshold – currently €335,000 / €32,500 / €16,250 depending on relationship - then add back prior benefits
- Current tax rate 33%

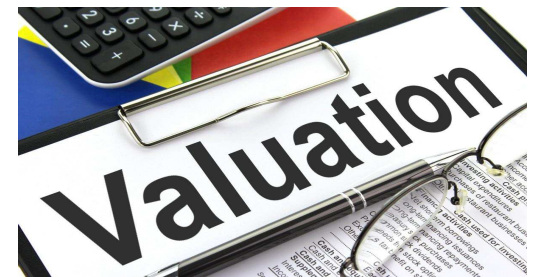




## Grant of Probate/letters of administration

### Tax considerations contd.

- Timing of payment of CAT inheritance tax
  - Valuation Date between 1 September and 31 August – pay before the following 31 October
    - Valuation Date 30 Aug 2021 - tax due 31 October 2021
    - Valuation Date 2 Sept 2021 - tax due 31 October 2022
  - However non residents must pay once ready to distribute
  - Date of death of life tenant = Valuation Date for remaindermen
- Valuation of assets for CAT inheritance tax at 'Valuation Date'
  - c. date of Irish grant/ capable of distribution
  - need to revalue assets
  - net of admin expenses etc.





## Territoriality rules for Gift / Inheritance Tax (CAT)

### Domicile

- Worldwide benefits from Irish domiciled disponer
- Pre 1/12/1999 settlements only

### Residence

- Worldwide benefits from Irish resident disponer
- Worldwide benefits to Irish resident beneficiary

### Ordinary residence

- Worldwide benefits from Irish ordinary resident disponer
- Worldwide benefits to Irish ordinary resident beneficiary

### Situs

- All Irish situate assets
- Unless exempt insurance policy/collective investment undertaking

## Grant of Probate/letters of administration

Therefore watch out in UK estates when there are Irish resident beneficiaries

Even if no Irish situate assets, an Irish beneficiary may have Irish tax to pay on a PET or on an inheritance from a UK estate

Similar to German beneficiaries and old French rules!



## Grant of Probate/letters of administration

Tax year – calendar year basis – 1 January to 31 December

### Tax Residence – Statutory test

- 183 days in a calendar year
- “Look back” test - 280 days current & prior tax year
- *De minimis* of 30 days
- ***Inheritance and gift tax*** not chargeable until non Irish domiciled disponent / beneficiary has been tax resident in Ireland for 5 consecutive years



**Ordinary tax residence** – 3 year residence

## Grant of Probate/letters of administration

### Tax considerations contd.

- Irish/UK Double Taxation Treaty 1976
- Inheritance tax only – not gift tax or discretionary trust levies
- Gift tax ignored (Ireland no PET – gift tax arises > threshold)
- Spousal exemption in Ireland irrespective of domicile/residence
- Cumbersome if no sales - estate values v valuation date values
- Irish CGT on sales – estate tax but inheritance net of CGT
- Take care to consider who pays the tax (residuary beneficiary?)
- Lower effective rate on
  - same assets
  - same event
  - same beneficiary
- Agricultural reliefs and business property reliefs - similar but some differences



# Distribution

## Distribution considerations

Private International law - conflicts of law on succession

- Ireland = schismatic system
  - Domicile re moveables
  - Situs re immoveables
  - Renvoi
- Domicile concept differs from UK
  - No dependant spouse (Ireland since 1937 as unconstitutional -v.- UK since 1974 under legislation)
  - No 'deemed domicile' rules (re taxation)
  - Otherwise our caselaw generally similar to UK
- EU Succession Regulation
  - Ireland opted out also
  - Ireland practises choice of law clauses – though no case law on this yet





## Distribution considerations

- Matrimonial regime
  - No community of property (but see strict forced heirship)
  - Recognition of foreign divorces – domicile
  - Civil partners - limited in time – Jan 2011 to Nov 2015
  - Marriage includes same sex
  - Cohabitation claims / agreements
  - Court variation of pre/post nuptial settlements
- Joint assets
  - True joint tenancy or ‘convenience’?
  - Tenants in common or presumption of advancement
  - Resulting trust
  - Care on timing for tax payments





## Distribution considerations

- Clawback
  - Transfers made where beneficial ownership vests in possession of beneficiary within 3 years of death or on death
  - Applies if transfer made with intention to defeat or diminish
    - Legal Right Share or right of intestacy of spouse/civil partner or
    - right of intestacy or amount for consideration under s.117 claim for children



