

PRIVATE CLIENT

Ireland



Private Client

Consulting editors

Anita Shah, Ludovica Rabitti, Ziva Robertson, Jennifer Ronz

McDermott Will & Emery

Quick reference guide enabling side-by-side comparison of local insights, including into tax; trusts and foundations; same-sex marriages; civil unions; succession; capacity and power of attorney; immigration; and recent trends.

Generated 21 November 2022

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2022 Law Business Research

Table of contents

LEGAL FRAMEWORK

Key legislation
Real property
Establishing a business

TAX

Residence and domicile
Income
Capital gains
Lifetime gifts
Inheritance
Real property
Non-cash assets
Other taxes
Trusts and other holding vehicles
Charities
Anti-avoidance and anti-abuse provisions

TRUSTS AND FOUNDATIONS

Trusts
Private foundations
Disputes

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships
Heterosexual civil unions

SUCCESSION

Estate constitution
Disposition
Intestacy
Adopted and illegitimate children
Distribution
Formalities

Foreign wills

Administration

Challenge

CAPACITY AND POWER OF ATTORNEY

Minors

Age of majority

Loss of capacity

IMMIGRATION

Visitors' visas

High net worth individuals

UPDATE & TRENDS

Key developments

Contributors

Ireland



John Gill
john.gill@matheson.com
Matheson



Maeve Lochrie
maeve.lochrie@matheson.com
Matheson

LEGAL FRAMEWORK

Key legislation

What key legislation and regulations are relevant to foreign individuals moving to or investing in your jurisdiction? What government bodies are charged with enforcing these laws and what is the extent of their powers?

The following immigration legislation is relevant to foreign individuals moving to Ireland or investing in Ireland:

- the Immigration Act 2004; and
- the Irish Nationality and Citizenship Act 1956.

Immigration officers appointed by the Minister for Justice and Ireland's national police force (An Garda Síochána) are charged with enforcing these laws and have wide reaching powers.

The following tax legislation is relevant to foreign individuals moving to Ireland or investing in Ireland:

- the Taxes Consolidation Act 1997, which contains the Irish income tax, capital gains tax and corporate tax provisions; and
- the Capital Acquisitions Tax Consolidation Act 2003, which contains the Irish gift and inheritance tax provisions.

The Irish Revenue Commissioners can assess an individual to tax in accordance with the abovementioned legislation and have wide powers of enforcement.

Law stated - 15 September 2022

Real property

Are there any particular rules or restrictions on foreign individuals purchasing or investing in real property in your jurisdiction?

There are no rules or restrictions on foreign individuals purchasing or investing in real property in Ireland; however, such individuals will need to apply for an Irish tax number (also known as a PPSN).

Law stated - 15 September 2022

Establishing a business

Are there any particular rules or restrictions on foreign individuals establishing a business in your jurisdiction?

There are no restrictions on EU, EEA or Swiss nationals establishing a business in Ireland.

Non-EU, EEA or Swiss nationals will have to apply for permission to remain in Ireland and their ability to establish a business in Ireland will depend on the type of permission granted.

Law stated - 15 September 2022

TAX

Residence and domicile

How does an individual become taxable in your jurisdiction?

The Irish tax year runs from 1 January to 31 December.

Under Irish law, an individual's liability to Irish tax in any given tax year is determined by three connecting factors:

- Domicile: the concept of domicile is not defined under Irish law and is a common law concept that seeks to determine the jurisdiction with which an individual has the closest links. It is usually linked with the notion of an individual's 'permanent home' and is distinct from an individual's nationality and residence.
- Residence: there are two tests for residence under Irish law; (1) the 'current-year test' and (2) the 'look-back test'. Under the 'current-year test', if an individual is present in Ireland for 183 days or more in the current tax year, he or she will be considered resident in Ireland. Under the 'look-back test', if an individual is present in Ireland for 280 days or more in the current tax year and the previous tax year, he or she will be considered resident in Ireland in the current tax year (subject to spending at least 30 days in Ireland in the current year).
- Ordinary residence: an individual will be considered ordinarily resident in Ireland for tax purposes in any given tax year if he or she has been tax resident in Ireland in each of the previous three tax years.

