

Charles Hamer Financial Services

INDEPENDENT FINANCIAL ADVISERS

87 Park Street, Thame, Oxfordshire, OX9 3HX

Tel: 01844 218957 Fax: 01844 261886

Email: Jon@charleshamer.co.uk Chris@charleshamer.co.uk

www.charleshamer.co.uk

EU CROSS BORDER SUCCESSION REGULATIONS PLACED ON FRENCH STATUTE BOOK 16TH AUGUST 2012.

HOW WILL THESE IMPACT ON BRITISH RESIDENT OWNERS OF FRENCH PROPERTY?

We have recently received confirmation that France will formally pass the above regulation on to its statute book today, 16th August 2012. With a 3 year moratorium before the regulation becomes law, it will not therefore be possible to make use of the new rules for planning the devolution of your French property until 17th August 2015.

Our [July news update](#) on this topic provided a basic introduction to the Regulation but left open the question as to whether or not it would be accessible and relevant for the French property owner who remains resident in the UK, bearing in mind that our government has decided to opt out.

Our own opinion was and still is that, all other things being equal, the Regulation will nonetheless apply in these circumstances, so enabling the UK resident owner to devolve their French property according to one or other UK Succession Law, (England & Wales, Scotland, N.Ireland).

Our reasoning behind this conclusion is by reference to the theory of "Renvoi".

What is Renvoi?

Renvoi is a technique used both in the UK and France, (where it originated), for solving problems which arise out of a conflict of international laws and is applied by the Court in one State (e.g. the UK) by deciding the case in accordance with or by reference to the law in the other State, (e.g. France).

A topical French case example is that of the estate of Mme Theon^[1], considered by the Tribunal de Grande Instance (Juges des Tutelles) Lille 28th March 1981:

The case concerned the devolution of the estate of a Mme Theon, a French national, who died at her home in Montpellier, leaving – other than her surviving husband - a daughter of their marriage. The estate included an apartment at la Grande Motte (France) and some land in Spain: on the Costa Brava to be precise.

Because of her domicile, the devolution of the movable estate and the apartment at Grande Motte follows French law. On the other hand, the devolution of the Spanish land is governed by Spanish law, conforming to standard French rules on conflict of laws. But Spanish law, by referring to the law of nationality of the deceased, results in the devolution of this Spanish asset being subject to French Succession law.

So, as a result of French law considering how Spanish law would treat the matter, it was concluded that French Succession law would nonetheless apply to the devolution of the land in Costa Brava.

Charles Hamer Financial Services is Authorised and Regulated by the Financial Services Authority

Conclusion on Prospective Application of the EU Regulation on Cross Border Successions

If we were to apply the same system of Renvoi under the post cross border succession Regulations, as will apply in France and then substitute the French resident national with a British national resident in the UK and the Spanish land with a French property, we arrive at the following outcome:

The British conflict of laws refers the succession of the French property to French succession law. However, post the EC Regulations, French succession law now provides that the succession law of the worldwide estate is governed by either the law of residence of the deceased by default or the law of nationality by election. Since the deceased is UK resident, the devolution of the French property will therefore be dealt with by UK succession law.

Consequently, despite the UK not having signed up to the Regulation, British residents should therefore be able to devolve their interest in the French property by reference to a UK Succession Law and thus a UK Will.

The question that remains for clarification in due course is whether Renvoi will still be available as a technique for interpreting the regulations and we'll keep our readers posted on this as and when such detail comes to light over the next few weeks and months.

*On the other hand the new Regulations will **not** exclude the devolution of the French property from the scope of **French Inheritance Tax** and it is in this regards that there are bear traps waiting for the unwary who otherwise gleefully avail themselves of the post cross border succession era opportunities, as above, without making plans to avoid falling victim to unexpected tax liabilities, levied at **60%**, which could be potentially devastating for the beneficiary.*

Seeking professional advice and pre-planning will, if anything, be even more important than before. To find out how we can help best prepare your French and UK estate planning do contact our advising partner, Jon Pawsey on 01844 218956 or by email jon@charleshamer.co.uk