



Offshore estate administration – practical hints and tips

Oliver Phipps

March 2024



Introduction - the challenges of cross-border estates

- Identification – what are the offshore assets and liabilities?
- Succession – who is entitled to the offshore assets?
- Responsibility – who is responsible for administering the assets?
- Procedure – how will the offshore assets be administered?
- Tax – is a foreign tax payable?
- Distribution – how will the assets be distributed?

Identifying the assets and liabilities

- What are the offshore assets and liabilities and where are they located?
- Who has access to the deceased's personal papers?
- What evidence is there that the offshore assets exist?
- Writing to banks and investment managers;
- Researching land registers.



What documents do we require from the outset?

- If another professional is required, what will they require from the outset?
- Death certificate;
- Death notice – if available;
- Will – if there is one – or Wills – if more than one;
- Letters of executorship or letters of authority – if they have been issued;
- Details of the offshore assets – as much information as possible.



Situs of assets – importance of identifying

Importance of identifying where an asset is situated:

- Important to determine which law will apply and whether a foreign estate tax may apply;
- Example – United Kingdom – does not include Jersey, Guernsey or the Isle of Man;
- Example – shares and investments – are they located in the UK or the USA – if so, UK inheritance tax or US estate tax may apply.



Planning the offshore administration

Once the offshore assets have been identified:

- Timing - avoid leaving the offshore administration to the end of the local administration;
- Timescales – managing the expectations of the beneficiaries;
- Looking at the worldwide administration as whole – be careful of distributing before all expenses, liabilities and taxes have been paid;
- Costs – will a foreign lawyer or agent be required?

Costs of the offshore administration

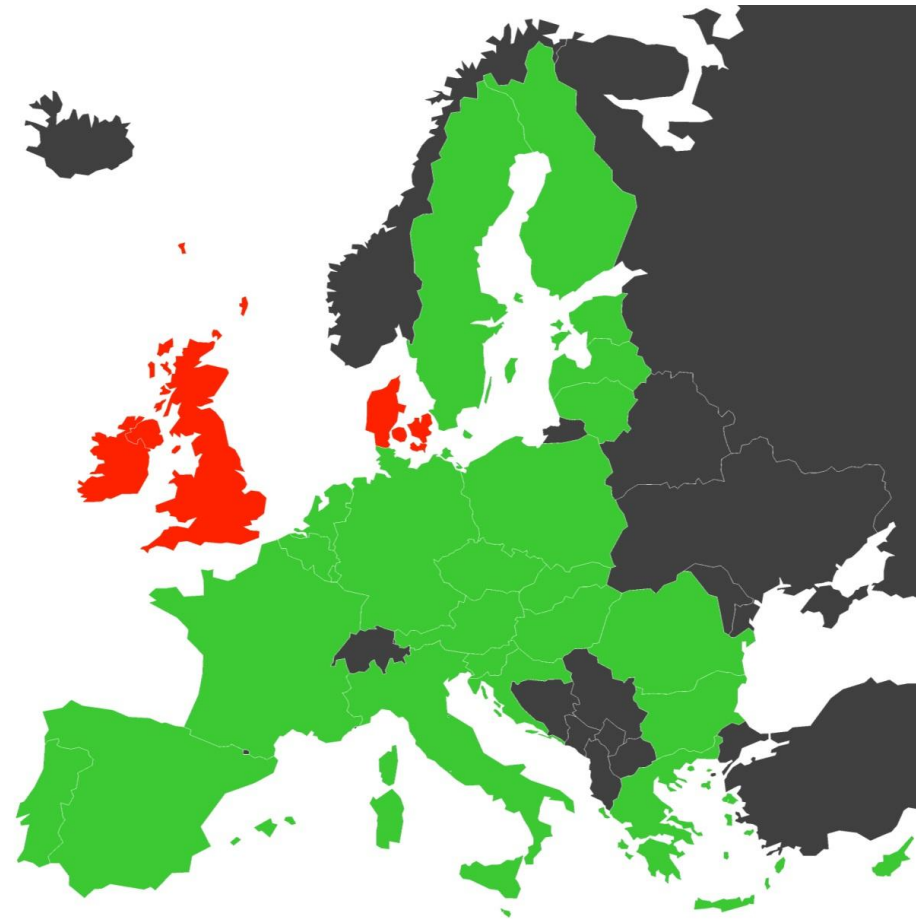
- How much will it cost? This will depend on the type of assets, their value and where they are located.
- How will the costs be calculated? Consider fixed fees, percentages or time spent basis.
- How will the costs be paid? From the offshore assets?
- How will the costs be paid if assets are transferred?
- Disbursements – court fees, courier fees, indemnity fees, Land Registry fees – to name a few examples.



