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Legal Guides**



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1 Connection Factors

1.1 To what extent is domicile or habitual residence relevant in determining liability to taxation in your jurisdiction?

Domicile is not relevant in determining liability to taxation in France.

Please see questions 1.3 and 1.4.

1.2 If domicile or habitual residence is relevant, how is it defined for taxation purposes?

The common law concept of “domicile” is not used by the French Tax Code (FTC). Under the French Civil Code, domicile is the place where a person has his/her habitual residence. The place of origin has no influence on the determination of habitual residence.

The habitual residence is defined as the primary place of residence, which means the place where the individual spends most of his/her time during the civil year.

1.3 To what extent is residence relevant in determining liability to taxation in your jurisdiction?

Residence is essential in determining liability for taxation in France.

As a principle, individuals who are residents of France are liable to French income tax in France in respect of their worldwide income and to a wealth tax which applies to real estate properties and rights owned directly or indirectly (“*Impôt sur la Fortune Immobilière*” or IFI), irrespective of where they are located.

Individuals are subject to French inheritance tax or gift tax on the worldwide assets transferred when the deceased (or donor) is a tax resident of France or when the heir (or donee) is a French tax resident.

Finally, when the settlor or at least one of the beneficiaries is a French tax resident, trustees are subject to reporting obligations *vis-à-vis* the French tax authorities (see question 12.2).

1.4 If residence is relevant, how is it defined for taxation purposes?

As explained above, the concept of “residence” determines the French tax authorities’ right to tax. It is defined in the same way for all tax purposes (article 4B of the FTC). There are four alternative tests for determining whether an individual is treated as resident for tax purposes:

- he/she has his/her home (“*foyer*”) in France;
- his/her primary place of residence is in France;
- he/she performs an activity in France; or
- he/she has the centre of his/her economic interests in France.

1.5 To what extent is nationality relevant in determining liability to taxation in your jurisdiction?

Nationality is not relevant in determining liability to taxation in France.

1.6 If nationality is relevant, how is it defined for taxation purposes?

This is not applicable (see question 1.5).

1.7 What other connecting factors (if any) are relevant in determining a person’s liability to tax in your jurisdiction?

The qualification of an asset as a “French asset” is also a very important factor.

French assets are either assets that are located in France, or assets (French or foreign) that are deemed to be located in France for French tax purposes. For example, a foreign company owning (directly or indirectly) real estate located in France may be, under certain circumstances, considered a French asset.

Income derived from French assets (as well as capital gains) is taxable in France when said assets are sold, even if realised by a non-French resident taxpayer.

Non-residents are subject to wealth tax (IFI) on their French real estate properties and rights, owned directly or indirectly.

Qualifying an asset as a French asset allows France to levy inheritance tax and gift tax even if the deceased (donor) and the heir (donee) are not residents of France.

Finally, a French asset owned by a trust entails reporting obligations on the trustee *vis-à-vis* the French tax authorities (see question 12.2).

2 General Taxation Regime

2.1 What gift, estate or wealth taxes apply that are relevant to persons becoming established in your jurisdiction?

Liability to French gift and inheritance taxes is determined by

the donor's and donee's residence (or the deceased and heir's residence) as well as the location of the assets being transferred. As explained in question 3.1, foreign assets may be deemed to be located in France and therefore considered "French assets".

France does not impose an estate tax upon the transferor's estate. Inheritance tax is imposed upon the recipient and the rates vary according to the relationship between the heir and the deceased. The rates vary from 5% to 45% above EUR 1,805,677 (for 2023) for direct family members (after deduction of an allowance of EUR 100,000 for descendants for each 15-year period). They increase to 60% in the absence of a family relationship. Surviving spouses and civil partners are fully exempt from inheritance tax (but not from gift tax).

Inheritance tax is due on any transfer of property upon death, whether it results from the application of intestate succession rules, the provisions of a will, or forced heirship. It is calculated on the net value of the property distributed to each heir.

Gift tax, which is imposed upon the donee, is due when all of the following conditions are fulfilled: a transfer is made without valuable consideration and with the intention of benefitting the person receiving the transfer ("*animus donandi*"); and the donor is immediately divested of the donated property and the gift is accepted by the donee, regardless of the nature of the gift. Gift tax is calculated at the same graduated rates that apply to inheritance tax.

When the donor (or deceased) is a resident of France or when the donee (or heir) has been so for at least six out of the preceding 10 years, all movable and real estate property (wherever situated) transferred without valuable consideration is liable to tax in France.

When the donor (or deceased) and the donee (or heir) are both resident outside of France, only movable and real property situated in France (or deemed to be French assets) are liable to French gift or inheritance taxes in these circumstances.

Tax treaties may modify the above rules (see section 6 below).

See question 2.3 for developments with regards to wealth tax (IFI). It is important to note that new French residents benefit from an exemption of wealth tax (IFI) on real estate properties situated abroad during their first five years of residence (see question 3.1 below).

2.2 How and to what extent are persons who become established in your jurisdiction liable to income and capital gains tax?

For non-residents, see question 4.1.

Ordinary income

In principle, individuals who are residents of France are liable to French income tax in France in respect of their worldwide income (including ordinary income and capital gains).