Law stated - 15 September 2022

Income

What, if any, taxes apply to an individual's income?

Irish source income, which includes income from a trade or profession the duties of which are carried out in Ireland, is always subject to income tax.

Irish resident, ordinarily resident and domiciled individuals are subject to tax on their worldwide income, subject to certain exceptions.

Irish resident and ordinarily resident individuals who are not domiciled in Ireland are subject to tax on foreign income to the extent that it is remitted into Ireland (subject to certain exceptions).

The standard rate of income tax is 20 per cent and the higher rate of income tax is 40 per cent. There are various income tax reliefs and credits available.

There is a further tax known as the universal social charge, which is charged on gross income. The rate payable increases as an individual's income increases and the rate goes up to 11 per cent.

There is also a charge of pay-related social insurance, which is a form of social security. The amount chargeable depends on an individual's income and there are limited exemptions.

Law stated - 15 September 2022

Capital gains

What, if any, taxes apply to an individual's capital gains?

Capital gains tax (CGT) is currently payable at a rate of 33 per cent on personal gains in excess of €1,270 (this is an annual cap).

CGT is payable on gains made on the disposal of Irish land, immovable property, mineral rights or shares in a company that derives more than 50 per cent of its value from Irish land, immovable property or mineral rights, irrespective of the tax profile of the individual making the disposal.

An individual who is resident or ordinarily resident in Ireland but not domiciled in Ireland, will also be liable to pay Irish CGT on gains arising on the disposal of foreign property, to the extent such gains are remitted into Ireland. However, the remittance basis of taxation is not available in respect of certain gains arising on investments in regulated funds in EU, EEA or OECD jurisdictions (with which Ireland has a double taxation agreement).

An individual who is resident or ordinarily resident and domiciled in Ireland will be liable to CGT on worldwide gains.

There are several reliefs and exemptions in respect of CGT.

Law stated - 15 September 2022

Lifetime gifts

What, if any, taxes apply if an individual makes lifetime gifts?

A gift may come within the charge to capital acquisitions tax (CAT) if:

- the donor is resident or ordinarily resident in Ireland;
- the recipient is resident or ordinarily resident in Ireland; or
- the gift comprises Irish situs assets.

Individuals have three tax-free thresholds, depending on the relationship between the donor and the beneficiary. These thresholds apply to both lifetime gifts and inheritances. Under the current rates, an individual may receive:

- €335,000 tax-free from a parent;
- €32,500 tax-free from certain family members (eg, a sibling, aunt, uncle or grandparent); and
- €16,250 tax-free from individuals falling outside the above mentioned categories.

Gifts or inheritances received from members within the same group are aggregated together.

There is full spousal exemption in respect of benefits passing between spouses.

There is also a small gift exemption of €3,000 per annum. A person may receive €3,000 from any person in a calendar year tax-free, and it is not taken into account when calculating his or her available tax-free threshold.

CAT at a rate of 33 per cent is payable by a person receiving a gift on value received in excess of his or her available tax-free threshold.

CGT may be payable by the person making the gift depending on the nature of the asset. However, the CGT paid by the donor may be offset against the CAT payable by the beneficiary as credit, provided that the beneficiary retains the gift for two years.

There are also several reliefs and exemptions from CAT.

Law stated - 15 September 2022

Inheritance

What, if any, taxes apply to an individual's transfers on death and to his or her estate following death?

There are no taxes payable by an individual's estate unless the individual has so directed.

Similar to lifetime gifts, an inheritance may come within the charge to CAT if:

- the disponent is resident or ordinarily resident in Ireland;
- the successor is resident or ordinarily resident in Ireland; or
- the inheritance comprises Irish situs assets.

Individuals have three lifetime tax-free thresholds, depending on the relationship between the deceased and the beneficiary. These thresholds apply to both lifetime gifts and inheritances and are referred to in question 2.4.

Gifts or inheritances received from members within the same group are aggregated together.

