



passionate  
about tax  
optimization

## Beyond the Basics - Tax Issues In Drafting Wills

**moodys** LLP  
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## Are you Sure the Will Drafting will be Simple? Know Your Client!

- Residence/ties in other jurisdictions?
  - Inheritance taxes of foreign jurisdiction may apply in certain circumstances.
  - Having foreign beneficiaries of an estate may result in foreign withholding and reporting requirements.
- Any US citizens in the family?
  - Your client may be a US citizen and not know it.
  - Any US beneficiaries?
  - Call a US tax advisor ... will drafting is now very complex
  - Will need US legal counsel to assist in drafting
- Your client's asset profile
  - Assets located in other jurisdiction may be subject to inheritance tax of foreign jurisdiction.

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UK applies an inheritance tax to domiciliaries of the UK if the value of the estate is above a certain threshold. Special rules may deem non-UK domiciled individuals to be treated as UK domiciled for inheritance tax purposes.

French residents are liable for an inheritance tax on the value of the estate.

Assets located in other jurisdictions may be subject to inheritance tax.

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- Philanthropic objectives?
- Shareholder agreements?
  - A mandatory buy-sell in a shareholder agreement (unanimous or otherwise) may limit a testator's freedom to bequeath shares
  - Buy-sell triggered on death of shareholder may result in unexpected tax consequences. (e.g. sections 69 and 84.1 of the Income Tax Act)
- Executor/Executrix Selection
  - Will executor/executrix be resident of Canada at time of such person carrying on duties?
  - If executor/executrix is non-resident of Canada, the Estate will be non-resident of Canada which can cause significant tax issues.
  - Consider prohibiting non-residents of Canada from being able to accept executor/executrix appointment in will drafting.

**Are you Sure the Will Drafting will be Simple?  
Who Is A U.S. Person for U.S. Tax Purposes?**

- A U.S. Citizen
- A U.S. Resident Alien

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An “alien” is someone who is not a U.S. citizen. An alien can be either (1) a nonresident alien, or (2) a resident alien.

If both parents are U.S. citizens, all children of the marriage are U.S. citizens at birth if either parent lived in the U.S. for a least one day. If one parent is a U.S. citizen, transmission of citizenship to the children depends on the amount of time that parent lived in the U.S. The rules governing citizenship where only one parent is a U.S. citizen are extremely complex. Consult a tax advisor.