As a general rule, income tax is progressive, with a marginal rate of 45% (for the fraction of taxable income over EUR 168,995 for 2023). In addition to income tax, an additional so-called "social contribution" is due in respect of savings income and income from capital assets at an effective flat rate of 17.2% (for 2023).

More specifically, investment income (dividends, interests) is subject to a flat tax rate of 30% (including 12.8% income tax and 17.2% social contributions), unless the taxpayer elects for the application of the income tax progressive rates (in such cases a 40% allowance may apply for the calculation of the dividend taxed).

A supplementary contribution also applies to an individuals' high annual income, at a rate of 3% for the fraction of income

between EUR 250,001 and EUR 500,000 for single taxpayers (between EUR 500,001 and EUR 1,000,000 for couples subject to joint taxation), and 4% for the fraction of income over EUR 500,001 for single taxpayers (over EUR 1,000,000 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.

Income tax is withheld by the employer (in respect of wages) and/or by the French tax authorities (in respect of industrial/commercial profits, non-commercial profits, rental income, and revenues from agricultural activities).

Capital gains tax

Although France does not levy a separate general capital gains tax as such, some specific gains are subject to income tax. As a general rule, only capital gains realised at the time of a sale or exchange for valuable consideration are taxable. Unrealised capital gains can, however, be taxable under the so-called "exit tax", which may apply when an individual transfers his tax residence outside of France.

The taxable base and applicable tax rates depend on the nature of the asset sold and whether the gains are made by individuals who are resident in France or not.

As a general rule, French-resident individuals are taxed on realised capital gains upon the sale of real estate property (regardless of where the property is located) at the global rate of 36.2% for 2023 (19% plus social contributions at the rate of 17.2%).

Capital gains on the sale of the main residence are, however, tax-exempt and capital gains on the sale of other real properties can be reduced by yearly allowances applying from the sixth year of ownership.

The yearly allowance is 6% from the sixth year of ownership up to the 21st year and 4% for the 22nd. As a consequence, after 22 years, holding capital gains on property are fully exempt from capital gains income tax. However, capital gains are only exempt from social contributions after 30 years of ownership.

An additional tax is assessed on capital gains exceeding EUR 50,000 realised upon the sale of real property by both French residents and non-residents. This tax applies to the whole amount of the capital gains at a flat rate varying from 2% to 6% (for capital gains exceeding EUR 260,000).

The sale of the shares of a company owning real estate located in France as its main assets (qualified as a "*société à prépondérance immobilière*" – a real estate company) is subject to a different tax regime depending on whether the company sold is a pass-through entity (i.e. a "*société civile immobilière*", for example) or a company subject to corporate tax. Assuming the French resident sells the shares of a pass-through entity, capital gains are taxable at the global rate of 36.2%. The same rebates as those applying to real estate properties apply. Assuming the French resident sells shares of a company subject to corporate tax ("*société à responsabilité limitée*", "*société anonyme simplifiée*" or "*société anonyme*"), the rules applicable to the sale of shares of a company running business assets apply (see below).

Capital gains on shares and securities of "business companies including companies subject to corporation tax" are, as a general rule, subject to a 30% flat tax rate (12.8% income tax and 17.2% social contributions). When taxpayers' capital gains are taxed under the flat tax rate, no allowance can be applied.

However, taxpayers are still allowed to elect for the application of the income tax progressive rates (with a marginal rate

of 45%) plus 17.2% social contributions. In that case, for the purpose of determining the taxable net gain, such gains will benefit from annual allowances at the following rates: 50% if the shares are held for a period from two to eight years; and 65% if the shares are held for at least eight years.

2.3 What other direct taxes (if any) apply to persons who become established in your jurisdiction?

Wealth taxes (“*Impôt de Solidarité sur la Fortune*” (ISF) and IFI)
The former wealth tax due since 1981 (ISF), based on movable and immovable wealth owned by French residents and non-resident individuals, was repealed in 2017.

A new wealth tax (IFI) was introduced on 1st January 2018, which applies to real estate properties and rights, owned directly or indirectly by resident and non-resident individuals.

Resident taxpayers are liable to IFI on the worldwide real estate properties and rights they directly or indirectly own, whereas non-resident taxpayers are only liable to IFI on real estate and rights located in France that they directly or indirectly own.

IFI is payable only by individuals whose private real estate wealth, after deduction of debts, exceeds a certain limit on 1st January each year (EUR 1,300,000 for 2023).

The IFI rules relating to the deduction of the loans financing the acquisition are substantially different from those that applied for ISF purposes. The concept of “*société à prépondérance immobilière*” no longer exists for IFI purposes. However, some exemptions apply under certain conditions when real estate properties are used for business purposes.

The total amount of income tax, IFI and some specific local taxes cannot exceed 75% of the reference tax income (“*revenu fiscal de référence*”) of the taxpayer. However, this limit does not apply to non-residents. We consider this measure to be discriminatory.

The IFI payable for 2023 is determined by applying the following sliding scale to the individuals’ taxable assets over EUR 800,000:

- Up to EUR 800,000: 0%.
- EUR 800,000 to EUR 1,300,000: 0.5%.
- EUR 1,300,001 to EUR 2,570,000: 0.7%.
- EUR 2,570,001 to EUR 5,000,000: 1%.
- EUR 5,000,001 to EUR 10,000,000: 1.25%.
- More than EUR 10,000,000: 1.5%.