- by Family Courts
- ante/post nuptial settlements
- otherwise only on Court application



# Intestacy

If Deceased is survived by:

- Spouse/civil partner, no children or grandchildren
  - spouse/civil partner gets entire estate
- Spouse/civil partner and children
  - spouse/civil partner gets two-thirds
  - children gets one-third equally
  - if one child has died, share to his/her children
- Children/grandchildren, but no spouse / civil partner
  - equally among the children (or their children)
- Parents, no spouse/civil partner or children/grandchildren
  - equally between parents, or
  - all to one parent if only one is living.
- Brothers and sisters only
  - equally among them
  - children of a deceased brother/sister taking that share
- Nieces and nephews only
  - equally among those surviving
- Other relatives only
  - equally between the nearest equal relations
- No relatives – all to the State.

# Anything else?

## “Non Dom” planning

- Irish tax resident but not Irish domiciled – remittance basis
- Remittance basis - Irish tax on
  - Irish source income and gains on Irish ‘*specified assets*’
  - Income tax on foreign income remitted to Ireland
  - Capital Gains tax on foreign gains remitted to Ireland
- No additional charge for remittance basis treatment – unlike UK
- Offshore anti-avoidance for income and gains
  - planning pre move
- Employment Income Reliefs
- Allocation of income/gains in trusts pre residence
- Inheritance/gift planning – split 5 year continuous residence

## CGT and Income tax offshore anti-avoidance

- Attribution of foreign gains
  - Gains from 11 Feb 1999 on
  - either ongoing gains attributed or
  - Gains attributed on receipt of capital benefit
- Affected by
  - Residency of trustees
  - Settlor interest or not
  - Domicile and residence status of settlor
  - Domicile and residence status of beneficiary
- Income attribution rules – transfer of assets abroad
  - Transferor Irish resident or ordinary resident
  - Income is payable to person resident or domiciled outside the Ireland, e.g. trustee
  - Transferor or spouse retains power to enjoy income or capital now or later



## Common Travel Area 1922 & Memo of Understanding 2019

Applies to Citizens of Ireland, UK, Isle of Man and Channel Islands

- Freedom of movement/residence
- Freedom to work/be self employed/study
- Mutual recognition of qualifications
- Eligibility to vote in certain elections
- Right to healthcare, social protections



## Commonalities between Ireland and the UK

- Domicile and situs rules for conflicts of law
- Domicile concept generally similar
- Ireland also opted out of EU Succession Regulation
- Choice of law clauses
- Validity of Wills similar
- Similar trust provisions (but different tax considerations)
- Non dom regime available (remittance basis)
- Opportunity for pre planning re offshore anti avoidance for income and gains
- Enduring Power of Attorney & Wardship (Ireland has wardship (not deputies) for adults too) (Ireland does not have lasting powers of attorney)
- Common law (and Ireland has a written constitution)
- Irish Courts will find UK caselaw persuasive
- Acceded to EU at same time in 1973 so similar EU updates thereafter (until 31/12/20)
- English speaking - no 'translation issues'
- Common Travel Area
- Professional recognition – e.g. reciprocal provisions for solicitors
- Irish taxation concepts similar to UK especially re anti avoidance tax legislation
- Post Brexit – Irish to continue to apply EU style exemptions to all UK assets (e.g. agricultural assets relief)
- Double tax treaty for inheritance tax

## Differences between Ireland and the UK

### Domicile

- Relevant for tax on benefits from pre 1/12/99 settlements
- Relevant for rules on forced heirship
- 'Dependent spouse' n/a since 1932
- No 'deemed domicile'

### Forced Heirship

- Spousal rights – fixed share if elect
- Children's right to claim
- Clawback

### Other concepts

- Will variations not available - consider conflict of laws re ability to vary Irish benefits taken

### Matrimonial

- Pre nup - influential but little Irish caselaw other than succession rights
- Ante/post nuptial settlement - variation by Court
- Divorce (recognition) based on domicile, not residence

### Taxation

- Beneficiary based since 1/12/99
- Not estates based so DTA practical difficulties
- Gifts taxable – no PET
- Trusts are taxed in a significantly different way – care with deemed discretionary trusts
- Tax year – calendar year basis

# Slán agus Beannacht is Fánagaí Sábháilte

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Ireland