

Managing Your International Assets

A Guide for Private Clients





Angharad Lynn
Partner

+44 (0)20 7665 0904
+44 (0)7500 042 044
alynn@vww.co.uk

In this increasingly global world, you need legal advisers who can look after your interests in the UK and beyond.

Whether you are UK resident and domiciled, with a holiday home abroad, or whether you are a multi-national family with assets in a number of jurisdictions, we can help you ensure that all your personal legal needs are looked after, in a tax efficient way.

Why Choose Us?

Based in the City of London, our lawyers are members of the Society of Estate and Trust Practitioners (STEP), the Association of European Lawyers and Eurojuris. This means that we work with highly qualified and experienced practitioners internationally.

“ Angharad Lynn is excellent at getting the job done efficiently and on time. ”

Legal 500

Wills

Should you have a single Will to cover your worldwide assets? Or multiple Wills in the jurisdictions where you hold assets?

Where more than one jurisdiction is involved, there will inevitably be a conflict between the different legal systems. Our cross-border experts can collaborate with your advisers abroad to ensure that your estate can be **passed on efficiently** on your death.

What Is Usually the Best Option?

It is often sensible to **have a Will in each jurisdiction** in which you hold assets. This can avoid practical problems, such as having to obtain probate in one jurisdiction before applying in another, and means you can avoid having to obtain notarised translations of Wills, and affidavits of law.

What Are the Risks with Several Wills?

If more than one Will is made, it is essential to ensure that the later Will does not **inadvertently revoke** the earlier one. It is also important to ensure that all of the worldwide estate is dealt with in the Wills, to prevent a partial intestacy from arising.



Private International Law

The Private International Law (PIL) of England and Wales provides that immovable assets, such as residential property, are on death subject to the succession law of the country in which the assets are located - this is known as the doctrine of 'renvoi'.

Movable assets, such as bank accounts, pass under the law of the individual's domicile. This is known as a 'schismatic' system.

Other countries, such as Denmark and Brazil, have 'unity' systems, under which the whole estate must be dealt with under one law. If immovable property is owned in such a country by a foreign national, the renvoi will be rejected and the whole estate will be governed by the law of the domicile of the deceased.

As English lawyers, we can advise on **how PIL will affect your assets abroad**, and we will advise in conjunction with your advisers in the other jurisdiction.



Choice of Law: The EU Succession Regulation

If you have assets in mainland Europe, we can advise on the EU Succession Regulation (Brussels IV).

What Is the EU Succession Regulation?

The Succession Regulation came into force in 2015. It was introduced to simplify estate administration across the EU. The UK was never party to the Succession Regulation, but all other Member States are, except Ireland and Denmark.

If you are habitually **resident in a participating Member State**, then the law of your habitual residence will apply to your whole estate on death, unless you have made an election for the law of your nationality to apply.

Even though the UK is not a party to the Regulation, it can still affect **UK nationals with property in mainland Europe**. For example, a British national with a house in France can elect in their Will for English law to apply to their French holiday home. There are a number of advantages to this. For example, forced heirship rules may be avoided. We can draft a suitable Will and can liaise with your lawyer in the relevant jurisdiction to ensure that your estate passes as you wish.

How We Can Help

We can advise when it may not be appropriate to make an election for your national law to apply or, if you have dual nationality, we can discuss which nationality you may wish to choose to apply to your succession.



Domicile

Your domicile will affect how your estate is taxed on death. As part of your succession planning, we can guide you and help you obtain evidence to prove your domicile.

What Is Domicile?

Domicile is a complicated concept, and means different things in different jurisdictions. Under English law, it is broadly where an **individual's permanent home is located**.

If you are domiciled in England, Wales, Scotland or Northern Ireland then, on death, your worldwide estate will be subject to UK inheritance tax. If you are not domiciled in the UK then only your estate in the UK will be subject to UK inheritance tax (although double taxation treaties may apply).

Under English law, at birth an individual's domicile follows that of their father if the parents are married, or that of the mother if the parents are not married.

Can I Change Domicile?

Changing domicile is a complicated process. To lose an English/Welsh domicile of origin, you must show that you have **severed ties with your home country** and have made a permanent home elsewhere.

If you are living in the UK, whether or not your legal domicile is still your country of origin, you will be **deemed domiciled in the UK** for all tax purposes once you have been resident in the UK for at least 15 of the last 20 tax years.





What If My Spouse Has a Different Domicile?

If you and your spouse have different domiciles, it is important to be aware of the **inheritance tax consequences**. In the UK, transfers between spouses, including on death, are usually free of inheritance tax.

However, there is a limit to this exemption from tax if the deceased died domiciled (or deemed-domiciled) in the UK, but their spouse is not UK domiciled (or deemed-domiciled).

In that case, the spouse exemption is limited to **£325,000** (applied in addition to the nil rate band, if available). So a UK domiciled individual who leaves a £1m estate to their German domiciled spouse will have their own nil rate band and an additional allowance of £325,000 which is the spousal allowance.