2.4 What indirect taxes (sales taxes/VAT and customs & excise duties) apply to persons becoming established in your jurisdiction?

French legislation has applied the VAT Sixth Community Directive since 1st January 1979. Article 256, I of the FTC provides that the sale of goods, delivery of assets and the supply of services for payment by a taxpayer are subject to VAT. This extremely broad definition contains a certain number of exceptions, which are set out in the FTC. However, some exempt transactions may be rendered taxable if the appropriate elections are made.

The standard rate is 20%. An intermediary VAT rate of 10% applies to certain goods and services (agriculturally based products, non-reimbursable medications, etc.), a reduced VAT rate of 5.5% applies to basic necessities such as food products and a super reduced rate of 2.1% applies to certain drugs. Nevertheless, a number of specific rates should be added to this list (newspapers, for example), as well as the various specific rates applicable in Corsica and the overseas territories.

2.5 Are there any anti-avoidance taxation provisions that apply to the offshore arrangements of persons who have become established in your jurisdiction?

There are numerous anti-avoidance taxation provisions in France. First, the concept of abnormal acts of management and the abuse of law theory (see question 2.6) allow the tax authorities to reassess transactions that are deemed to be artificial or to have no purpose other than to reduce taxation. There are also specific anti-avoidance provisions that apply directly to offshore arrangements.

In addition, the French CFC legislation provides that resident individuals who directly or indirectly own more than 10% in a foreign entity established in a low tax jurisdiction are taxable on a *pro rata* share of the income realised by the foreign entity, whether or not distributed. The income realised by the foreign entity is determined either on a real basis or on a notional basis, depending on whether the entity is established in a so-called “non-cooperative jurisdiction”, and is taxed in the hands of its French resident shareholder based on 125% of the amount of income calculated.

The 10% participation requirement is deemed to be met if the entity is located in a non-cooperative state or with respect to the settlor (or “beneficiary deemed settlor”) of a trust, even if the trust is irrevocable and discretionary and regardless of the jurisdiction in which it is located.

2.6 Is there any general anti-avoidance or anti-abuse rule to counteract tax advantages?

As a general rule, under the abuse of law theory (“*abus de droit*”) provided by article L. 64 of the Tax Procedure Code, the French tax authorities may challenge a transaction (or a series of transactions) that allows the taxpayer to avoid, reduce or postpone a French tax.

An abuse of law may be characterised when either the operation or the scheme used is fictitious or the taxpayer researched a literal application of a provision or decision that is contrary to the intention of the lawmaker and was motivated exclusively by the intention of avoiding or reducing their tax burden. A penalty at the rate of either 40% or 80% applies when an abuse of law is deemed to have occurred.

On 1st January 2020, a new abuse of law procedure was introduced (provided for by the new article L. 64 A of the Tax Procedure Code), under which the French tax authorities are allowed to disregard any transaction implemented for “main tax purposes” – as opposed to “exclusive” tax purpose in the pre-existing abuse of law procedure. This procedure does not automatically carry the 40% or 80% penalties, although the French tax authorities may still try to apply a 40% penalty for wilful default, or an 80% penalty for fraudulent acts.

Nevertheless, when two legal solutions are possible, the taxpayer has the right to choose the less heavily taxed option.

2.7 Are there any arrangements in place in your jurisdiction for the disclosure of aggressive tax planning schemes?

The Directive on Administrative Cooperation in the field of taxation (DAC 6), transposed under articles 1649 AD to 1649 AH of the FTC, imposes mandatory disclosure requirements on EU-based intermediaries and their clients. The disclosure concerns cross-border tax-planning arrangements that have certain characteristics or hallmarks, intended to highlight risks of tax avoidance and enable more effective audits.

The disclosure must be made within 30 days of either:

- the day after the tax arrangement has been made available;
- the day after the tax arrangement is ready for use; or
- the day the first step of the arrangement has been made.

3 Pre-entry Tax Planning

3.1 In your jurisdiction, what pre-entry estate, gift and/or wealth tax planning can be undertaken?

Since French gift and inheritance taxes are due at very high rates when either the transferor or the transferee is resident in France, when a gift is contemplated it should, in most circumstances, be completed before any of the individuals involved become a resident of France. On the other hand, it is also important to reorganise the ownership structure before the taxpayer becomes a French tax resident – this is because some assets may still qualify as French assets for estate and gift tax purposes after the taxpayer transfers, once again, his/her tax residence abroad. Likewise, a transfer into a trust should also be completed before the settlor becomes resident in France. This will allow a lower inheritance tax rate to be due upon his/her death (see question 9.2).

IFI (or before 1st January 2018, ISF) cannot be avoided any longer by transferring assets into a trust (see question 9.2) when the taxpayer has been a French tax resident for more than five years. However, new French tax residents benefit from an IFI (or before 1st January 2018, ISF) exemption granted on real estate assets (or all kind of assets before 1st January 2018) that do not qualify as French assets for five years. Therefore, before arriving in France, one may contemplate placing assets in a foreign company and/or setting up a trust in order to benefit from an exemption for five years.

