

# Wills & Probate in Germany

## Seminar for British Professionals who advise Clients with foreign Assets

Expert speakers explain how to tackle Probate matters connected to Germany. Expect lively presentations for Probate practitioners with real life case studies and helpful checklists on how to:

- Understand German Wills and Intestacy Rules
- Will Preparation for international Families and Expats:  
Make English Wills work in Germany
- Access foreign Assets: Is German Probate unavoidable?
- Speed up Probate Procedure
- Mitigate Inheritance Tax in both Countries
- Deal with contentious Probate



**Elissa Jelowicki**  
Solicitor & R.E.L.

**Bernhard Schmeizl LL.M.**  
Rechtsanwalt (Called 2001)

Phone: +49 941 463 7070  
Email: [mail@grafpartner.com](mailto:mail@grafpartner.com)

# German Probate & Inheritance Tax

## Why bother?



## Foreign Succession Rules may apply to (parts of) the Estate

**Avoid surprises and  
legal disputes among  
the beneficiaries**

# Foreign Succession Rules



**Gerda dies:**  
**(i) without a Will; or**  
**(ii) her English Will only deals with UK assets** (which is quite common)

**German estate is divided:**  
→  $\frac{1}{2}$  or  $\frac{3}{4}$  go to **John** (marital property regime)  
→ **rest goes to Gerda's siblings**

→ **John now co-owns German property with his German in-laws!**  
(tenants in common, unanimity rule)

# Which Country's Succession Laws apply?

**Relevant if there is no (valid) Will  
or if forced share rules are invoked**

**Pre EU Succession Regulation: nationality**



**Now (since 8/2015): EU Succession Regulation uses habitual residence to determine both jurisdiction and applicable law**

# How to Access German Assets

**UK Grant is not accepted.**

**No resealing.**

**No EU Certificate of Succession. \***

(\* unless the deceased was habitually resident in a EU member state)

**Well then, what *does* work?**

# Some Real Life Cases

## **(3) British Couple own German Assets**



# Assets in Germany



## What happens if Gerda dies?



→ Global Estate is  
subject to UK IHT



→ German IHT on  
German assets,  
i.e. £250k

**P: If not tax resident, no regular allowances! Instead: lousy €2,000.**

**Opt to be treated as tax resident.  
P: Then Global estate is taxed.**



# Opting to be treated as German IHT tax resident

Graf

Partners  
GERMAN LAWYERS  
& BRITISH SOLICITORS

**Section 2, para. (3) ErbStG:** Auf **Antrag** des Erwerbers wird ein Vermögensanfall, zu dem Inlandsvermögen (§ 121 BewG) gehört, insgesamt als **unbeschränkt steuerpflichtig** behandelt, wenn der Erblasser zur Zeit seines Todes, der Schenker zur Zeit der Ausführung der Schenkung oder der Erwerber zur Zeit der Entstehung der Steuer (§ 9) seinen Wohnsitz in einem **Mitgliedstaat der EU** (...) hat. In diesem Fall sind auch mehrere **innerhalb von zehn Jahren vor dem Vermögensanfall und innerhalb von zehn Jahren nach dem Vermögensanfall von derselben Person anfallende Erwerbe** als unbeschränkt steuerpflichtig zu behandeln und nach Maßgabe des §14 zusammenzurechnen.

application by transferee

to be treated as tax resident → full allowances

post Brexit?

**However!**

All (global!) transfers within 20 years are subject to German IHT, incl. lifetime gifts

# Assets in Germany



## What happens if Gerda dies?



→ Global Estate is  
subject to UK IHT



→ German IHT on  
German assets,  
i.e. £250k

**No opting** → Spouse pays 11% on  
£248k = £27k. UK Estate irrelevant

**Opting** → Global Estate £250k + £250k is  
subject to German IHT. But spouse can  
claim German allowances €500k plus €256k.