There is full spousal exemption in respect of benefits passing between spouses.

CAT at a rate of 33 per cent is payable by the person receiving an inheritance on any value received in excess of that person's available tax-free threshold.

If a deceased person held foreign assets at the date of death, a charge to tax may arise in that foreign jurisdiction and in Ireland. To mitigate double taxation arising on death, Ireland has entered into double taxation agreements with the United Kingdom and the United States. Unilateral relief is also available under domestic legislation.

Law stated - 15 September 2022

Real property

What, if any, taxes apply to an individual's real property?

Local property tax is charged on the market value of residential properties on an annual basis. It is a self-assessed tax and is a set amount depending on which one of 20 valuation bands applies to the property.

Stamp duty is payable by the purchaser on the acquisition of real property, but this does not arise when real property is inherited. It is charged on residential property at a rate of 1 per cent up to a value of €1 million and at a rate of 2 per cent on amounts over €1 million. A single rate of 7.5 per cent applies to non-residential property.

Law stated - 15 September 2022

Non-cash assets

What, if any, taxes apply on the import or export, for personal use and enjoyment, of assets other than cash by an individual to your jurisdiction?

An individual who is not resident or ordinarily resident in Ireland (irrespective of his or her domicile position) will only be liable to income tax on income arising in Ireland and CGT on gains made on the disposal of Irish land and immovable property, Irish mineral rights or shares in a company that derives more than 50 per cent of its value from Irish land, immovable property or mineral rights.

For individuals who are resident or ordinarily resident in Ireland, but not domiciled, the import of goods or property purchased with previously unremitted income or gains may constitute a taxable remittance, bringing them within the charge to income tax or CGT.

No additional taxes apply to imports from within the European Union.

Imports from outside the European Union may be subject to customs duty, excise duty and value added tax (VAT) as follows:

- customs duty is normally calculated as a percentage of the value of the goods and varies depending on the type of goods and the country of origin;
- excise duty is charged on alcohol and tobacco, in addition to customs duty, and will vary depending on the type of product and the amount of product; and
- VAT is charged at the same rate as would be charged on similar goods sold within Ireland.

Law stated - 15 September 2022

Other taxes

What, if any, other taxes may be particularly relevant to an individual?

There is no wealth tax in Ireland.

Irish-domiciled individuals may be liable to a domicile levy, irrespective of their tax residence if their:

- worldwide income exceeds €1 million;
- Irish property is valued in excess of €5 million; and
- Irish income tax paid in a year was less than €200,000.

The amount of Irish income tax paid in a year may be offset against the domicile levy due for that year.

VAT is charged at different rates for different goods and services as follows:

- 23 per cent is the standard rate for goods and services that do not fall into a reduced rate category;
- 13.5 per cent is the reduced rate for fuel, building services, maintenance services and additional services;
- 9 per cent is a special reduced rate for newspapers and sporting facilities (this also includes e-books and electronically supplied newspapers);
- 4.8 per cent is the reduced rate for agriculture; and
- zero per cent VAT applies to certain goods, such as disability aids, children's clothing and shoes and exports.

Certain transactions are exempt from VAT, such as financial services (including share dealing and operating bank accounts), insurance services and the letting of property.

Deposit interest retention tax (DIRT) at 33 per cent is deducted at source by deposit takers from interest paid or credited on deposits. A non-resident can receive Irish deposit interest-free from DIRT.

Dividend withholding tax is charged at a rate of 25 per cent. An exemption may be available if the recipient is resident in a jurisdiction with which Ireland has a double taxation agreement or in another EU member state.

Law stated - 15 September 2022

Trusts and other holding vehicles

What, if any, taxes apply to trusts or other asset-holding vehicles in your jurisdiction, and how are such taxes imposed?

A trust will be treated as Irish tax resident for income tax and CGT purposes if:

- all the trustees of the trust are resident in Ireland (income tax only); or
- most of the trustees are resident in Ireland and the general administration of the trust is carried out in Ireland.