3.2 In your jurisdiction, what pre-entry income and capital gains tax planning can be undertaken?

Due to the high income and capital gains tax rates, it might be appropriate to accelerate the realisation of foreign-source income or to realise latent capital gains by selling and repurchasing capital assets with built-in appreciation before becoming a French resident. Contributing assets into a holding company in a suitable jurisdiction may be an efficient tax-planning technique to obtain a tax-free set-up. As mentioned in question 3.1, it also allows one to avoid, under certain conditions, the qualification of French assets assuming that the taxpayer decides to transfer his/her tax residence outside of France after a certain period.

The use of a holding company set up in an appropriate jurisdiction can be a very efficient solution. Before arriving in France, one can also place assets that will otherwise generate taxable income into an insurance policy that complies with French requirements. Setting up irrevocable and discretionary trusts should also be considered.

3.3 In your jurisdiction, can pre-entry planning be undertaken for any other taxes?

There are no other significant taxes requiring pre-entry planning.

4 Taxation Issues on Inward Investment

4.1 What liabilities are there to tax on the acquisition, holding or disposal of, or receipt of income from investments made by a non-resident in your jurisdiction?

A non-French resident is only taxable on income arising from

his/her French assets during the civil year, irrespective of whether or not the income is remitted in France. Remittance of assets or funds into France does not attract direct taxes *per se*.

Unless a tax treaty provides otherwise, non-resident persons are subject to French income tax on their French-source income (including rental income and business income) and capital gains realised on French assets (see question 1.7). However, a minimum tax rate of 20% for the fraction of French-source income under EUR 27,478 and 30% above applies to non-residents.

Non-resident individuals affiliated with a social security scheme in the EU are subject to 7.5% social contributions on their French real estate income. All other non-resident individuals, as well as French resident individuals, are subject to social contributions at the standard rate of 17.2%, which comes in addition to the income tax. A supplementary contribution may also apply to individuals' high annual income, irrespective of whether they are French residents or non-residents, at a rate of 3% or 4% (see question 2.2).

Unless a tax treaty states otherwise, French-source dividends and royalties received by non-French resident individuals or companies are subject to withholding taxes, respectively at the rates of 12.8% and 25%.

Non-resident individuals' capital gains on the sale of real estate are only taxable in France when the property transferred is situated in France. They are determined on the same basis as for a French resident (see question 2.2). The taxable capital gains are the difference between the sale price and the purchase price plus purchase costs and are subject to a withholding tax of 19%. Individuals that are affiliated with a social security scheme in the EU are subject to social contributions at a rate of 7.5% on the sale of French real estate. All other individuals (i.e. French resident individuals and individuals that are not affiliated with a social security scheme in the EU) selling French real estate are subject to social contributions at the flat rate of 17.2%. An additional tax ranging from 2% to 6% also applies when the taxable capital gains on French real estate and shares of companies directly or indirectly owning real properties exceeds EUR 50,000. In addition, the supplementary contribution levied on individuals' high annual income, at a rate of 3% or 4%, may also apply. As a consequence, the marginal rate of taxation may reach 36.2%. Some tax treaties may, however, alter the application of these rules.

As a general rule, the same treatment also applies to the sale of shares in a company (French or foreign) that owns real estate located in France as a main asset, regardless of the tax regime applicable to the sold company (as opposed to the tax regime applicable to French residents).

A non-resident individual's capital gains from the sale of securities or shares of companies that do not qualify as "*société à prépondérance immobilière*" are only taxed if his/her participation, together with the participation of his/her spouse, ascendants (that is, those from whom a person is descended, e.g. parents and grandparents) and descendants, exceeds 25% of the shareholding in a resident company subject to corporate income tax at any time during the previous five years. Since 1st January 2018, the tax rate has been 12.8% for non-resident individuals. Social contributions are not due on capital gains from the sale of securities or shares of companies that do not qualify as real estate companies realised by a non-resident individual. Tax treaties may provide for exemptions.

Any dividends, royalties, capital gains or income from a French paid source to a resident in a non-cooperative state or territory are subject to a specific 75% withholding tax.

4.2 What taxes are there on the importation of assets into your jurisdiction, including excise taxes?

Importation of assets into France gives rise to VAT (see question

2.4). The current standard rate is 20%. Certain goods may also be subject to customs duties or excise duties when they are imported from outside the EU.

4.3 Are there any particular tax issues in relation to the purchase of residential properties by non-residents?

France places no restrictions on non-French residents acquiring French real estate property. From a tax standpoint, it is essential to understand that using a legal entity, whether it is French (such as a “*société civile immobilière*”) or foreign (such as a Luxembourg “*société de participation financière*”) and whether it is held absolutely or in trust, to hold a French property does not always avoid French taxes. This is because French tax law applies the concept of “*société à prépondérance immobilière*”, under which French and foreign companies that mainly own a real estate property in France are treated in a similar way as the property itself. Some tax treaties may, however, alter the application of these rules.

Purchase tax

Whether the buyer is a French resident or not, the purchase of a residential property located in France is subject to transfer duties amounting to approximately 5.81% on the transfer price and related expenses. In addition, notary’s fees are payable, bringing the total rate to approximately 7%. The purchase of the shares of a company (whether French or foreign) owning French real property directly or indirectly with a value representing more than 50% of the total French assets of the company is also subject to transfer duties at the rate of 5%.

Inheritance/gift tax

As a general rule, whether a French real property is owned directly or via one or more companies, inheritance/gift taxes are payable in France even if the ultimate owner is non-resident. Some tax treaties may, however, alter the application of these rules.

