

Private client law in France: overview

Jean-Marc Tirard and Maryse Naudin
Tirard Naudin

global.practicallaw.com/2-500-7364

TAXATION

Tax year and payment dates

1. When does the official tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

For individual taxpayers, the tax year corresponds to the calendar year. Income tax is levied on the income of the previous year. As a general rule, resident individuals subject to income tax must file their tax return before 31 May.

Resident and non-resident individuals subject to wealth tax must file a tax return before 15 June (see *Question 11, Wealth taxes*).

When a resident individual dies in France, the heirs must file an inheritance tax return within six months of the death. When the deceased is non-resident but leaves assets located in France, the inheritance tax return must be filed within one year of the death.

As a general rule, when a resident individual makes a gift, the beneficiary must file a gift tax return within one month of the gift.

Domicile and residence

2. What concepts determine tax liability in your jurisdiction (for example, domicile and residence)? In what context(s) are they relevant and how do they impact on a taxpayer?

Domicile

The concept of domicile is not used by the Tax Code. However, the French courts usually find that the law of the deceased's last domicile governs succession. Domicile is the place where a person has his habitual residence (*Civil Code*). The place of origin has no influence on the determination of habitual residence.

Residence

Residence is defined in the same way for all tax purposes (*Article 4B, Tax Code*). It determines the French tax authorities' right to tax. There are four alternative tests for determining whether an individual is resident for tax purposes:

- He has his home in France.
- His primary place of residence is in France.
- He performs an activity in France.
- His centre of economic interests is in France.

Where jurisdictions conflict, the applicable tax treaty determines which country can tax.

Taxation on exit

3. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

An exit tax was reinstated from 3 March 2011. Under certain conditions, a transfer of residence abroad triggers progressive income tax and social contribution on any unrealised gains calculated at the date of transfer (that is, at a marginal global rate of 60.5%).

The taxpayer benefits from an automatic deferral if he becomes resident in another EU state. Otherwise income tax and social contributions are immediately payable unless the taxpayer provides an appropriate guarantee for the payment of such taxes.

Temporary residents

4. Does your jurisdiction have any particular tax rules affecting temporary residents?

France does not have any concept of temporary residence, with the only exception of a five year exemption from wealth tax on foreign assets applying to new French resident individuals.

Taxes on the gains and income of foreign nationals

5. How are gains on real estate or other assets owned by a foreign national taxed? What are the relevant tax rates?

Gains on real estate

When the transferred property is situated in France, non-resident individuals' capital gains on the sale of real estate are taxed in France and are determined on the same basis as for a French resident. The gross capital gain is the difference between the sale price and the purchase price plus purchase costs. This is subject to a withholding tax of 19% regardless of the place of residence of the taxpayer and increased to 75% for residents of a non-cooperative state (see *Question 6*).

As from 1 January 2013 an additional tax varying from 2% to 6% is due when the taxable gain exceeds EUR50,000.

Since 18 August 2012, non-resident individuals' capital gains on the sale of French real estate property are also subject to social contributions at the rate of 15.5%. However, an infraction procedure was initiated before the EU Court of Justice against this tax for European Economic Area (EEA) residents.

Generally, the same treatment also applies to the sale of shares in a company (French or foreign) whose assets mainly consist of real property.



The Finance Bill of 2015 removes the tax representative system for residents of EEA member states (except for Liechtenstein) that imposed the nomination of a French tax representative when a non-resident made a capital gain on real estate located in France.

Gains on securities and shares

A non-resident individual's capital gains from a sale of securities or shares are taxed only if his participation, together with the participations of their spouse, ascendants (that is, those from whom a person is descended, for example parents and grandparents) and descendants, exceeds 25% of the shareholding in a resident company subject to corporate income tax at any time during the five previous years.

The tax rate is currently 45% as from 1 January 2013.

Tax treaties may provide for exemptions.

6. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

Non-residents are subject to French income tax on their France-source income. The tax treatment differs according to the type of income:

- **Real estate income.** This is taxed on the progressive tax scale applied to resident taxpayers (a minimum rate of 20% applies). Since 1 January 2012, non-resident individuals' rental income from their real property in France is also subject to social contributions at the rate of 15.5% (see Question 5).
- **Investment income.** Withholding taxes are levied on dividends at 30% or 21% if paid to a resident of an EEA member state and 75% if paid to a resident of a non-cooperative state or territory (see below).
- **Withholding taxes.** Withholding taxes are assessed on the income of non-resident taxpayers at the following rates:
 - directors' fees: 30%;
 - royalties: 33.33% (75% for non-cooperative states).
- **Income from employment.** As a general rule, withholding taxes are levied on salaried income paid to non-resident individuals at a progressive rate up to 20% (for the fraction of salaried income over EUR41,327).

Tax treaties usually provide for exemptions or lower rates. However, higher rates apply when payments are made to individuals resident in non-cooperative states or territories. A state/territory is deemed non-cooperative if all of the following conditions apply:

- Is not a member state of the EU.
- Has been examined by the OECD Global Forum, as established by the OECD on 17 September 2009.
- Has failed to sign a Tax Information Exchange Agreement (TIEA) with France.
- Has failed to sign a TIEA with 12 other countries.

A supplementary contribution also applies to individuals' high annual income, at a rate of:

- 3% for the fraction of income between EUR250,000 and EUR500,000 for single taxpayers (or between EUR500,000 and EUR1 million for couples subject to joint taxation).
- 4% for the fraction of income over EUR500,000 for single taxpayers (or over EUR1 million for couples subject to joint taxation).

This contribution is assessed on the individuals' reference tax income (*revenu fiscal de référence*), corresponding to the net annual amount of all income and capital gains, including capital gains on the sale of real estate and exceptional income. This contribution applies to both French residents and non-residents whose French reference tax income exceeds the above thresholds.

Inheritance tax and lifetime gifts

7. What is the basis of the inheritance tax or gift tax regime (or alternative regime if relevant)?

Gift and inheritance taxes are calculated on the beneficiary's net entitlement after applying tax-free allowances (see Question 8) and deducting liabilities. For lifetime gifts, liabilities are only deductible under certain strict conditions.

Rates vary according to the family relationship between the transferor and the beneficiary (see Question 8). If at the time of transfer the beneficiary has three or more children (whether living or represented by offspring) a tax reduction of EUR610 per child applies.

The tax rates do not depend on the beneficiary's wealth.

8. What are the inheritance tax or gift tax rates (or alternative rates if relevant)?

Tax rates

The rates of gift tax for 2014/15 are as follows:

- **Transfers to parents and children in the direct line.** When the amount transferred to parents and children in the direct line is over EUR100,000, progressive rates from 5% to 45% apply to the taxable assets:
 - Up to EUR8,072, the rate is 5%.
 - EUR8,072 to EUR12,109, the rate is 10%.
 - EUR12,109 to EUR15,932, the rate is 15%.
 - EUR15,932 to EUR552,324, the rate is 20%.
 - EUR552,324 to EUR902,838, the rate is 30%.
 - EUR902,838 to EUR1,805,677, the rate is 40%.
 - More than EUR1,805,677, the rate is 45%.
- **Transfers by lifetime gift to surviving spouse or civil partners.** When the amount transferred to spouses and civil partners (see Question 41) is over EUR80,724, progressive rates from 5% to 45% apply to the taxable assets:
 - Up to EUR8,072, the rate is 5%.
 - EUR8,072 to EUR15,932, the rate is 10%.
 - EUR15,932 to EUR31,865, the rate is 15%.
 - EUR31,865 to EUR552,324, the rate is 20%.
 - EUR552,324 to EUR902,838, the rate is 30%.
 - EUR902,838 to EUR1,805,677, the rate is 40%.
 - More than EUR1,805,677, the rate is 45%.

No inheritance tax is payable on transfers to a surviving spouse or civil partner (see Question 41) in case of succession.

- **Transfers to brothers and sisters.** When the amount transferred to brothers and sisters is over EUR15,932, two different rates apply depending on the amount of the taxable assets:
 - Up to EUR24,430: 35%.
 - More than EUR24,430: 45%.
- **Transfers to relatives up to the fourth degree.** Relatives up to the fourth degree include nephews, grand nephews, uncles, grand uncles and first cousins. The tax rate is 55%.
- **Transfers to more distant relatives and unrelated persons.** The tax rate is 60%.