Succession – private international law concepts

- Domicile – where was home?
- Moveable assets – will usually pass in accordance with the law of domicile;
- Importance of domicile – entitlement to the moveable assets;
- Land – in which jurisdiction is the land situated?
- Lex situs - land will usually pass in accordance with law of where the land is situated;
- European Succession Regulation – consider how the conflict of laws may be governed by the Regulation.

European Succession Regulation



Succession – who is entitled to the offshore assets?

- Is there one worldwide Will?
- More than one Will?
- Do the Wills overlap?
- Does a later Will accidentally revoke another Will?
- Do the Wills cover all jurisdictions or is there an intestacy?



Succession – jointly owned assets or nominated assets

- Will the offshore assets pass in accordance with a Will or intestacy – or outside of the estate?
- Bank accounts or investments in the UK – are they jointly owned?
- Will the principle of ‘survivorship’ apply?
- Bank accounts or certain investments in the US – are they ‘nominated’ assets?
- Land in the UK – is the title held as ‘beneficial joint tenants’ or as ‘tenants in common’?



Responsibility – who can administer the assets?

- Common law jurisdictions – recognising the role of executor.
- Civil law jurisdictions – recognising the authority of beneficiaries.

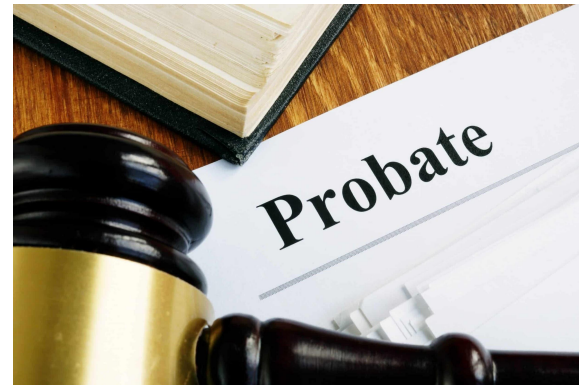


Procedure – unlocking the assets

- Careful planning – how will the assets be administered?
- Recognising the appointment from the court of domicile – examples from North America and Switzerland?
- Consider low value assets – examples from the UK;
- Common law jurisdictions – will a foreign grant of representation be required?
- Civil law jurisdictions – will a notarial declaration of certificate of succession be required?

England & Wales – the rise and fall of ‘resealing’

- No practical advantage to resealing in England & Wales anymore;
- Changes to probate procedure in England & Wales;
- Unacceptable timescales – England and Ireland;
- UK inheritance tax reporting – needs to be submitted prior to the grant application;
- Preparation of our administration accounts.



Jersey, Guernsey and the Isle of Man

- Crown dependencies – all independent jurisdictions with separate probate procedures;
- Important to remember that these islands are not, ‘the UK’;
- **Jersey** – requirement for a personal appearance – new threshold of £30,000 to release assets without probate;
- **Guernsey** – new requirement for powers of attorney to be, ‘notarised and apostilled’;
- **Isle of Man** – follow similar probate procedures to England & Wales, but still require a sworn oath;
- Court fees in the islands – linked to the value of the assets.

Procedure – format of the documents

- British Isles – UK, Jersey, Guernsey and the Isle of Man – will all require court sealed and certified copies of the letters of executorship and Will – for use overseas;
- In addition to the court seal, some jurisdictions will also require an ‘apostille’ – to add a further layer of authentication.
- What is an ‘apostille’?

APOSTILLE (Convention de La Haye du 5 octobre 1961)	
1. Country: Pays / País:	United Kingdom of Great Britain and Northern Ireland
This public document Le présent acte public / El presente documento público	
2. Has been signed by a été signé par ha sido firmado por	
3. Acting in the capacity of agissant en qualité de quien actúa en calidad de	Solicitor.
4. Bears the seal / stamp of est revêtu du sceau / timbre de y está revestido del sello / timbre de	Not applicable
Certified Attesté / Certificado	
5. at à / en	London
6. the le / el día	21 November 20
7. by par / por	Her Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs
8. Number sous no / bajo el numero	APO-86
9. Seal / stamp Sceau / timbre Sello / timbre	10. Signature Signature Firma

