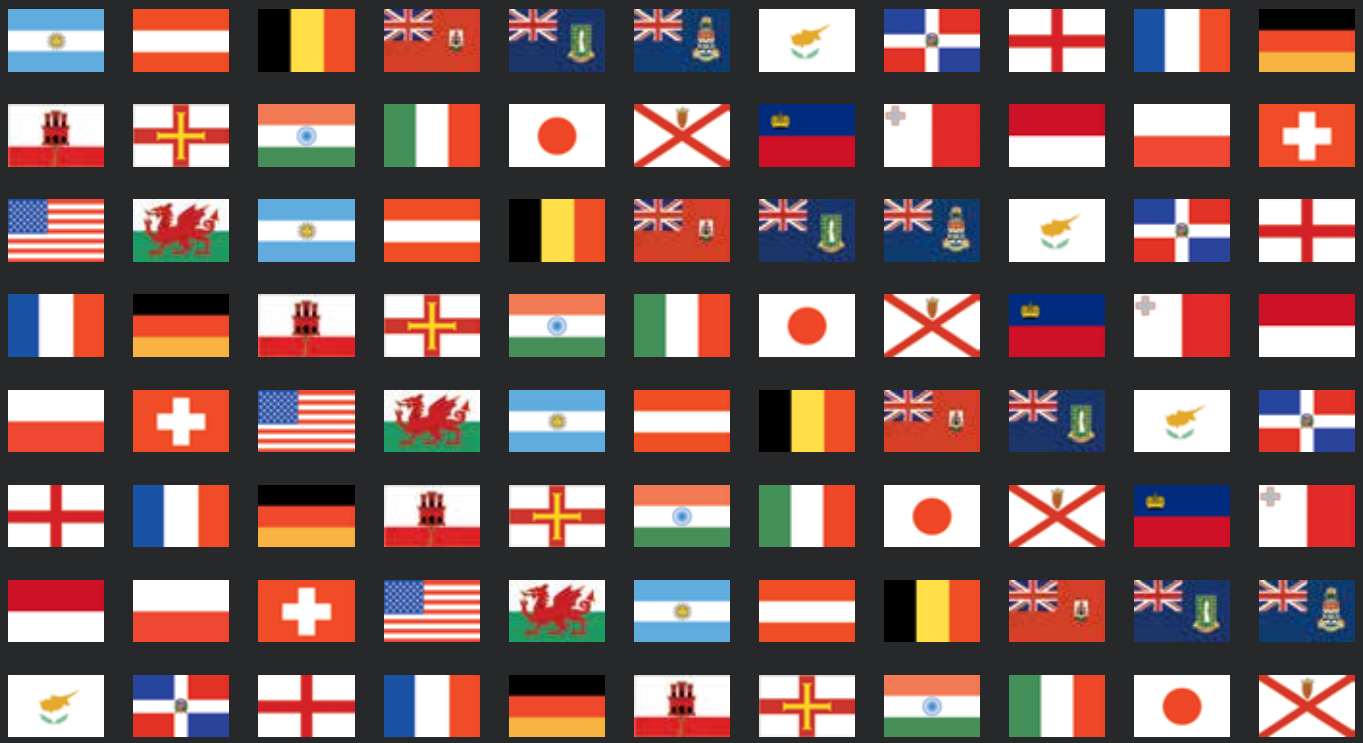
Private Client

Contributing editors
Anthony Thompson and Sara Walter



2018

GETTING THE DEAL THROUGH

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Private Client 2018

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Tax

1 How does an individual become taxable in your jurisdiction?

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 French Tax Code (FTC)). There are four alternative tests for determining whether an individual is treated as a resident for tax purposes:

- the individual's home is in France;
- the individual's primary place of residence is in France;
- the individual performs an (economic) activity in France; or
- the individual has the centre of his or her economic interests in France.

In principle, individuals who are residents of France under article 4A of the FTC are liable to income tax in France in respect of their worldwide income. However, where jurisdictions conflict, the applicable tax treaty determines which country can tax.

The concept of 'domicile' is not used by the FTC. However, the French courts usually find that the law of the deceased's last domicile governs succession (see also question 18). Under the French Civil Code (CC), domicile is the place where a person has his or her habitual residence. The place of origin has no influence on the determination of habitual residence.