Tax free allowance

The allowances that can be transferred free from inheritance and gift tax depend on the transferor's relationship with the beneficiary. The allowances for 2014/15 are as follows:

- Parents and children in the direct line: up to EUR100,000 for each 15-year period.
- Brothers and sisters: up to EUR15,932 for each 15-year period.
- Nephews and nieces: up to EUR7,967 for each 15-year period.
- Lifetime gifts made to a spouse or partner: up to EUR80,724 for each 15-year period.
- Lifetime gifts made to grandchildren: up to EUR31,865 for each 15-year period.
- Lifetime gifts made to great-grandchildren: up to EUR5,310 for each 15-year period.
- Lifetime gifts made to handicapped people: up to EUR159,325 for each 15-year period.
- Bequests made to other beneficiaries: up to EUR1,594.

Exemptions

As of 22 August 2007, cash gifts of up to EUR31,865 to children, grandchildren, great-grandchildren (or nephews and nieces, in the absence of direct descendants) are exempt from gift tax if, at the time of the donation:

- The donor is under 80 years old (for gifts made as from 31 July 2011).
- The beneficiaries are over 18 years old or emancipated (that is, a child over 16 years old that has acquired legal capacity from a judge).

Exemptions are now available for each 15-year period.

Techniques to reduce liability

One common method to reduce the impact of gift tax is for parents to give away assets to their children while retaining a lifetime interest (*usufruct*). Gift tax is only due on the value of bare ownership, which is calculated with reference to the donor's age. Inheritance tax is not due on the death of the holder of the lifetime interest.

9. Does the inheritance tax or gift tax regime apply to foreign owners of real estate and other assets?

France levies inheritance and gift taxes on non-resident owners' assets that are situated in France. Real property situated in France is always taxed in France. The same treatment also applies to the transfer of shares in foreign companies whose assets are mainly composed, directly or indirectly, of real property located in France.

Different terms can apply to movable assets if there is an applicable tax treaty with a foreign transferor's or beneficiary's country of residence. However, movable assets located in France are generally taxable in France.

Unless an inheritance tax treaty provides otherwise, if the beneficiary is (and has been for at least six of the preceding ten years) resident in France, all movable and real property, wherever situated, that is transferred to the French beneficiary is liable to tax in France. This remains unchanged even if the transferor is resident abroad.

If both the transferor and the beneficiary are resident outside France, only movable and real property situated in France is subject to French inheritance tax.

10. Are there any other taxes on death or on lifetime gifts?

When real property located in France is transferred by gift, a registration fee (*taxe de publicité foncière*) must be paid in addition to gift tax.

Taxes on buying real estate and other assets

11. Are there any other taxes that a foreign national must consider when buying real estate and other assets in your jurisdiction?

Purchase and gift taxes

Gift tax is due when a foreign resident makes a gift of assets or property situated in France. The same rates and rules apply irrespective of whether the beneficiary is resident or non-resident in France (see Question 8).

Wealth taxes

Non-resident taxpayers are subject to wealth tax on their capital assets located in France (except for financial investments (*placements financiers*) made in France such as shares, securities, bonds and deposits). Most treaties impose French tax on property situated in France.

Wealth tax is payable only by individuals whose private wealth, after deduction of debts, exceeds a certain limit on 1 January each year (EUR1.3 million for 2014).

The rate depends on the value of their net assets and is calculated by applying the following sliding scale rates to an individual's taxable assets above EUR800,000:

- Up to EUR800,000: 0%.
- EUR800,000 to EUR1.3 million: 0.5%.
- EUR1.3 million to EUR2.57 million: 0.7%.
- EUR2.57 million to EUR5 million: 1%.
- EUR5 million to EUR10 million: 1.25%.
- More than EUR10 million: 1.5%.

A cap was introduced that limits the overall amount of taxes (wealth tax plus income tax) paid regarding income received during a fiscal year to 75% of the net income received during that fiscal year.

Local property tax

The tax base and rates of local property taxes are set up by local authorities and vary significantly according to the location and size of the property.

Any owner of real property, whether an individual or a corporate entity, must pay local property tax on any developed or undeveloped property in the municipality (*commune*) where the property is located.

Transfer tax and notaries' fees

The purchase of real estate located in France is subject to transfer duties and notaries fees at the rate of about 6.3% of the purchase price.

