The Pitfalls of Shares – Pre and Post Death

Many clients work diligently with their financial advisors to create financial assets that work hard for them but often overlook the impact these might have on the administration of their estate in the future. Janet O'Byrne outlines some challenging issues when dealing with shares pre and post death and how to avoid them

Pre-death Planning

When taking instructions from a client who is drawing up a Will, it might be useful to ask them if they have any shares in public or private companies. In this instance I shall deal with just those shares that are listed on a stock exchange.

I set out some questions to assist in assessing what problems might arise with clients who have shares:

1. Approximately what is the value of the shares?
2. How are the shares held – in joint names or sole name?
3. Are the shares held by a stockbroker – which one and if an on-line broker, who has the username and password to access the account or what are the arrangements that the stockbroker has in the event of the client's death and is there more than one stockbroking account?
4. If they are held with the relevant registrars
   a. Are they paper share certificates or electronic shareholdings?

You need to work out the locations of the shares for the purposes of inheritance tax as it is not always as obvious as where the company is quoted or where the company itself is registered.

You can then broadly identify if there is an exposure to foreign tax consequences or the estate might require a secondary foreign Grant of Representation. What is the client's attitude to this? Some clients don't care, and some will want to keep things simple for their heirs.

Post Death First Steps

As you prepare the SA2 you will need a formal valuation of the shares at date of death – but why use a professional to do this?

1. Where possible we will check the holding with the relevant registrars/institution.
2. Why? As you cannot just rely on the share certificates to give you an accurate picture of the shareholdings by simply adding up all the certificates – for example, Vodafone have done two stock splits since 2005 – one in 2006 and one in 2014.
3. Revenue prescribed formula to calculate the value.
4. We will also highlight if we believe that the estate might need a foreign Grant or have a potential liability to a foreign tax.

Location of Assets for the Calculation of Inheritance Tax Liability

The location of assets for the purposes of inheritance tax liability is not necessarily what you might suppose – it is not the location of where the shares are traded, it is not where the company is registered, but it is in fact

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where the shares are administered from – such as the location of the registrar.

However, there are a few anomalies – Diageo – Link Asset Services are the registrar, and they are located in Leeds in the UK, however in this case Link Asset Services run a "branch register" for Irish shareholdings in this company, thus making it an Irish asset for inheritance and this means it should be entered as an Irish asset on the SA2 and can be administered by an Irish Grant of Probate.

Post Grant – Once the Irish or Primary Grant has issued

Up until this time any shareholdings are held in suspense and no action can be taken, the shares cannot be sold or transferred, no corporate actions can be accepted or rejected and the address cannot be changed.

Once the Irish or Primary Grant of Representation issues, only now can the active administration start.

Irish and UK Shares

To formally note the death on the shareholding either the original or a court-attested copy of the Irish Grant needs to be physically sent to the registrar to note the death in the case of Irish shares.

At this time, we will also check that the holding has not changed, that the share certificate(s) are all present and correct and request that any and all uncollected dividends are paid out to the estate. We usually send the original share certificate(s) with the Irish Grant so that the certificates are reissued to the estate. This makes it very clear then if the next step is being done by somebody else that the death has indeed been formally noted.

The registrars in Ireland and the UK do have a system to formally note the death on shareholdings without an Irish Grant or an English Grant as long as the shareholding meets certain criteria; the registrars also charge a fee for this service.

This "small estates" process is carried out by the Legal Personal Representatives in the case where there is a Will or by the next of kin in an intestacy.

The Computershare and Link Registrars small estates procedure results in the shares being registered in the name of the estate, however Equiniti transfers the shares to the Executors/Next of Kin. The Irish Grant can be used to support the small estates application in the UK.

However, if the shares do not meet the small estates threshold, then an English Grant will need to be extracted.

Please note that there is no such thing as a UK grant of probate from non-UK domiciled estates. If

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you have assets as a non-UK domicile in England and Wales, Scotland, Northern Ireland or Jersey etc.... then it is conceivable that you might have to extract a grant in each region/territory. However, HMRC return covers the whole of the United Kingdom.

US Shares

US shares have a completely different process and, depending on who the transfer agent is, the document set to formally note the death will vary.

The major requirement is that the transfer documents have to have a Medallion Stamp on them (see below).

One of the problems dealing with US shares is that if you write to the US registrar asking them to confirm the quantity at the date of death they will not reply until you send the Irish Grant and you can explain that it is required to make a tax return (including one for the IRS in some circumstances) but they still will not give you the information. The dividend vouchers are your most useful tool in this circumstance.

One other pitfall is escheatment of shares. These are shares that have been deemed abandoned by the State of Incorporation in the US. You can claim these shares back.

Medallion Stamps

Medallion stamps are a green bar-coded stamp that is applied to all transfers of US shares, in many cases they are not even visible to the client, however they are very visible in estates!

They work like an insurance indemnity bond that the signatures on the transfer document are valid and are an anti-fraud tool used by the US and Canadian securities market.

In the US these are easily obtained and in many cases the US bank or securities house will provide them free of charge, however outside the US and Canada this is far from the case. There are no Medallion Stamp providers in Ireland, and I get them from the UK, and they cost Stg£200 per stamp for a stamp up to the value of US$500,000.

You will need to provide a number of documents to prove the holding and identity of the person who has signed the document in order to obtain a medallion stamp.

US Federal Estate Tax

This is another factor in dealing with US shares – the requirement for non-resident aliens to file a tax return if they hold US assets over the value of US$60,000 at the date of death. This needs to be done within nine months of the date of death and can be started without the Irish Grant issuing. If you are late paying and filing the tax the penalties and interest can accrue to 25% of the tax within three months.

There are also a few issues to watch out for with US Federal Estate Tax

- Firstly, there is no spousal exemption so if the assets are passing between spouses, then there is no tax relief to offset the tax against.
- If the assets are in joint names, the IRS look through the joint holding and ask who has paid for the asset, so putting shares into joint names for convenience does not reduce this tax liability by 50%.
- This is a rising scale tax, so the larger the value of the assets, the larger the tax liability.
- It does not matter if the shares are held by an Irish custodian if underlying shares would be managed by a US transfer agent, then they are US assets, and the legal personal representatives should distinguish between access to the asset and their obligation to pay the tax of a foreign jurisdiction.

You can offset estate expenses against some of the US tax but only on a pro-rata basis, so if the US assets are 20% of the entire estate, then you are allowed offset 20% of the expenses against the tax due.

There is a double taxation treaty between the US and Irish tax authorities and any you can get a credit on any tax paid in the US against any tax paid here, however it is at the lower of the two rates.

The final problem is that US Federal Estate Tax is only payable by US dollar bank draft, and these are increasingly difficult to get. You cannot pay electronically as the estate does not have a US Tax Identification Number to accompany the payment in the first instance and then you are paying a US government institution rather than a bank and they do not provide an IBAN or all the details required to transfer funds successfully. From the time you submit the tax return it takes 7-8 months for the IRS to issue the tax identification number (and sometimes longer) and if you were to defer payment until then further interest would have accrued.

The last pitfall is that the IRS are currently taking about 24 months to issue these tax certificates.

However, if you are US resident, citizen or green card-holder then the US Federal Estate Tax threshold increases to US$12,920,000 for 2023.

Small shareholdings that are too small to sell – what can be done?

My suggestion is that the share be donated to ShareGift, which is a UK charity that takes small quantities of shares, adds them together and then sells them in larger blocks and then donates the proceeds on to a basket of Irish charities for those donations coming from Ireland. I don't charge to make the donation but would need to charge to deal with the noting of death to get them to the point of donation.