



# Do you own Property Abroad?

## Consider the impact on your Will and IHT planning

Many people own a property overseas or are considering buying one. Not everyone realises that other countries' tax, property and succession laws are different to those in the UK. Overlooking this could be an expensive mistake and cause difficulties for your family in the future.

### Succession Issues

Firstly, you will need to find out about the succession laws in the country concerned. Then you will need to find out whether any Will you make in England will be effective in that country. For instance:

- In France you cannot assume that your share of any 'immovable property', such as a house, will pass to your spouse, either automatically or by your Will. It will depend on the basis on which you purchased the property and whether you have children. Any 'movable property' such as money in a French bank can however be left to whoever you choose.
- If you are English and have a property in Spain you can make a Will leaving your property to whoever you choose, whereas if you are regarded as a Spanish national you would be subject to forced inheritance rules.

The four key issues to consider are:

**'Movables and immovables'** – will all your assets in the foreign country be dealt with under UK law, under the laws of the country in which the property is located, or will some be dealt with under one jurisdiction and some under the other?

**'Forced heirship'** – in some countries a certain proportion of your estate has to be passed to specified members of the family. This may be affected by the basis on which the asset was acquired and owned, particularly if owned jointly.

**Joint ownership** – in the UK we are able to own property as 'joint tenants' so that when one person dies their share of the property passes automatically to the other. Most countries don't have this option, and you may not have the freedom to determine who will benefit.

**Family law** – different countries have different laws in relation to the family home both at the time of, during and on the termination of marriage or civil partnership. Also, some recognise and use pre-nuptial agreements while others do not.

“KCJ is a large firm but you dealt with us in a friendly, individual manner.”



# Do you own Property Abroad?

## Which Country's Law Applies?

The answer may be more than one. You will need to take into account the rules relating to 'domicile', 'nationality' and 'residence'.

Your **domicile** is inherited from your father and can only be lost if you take up residence in another country and say that you intend to spend the rest of your life there. Your passport shows your **nationality**. **Residence** is where you are living for the majority of each year.

If you are UK domiciled you are liable to pay IHT on all your worldwide assets. Even if you move abroad permanently, you will still be deemed as domiciled in the UK for the following 3 years for IHT purposes. In contrast, some countries, such as France, determine tax liabilities on residence and others, such as Germany, on nationality.

## Tax Complications

As there are different exemption rules and different tax rates in different countries, there is a danger that you could have to pay tax twice on the same assets. However, a few countries do have 'double taxation treaties' with the UK, enabling one lot of tax to be offset against the other.

The tax complications are not just limited to overseas property. If your spouse or civil partner is not UK domiciled, then the usual rule of tax-free transfers between spouses does not apply and the limit is currently just £55,000.

## Planning Pays!

Taking advice now so that you are clear which rules will apply, and can plan your purchase, property ownership and tax affairs accordingly, can help to prevent nasty shocks for members of your family in the long run. We will be happy to give you individual advice.

Kester Cunningham John is a member of Eurojuris. We therefore have links to lawyers in many overseas locations if you need to make a separate Will abroad.



**Jennie Pratt**  
Cambridge  
T 01223 431096  
E [jennie.pratt@kcj.co.uk](mailto:jennie.pratt@kcj.co.uk)



**Robert Chalmers**  
Norwich  
T 01603 703224  
E [robert.chalmers@kcj.co.uk](mailto:robert.chalmers@kcj.co.uk)



**Simon Crooks**  
Bury St Edmunds  
T 01284 732132  
E [simon.crooks@kcj.co.uk](mailto:simon.crooks@kcj.co.uk)



**KESTER CUNNINGHAM JOHN**  
Solicitors

Kester Cunningham John is regulated by the Solicitors Regulation Authority

The information contained in this guide is of a general nature and specific advice should be sought for specific situations. We believe the information to be correct as at the time of publication, August 2008. While all possible care is taken in the preparation of this leaflet, no responsibility for loss occasioned by any person acting or refraining from acting as a result of the material contained herein can be accepted by the firm or the authors.