The purchase of shares in a company (French or foreign) that directly or indirectly owns French real property with a value representing more than 50% of its total French assets is also subject to transfer duties at the rate of 5% (applied to the market value of the shares after deduction of the sole debts incurred for the acquisition of the property). These taxes apply irrespective of whether the buyer is a French resident or not.

12. What tax-advantageous real estate holding structures are available in your jurisdiction for non-resident individuals?

Generally, irrespective of the holding structure used to own a French property, the tax treatment is the same as if the property was owned directly by the non-resident individual. However, under certain circumstances, using an EU holding company to hold French assets can offer some tax advantages.

Taxes on overseas real estate and other assets

13. How are residents in your jurisdiction with real estate or other assets overseas taxed?

Residents of France are subject to:

- Income tax on their worldwide income.
- Wealth tax on their worldwide property.

International tax treaties

14. Is your jurisdiction a party to many double tax treaties with other jurisdictions?

France has concluded more than 130 income tax treaties and around 35 tax treaties concerning inheritance tax, but only eight treaties concerning gift tax (including the US/France Estate, Inheritance and Gift Tax Treaty of 24 November 1978). The UK/France Tax Treaty of 21 June 1963 only applies to inheritance tax.

As a general rule, these treaties provide that when the resident has paid tax in another contracting state, a tax credit is granted in the state of residence, but that this credit is limited to the amount of tax due in France on the property in question.

One of the general principles under the inheritance tax treaties is that the country in which a transferor is domiciled can tax that individual's transfers on a worldwide basis but must credit tax paid abroad on certain types of foreign property.

WILLS AND ESTATE ADMINISTRATION

Governing law and formalities

15. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will have to be governed by the laws of your jurisdiction?

Although it is possible for a foreign will to cover French assets, it is generally recommended to have a French will covering assets in France. Care should be taken that the two wills (French and foreign) do not overlap and that one does not revoke the other.

16. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

There are two main forms of wills under French law:

- **Holographic will.** This must be handwritten by the testator but does not need to be witnessed. This is the most common type of will.
- **Authentic will.** This must be made in the presence of a notary (*notaire*) and two witnesses.

As a general rule, French law permits a foreign person who is not domiciled in France to make a will under the law of any country, provided it is valid under the law of that country.

Redirecting entitlements

17. What rules apply if beneficiaries redirect their entitlements?

The beneficiaries cannot make a post-death variation. The testator is the only person with the right to change his will (*révocation*).

Since 1 January 2007, succession pacts are authorised subject to restrictive conditions. The testator's consent is also required (see *Question 25*).

Validity of foreign wills and foreign grants of probate

18. To what extent are wills made in another jurisdiction recognised as valid/enforced in your jurisdiction? Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

Validity of foreign wills

A French resident can make a will abroad by using either the French form of will or the form required in the other country. Wills valid in another jurisdiction are recognised as valid in France.

Validity of foreign grants of probate

French law recognises the effect of a foreign grant of representation.

Death of foreign nationals

19. Are there any relevant practical estate administration issues if foreign nationals die in your jurisdiction?

If a foreign national has his habitual residence in France, French law applies to succession to his personal property, irrespective of its location.

When a non-resident dies in France, this does not raise any particular practical issues.

Administering the estate

20. Who is responsible for administering the estate and in whom does it initially vest?

Responsibility for administering

Either the heirs collectively or a representative designated by the will administer the estate. The role of the executor (*exécuteur testamentaire*) is different from that in many countries. His powers are only supervisory and his role lasts for up to two years only.

Vesting

The ownership of the deceased's assets vests in the lawful heirs and the surviving spouse (*saisine*).

21. What is the procedure on death in your jurisdiction for tax and other purposes in relation to:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
- Paying taxes?
- Distributing?

Heirs are deemed to inherit property from a deceased person immediately on death without a common law-style estate administration (the distinction between common law probate and civil law succession). There is no grant of probate.

Establishing title and gathering in assets

Under French law, there is no procedure to prove a will. The nearest equivalent to a grant of representation is the *acte de notoriété* (that is, an affidavit drafted by a notary). This is prepared by the *notaire* (that is, the person who acts in the estate and certifies the persons who are entitled to inherit from it).

Procedure for paying taxes

Inheritance tax is imposed on the recipient. Any other transfer by reason of death is subject to tax, payable by the heirs on condition that they accept the property. The heirs must pay the inheritance tax within six months of the death if the deceased was French resident and within one year if he was non-French resident.

