

GRANT OF REPRESENTATION

General

A Grant of Representation is an official appointment by Probate Office of the Courts obliging and entitling the person appointed to gather in the assets and liabilities of the deceased and distribute them in accordance with the Will or the intestacy rules.

As in Ireland, there are two principal types of Grant of Representation. A "Grant of Probate" involves "proving the Will" and having it certified as the authentic last Will of the deceased. Letters of administration issue where there is no Will.

The vast majority of applications for Grants are not contentious in that the existence of a valid Will is not disputed. However, where the validity of a Will is challenged, the matter is decided by a Probate Judge.

There is a Principal Probate Registry in London and there are District Registrars. The Registries are not limited to any geographical area.

The procedure for obtaining a Grant, involves steps which secure that inheritance tax is paid or secured if it arises. HM Revenue usually requires a full inventory and valuation of the assets and liabilities of the deceased. Once HM Revenue certifies that the return is paid and in order, an application for the Grant is made by lodging papers, including the original Will, Affidavits, and other documents in the Probate Registry.

Executors and Administrators

A Grant of Representation gives the executor or administrator powers to implement the terms of the Will or deal with it under intestacy rules, if there was no Will or no effective Will.

The “executor” is the person whose role it is to distribute the assets in accordance with the terms of the Will. The “administrator” is the equivalent name where there is no Will or where the executor named in the Will is not available. The personal representative refers to either an executor or administrator. Any person over the age of 18 and of mental capacity may be a personal representative.

A Grant of Representation will generally be required to transfer assets of the deceased into the names of the beneficiaries. There is an exception for certain small sums, up to £5,000. Certain legislation allows certain limited types of assets to be paid without a Grant, such as National Savings Bank, Friendly society, certain pensions etc.

Where executors are appointed but they are unable or unwilling to act, certain substitutes become entitled to apply to have the Will proved and administer the estate. The order of entitlement is set out by Court rules and follows the entitlement under the Will. For example, the person left the bulk of the estate will generally act if the named executor cannot act.

Where there is no Will, the order of entitlement to a Grant is also laid down by law. The persons entitled are usually the surviving spouse, children, parents or more remote relatives depending on the circumstance. In order for the persons in more remote categories to establish entitlement, it is necessary that they account for those with a better right. Unless already dead, those parties will either have to renounce their right or be cited which involves the Court Office giving them an opportunity to prove the Will and their passing on it.

It is possible for a creditor to apply for a Grant where necessary in order to secure payment of debts.

Where a number of parties (say children) have an equal entitlement to obtain a Grant, a grant can be made to the first to apply without notice to the other.

A single personal representative is enough but it is possible to have several. A Grant of Probate cannot issue to more than four people. It is possible to have different executors for different parts of the estate and up to four can be appointed for each part of the estate. Likewise there can only be a maximum of four administrators in an intestacy case.

Nobody can be forced to accept the office of executor or administrator. A person named as executor in a Will may decline to act by renouncing his right. A “renunciation” must be in writing and signed by the executor.

A personal representative must undertake obligations in relation to the administration of the deceased’s estate. He or she must swear that the Will filed is believed to be the true and last Will of the deceased.

Returns to Revenue

An Inland Revenue Affidavit must be delivered within 12 months after the death. In practice it should be done much earlier. Until inheritance tax has been paid, it will not be possible to obtain the Grant. The Inland Revenue Affidavit is a statement of the deceased’s assets and liabilities. This may require the personal representatives to obtain valuations. In the case of certain assets this may be straight forward. Other assets such as property may need to be valued.

There is no need to file an Inland Revenue Account if the estate is “excepted”, unless HM Revenue so require within 35 days of the issue of the Grant or it is subsequently discovered that the estate is not “excepted”.

An “excepted” estate is where the following conditions are met namely:

- the deceased died domiciled in the United Kingdom
- the estate only comprises property which passed under Will or intestacy or by statutory nomination or survivorship

- not more than £35,000 in gross value is distributable to property situate outside the UK
- the deceased has not made transfers during the seven years prior to death not exceeding £100,000
- the total gross value, of the deceased's estate (including transfers in the last seven years) does not exceed either the Inheritance Tax threshold at the time of the application or £1,000,000 of net chargeable estate

There is a category of except estates for a person who has never been domiciled in the UK. In such cases there is no need to deliver a formal account if the UK estate is attributable solely to cash or quoted shares and the gross value does not exceed £100,000. This is relevant to Irish domiciled individuals with shares in UK Companies.

Applications for a grant in respect of excepted estate must be accompanied by a return of estate information to HM Revenue. Where the estate is not an excepted estate, a full account must be completed.

It is necessary to work out the value of the estate and compute the chargeable tax. This will require obtaining information in relation to lifetime transfers on the part of the deceased because inheritance tax rules take them into account. The tax is payable on delivery of the accounts. In certain circumstances payments by instalments may be available. Interest is charged on late payment.

Because the Grant will not normally be issued without payment of Inheritance Tax, HMRC have agreed certain processes with Banks and Building Societies to allow personal representatives to draw on money held for the purpose of payment of Inheritance Tax due on delivery of the Inland Revenue account. Certain forms must be completed and submitted to Inland Revenue in respect of accounts from which it is sought to transfer funds in payment of the tax due.

In the absence of the above, procedures it may be necessary to obtain a bank loan to cover Inheritance Tax liability. The receipt for lodgement of Inheritance Tax return must be lodged with the application for probate.

Domicile

Issues of domicile often arise and if this is relevant to whether an individual is liable on their world wide assets to UK Inheritance Tax liability. There are specified formats and returns in relation to proof of domicile. Domicile is important in relation to inheritance tax because a person who is UK domiciled is subject to inheritance tax on all of his world wide assets. A non-UK domiciled person is only subject to UK inheritance tax on his UK assets.

The issue of whether an individual is Irish or UK domiciled will often need to be proved in the Inland Revenue Return. Domicile is a legal notion that refers to the deceased's long term home base. There are special UK domicile rules for inheritance tax. There is special deemed domicile in the UK where a person has been resident in the United Kingdom for 17 out of 20 years before death.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.