However, for CGT purposes, if the services of an Irish resident professional trustee have been engaged for the purposes of administering the trust, that trust will not be treated as Irish tax resident if the settlor of the trust was not, at the time of the settlement, resident or ordinarily resident in Ireland.

The income of a trust is subject to income tax at a standard rate of 20 per cent only. The beneficiary is given a credit for the income tax paid by the trustees against his or her income tax liability but can be taxed directly if he or she has the right to be paid the income as it arises. A surcharge at a rate of 20 per cent may apply to trust income that has not been distributed within 18 months.

The gains of a trust are subject to CGT at 33 per cent.

A discretionary trust will be subject to discretionary trust tax (DTT). DTT is charged at a one-off rate of 6 per cent of the trust value on either the death of the settlor or the date on which all principal objects of the trust have reached the age of 21, whichever is the later. If the total trust fund is transferred to the beneficiaries within five years of the one-off charge, half of that initial charge will be refunded. One year after the one-off charge, the trust will become liable for an annual DTT charge of 1 per cent of the trust value as of 31 December each year.

Anti-avoidance rules seek to tax the income and gains of non-Irish resident trusts on Irish resident settlors and beneficiaries in certain circumstances.

Law stated - 15 September 2022

Charities

How are charities taxed in your jurisdiction?

A charity must register with the Charities Regulatory Authority to obtain charitable status and, separately, with the Revenue Commissioners to obtain a charitable tax-exempt status.

On an ongoing basis, the charity may be exempt from income tax, CGT, CAT, corporation tax and stamp duty, provided certain conditions are met.

Following receipt of a charitable tax exemption, after two years the charity may apply for authorisation as an eligible charity pursuant to section 848A of the 1997 Act, which gives donors (in the case of corporations) and the charity itself favourable tax treatment in relation to donated sums.

Charities must pay Pay As You Earn (PAYE) on behalf of its employees. While a charity cannot apply for a VAT exemption, there are several specific reliefs available.

Law stated - 15 September 2022

Anti-avoidance and anti-abuse provisions

What anti-avoidance and anti-abuse tax provisions apply in the context of private client wealth management?

The 1997 Act contains general anti-avoidance provisions (section 811 to 811D) designed to defeat transactions where the primary intention is to avoid or reduce a tax charge or to artificially create a tax deduction or tax refund.

In addition, there are targeted anti-avoidance provisions that can attribute the income and capital gains of an offshore structure to an Irish resident settlor (sections 806 and 579 respectively) or an Irish resident beneficiary in receipt of a benefit (sections 807A and 579A respectively). The attribution of capital gains to an Irish resident beneficiary under section 579A will only give rise to a CGT liability for that beneficiary if he or she is also domiciled in Ireland.

Other anti-avoidance provisions restrict the ability to shelter income or capital gains with the offset of losses.

Law stated - 15 September 2022

TRUSTS AND FOUNDATIONS

Trusts

Does your jurisdiction recognise trusts?

Trusts are recognised in Ireland. The most common types of trusts are the following:

- Discretionary trusts: where the trustees hold the trust fund for the benefit of a class of beneficiaries and have discretion as to whom and in what sum distributions are made.
- Bare trusts: where trustees hold the legal title to property on the beneficiary's behalf, and the beneficiary holds the beneficial interest.
- Fixed trusts: where the beneficiary has a fixed entitlement to the trust fund and the trustees have no discretion in this regard.

Trusts governed by the law of another jurisdiction are generally respected in Ireland if they comply with the essential elements of a trust as set out in Irish law. The essential elements of a trust are:

- certainty of intention;
- certainty of subject matter of the trust; and
- certainty of objects of the trust.

Real property held in trust must be evidenced in writing and signed.

Law stated - 15 September 2022

Private foundations

Does your jurisdiction recognise private foundations?

Ireland has not legislated to recognise foundations unlike civil and many offshore jurisdictions.

Foreign foundations may be treated as discretionary trusts by the Irish Revenue Commissioners for tax purposes.