Distributing the estate

The concept of personal representatives (as known in English law) does not exist in French law. Therefore, it is necessary to have arrangements to vest the deceased's property in the beneficiaries, which depend on whether the deceased died intestate or left a will.

- **Intestacy.** In the case of intestacy, French law determines the persons who are entitled to inherit, namely the heirs. As a general rule, a share of the deceased person's estate is attributed to each heir on acceptance of the inheritance, without the requirement for any further action.
- **A will.** Where a will is made, the *de cujus* (testator) decides to allocate, by *inter-vivos* gift or legacy, a part of his estate to the person he chose, provided that this complies with the forced heirship rules. According to the forced heirship rules, the reserved heirs are entitled to a variable fraction of the estate that cannot be transferred to any other persons (see Question 23).

22. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with an element in another jurisdiction?

The same rules apply whether the estate is purely domestic or has foreign connections.

23. Is it possible for a beneficiary to challenge a will/the executors/the administrators?

Heirs can challenge a will, for example, if the forced heirship rights have not been respected.

Only reserved heirs (that is, those entitled under the forced heirship regime) can bring a court action to challenge gifts made by the deceased during his life that infringe their heirship rights. As a general rule the reserved heirs must act within five years of the opening of the succession (see Questions 24 and 25).

SUCCESSION REGIMES

24. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

There is a forced heirship regime (*réserve héréditaire*). Therefore, a certain portion of the estate (hereditary reserve) cannot be disposed of by lifetime gift or will other than to descendants and, under certain conditions, to the surviving spouse.

The remaining portion of the estate that can be freely disposed of depends on the number of children the deceased had:

- One child: 50%.
- Two children: one-third.
- Three children or more: 25%.

If the deceased does not leave descendants, the surviving spouse is entitled to at least 25% of the estate, provided that no divorce has been announced.

Forced heirship regimes

25. What are the main characteristics of the forced heirship regime, if any, in your jurisdiction?

Avoiding the regime

There are different ways to avoid the forced heirship regime:

- **Marriage contract.** If assets acquired by the spouses before and after marriage are held as common property under the marriage contract they are excluded from the succession (see Question 40).
- **Tontine clause.** A property conveyance with a clause allocating all of the assets to the surviving spouse (*tontine* clause) gives a surviving spouse full ownership of the property and the forced heirship rules do not apply. The effect is similar to a joint tenancy with a survivorship right. However, this structure may not be suitable for high-value properties because of an unfavourable tax regime. Under certain conditions, this clause can be very efficient when included in the articles of association of a company purchasing real estate.
- **Foreign trusts.** Passing assets into an irrevocable lifetime trust in a jurisdiction that does not recognise forced heirship provisions can avoid the forced heirship regime. This is provided that the assets are also held in a jurisdiction that does not recognise an order from a French court. However, a trust may, exceptionally, be disregarded if it can be established that the trust was set up with the sole purpose of depriving some of the heirs of their forced heirship rights.

Assets received by beneficiaries in other jurisdictions

If the deceased is a French resident, the forced heirship rights also apply to assets received by beneficiaries in other jurisdictions. However, if the deceased's last domicile is not France, French law governs succession only with respect to real property situated in France. The forced heirship rights then also apply to French real property transferred to foreign beneficiaries.

Mandatory or variable

Succession pacts are allowed under restrictive conditions. A reserved heir can renounce all or part of his rights to his reserved portion during his lifetime in favour of another person, even if that person is not a member of the family. However, these pacts must be:

- Made in favour of a specific beneficiary or beneficiaries.
- Accepted by the testator.
- Concluded by deed executed in the presence of two separate notaries.

Real estate or other assets owned by foreign nationals

26. Are real estate or other assets owned by a foreign national subject to your succession laws or the laws of the foreign national's original country?

Before the entry into force of 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 (Succession Regulation) and unlike many other civil law countries, France applied its laws of succession to all immovable property located within France at the date of a non-French domiciliary's death (see *Question 5*), but looked to the law of the deceased's place of domicile to govern succession to movables.

French courts never refer succession questions concerning immovable property situated in France back to the foreign national's home country.