This Apostille is not to be used in the UK and only confirms the authenticity of the signature, seal or stamp on the attached UK public document. It does not confirm the authenticity of the underlying document. Apostilles attached to documents that have been photocopied and certified in the UK confirm the signature of the UK official who conducted the certification only. It does not authenticate either the signature on the original document or the contents of the original document in any way.
If this document is to be used in a country not party to the Hague Convention of the 5th of October 1961, it should be presented to the consular section of the mission representing that country.
To verify this apostille go to www.verifyapostille.service.gov.uk

UK inheritance tax (IHT)

- UK domiciled individuals are liable to IHT on their worldwide property.
- ‘Domicile’ can either be the English common law meaning or the artificial ‘deemed’ or fiscal domicile imposed by tax legislation.
- Those who are non-UK domiciled are only liable on the property which is situated in the UK. For SA domiciled individuals, this is also modified by the double-taxation convention between the UK and SA.



UK inheritance tax (IHT)

- IHT is currently charged at two rates: £0 - £325,000 is charged at 0% ('the nil-rate band'). The value above £325,000 is charged at 40%.
- For a married couple (or civil partnership), the nil-rate band can potentially be transferred to the survivor – doubling the nil-rate band for the survivor to £650,000.
- In certain prescribed circumstances, the 'residence nil-rate band' may also be utilised. This applies to qualifying interests in land that are closely inherited by direct lineal descendants. £175,000 for an individual or up to £350,000 for a married couple or civil partners.
- Potential for a surviving spouse or civil partner to have nil-rate bands up to £1 million.
- Unlimited spouse exemption if both the married couple are domiciled outside of the UK.

Double taxation convention – UK & SA

- Bank accounts – place of domicile;
- Shares - basis of locality;
- Shares listed and registered in the UK would be subject to assessment in the UK - if the value is above the taxable threshold;
- Alternative Investment Market (AIM) - AIM listed shares may qualify for business property relief – if they have been held for over two years and meet a number of qualifying criteria;
- Land – situs/ locality.



Double taxation convention – USA & SA

- For South African investors wishing to access global markets and hedge against volatile exchange rates, externalising assets offshore can present great opportunities. International trading platforms allow South African investors to access the US stock market with ease;
- The DTC has not been updated since the 1950's. Unfortunately, the DTC can result in exposure to US estate tax if the deceased has invested in US shares.



Double taxation convention – USA & SA

- South Africans investing in US stocks should tread very carefully as the implications for poor estate planning could be severe;
- US tax law will consider a South African domiciled individual who is also a non-US citizen as a “non-resident alien” (“NRA”). The threshold (estate tax exemption amount) for an NRA is set dangerously low at only \$60,000 with a top estate tax rate set at 40%. The SA and US DTC operates so that the US will have the privilege of taxing stocks in companies that are registered in the US.
- The result is that, if a South African who is considered as an NRA, passes away owning US stocks valued at over \$60,000, a punitive tax could be levied. To compound this punitive tax, unlike the unlimited spouse exemption offered in the UK, the US does not offer the equivalent exemption. So even if the US shares pass to a lawful spouse, there is no spouse exemption – unless the surviving spouse is a US citizen.

Distributing – identification of beneficiaries

- Distributing to an estate account?
- Distributing directly to beneficiaries?
- Current procedures to verify the identity of the beneficiaries.



Distributing – verifying bank details

- Can the bank accept a foreign currency?
- Is the account still open? Can the executor or beneficiary currently operate the account?
- In some circumstances, it is useful to send a test payment.
- Helpful to conduct video calls with beneficiaries to verify account details.



Distributing – consider the currency

- Who will be responsible for any exchange of currency that may take place?
- Consider if a competitive rate of exchange is going to be achieved.

89	+2.13%	▲	564.23	900,000
45	+6.43%	▲	765.90	600,000
67	-11.6%	▼	120.34	380,000
64	+23.1%	▲	893.23	120,000
79	+5.56%	▲	128.98	320,000

Thank you



Any questions?





Oliver Phipps | Partner

Solicitor and Notary Public



Visit: www.lesteraldridge.com for more information

Contact Oliver Phipps at oliver.phipps@LA-law.com or call +44 (0) 1202 786351

The webinars delivered by Lester Aldridge LLP are provided for information purposes only and they are general in nature. They do not constitute legal or other professional advice and should not be relied upon as such. No responsibility for the accuracy and/or correctness of the information, or for any consequences of relying on it, is assumed or accepted by any member Lester Aldridge LLP or as Lester Aldridge as a whole. The content does not negate the requirement for comprehensive assessment of each specific circumstances. If you have any questions relating to this disclaimer or if you require legal advice, please contact info@LA-law.com.