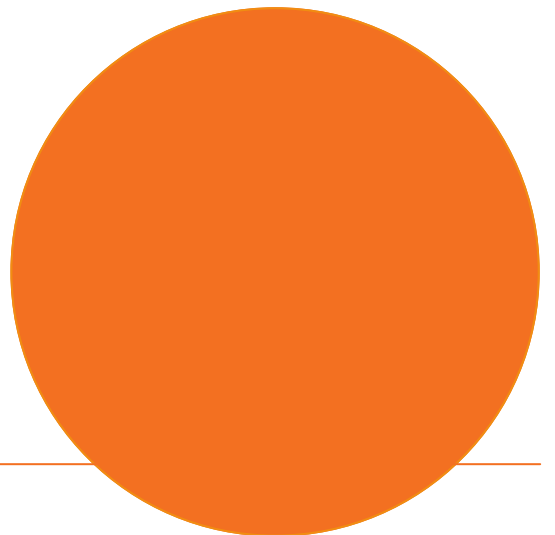


Administration of Estates

An Introduction



An Introduction to Administration of Estates

Introduction

Dealing with the administration of an estate can be a difficult time both from an emotional and a practical perspective.

The private client team at FSI has a depth of experience and knowledge in dealing with estates, particularly those of a complex nature, with sensitivity and professionalism to help our clients through this difficult time.

Recognising a "complex" estate is important as it is not always immediately obvious. You may think that an estate is straightforward if it contains shares in the family company and the holiday home in France. It will not be until you become embroiled in a dispute with HMRC over the amount of inheritance tax relief they will allow on the shares or frustrated by delays with the French probate procedure before you realise that the administration of the estate is not as simple as it first appeared.

This is where we can help you.

Our services

The basics

We guide you through the probate process from start to finish, including:

- explaining the process and dealing with the information gathering exercise
- preparing the documents required to obtain probate including the inheritance tax account and Oath for Executors
- after probate has been granted, dealing with the deceased's assets and liabilities as required
- organising the estate accounts, any tax returns required for the administration period and final distributions.

Business assets

Many of the estates that we deal with contain business assets, such as partnership interests, private trading companies and property investment companies. Whilst dealing with these assets, Executors need to be conscious of various factors, including:

- valuation
- application of reliefs from Inheritance Tax and potential negotiations with HMRC
- continuing to run the family business whilst the estate is in administration
- dealing with the business assets in accordance with the Will whilst taking into account provisions in the Partnership deed, Shareholders Agreement or Articles of Association.

We can provide valuable guidance and assistance on all of these issues.

Overseas element

We are used to dealing with estates containing assets in overseas jurisdictions from holiday homes to foreign business assets. Many clients also have a foreign connection themselves, for example, they are domiciled outside the UK but live and have assets here.

We have experience in liaising with overseas lawyers to help Executors deal with the issues that arise in those jurisdictions. We are also part of an international network of lawyers called Meritas and regularly liaise with our Meritas colleagues in the relevant jurisdictions.

Post death tax planning

Ideally, individuals will have received good advice during their lifetime and been able to structure their affairs to take advantage of Inheritance Tax planning opportunities. However, the law can change quickly and opportunities can be missed.

Our knowledge of the tax legislation allows us to recognise where it is possible to carry out further tax planning after death for the benefit of the current or future generations by using, for example, deeds of variation.

Contentious Estates

More and more estates are involved in some sort of disagreement or dispute that can easily escalate into litigation. Our contentious probate team have the expertise to deal with the often unique problems that arise during these difficult and testing circumstances.

Case Studies

An estate with no Will

We were instructed by the family of an individual who tragically died in a car crash. He died intestate, leaving his parents, a brother and sister, and a fiancée with whom he cohabited. He had set up a property business with the help of the companies' bank loans which had been personally guaranteed by the deceased and his business partner. He also owned property in France.

The issues that we overcame:

- the intestacy rules made no provision for the fiancée who made a claim against the estate. We advised the family and were able to settle the fiancée's claim through mediation;
- the property companies found themselves in difficulties following his death and the Bank called on his guarantee. We liaised with the Bank and gained enough time for funds to be realised to repay the sums due from the deceased without direct intervention from the Bank;
- using our Meritas colleagues in France, we were able to deal with the French reporting and tax obligations in relation to the French property and dealt with the claim to HMRC for double tax relief.

A wealthy property empire

We act for the estate of an individual who had built up a valuable property empire. The properties were held through a combination of direct ownership and private companies.

Under his Will, the deceased left the vast majority of his estate on trust for his wife. On her death there would be a substantial amount of Inheritance Tax payable if nothing was done.

The estate was re-organised so that the assets were transferred to the younger generations. As long as the wife survives seven years, those assets will pass down free of Inheritance Tax.

Liaising with the deceased's accountants, we devised a strategy to allow the second generation to retain a degree of trust like governance over the third generations' entitlements without incurring the various Inheritance Tax costs of keeping assets in trust for future generations.

Using the nil rate band effectively

The legislation regarding the nil rate band ("NRB") (currently £325,000) changed effective from 9 October 2007. Previously an individual had to use their NRB on their death otherwise it was wasted. The change provided that if the individual's NRB remained unused, for example their entire estate passed to their spouse or charity, their NRB could be transferred for use by their surviving spouse's estate so that the survivor could have two NRBs. However, the legislation is drafted so that in certain circumstances where one or both of the spouses had been married previously, it is possible for more than two NRBs to be used by the joint estates.

We are acting for the estate of an individual who survived his first wife and remarried. On his death he was survived by his second wife and children from his first marriage. The deceased's whole estate was left to his second wife on trust, so that his NRB remained unused. If nothing is done, two NRBs will be available on the second wife's death for use by the trust he created under his Will and by her estate.

However, the deceased's first wife had died leaving her estate to him so her NRB was unused. The new rules provide that only a maximum of two NRBs can be used on the second death so we have prepared a deed of variation which allows the NRB of the deceased and his first wife to be used now leaving his second wife's NRB to be used on her death so that the family can benefit from three NRBs and therefore an extra Inheritance Tax saving of £130,000.

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Services for individuals include:

- wills and inheritance tax planning
- efficient administration of estates
- creation and administration of trusts and charities
- trust and estate dispute resolution
- family issues, including:
 - marriage and cohabitation (pre-nups/post-nups/cohabitation agreements)
 - relationship breakdown (divorce/civil partnerships dissolution and financial settlement)
- our specialist children's unit dealing with residence and contact, adoption and surrogacy, international child abduction and children disputes
- residential property
- employment law advice
- reputation management and defamation

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