However, from 17 August 2015, the Succession Regulation considerably modifies the rules on jurisdiction and applicable law governing matters of succession in France. Under the Succession Regulation, the law applicable to the succession as a whole (immovable and movable property) is the law of the country in which the deceased had his habitual residence at the time of death (whether an EU member state or not). French law no longer applies to all immovable property located in France.

The Succession Regulation allows a person to choose the law of his country of nationality at the time of choice, or at the time of death, as the law that governs his succession. Therefore, a person with multiple nationalities can choose the law of any of his countries of nationality.

In practice, this means that on the death of the direct owner of the French property, the French notary (*notaire*) will have to apply either the foreign law chosen by the owner or the law of his last domicile. To avoid practical issues (for example, land registry issues), as that there is no precedent, it is suggested that non-residents own their French real estate properties indirectly through a French real estate civil company (*société civile immobilière*) (SCI).

27. Do your courts apply the doctrine of *renvoi* in relation to succession to immovable property?

French courts accept a reference back if immovable property is located in another country that does not take into account the location of the real property (using, for example, the nationality of the deceased instead).

INTESTACY

28. What different succession rules, if any, apply to the intestate?

Succession to an intestate's movable property is governed by the law of the individual's domicile at the time of the death. Succession to an intestate's immovable property is governed by the law of the country where it is situated.

29. Is it possible for beneficiaries to challenge the adequacy of their provision under the intestacy rules?

Dispositions of property made in contravention of forced heirship rules are valid, but they can be reduced to protect the hereditary reserve (see *Question 23*).

TRUSTS

30. Are trusts (or an alternative structure) recognised in your jurisdiction?

French law has no doctrine of trusts. There is no distinction between legal and equitable ownership. Therefore, creating a trust under French law is impossible. The French *fiducie*, adopted in February 2007, is a very different institution and cannot be seen as an alternative structure to the common law trust, either conceptually or functionally. Specific taxation rules apply (see *Question 3*).

See also *Question 31*.

31. Does your jurisdiction recognise trusts that are governed by another jurisdiction's laws and are created for foreign persons?

Although it is not possible to create a trust under French law, French courts recognise the effects in France of common law trusts, provided they comply with the mandatory rules of French law. In most cases this can be achieved without major difficulty.

Up until the adoption of the Law of 29 July 2011 (Trust Tax Law), France had no tax legislation dealing with the tax treatment of trusts in respect of gift and inheritance taxes as well as wealth tax. As a consequence, trusts benefited from a very favourable tax treatment in France.

However, to counter the exploitation of what were perceived as loopholes, the Trust Tax Law introduced a comprehensive gift, inheritance and wealth tax regime for the taxation of trusts.

Inheritance or gift tax

Since 31 July 2011, inheritance or gift tax applies either:

- At the time the trust assets are transferred to the beneficiaries.
- On the death of the settlor (if earlier).

The beneficiaries are liable for the payment of gift or inheritance tax, which is assessed on the value of the trust assets at the time. The tax rate is determined in accordance with the relationship between the settlor and the beneficiary (see *Question 8*). If it is not possible to ascertain the shares of the beneficiaries in the trust fund on the death of the settlor, the trustee and the beneficiaries are jointly liable for the payment of tax, at the rate of:

- 45%, if the class of beneficiaries only contains descendants of the settlor.

- 60%, if the class of beneficiaries contains non-descendants.

The 60% rate will always apply if the trust either:

- Is governed by the law of other non-cooperative states or territories (see *Question 6*).
- Was settled by a French resident after 11 May 2011.

Wealth tax

Since 1 January 2012, the settlor (or beneficiaries treated as deemed settlors (see *below*)) must pay French wealth tax on assets held in any kind of trust (including an irrevocable discretionary trust) if either:

- The settlor (or the deemed settlor beneficiary, after the death of the settlor) is a French resident.
- The trust fund contains taxable French assets.

A specific tax applicable to trusts was also introduced, at a rate of 1.5%. A catch-all provision provides that the trustee is liable for this tax jointly with the settlor and the beneficiaries if either the:

- Trust assets are not included in the settlor's or the beneficiaries' estates for wealth tax purposes.
- Trust assets have not been disclosed to the tax authorities when the settlor is not liable to wealth tax.

Residence of trusts

A trust cannot be resident in France (see *above*, *Type of trust and taxation*).