Law stated - 15 September 2022

Disputes

What issues typically give rise to disputes relating to trusts and foundations? How are these disputes resolved? (What are the most common causes of action? Which courts are used? Is alternative dispute resolution (ADR) available and commonly used? What remedies are commonly awarded?)

This is quite a broad question with a number of possible answers.

Several disputes can arise in the context of trusts and foundations. For example, disputes concerning the construction of the instrument establishing the trust or foundation, the class of beneficiaries or the nature and extent of powers conferred on the trustees or board; disputes concerning the exercise of trustee or board discretion in relation to distributions; disputes concerning disclosure of information and documentation concerning the trust or foundation; disputes concerning the validity of the trust or foundation and disputes concerning the tax treatment of the trust or foundation.

Disputes can be litigated through the Irish Court system, with the High Court generally being the appropriate forum for the hearing of trust related disputes. If the dispute concerns tax issues, it will generally be heard by the Tax Appeals Commission in the first instance. Alternatively, disputes can be the subject of ADR. The main types of ADR are mediation (not legally binding) or arbitration (legal binding).

The nature of the remedies available will depend on the type of dispute at issue. Damages and equitable reliefs, such as restitution and injunctive relief, being the most common remedies.

Law stated - 15 September 2022

SAME-SEX MARRIAGES AND CIVIL UNIONS

Same-sex relationships

Does your jurisdiction have any form of legally recognised same-sex relationship?

Since 16 November 2015, same-sex couples may legally marry. Same-sex marriage is recognised in the same way as heterosexual marriage.

Following marriage, a couple may choose to be assessed for tax as a single person, to be assessed separately or to be assessed jointly. The difference between being assessed as a single person and being assessed separately relates to certain tax credits available to married couples. Joint assessment is usually the more favourable treatment.

The standard rate cutoff point for married couples is currently €44,300. This amount is taxed at 20 per cent and the balance is taxed at 40 per cent. Where both spouses have income, this standard rate cutoff point can be increased by either €26,300 (currently) or the amount of the income of the spouse with the smaller income, whichever amount is lower.

Law stated - 15 September 2022

Heterosexual civil unions

Does your jurisdiction recognise any form of legal relationship for heterosexual couples other than marriage?

Prior to the legalisation on same-sex marriage, same-sex couples could enter a civil partnership from January 2011. Following the introduction of same-sex marriage, no new civil partnerships may be entered into. Couples in existing civil partnerships may apply to get married or may remain civil partners. The treatment of existing civil partners, in respect of tax and succession, is the same as for a married couple.

Law stated - 15 September 2022

SUCCESSION

Estate constitution

What property constitutes an individual's estate for succession purposes?

All property beneficially owned by an individual in his or her sole name will form part of an individual's estate, save where the property is the subject of a nomination, statutory or otherwise. All property held by a nominee of which the deceased is the beneficial owner will form part of his or her estate.

All interests held by the deceased by way of tenancy-in-common will also form part of an individual's estate. Where property is held by joint tenancy, the deceased's interest in that property will pass to the surviving joint tenants according to the rules of survivorship.

Law stated - 15 September 2022

Disposition

To what extent do individuals have freedom of disposition over their estate during their lifetime?

Individuals have complete freedom of disposition over lifetime dispositions as there is no community property regime in Ireland. However, regardless of whether the disponent died testate or intestate, the court may order that the disposition shall, wholly or partly, be deemed to be a devise or a bequest made by him or her by will and to form part of his or her estate, and to have had no other effect, if:

- the deceased made a disposition of property within three years of his or her death, and the court is satisfied that the disposition was made for the purpose of defeating or substantially diminishing the share of the disponent's spouse, whether as a legal right or on intestacy; or
- the intestate share of any of his or her children is insufficient, or any of his or her children are insufficiently provided for.

In the event of a divorce or separation, the court may make an order distributing the couple's assets that may restrict future dispositions.

Law stated - 15 September 2022

To what extent do individuals have freedom of disposition over their estate on death?

Ireland operates a schismatic system of succession law. If a person dies Irish-domiciled, Irish succession law shall apply to their worldwide movable estate and their Irish immovable estate. If a person dies not Irish-domiciled but with Irish immovable property, Irish succession law shall apply to that property.