Capital gains tax

Non-resident individuals’ capital gains on the sale of real estate are taxable in France when the property is located in France (see question 4.1).

Wealth tax on real estate properties and rights, directly or indirectly owned by resident and non-resident individuals (IFI)

Any real estate properties owned directly or indirectly through one or more companies are, as a general rule, subject to IFI. The concept of “*société à prépondérance immobilière*” that existed with the former wealth tax (ISF) no longer applies for IFI purposes. As a consequence, non-resident individuals owning French real property by means of several intermediate companies (French or foreign) remain subject to IFI in France.

However, IFI is not due on real property owned by an operating company that is held, directly or indirectly, by the taxpayer (and his/her “tax household”), when the property is used by the company for its own business or when it is used by another company of the group for its business activity.

The annual 3% tax

Although legal entities are not subject to wealth tax (IFI), all legal entities (i.e. both French and foreign) that directly or indirectly own real property in France are subject to an annual tax of 3% levied on the market value of the property. Under most circumstances, when there is a chain of ownership, each company involved in the structure can benefit from a 3% tax exemption by

disclosing (or committing to disclose) its immediate shareholder and the ultimate beneficial owner on a specific form.

5 Taxation of Corporate Vehicles

5.1 What is the test for a corporation to be taxable in your jurisdiction?

Corporations are subject to French corporate tax on the profits of any business carried out in France, irrespective of whether they are registered in France or not.

5.2 What are the main tax liabilities payable by a corporation which is subject to tax in your jurisdiction?

Since 1st January 2022, the standard corporate tax rate has been 25% for all companies. In addition to corporate tax, corporations are notably subject to the territorial economic contribution (CET).

5.3 How are branches of foreign corporations taxed in your jurisdiction?

French branches of foreign corporations are subject to corporation tax. They may also be subject to a 25% withholding tax (the so-called “branch tax”) on the profits made in France, which are presumed to be automatically distributed to the non-resident shareholders. This branch tax may be capped/waived by some tax treaty provisions, and is not due by French branches of EU corporations.

6 Tax Treaties

6.1 Has your jurisdiction entered into income tax and capital gains tax treaties and, if so, what is their impact?

France has entered into income tax and capital gains tax treaties with more than 130 countries. Although, as a general rule, their main objective is to avoid double taxation, the more recent treaties also aim to prevent tax evasion through the exchange of information and to provide for mutual assistance in the collection of taxes.

6.2 Do the income tax and capital gains tax treaties generally follow the OECD or another model?

The vast majority of the tax treaties follow the OECD model.

6.3 Has your jurisdiction entered into estate and gift tax treaties and, if so, what is their impact?

France has signed 35 estate tax treaties, which seek to prevent double taxation; however, only eight also concern gift tax.

When a tax treaty applies, it defines each state’s entitlement to tax by reference to the deceased’s residence as well as providing the means for avoiding double taxation.

One of the general principles of the estate and gift tax treaties is that the country in which the donor or decedent was domiciled may tax the estate or gifts of that individual on a worldwide basis but must allow a tax credit corresponding to the tax paid in the other country with respect to certain types of property located in such other country.

There are, however, a number of exceptions to the premise that the country of domicile will be the main taxing country. One of the main exceptions relates to real property that may be taxed in the country where it is located. It should be noted that this is a primary taxing right, but not always an exclusive one.

6.4 Do the estate or gift tax treaties generally follow the OECD or another model?

These treaties generally follow the OECD model, with a few exceptions in respect of the older treaties.

7 Succession Planning

7.1 What are the relevant private international law (conflict of law) rules on succession and wills, including tests of essential validity and formal validity in your jurisdiction?

On 17th August 2015, a new EU Regulation that considerably modifies the rules on the jurisdiction and applicable law governing matters of succession in France came into force.

Under the Regulation, the law applicable to the succession as a whole (immovable and movable succession) shall be the law of the country in which the deceased had his/her habitual residence at the time of death (irrespective of whether they are Member States of the EU or not).

The Regulation allows a person to choose the law of his/her country of citizenship (at the time of making the choice or at the time of death) as the law to govern his/her succession. In practice, this choice must be made expressly in a will.

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 allows 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.

7.2 Are there particular rules that apply to real estate held in your jurisdiction or elsewhere?

When the law applicable to a given succession is that of the country of habitual residence of the decedent, such law may often provide for a so-called “*Renvoi*” rule, under which a reference back to the French succession law will be made to govern the devolution of real estate located in France.

In such a case, when the decedent owns French real estate in his/her own name, electing for the law of citizenship as the law governing the decedent’s whole succession will allow to set aside the potential application of the “*Renvoi*” rules. In other terms, the reference back to French law would not apply and the transfer of the French property would remain governed by the chosen law, as the rest of the whole estate.

7.3 What rules exist in your jurisdiction which restrict testamentary freedom?

Forced heirship rules

Under the French forced heirship rules, 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: one-half;
- two children: one-third; and
- three children or more: one-quarter.

If the deceased does not leave descendants, the surviving spouse is entitled to 25% of the estate, provided that no divorce proceeding is pending.

Prohibition of covenants on future inheritance

Any agreement that purports to allocate assets falling within a future estate to the future heirs is prohibited, unless it is made according to the provisions of the French Civil Code.