32. What are the tax consequences of trustees (for example, of an English trust) becoming resident in/leaving your jurisdiction?

Under the Trust Tax Law, the fact that a trustee becomes a resident of France or becomes non-resident of France has no consequences on the taxation of the trust's income or of the holding and/or transfer of the trust assets (see *Question 31*).

33. If your jurisdiction has its own trust law:

- Does the law provide specifically for the creation of non-charitable purpose trusts?
- Does the law restrict the perpetuity period within which gifts in trusts must vest, or the period during which income may be accumulated?
- Can the trust document restrict the beneficiaries' rights to information about the trust?

There is no trust law in France (see *Question 30*).

34. Does the law in your jurisdiction recognise claims against trust assets by the spouse/civil partner of a settlor or beneficiary on the dissolution of the marriage/partnership?

Generally, these claims are not recognised unless the spouse can prove that the trust was created with the sole purpose of hiding the settlor's assets.

35. To what extent does the law of your jurisdiction allow trusts to be used to shelter assets from the creditors of a settlor or beneficiary?

French law does not contain any provisions regarding asset protection trusts. However, transfers made into a trust are subject to the fraudulent conveyance provisions (*action paulienne*) as set out in the Civil Code.

CHARITIES

36. Are charities recognised in your jurisdiction?

Unlike the situation in some other European Civil Law jurisdictions, foundations (*fondations*) cannot be freely used as charities in the private sector and should be controlled by a representative of the Administrative Supreme Court (*Conseil d'Etat*).

37. If charities are recognised in your jurisdiction, how can an individual donor set up a charity?

Although recognised by French law, foundations as well as "associations" only acquire the right to receive gifts or legacies upon special authorisation granted by decree after an inquiry and report by the Conseil d'Etat recognising that the foundation only operates to promote public welfare. Foundations can only be set up for cultural, scientific or charitable purposes and cannot be considered as a substitute for trusts except, to a limited extent, in the case of charitable trusts.

Gifts to foreign and French foundations and associations are subject to the rules governing forced heirship.

38. What are the benefits for individuals when setting up charitable organisations?

Donations from individuals

Individuals making donations to qualified foundations and associations can deduct 66% of their contribution from their French income tax, up to 20 % of the donor's taxable income (*Article 200-1, FTC*).

Wealth tax reduction

Individuals making donations to qualified foundations and associations can deduct 75% of their contribution from their French wealth tax. The tax reduction cannot exceed EUR50,000 per year.

Tax exemption for qualifying purposes

In addition, it should be noted that as a general rule, a favourable tax regime applies to qualified foundations and associations. Public utility foundations benefit from corporate tax exemptions in respect of their income deriving from non-profit activities (*Article 206-5, FTC*).

OWNERSHIP AND FAMILIAL RELATIONSHIPS

Co-ownership

39. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

The Law of 10 July 1965 defines all the rights and obligations of the co-owners concerning estate administration. A co-ownership agreement must be signed by all co-owners. Each co-owner can dispose of his part of the property and, in principle, has the right to sell, give and bequeath it (unless prohibited by the co-ownership agreement).

Familial relationships

40. What matrimonial regimes in trust or succession law exist in your jurisdiction? Are the rights of cohabitees/civil partners in real estate or other assets protected by law?

Spouses can enter into a contract before marriage to regulate their property rights but they may also change it during the marriage. When a spouse transfers property, it is essential to refer to the marriage contract, which may contain clauses affecting the division of assets held as common property.

If a couple marries without a contract, they automatically fall under the regime of community reduced to acquisitions (*communauté réduite aux acquêts*). Movable and real property owned separately at the time of the marriage, or subsequently acquired by gift or inheritance, remain the sole property of the owner. Common property is then limited to the assets acquired by the couple during the marriage. Both spouses hold a 50% interest in the common property and can dispose of their share in the common property by will.

If the spouses choose not to apply the community reduced to acquisitions regime, the Civil Code provides two main alternatives:

- **The separation of property (*séparation de biens*).** Each spouse retains the administration of his or her present or future property and has the free enjoyment and disposition of both capital and income. Therefore, each spouse can dispose of all his or her property by will.
- **The universal community (*communauté universelle*).** All of the assets acquired by the spouses before or after the marriage are common property. Each spouse holds a 50% interest in the assets composing the common property and can therefore dispose of his or her share in the common property by will.