The principal legislation governing the area of succession law in Ireland is the Succession Act 1965.

There is a form of forced heirship whereby a surviving spouse has a legal right to a share in the deceased's estate (section 111, Succession Act 1965). If the testator has left surviving children, the surviving spouse is entitled to a one-third share of the estate. If there are no children, then the surviving spouse is entitled to half. The spouse can renounce the legal right to a share either before or after marriage.

The courts have a discretionary power to make provision for a child (including a child born outside marriage) where satisfied that the testator has failed in his or her moral duty to make proper provision for the child and has died testate. An order will not affect the legal right to a share of a surviving spouse or any bequest to that spouse if that spouse is also the child's parent. There are strict time limits on bringing an application.

Law stated - 15 September 2022

Intestacy

If an individual dies in your jurisdiction without leaving valid instructions for the disposition of the estate, to whom does the estate pass and in what shares?

The Succession Act 1965 governs the distribution of intestate estates. If a person dies Irish-domiciled, these rules shall apply to their worldwide movable estate and their Irish immovable estate. If the person dies non-Irish domiciled, these rules shall only apply to their Irish immovable assets.

The rules of order of entitlement on intestacy are set out in the Succession Act 1965. On the death of a spouse without issue, the surviving spouse will inherit all the estate. However, on the death of a spouse leaving children, the surviving spouse will inherit two-thirds of the estate and the children one-third of the estate divided equally between them, with a predeceased child's issue taking that child's share.

The nearest next-of-kin alive at the date of death of the deceased are entitled to apply to administer the estate. The Rules of Superior Courts 1986 set out the order of priority. In summary, the next of kin begins with the deceased's surviving spouse or the surviving spouse and children. However:

- if the spouse is predeceased, the surviving children share equally and the issue of predeceased children take per stirpes or per capita if all children have predeceased the intestate;
- if no spouse or issue survive, the parents of the deceased inherit in equal shares;
- if a person dies without a spouse, issue or parent, all brothers and sisters take equally and the children of a predeceased brother or sister take per stirpes; and
- if no brothers or sisters survive, all nieces and nephews share equally, and so on, with a general preference for lineal descendants.

An administration bond is required from the applicant, which binds him or her to compensate the High Court if he or she fails to administer the estate.

Law stated - 15 September 2022

Adopted and illegitimate children

In relation to the disposition of an individual's estate, are adopted or illegitimate children treated the same as natural legitimate children and, if not, how may they inherit?

In a testate situation, except for any claim made by a child under section 117 of the Succession Act 1965, a child is only entitled to whatever the will of the deceased says. The testator may have a number of different 'types' of children, including non-marital, unborn or adopted, stepchildren or foster children.

In an intestate situation, a spouse is entitled to two-thirds of the estate and one-third will go to the issue. 'Issue' for the purposes of the Succession Act 1965 includes marital and non-marital children, adopted children and their lineal descendants. Stepchildren and foster children are not included.

Law stated - 15 September 2022

Distribution

What law governs the distribution of an individual's estate and does this depend on the type of property within it?

Movable property passes in accordance with the succession laws of the country in which the deceased was domiciled at the time of his or her death. Immovable property passes in accordance with the laws of the country in which it is situated.

Ireland is not a party to Regulation (EU) 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (the Succession Regulation).

In respect of foreign immovable property, the doctrine of renvoi is accepted in Ireland. Thus, if Irish courts adopt the rules of a foreign jurisdiction, and the rules of the foreign state refer the court back to the law of the forum where the case is heard, then the Irish courts will generally accept the reference back.

It is expected that where an Irish-domiciled individual holds property in a participating member state under the Succession Regulation, the matter will be referred to Ireland if the deceased was habitually resident there at the time of death or if the deceased had made an election of Irish law on the applicable succession regime to the devolution of his or her estate.

Law stated - 15 September 2022

Formalities

What formalities are required for an individual to make a valid will in your jurisdiction?