If the situation is reversed and a **non-dom spouse** leaves their estate to their UK domiciled spouse, then **this limit does not apply** (ie there is no inheritance tax). It is possible for a non-UK domiciled spouse to elect to be treated as UK domiciled. This election can be made during the lifetime of their UK-domiciled spouse, or after the spouse's death. Such an election is **not revocable**, although it can be lost if the surviving spouse, for example, moves abroad and gains a new domicile.

Can You Change Domicile After Death?

Even after death it is possible for a deceased's executors to make an election for the deceased to be treated as UK domiciled within two years of that person's death. This may allow the surviving spouse to **claim full spousal exemption**.

We can advise on the consequences of making an election, which requires a detailed consideration of the wider implications.

Case Study

James is resident and domiciled in England. He is married to Aga, who has been resident in England for five years, and who retains her domicile of origin in Poland.

If James dies first then there is a limit to how much of his estate can pass to Aga free of inheritance tax, unless Aga elects to be treated as UK domiciled.

If Aga dies first however, her entire estate can pass to James free of inheritance tax.

Estate Administration

We have a great deal of experience in administering cross-border estates.

Once we have established the domicile of the deceased, we work with the executors and the overseas advisers to ensure that the estate is **administered in the most efficient way**.

If inheritance tax is due in more than one jurisdiction, we will ensure that we take advantage of any double taxation treaties. If there is no treaty, we will liaise with HMRC and apply for a tax credit for the tax charged in another jurisdiction.

We are experienced in obtaining affidavits of foreign law and translations of documents, to ensure that the **process is as seamless as possible**. If the deceased was domiciled abroad we will assist in compiling information on the non-domiciled status of the deceased.





Re-Sealing Grants of Probate

When an individual dies in a country to which the Colonial Probates Acts of 1892 and 1927 apply...

...(usually Commonwealth or former Commonwealth countries) and a grant has been issued in that country, it is possible to apply for that **grant to be resealed** to enable the estate in England and Wales to be administered.

We can make the application to re-seal the foreign grant and can administer the estate in England and Wales, completing the inheritance tax return required by HMRC and paying any tax due.

Capacity Issues

As people live longer, the chances of them losing capacity at some point in their lives grow more likely.

If an individual loses capacity without **safeguards in place** to ensure that their assets can be dealt with by their loved ones, this can cause difficulties.

We advise on **Lasting Powers of Attorney** (LPAs) for both health and care, and property and finance. LPAs allow you to choose one or more persons to act as attorneys and make decisions on your behalf (for example in relation to medical treatment or selling a property) if you lose capacity.

LPAs were introduced following the Mental Capacity Act 2005. If you are habitually resident in England and Wales then the law of England and Wales will apply to your LPAs, unless you specify in writing that you would like another law to apply.

We can advise on how to prepare the LPAs to give them the best chance of being accepted in other jurisdictions, in conjunction with suitably qualified lawyers overseas. Often the LPAs will need to be legalised with the use of an 'apostille' (a certificate to confirm that they are genuine).

If you or a loved one loses capacity without making LPAs, we can also advise on **applications to the Court of Protection** for deputyship orders.



How We Can Help

At VWV we have a long track record of helping individuals deal with their personal assets across the world.

We work in close conjunction with our colleagues in the Family, Property and Immigration teams to provide a seamless service and we work closely with your advisers overseas.

What Others Say...

“ The technicalities of dealing with such a complex cross-jurisdictional situation require a highly skilled (and patient!) team.

We are indebted to you for navigating not only those complexities, but the unexpected hurdles which also resulted from a global pandemic. ”

Private client

Get in Touch Today

Angharad Lynn - Partner

 alynn@vww.co.uk

 +44 (0)20 7665 0904



@VWVPrivClient

Did You Know?

As a full service law firm, we provide a wide range of services to organisations and individuals. Whether you need pragmatic **solutions for your business**, or want to make the best decisions for **you and your family**, we are here to help you.

Below are a few examples of how we can support you:

- buying or selling a house
- family law and divorce
- immigration and UK visa applications
- setting up a business in the UK
- tax planning
- the legal implications of Brexit and coronavirus
- and much more...

Visit our website or contact us to find out our full range of services.



Focus on: Family Law

Advances in technology and widespread international travel have led to an increase in family law proceedings involving property abroad and foreign investments. It is important to instruct a family solicitor who has the expertise to advise you on the international aspects of your case.

Divorce and Financial Remedy Proceedings

Where proceedings could be issued in more than one jurisdiction, the implications of choosing one jurisdiction over another can be significant.

The choice can affect both how a court will **distribute matrimonial assets** and whether it will consider **maintenance payments**. If a party has assets in another jurisdiction, it is important to consider how any orders made in England and Wales may be enforced.

Proceedings Affecting Children

When children are involved, there may be **practical and legal concerns** about a parent taking the child/ren abroad. In extreme cases, if a child has been abducted, you may need assistance to secure the child's return. This can be a very difficult and complicated process.

Our specialist family lawyers are available to assist you with all family matters, and are experienced in international family law. The team has connections with lawyers all over the world, with whom we work on a regular basis.

Get in touch with Sam Hickman on
+44 (0)7464 544 828 or at shickman@vww.co.uk