A person living with the deceased without being married (such as a cohabitee or civil partner) is not acknowledged by the intestate succession rules and is treated as a third party.

41. Is there a form of recognised relationship for same-sex couples and how are they treated for tax and succession purposes?

A same-sex couple is granted the right to get married under French law and benefits from all the benefits and duties of the spouses. They also can conclude a contract to organise their life in common (*pacte civil de solidarité*) (PACS). In this latter case they are not treated as spouses for succession purposes (see Question 24) but they are fully exempt from inheritance tax (see Question 8).

42. How are the following terms defined in law:

- **Married?**
- **Divorced?**
- **Adopted?**
- **Legitimate?**
- **Civil partnership?**

Married

Marriage is the legal union of two people as spouses.

Divorced

Divorce refers to when marriage has been legally dissolved.

Adopted

Full adoption is the legal process under statute in which a child's legal rights and duties toward his natural parents are terminated and similar rights and duties toward his adoptive parents are substituted.

Legitimate

A legitimate child is born in wedlock. There is a procedure for legitimising the status of an illegitimate child.

Civil partnership

Civil partnership is a contract entered into by two persons of either different or same sex to organise their life in common (see Question 41).

Minority

43. What rules apply during the period when an heir is a minor? Can a minor own assets and who can deal with those assets on the minor's behalf?

When an heir is a minor (that is, until the age of 18 years), only his parents can accept any inheritance on his behalf. Until the age of 16 years, an heir's parents represent him and act for him.

A minor can own assets. Legal administration is attributed either to parents or to a guardian in certain circumstances. A minor can inherit but cannot make a gift.

CAPACITY AND POWER OF ATTORNEY

44. What procedures apply when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

When a person loses capacity, the law organises his or her protection. Different regimes apply depending on the degree of incapacity. In some cases, where the person is of totally unsound mind he must be represented by another person. In other cases he will only be advised or controlled.

PROPOSALS FOR REFORM

45. Are there any proposals to reform private client law in your jurisdiction?

There are currently no proposals for reform.

ONLINE RESOURCES

Legifrance

W www.legifrance.gouv.fr/Traductions/en-English

Description. Legifrance is the official French government entity responsible for publishing legal texts online. It provides access, in French, to laws and decrees published in the *Journal officiel*, important court rulings, collective labour agreements, standards issued by European institutions, and international treaties and agreements to which France is a party.

This is the section for translations of French legal texts of the Legifrance website, for reference purposes only. The texts accessible have no legal force. Three types of documents can be freely consulted:

- Translations done specifically to be published on Legifrance.
- Translations accessible on other French institutional websites.
- Other translations, referenced per agreement with their authors.

French tax authorities

W www.impots.gouv.fr

Description. Impots.gouv.fr is the official French tax authorities website. It notably provides access to the French tax authorities' official documentation and guidelines as well as official tax forms.

Practical Law Contributor profiles

**Jean-Marc Tirard, Partner**

Tirard Naudin
T +33 1 5357 3600
F +33 1 4723 6331
E tirard.naudin@online.fr
W www.tirard-naudin.com

**Maryse Naudin, Partner**

Tirard Naudin
T +33 1 5357 3600
F +33 1 4723 6331
E tirard.naudin@online.fr
W www.tirard-naudin.com

Professional qualifications. France, Avocat

Areas of practice. French and international tax planning; estate planning; trusts; tax litigation.

Publications

- *La fiscalité des sociétés dans l'Union Européenne (in French).*
- *Corporate Taxation in EU countries.*
- *Taxation of Trusts in Civil Law Jurisdictions.*
- *Les trusts anglo-saxons et les pays de droit civil (in French).*
- *Trust et Fiducie : concurrents ou compléments ? (in French).*
- *The tax treatment of trusts in France (French Chapter).*
- *International Taxation of artistes and sportsmen (French Chapter).*
- *Optimiser la fiscalité de la propriété industrielle (French Chapter).*
- *International Estate Planning (French Chapter).*
- *Transfer Pricing & Tax Avoidance (French Chapter).*
- *The Estate planning of Art (French Chapter).*
- *Tax Amnesties (French Chapter).*

Professional qualifications. France, Avocat

Areas of practice. French and international tax planning; estate planning; trusts; tax litigation.