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

Residents of France are subject to income tax on their worldwide income, except by virtue of the application of a tax treaty. Non-residents are subject to French income tax on their French source income. Taxable income is as a general rule subject to a progressive tax scale with a marginal tax rate (for 2016) of 45 per cent. A minimum tax rate of 20 per cent applies to non-residents. Capital and property income are also subject to social contributions (at a rate of 15.5 per cent for 2016). Withholding taxes may also be levied depending on the type of income.

A supplementary contribution also applies to an individual's high annual income, at a rate of 3 per cent for the fraction of income between €250,000 and €500,000 for single taxpayers (between €500,000 and €1 million for couples subject to joint taxation) and 4 per cent for the fraction of income over €500,000 for single taxpayers (over €1 million for couples subject to joint taxation). This contribution is assessed on the individual's reference tax income, 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. The tax treatment differs according to the type of income.

Wages and salaries

These are subject to a withholding tax when paid by non-resident individuals. A lump sum corresponding to professional expenses amounting to 10 per cent of the wages received (limited to €12,183 for 2016) is deductible for the determination of the net income subject to the progressive tax rate for residents. Social contributions are withheld by the employers.

Real estate income

This is taxed on the progressive tax scale applied to resident taxpayers (a minimum rate of 20 per cent applies to non-residents). Since 1 January 2016, all non-resident individuals' rental income from their real property in France is also subject to social contributions at the rate of 15.5 per cent.

Investment income

This is, as a general rule, subject to the progressive tax scale for residents. Social contributions are only due by French residents; royalties are, however, subject to a flat rate of 16 per cent under certain conditions. Dividends paid to French residents are now subject to a 21 per cent withholding tax, which is considered a prepayment of the income tax due by application of the progressive tax scale.

Withholding taxes are assessed on the income of non-resident taxpayers at the following rates:

- dividends: 30 per cent, or 21 per cent if paid to an individual resident in a member state of the European Economic Area (EEA);
- royalties: 33.33 per cent;
- interest benefit from an exemption under certain conditions; and
- 75 per cent when dividends, royalties or interest are paid to an individual resident in a 'non-cooperative state or territory'.

Tax treaties usually provide for exemptions or lower rates.

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

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 34.5 per cent for 2015 (19 per cent plus social contributions at the rate of 15.5 per cent).

Capital gains on the sale of the main residence are, however, tax-exempt. Rebates apply depending on the ownership period preceding the sale of the real estate. As a consequence, capital gains are fully exempted from income tax (at the rate of 19 per cent) after 22 years of ownership and social contributions (at the rate of 15.5 per cent) are fully exempted after 30 years of ownership.

Capital gains upon the sale of shares of real estate companies realised by French tax residents are taxable at different rates depending on the form of the company. Assuming the company sold is a pass through entity, capital gains are subject to a flat rate of income tax of 19 per cent plus social security contributions. Capital gains upon the sale of real estate companies which are subject to corporate tax are taxable as if they were business companies (see below).

Non-resident individuals' capital gains on the sale of real estate are only taxed in France when the property transferred is situated in France. Capital gains realised on the sale of shares of companies directly or indirectly owning French properties (having a market value which exceeds the market value of the other assets they own) are also taxable in France. Taxable capital gains are determined on the same basis as for a French resident. As opposed to the tax regime applying to resident taxpayers, they are always subject to a withholding tax of 19 per cent representing income tax and social contributions at the rate of 15.50 per cent (since 1 January 2016). Tax treaties do not provide for exemptions any longer when the French real estate is sold. However, some treaties do not allow France to tax the sale of shares of companies owning directly or indirectly French real estate under certain conditions.

From 1 January 2013, an additional tax varying from 2 per cent to 6 per cent applies when the taxable capital gain on French real estate and shares of companies owning directly or indirectly real properties exceeds €50,000.

Realised capital gains from the sale of securities or shares by a French resident are subject to the progressive tax scale with a marginal rate of 45 per cent. Social contributions at the rate of 15.5 per cent are also due.

Rebates apply depending on the ownership period preceding the sale amounting to 50 per cent if the shares have been held for more than two years and less than eight years, and to 65 per cent assuming the shares have been held for more than eight years.

Unrealised capital gains can, however, be taxable under the 'exit tax'. We are convinced that the exit tax does not comply with the constitutional and European fundamental principles.