Limitation of “substitutions”

Historically, French civil law prohibited any provision under which a donee or an heir was obliged to conserve property and transfer it eventually to a third party (by gift or by cause of death). Since 2007, such substitutions (the so-called “*libéralités graduelles*”) have been allowed under the conditions expressly provided by the French Civil Code: in particular, only one level of “substitution” may be provided by the donor/deceased.

8 Powers of Attorney

8.1 In your jurisdiction, can an individual create a power of attorney which continues to be effective after the individual has lost capacity?

Since 2007, French law has provided for the possibility to conclude mandates for “future protection” (“*mandats de protection future*”), allowing a person to designate in advance the person(s) he/she wishes to be responsible for his/her person and/or all or part of his/her assets, for the day when he/she is no longer in a physical or mental capacity to do so.

8.2 To what extent would such a power of attorney made by an individual in their home jurisdiction be effective to allow the attorney to deal with assets belonging to the individual which are located in your jurisdiction?

A power of attorney made by an individual in his/her home jurisdiction will be effective in France but its implementation in France will be subject to obtaining a visa from the clerk of the judicial court to verify that the impairment of the principal’s faculties has been medically established and to set the effective date of the power of attorney, in accordance with provisions of the Hague Convention of 13th January 2000 on the International Protection of Adults.

In addition, the validity of a mandate may be challenged if it is manifestly contrary to French public policy.

9 Trusts and Foundations

9.1 Are trusts recognised/permitted in your jurisdiction?

The concept of trust is alien to the French Civil Code. French law, which does not know the distinction between legal and equitable ownership, has no doctrine of trusts. 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.

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 (see question 9.3).

9.2 How are trusts/settlors/beneficiaries taxed in your jurisdiction?

Up until the adoption of the law of 29th July 2011 (the New 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, irrevocable and discretionary trusts benefitted from a very favourable tax treatment in France.

However, to counter the exploitation of what were perceived as loopholes, the New Law introduced a comprehensive gift, inheritance and wealth tax regime for the taxation of trusts. The same tax treatment applies to all trusts regardless of their characteristics.

Income tax

The income tax treatment of trusts has been left unchanged by the New Law. French income tax is, as a general rule, imposed only when distributions of income are made to French resident beneficiaries; therefore, income generally may be accumulated in a trust without French income tax also being due.

Distributions of income are considered financial income from abroad for French tax purposes, regardless of whether income or capital gains were realised by the trust. The distributions are subject to a flat tax rate of 30% (12.8% corresponding to income tax and 17.2% for social contributions). However, beneficiaries are entitled to elect for the application of the progressive scale rate for income tax as well as social contributions (at the flat rate of 17.2%), when more favourable.

Inheritance or gift tax

Under French law, the transfer of assets into a trust does not give rise to transfer taxes. Inheritance or gift tax applies either:

- at the time the trust assets are transferred to the beneficiaries; or
- 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 of the taxable event. The tax rate is determined in accordance with the relationship between the settlor and the beneficiary, assuming the value of the trust assets is included in the inheritance tax return established by the settlor's heirs.

If it is not possible to ascertain the shares of the beneficiaries in the trust fund on the death of the settlor, the trustee should pay the inheritance tax at the rate of:

- 45%, if the class of beneficiaries only contains descendants of the settlor; or
- 60%, if the class of beneficiaries contains non-descendants.

The 60% rate will always apply if the trust is governed by the law of a non-cooperative state or territory, or if the trust was settled by a French resident after 11th May 2011.

The trustee and the beneficiaries are jointly liable for the payment of tax.

Wealth tax on real estate properties and rights directly or indirectly held by resident or non-resident individuals (IFI) The settlor (or the beneficiaries treated as “deemed settlors”) has to pay IFI on assets held in any kind of trust (including an irrevocable discretionary trust) if either:

- the settlor (or the beneficiary “deemed settlor”) is a French resident; or
- the trust fund contains taxable French assets.

After the death of the settlor, the beneficiaries who become “deemed settlors” are subject to IFI.

Before the entry into force of IFI on 1st January 2018, settlors and beneficiary deemed settlors were liable to ISF under similar conditions.

Finally, a specific tax applicable to trusts was also introduced by the New Law, at the current 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 (ISF or IFI) purposes; or
- trust assets have not been disclosed to the tax authorities when the settlor is not liable to wealth tax (ISF or IFI).

9.3 How are trusts affected by succession and forced heirship rules in your jurisdiction?

A certain portion of the estate called the “reserve” is reserved for certain heirs under the so-called “forced heirship rules”. Any reserved heir may request the application of these rules in the event that they are infringed by a will or by the provisions of a trust. It is important to note that, in practice, this rule only concerns real estate property situated in France, as well as movable property where the settlor is domiciled in France, at the time of his/her death.

Since the heirs may waive the application of the forced heirship rule, the mere existence of the reserve cannot make the existence of a trust invalid *per se*, unless the only purpose of the trust was to defraud reserved heirs. As a general rule, in the event that a trust does not comply with the reserve, the penalty is a reduction of the assets held in trust for non-reserved heirs.

9.4 Are private foundations recognised/permitted in your jurisdiction?

Foundations (“*fondations*”) cannot be used in France for estate-planning purposes and are controlled by a representative of the state. They only acquire legal personality and the right to receive gifts or legacies upon special authorisation, which can only be granted under very strict conditions and provided that the only purpose of the foundation is to promote public welfare.

