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European Commission + CNUE Colloquium - Brussels

Legal Cooperation at the Service of European Families

Succession Planning - Case Study

England & Wales – Netherlands - France

Penelope (“Penny”) is British citizen, but not United Kingdom resident. Nevertheless she may still have English domicile as defined under the law of England & Wales. (The United Kingdom of Great Britain and Northern Ireland, has three different legal jurisdictions – England & Wales, Scotland and Northern Ireland and a person is domiciled in only one of these three jurisdictions)

If Penny is domiciled in England & Wales, English law applies to her movable property but the local *lex rei sitae* applies to her immovable property.

England does apply double or total *renvoi* also known as the foreign court theory. The English court applies the law that the other court would apply. Thus if Penny has immovable property in Netherlands and has chosen English law as the applicable law, England will accept such choice under Dutch law as valid and binding.

For tax purposes, Bas is probably not English domiciled or deemed domiciled (which requires tax residence for 17 out of the previous 20 tax years) so that on his death only assets in the United Kingdom will be subject to United Kingdom inheritance tax (“IHT”).

The relevant Matrimonial Property Regime will depend upon the joint domicile or if none, the state with which the parties have the closest connection at the time of the marriage. This will probably be the Netherlands.

If there is a Dutch legal division, the question is how this would be classified for English law purposes. Probably such a structure would be regarded in England as most equivalent to a trust. If that is the case the whole value of such assets might be deemed to be in Penny’s estate on her death for UK IHT.

French immovable property will be subject to French succession law. Possible solutions might be to consider a Tontine or buy $\frac{1}{4}$ and $\frac{3}{4}$ to ensure equal division to all children?

In relation to the question of the gifts to Bas’s son, for English law purposes, gifts are not classified (qualification) as part of succession. Gifts are classified as questions relating to the transfer of property and property rights. Therefore the relevant distinctions are between immovable property, tangible movable property and

intangible movable property. Gifts of money would therefore be subject to the local law for English law purposes.

The extent to which IHT is payable will depend upon the situs of the assets.

There are double tax treaty for succession tax purposes both between the United Kingdom and Netherlands and between United Kingdom and France. The detailed consequences of these Treaties have to be carefully considered.

Clearly the French tax effects of 60% tax in France between Bas and his step children on gifts and death compared to no tax between himself and Penny, do make the whole question of estate planning very important.

The recent case of *Block v Finanzamt Kaufbeuren* 12 February 2009 **C-67/08** gives European Court of Justice authority that double inheritance tax is not in breach of the EU Treaty. However, the UK generally does give unilateral relief in most cases **s.159 Inheritance Tax Act 1984**. This is not limited to the tax payable on foreign situs assets, but applies to foreign tax payable on the same asset upon which UK tax is also payable.