

Flash News

New European Succession Regulation

The European Succession Regulation No. 650/2012 will apply to all successions opened from August 17, 2015.

It is applicable to cross-border successions in Member States, with the exception of Denmark, Ireland and the United Kingdom and aims to harmonize inheritance law against an international background.

However, the European Succession Regulation only determines the applicable national law and the competent court in the event of international inheritance matters. The respective national legislations will not be affected thereby. The same applies to the inheritance tax rules in force in the respective countries.

Furthermore, the recognition and enforcement of decisions taken in the context of an international succession will be facilitated by the European Succession Regulation and the estate processing speeded up and therefore less costly.

Basically, the European Succession Regulation provides that the law applicable to the succession shall be that of the State in which the deceased had his/her habitual residence at the time of his/her death.

If it appears from the circumstances as a whole, that the deceased was, at the time of death, manifestly more closely connected with a State other than the State of habitual residence, the succession shall be governed by the law of that other State, as an exception to the principle referred to above.

Another exception is possible, if the testator chooses, by last will (or testamentary contract), the law of the country of which he is a national.

Therefore, the European Succession Regulation governs which national law applies to a cross-border succession. As a general rule, the right to a compulsory portion, inheritance shares, inheritance rights of the surviving spouse and the like shall be determined by the applicable national inheritance law.

Even though the European Succession Regulation is only directly applicable in the participating EU-States, it indirectly has an impact globally. If, for instance, a citizen of a non participating State had his/her last habitual residence in a participating EU-State, the European Succession Regulation is applicable. It is also possible to apply the Regulation if a citizen of a participating State had his/her last habitual residence outside the territory of the

participating States, even where there has been no choice of law, but when a referral to the European Succession Regulation is possible by virtue of national legislation.

In the same way, the competence for decisions in succession matters for the whole of the succession is principally governed by the last habitual residence of the deceased.

Under certain circumstances, exceptions to the basic jurisdiction may be made.

Moreover, the European Succession Regulation introduces the European Certificate of Succession, which will be valid throughout Europe without any further acknowledgement. This serves as inheritance certificate, recognized in all participating EU-States.

On the basis of the European Succession Regulation, the judgements given in a Member State are considered enforceable in another EU Member State, when, on the application of any interested party, it has been declared enforceable there, pursuant to the European Succession Regulation, whereby the court has no power to assess the merits of the case.

Overall, the European Succession Regulation harmonizes international private law and provides legal clarity.

Action is required for EU citizens, who have their habitual residence in another country, but wish their testamentary dispositions be subject to their home country law. Even in the case of an already existing last will under the home country law, the legally valid choice of the applicable inheritance law is required.

Thanks to the new regulations and corresponding choices with regard to the applicable inheritance law, there are now a number of planning alternatives available. On the other hand, it is important to identify and remediate potential pitfalls, e.g. in case of repeated changes of residence.

The team of B.A. Tax Accountants has been active for years in the area of succession planning and will be pleased to be at your disposal for any individual advice.

For further information do not hesitate to contact one of our team members, who will be glad to assist you at any time:

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