However, a new type of foundation (“*fonds de dotation*”), inspired by Anglo-Saxon endowment funds, was introduced into French law in 2008 and amended in 2016. This type of foundation can benefit from an inheritance tax exemption on bequest or gifts, provided that certain conditions are met, and does not need to be controlled by a representative of the state or be granted special authorisation, contrary to the public utility foundation. The non-lucrative income part of such foundations is exempt of corporate income tax and VAT.

The above-mentioned foundations can only be set up for cultural, scientific or charitable purposes and cannot be considered a substitute for trusts (except, to a limited extent, in the case of charitable trusts).

9.5 How are foundations/founders/beneficiaries taxed in your jurisdiction?

A favourable tax regime applies to public utility foundations. Article 206-5 of the FTC provides that public utility foundations benefit from a corporate tax exemption in respect of their income deriving from non-profit activities (see question 9.4).

Individuals making donations to public utility foundations and foundations under the aegis of a public utility foundation can deduct 66% of the contribution from their French income tax, up to 20% of the donor's taxable income.

As a general rule, the founders are not subject to specific taxation resulting from the creation of the foundation. Moreover, public utility foundations cannot be used for estate-planning purposes.

9.6 How are foundations affected by succession and forced heirship rules in your jurisdiction?

Private foundations are not recognised. Gifts to foreign foundations are subject to the rules governing forced heirship (see question 9.3).

10 Matrimonial Issues

10.1 Are civil partnerships/same-sex marriages permitted/recognised in your jurisdiction?

A marriage can be contracted by two persons of the same sex, pursuant to article 143 of the French Civil Code.

Two persons of the opposite sex, as well as same-sex couples, can also conclude a contract to organise their life in common (the so-called "PACS"). They are not treated as spouses for succession purposes but they are fully exempt from inheritance tax.

10.2 What matrimonial property regimes are permitted/recognised in your jurisdiction?

There are five matrimonial property regimes.

The spouses can draw up a marriage contract when they get married or during the marriage period. Such contract, which can only be drawn up before a French *notaire*, allows the spouses to decide on a matrimonial property scheme with personalised provisions.

If a couple marries without a contract, they automatically fall under the regime of "*communauté réduite aux acquêts*" (community), governed by articles 1401–1408 of the French Civil Code, under which the movable and real property owned separately at the time of the marriage or subsequently acquired by gift or succession remain the sole property of their owner. Common property is thus limited, under this regime, to the assets acquired by the couple during the marriage, whether through their income-earning activities or the income from their sole property, but does not include increases in the capital value of sole property.

The spouses can also choose the regime of "*séparation de biens pure et simple*" (basic separation of property regime), under which no properties are jointly owned, or the regime of "*séparation de biens avec participation aux acquêts*" (separation of property regime), which combines separation and joint ownership where the property acquired after the marriage will be divided between the spouses upon a divorce.

The spouses can also choose the regime of "*communauté universelle*" (universal community of assets) under which all the assets owned by the spouses constitute a pool.

10.3 Are pre-/post-marital agreements/marriage contracts permitted/recognised in your jurisdiction?

Although it is not possible to establish a prenuptial agreement under French law *per se*, foreign prenuptial agreements might produce effects in France.

Married couples can draw up a contract before and during the marriage period under which the spouses decide on a matrimonial property scheme with personalised provisions (see question 10.2).

10.4 What are the main principles which will apply in your jurisdiction in relation to financial provision on divorce?

Maintenance obligation is unavailable under French law, which means that covenants cannot dispose of it.

A "*prestation compensatoire*" (compensatory allowance) may be paid upon a divorce (irrespective of its cause) to a spouse who suffered a difference in living standards due to the divorce. The amount is determined either by the spouses when there is mutual consent or by a judge.

11 Immigration Issues

11.1 What restrictions or qualifications does your jurisdiction impose for entry into the country?

In principle, foreign nationals entering and staying in French territory must be in possession of a valid entry and stay visa, unless exempt from this requirement. Visa exemption depends on the individual's nationality, the possession of a residence permit for France or a Schengen state, the duration of the stay and where on French territory the individual intends to stay.

Citizens from the EU and the EEA can work in France without requiring a work permit. As a general rule, any non-EU national (over the age of 18) who wishes to stay in France for more than three months to work, study or reside without employment must have a residence permit.

11.2 Does your jurisdiction have any investor and/or other special categories for entry?

France does not provide special categories of visa in order to attract investors or individuals with special skills.

11.3 What are the requirements in your jurisdiction in order to qualify for nationality?

French nationality is acquired by operation of law or by naturalisation. Anyone born anywhere of a French father or mother is French ("*jus sanguinis*"). Anyone born in France of unknown parents or to at least one foreign parent who is also born in France automatically acquires French nationality (double "*jus soli*"). Unlike the United States, one does not acquire French citizenship by virtue of birth in France only; residency must be proven. A child born in France from foreign parents may acquire French nationality under certain conditions. A person aged 18 and over may apply for French citizenship by naturalisation after five years' habitual and continuous residence in France. In addition, it is required that the applicant has his/her primary source of income in France during the five-year period. The residence period may be waived or shortened under certain circumstances.