Part VII of the Succession Act 1965 sets out the formalities for making a will. There is no difference in respect of the nationality, residence or domicile of the testator.

A will can be made by any person who has attained the age of 18 years (or is or has been married) and is of sound mind. A person who has attained the age of 18 years and is of sound mind can get married. A person who has not attained the age of 18 years, is of sound mind and has obtained a court exemption order under the Family Law Act 1995 can also get married. The following essential elements make a will valid:

- the will must be in writing;

- the testator must sign in the presence of two or more witnesses; and
- the witnesses must sign the will in the presence of the testator.

Law stated - 15 September 2022

Foreign wills

Are foreign wills recognised in your jurisdiction and how is this achieved?

Wills made in other jurisdictions are recognised as valid if they fall under one of the eight alternative systems of law set out in section 102 of the Succession Act 1965. Section 102 gives effect to the Hague Convention on the Conflict of Laws relating to the form of testamentary disposition. In addition, a testamentary disposition shall be valid if its form complies with the internal law of the place:

- of the testator's nationality at the time the will was made;
- where the testator made the will;
- in which the testator had his or her domicile, either at the time when he or she made the disposition or at the time of his or her death;
- of the testator's habitual residence, either at the time he or she made the disposition or at the time of his or her death; and
- where the assets are situated (in the case of real property).

Law stated - 15 September 2022

Administration

Who has the right to administer an estate?

An executor named in a will obtains the grant of probate, and his or her powers arise at the death of the deceased as the estate is vested in the personal representative from the date of death.

If there is no executor under the will or if there is an intestate situation, an administrator obtains the grant of administration. An administrator's powers arise when the grant is issued from the probate office. During the period from the date of death to the date the grant is issued, the estate is vested in the President of the High Court.

Law stated - 15 September 2022

How does title to a deceased's assets pass to the heirs and successors? What are the rules for administration of the estate?

If an individual dies testate, his or her estate will vest in the legal personal representatives named in his or her will on death. If there is no valid will or if there is no valid executor, his or her estate will vest in the President of the High Court until a grant of administration is made by the court, at which stage the estate will vest in the appointed administrators.

The legal personal representatives or administrators must apply for the appropriate grant of representation. Upon receipt, they may obtain title to the deceased's assets and distribute them accordingly to the beneficiaries.

Law stated - 15 September 2022

Challenge

Is there a procedure for disappointed heirs and/or beneficiaries to make a claim against an estate?

A surviving spouse has a legal right to a fixed share in the deceased's estate under the succession regime set out in the Succession Act 1965.

A child can challenge a will so that a previous advancement made to the deceased's other children is brought into account (section 63, Succession Act 1965).

A child, while having no fixed entitlement, has the right to act against an estate. The court may order in that child's favour if the testator has failed in his or her moral duty to make proper provision for the child (section 117, Succession Act 1965). The court has discretion as to whether to make this provision. However, an order will not affect the legal right of a surviving spouse to their share.

Law stated - 15 September 2022

CAPACITY AND POWER OF ATTORNEY

Minors

What are the rules for holding and managing the property of a minor in your jurisdiction?

In common law, any disposition by minors is voidable by them when they attain majority or within a reasonable time afterwards. Many testators use a bare trust or a discretionary trust until the minor reaches the age of majority. Under the recent Land and Conveyancing Law Reform Act 2009, a minor's land is held in trust, with the minor holding an equitable interest. The legal title is held by the trustees, and the trustees have the power to deal with the property.

Law stated - 15 September 2022

Age of majority

At what age does an individual attain legal capacity for the purposes of holding and managing property in your jurisdiction?

The age of majority under Irish law is 18 years.

Law stated - 15 September 2022

Loss of capacity

If someone loses capacity to manage their affairs in your jurisdiction, what is the procedure for managing them on their behalf?

Irish law presumes that a person has capacity. This presumption can be displaced by evidence.

If the donor loses mental capacity, an enduring power of attorney is a legal mechanism for granting certain decision-making powers to a nominated attorney, designated when the individual had mental capacity (Powers of Attorney Act 1996). It will only become effective if the donor loses capacity and the enduring power of attorney is registered with the High Court of Ireland.

