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Sir Roger Gale MP
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Dear Sir Roger,

CROSS BORDER INHERITANCE

I am writing in response to your letter of 10 September concerning a further query from Oliver Rowland of the English Language Newspaper "Connexion" on cross-border inheritance and further to your earlier letter on the same subject of 1 May and my reply of 10 July.

Your query concerns the position of UK residents owning property in France and what law will apply to that property when the Succession Regulation comes into force in 2015. As you are aware, the UK did not participate in the Regulation, as it was entitled to do under Title V (Protocol 21) to the Treaty on the Functioning of the European Union. As outlined in my letter of 10 July, the decision to remain outside the final Regulation was taken because the UK had been unable to secure the necessary amendments that would guarantee the best outcome for British citizens, businesses and charities. Remaining outside the Regulation does not significantly change the current legal regime.

To clarify your original query, the Succession Regulation will not apply to the succession of a deceased's estate where they die habitually resident in the UK and own a holiday home abroad, for example in France. The current legal regime remains in force. This means that the law that will apply to the property in France will be French law.

Succession is, however, a complex legal issue and a number of issues need to be taken into consideration in each specific case. This has, in some respects, become more complicated as a result of the relationship between the provisions of the new EU Regulation on Succession and the laws which currently operate within the UK. As a result of the Regulation coming into force, there will be certain circumstances where the Regulation could apply to the succession of the estate of a UK national who dies habitually resident in the UK and where their estate includes real property (defined as immovable property) located in France.

Under Article 10 of the Succession Regulation which deals with subsidiary jurisdiction (where the deceased is habitually resident in one Member State at the time of their death but had assets in another Member State), the French courts could claim jurisdiction and be able to deal with their estate in two situations:

- i) where the deceased had previously habitually resided in France and no more than five years had elapsed since that point to change that situation; and
- ii) no other court in another country that was legally bound by the Regulation had jurisdiction on the basis of the deceased's previous habitual residence. For example, for property and other assets located in France no other Member State could claim jurisdiction. As a result, the French courts would be entitled to deal with the succession to assets in France.

Where the French court has jurisdiction to deal with assets but where the deceased died habitually resident in another country, the French courts would be required to apply the law of the country where the deceased was habitually resident on the basis of Article 21 of the Succession Regulation (the applicable law). The general rule here is that it would be this law that would apply to the deceased's entire estate. However, as the UK is not party to the Regulation, Article 34 of the Succession Regulation takes effect (the law that applies where the country is not a party to the Regulation). In this situation although a UK law would still apply, the result of its application would be a reference back to the law of France and therefore French law would apply to any real property.

The main benefit of the Regulation is the ability of applying one law to the entire succession of a deceased's estate whether through choice (via a will) or by virtue of the law of the Member State where the deceased died habitually resident. For UK nationals residing in another Member State, UK law can be chosen to apply to their estate upon death. However, the application of a UK law would still mean that where this involved real property, reference would still fall to the law of the country where that property was located.

In simple terms, if UK law applies to the succession of an estate and this involves a property which is located overseas, the law in the UK will dictate that the law of the country in which the property is situated should apply. This means that the Regulation does not lessen the difficulties for British citizens who die in the UK or abroad where this involves real property. My officials are currently considering whether improvements can be made through domestic law that could address these problems.

As I am sure you appreciate, succession and succession planning is a complex area and the specifics of individual cases should be the subject of professional legal advice.

I hope, however, this helps explain the current position and clarify matters.

Yours Sincerely,
Tom McNally

TOM MCNALLY