11.4 Are there any taxation implications in obtaining nationality in your jurisdiction?

There are no taxation implications in obtaining French nationality.

11.5 Are there any special tax/immigration/citizenship programmes designed to attract foreigners to become resident in your jurisdiction?

As explained above, new French residents benefit from a five-year wealth tax exemption (ISF or IFI) in respect of their non-French assets (including the non-French assets held by a trust). During this period, they would be subject to wealth tax (ISF or IFI) only if the market value of their French real estate assets exceeds the threshold of EUR 1,300,000.

France also provides a favourable impatriate regime to encourage French expatriates or foreigners to return to France to pursue their professional activity. If certain conditions are met, they can, upon their return to France, benefit from tax exemption on several income and other tax advantages.

12 Reporting Requirements/Privacy

12.1 What automatic exchange of information agreements has your jurisdiction entered into with other countries?

France signed a FATCA agreement with the USA on 14th October 2013 (modified by law n°2014-1098 of 29th September 2014), under which French financial institutions must report US citizens' bank accounts. This agreement is enforceable as from 29th September 2014.

France has signed the common reporting standards Multilateral Competent Authority Agreement (MCAA), which provides for an automatic exchange of information for tax purposes with the signatories' states. France has been engaged in automatic exchange of information with other countries since September 2017.

12.2 What reporting requirements are imposed by domestic law in your jurisdiction in respect of structures outside your jurisdiction with which a person in your jurisdiction is involved?

Pursuant to the entry into force of the New Law, reporting requirements are imposed on trustees of foreign trusts when a trust has at least one of the following connecting factors with France:

- the settlors or at least one of the beneficiaries is a French resident;
- an asset of the trust is French-situated; and
- the trustee is a French resident.

The information must be provided in French on prescribed forms. The penalty for non-declaration amounts to EUR 20,000 per missing declaration. Failing to report may also give rise to an additional 80% surcharge, applying to all French tax consequences bearing on the trustees, the settlors or the beneficiaries that may be due in respect of the trust (i.e. income tax, IFI, inheritance/gift tax or trustees' specific 1.5% tax).

If the settlor or the "beneficiary deemed settlor" is liable to IFI in France and does not report the value of the trust assets for IFI purposes, a specific flat tax at the current rate of 1.5%

of the market value of the trust's assets within the scope of IFI ("sui generis tax") should, in principle, be due by the trustee on a yearly basis.

All the information reported by the trustee of a trust that has a French connection is gathered in a register that can be consulted by listed public authorities, such as the French tax authorities or the judicial authorities.

In addition, please see questions 4.3 and 12.4 regarding the reporting obligations imposed for the purpose of the annual 3% tax, when a French real property is held through a chain of foreign companies/entities.

12.3 Are there any public registers of owners/beneficial owners/trustees/board members of, or of other persons with significant control or influence over companies, foundations or trusts established or resident in your jurisdiction?

France has a register of beneficial owners. Following the OECD Common Reporting Standard, France has adopted requirements for the identification and registration of beneficial owners of corporations, aimed at preventing money laundering and terrorism financing. The decree that implemented the Register of beneficial ownership was signed on 12th June 2017 and entered into force on 1st August 2017.

However, in a decision dated 22nd November 2022, the ECJ held that the public accessibility of the information relating to companies' beneficial owners is invalid, as it is contrary to the fundamental right to privacy. Regrettably, to this date, the French ultimate beneficial owner public register has remained accessible in practice.

12.4 Are there any public registers of beneficial owners of, or of other persons with significant control or influence over, real estate located in your jurisdiction?

The Land Registry records all deeds relating to the land register, such as purchases, sales, transfers, donations, inheritances and mortgages of real estate. Notaries have a monopoly on registering deeds with the Land Registry. However, anyone can access the information reported in the Registry and find out about the legal status of a property. The service is not free, but the cost is low.

In addition, unlisted companies must declare to the *Registre du Commerce et des Sociétés* (RCS) details of their beneficial owners (see question 12.3), i.e. the individuals who ultimately own or control the company, or on whose behalf a transaction or activity is carried out. In principle, all companies owning real estate must therefore declare their beneficial owners. Some of this data is accessible to the general public without restriction.

Finally, all legal entities (French and foreign) owning real estate in France, whether directly or indirectly, are subject to an annual tax of 3% levied on the market value of the property, except where the companies involved in the structure of ownership disclose (or commit to disclose) their immediate shareholder as well as the ultimate beneficial owner (please see also question 4.3).



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TIRARD NAUDIN has been regarded as a leading law firm in the international tax/private client market for more than three decades. The firm was founded in 1989 by Maryse NAUDIN and Jean-Marc TIRARD, later joined in 2011 by Ouri BELMIN, who is now the firm's managing partner.

The firm specialises in international tax and estate planning for a wide variety of clients, mainly high-net-worth private clients and their families who need help in relation to complex estate planning and international structuring matters.

The firm is particularly renowned for its expertise in the legal and tax treatment of trusts, and more generally in matters involving conflicts between common law and civil law systems. The firm's partners also have a wealth of expertise in property tax issues and the creation of efficient structures for non-resident investors.

Most of the firm's clients are leading foreign law firms, or referred by leading foreign law firms, as well as foreign private banks, trust companies, family offices and fiduciary companies.

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