Under the existing system, where a person does not have mental capacity but does not have an enduring power of attorney, they can be made a ward of court. In these circumstances, the High Court is given jurisdiction over all matters relating to a ward's personal estate.

The Assisted Decision-Making (Capacity) Act 2015 was signed into law on 30 December 2015 but the principal provisions have not yet been commenced. Under the new legislation, capacity will be determined by assessing an individual's ability to understand the nature and consequences of a decision to be made by him or her in the context of the available choices at the time the decision is made. Capacity will be assessed based on their decision-making capacity. The assessment will be a time- and issue-specific test. There will be a tiered system of assistance available to those with varying levels of decision-making capacity. There is a presumption of decision-making capacity unless the contrary is shown.

Law stated - 15 September 2022

IMMIGRATION

Visitors' visas

Do foreign nationals require a visa to visit your jurisdiction?

Whether a visa is required to enter Ireland depends on an individual's citizenship. Citizens of an EEA member state and citizens of Switzerland do not require a visa to visit Ireland. Non-EEA nationals, whether they require a visa or not, must be able to satisfy immigration officers that they can be granted leave to land, and, must have sufficient funds to support themselves during their visit and that they have a work permit if required. A detailed list of countries whose citizens require a visa to enter Ireland can be found on the website of the Irish Naturalisation and Immigration Service.

Ireland and the UK have a long-standing arrangement known as the Common Travel Area, which allows Irish and British citizens to move freely between, and to live in, either country.

Law stated - 15 September 2022

High net worth individuals

Is there a visa programme targeted specifically at high net worth individuals?

The Immigrant Investor Programme permits non-EEA nationals who commit to an approved investment in Ireland to secure long term residency status for them and their immediate family members. Initial residence permission will be granted for a defined period with the possibility of renewal. There are a number of different investment options available, all of which have minimum investment requirements (ranging from €500,000 to €2 million).

The Start-up Entrepreneur Programme permits non-EEA nationals with an innovative business idea for a high-potential start-up and who have funding of €50,000 to acquire residency for the purposes of developing their business.

Law stated - 15 September 2022

UPDATE & TRENDS

Key developments

Are there any proposals in your jurisdiction for new legislation or regulation, or to revise existing legislation or regulation, in areas of law relevant to high-net worth individuals, particularly those coming to or investing in your jurisdiction? Are there any other current developments or trends relevant to such individuals that should be noted?

Capital taxes and capital tax reliefs have been consistent for a number of years and are unlikely to be significantly altered.

There are regulations on the registration of beneficial ownership of corporate entities and trusts, which are widely defined and include the estates of deceased persons. Trustees must gather information on the trust's beneficial owners and establish a Beneficial Ownership Register.

The EU mandatory disclosure regime (DAC6) came into operation on 1 July 2020. DAC6 introduces a new EU mandatory disclosure regime for certain cross-border transactions that could potentially be used for aggressive tax planning. These are referred to as reportable cross-border arrangements.

Law stated - 15 September 2022

Jurisdictions

	Andorra	Cases & Lacambra
	Armenia	Concern Dialog Law Firm
	Australia	Kalus Kenny Intalex
	Austria	DORDA
	Belgium	Loyens & Loeff
	Canada	Rogerson Law Corporation
	Colombia	Rimôn
	Cyprus	Patrikios Pavlou & Associates LLC
	Germany	POELLATH
	Hong Kong	Charles Russell Speechlys
	Ireland	Matheson
	Italy	Boies Schiller Flexner LLP
	Japan	Anderson Mōri & Tomotsune
	Liechtenstein	Gasser Partner
	Malta	GVZH Advocates
	Monaco	CMS Pasquier Ciulla Marquet Pastor Svara & Gazo
	Spain	Cases & Lacambra
	Switzerland	Kellerhals Carrard
	United Kingdom - England & Wales	McDermott Will & Emery
	USA	Holland & Knight LLP