

Let's chat

International estate planning – October 2021

With:

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Information provided is general in nature; precise application depends on specific circumstances

Assets

- Immovable
 - Law of jurisdiction asset located generally
 - Some jurisdictions reject this distinction between immovable and movable (i.e. Denmark, Spain and Netherlands), treat per deceased's residence
- Movable
 - Law of jurisdiction where deceased domiciled

Re Tang

- Mr Tang – died in 2014 in China
- Australian and Chinese assets
- Left handwritten note in Chinese for mother, and signed in China (not a proper Will)
- Mother lived in Victoria
- Complex cross-border issue in determining if note was valid ‘Will’ in China or Victoria
- Difficulty even if determining whether a Victorian Court is suitable to make such determination
- Argument to properly consider

Cultural background

- Consider rules in relation to Muslim inheritance laws
- Does not always match the intestacy rules in particular Australian States/Territories

Executorship

- Recommend executor residing in relevant Country
- Non-resident executors could cause delays
- If no resident executor, then additional costs engaging local solicitor

One Will?

- Prefer Will per jurisdiction
- Even if one global Will, there could still be conflict of law issues
- Separate power of attorney documents

Residency tax issues

- Executor, needs at least one to be resident ideally
 - Otherwise need to show central management and control in Australia
- K3
 - Disclaimers
 - Selling early
 - Testamentary trusts

International tax issues

- And why we only focus for Australian assets
- UK
 - Inheritance tax depending on individual's domicile status
 - 40% on the value of the estate above a certain threshold
 - Transfers between spouses exempt if they have same domicile status
 - Various look through rules to capture assets held in trusts
 - Relevant for Australians living in the UK
- US
 - Estate tax on US citizens for worldwide assets and trusts
 - Again, certain tax-free threshold
 - Non US citizen owning US assets, estate tax payable on their death if US assets exceed threshold of \$60,000 subject to tax treaty

Contact details

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