Finally, unless a tax treaty provides otherwise, a non-resident individual's capital gains from the sale of securities or shares are taxed only if his or her participation, together with the participations of his or her spouse, ascendants (that is, those from whom a person is descended, for example, parents and grandparents) and descendants exceeds 25 per cent of the shareholding in a resident company subject to corporate income tax at any time during the previous five years. At present, a flat tax rate of 45 per cent applies.

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

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 transferred.

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

When the donor and the donee are both resident outside of France, only moveable and real property situated in France is liable to French gift or inheritance taxes in these circumstances.

Tax treaties may modify the above rules. As a general rule, gift taxes apply to the beneficiary's net entitlement, after applying tax-free allowances (see below) and deducting liabilities under certain strict conditions.

Allowances

The amounts that can be transferred free from inheritance and gift tax depend on the transferor's relationship with the beneficiary. The allowances for 2016 are as follows:

- parents and children in the direct line: up to €100,000 for each 15-year period;
- brothers and sisters: up to €15,932 for each 15-year period;
- nephews and nieces: up to €7,967 for each 15-year period;
- lifetime gifts made to a spouse or partner: up to €80,724 for each 15-year period;
- lifetime gifts made to grandchildren: up to €31,865 for each 15-year period;
- lifetime gifts made to great-grandchildren: up to €5,310 for each 15-year period;
- lifetime gifts made to disabled people: up to €159,325 for each 15-year period; and
- bequests made to other beneficiaries: up to €1,594.

Rates

Gift tax rates do not depend on the beneficiary's wealth. Rates vary according to the family relationship between the transferor and the beneficiary, with it being specified that reduced rates can apply to gifts depending on the transferor's age.

The gift rates for 2017 are as follows:

- transfers to parents and children in direct line are taxable at progressive rates varying from 5 per cent (under €8,072) to 45 per cent (over €1,805,677);
- transfers by lifetime gift to a surviving spouse or partner of a civil union (PACS) in the case of an inter vivos gift are also taxable at progressive rates varying from 5 per cent (under €8,072) to 45 per cent (over €1,805,677);
- transfers to brothers and sisters are taxable (when the amount transferred is over €15,932) at the following rates: 35 per cent up to €24,430 and 45 per cent over €24,430;
- transfers to fourth-degree relatives are taxable at the rate of 55 per cent; and
- transfers to relatives greater than fourth degree and other beneficiaries are taxable at the rate of 60 per cent.

Exemptions

From 22 August 2007, cash gifts of up to €31,865 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 since 31 July 2011); and
- the beneficiaries are over 18 years old or emancipated (that is, a child over 16 years old who has acquired legal capacity from a judge).

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

Inheritance taxes are also calculated on the beneficiary's net entitlement after applying the same tax-free allowances as for gift taxes (see question 4) and deducting liabilities.

Rates

The inheritance tax rates do not depend on the beneficiary's wealth but on the amount transferred by death, and vary according to the family relationship between the transferor and the beneficiary:

- no inheritance tax is payable on transfers to a surviving spouse or partner of a PACS in the case of succession; and
- in all other situations, inheritance tax applies at the same rates as for gift taxes.

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

Inheritance and gift taxes

In principle, France levies inheritance and gift tax upon transfer without consideration of all real property (wherever situated) owned by French residents. Tax treaties may, however, provide otherwise. France always levies inheritance and gift taxes on non-resident owners' real property situated in France, even if the transferor and the beneficiary are both resident outside 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.

The same rates and rules apply irrespective of whether the beneficiary is resident or non-resident in France.

Registration fee

When real property located in France is transferred by gift, a registration fee must be paid in addition to gift tax.

Transfer duties and notaries' fees

The purchase of real estate located in France is subject to transfer duties and notaries' fees at a global rate of approximately 6.2 per cent.

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 per cent of its total French assets is also subject to transfer duties at a rate of 5 per cent (applying to the market value of the property after deduction of the sole debts incurred for the acquisition of the property).

The above taxes apply irrespective of whether the buyer is a French resident or not.

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 where the property is located.

Wealth tax

Resident taxpayers are liable to wealth tax on their worldwide assets whereas non-resident taxpayers are only liable to wealth tax on their French assets. In particular, non-residents are subject to wealth tax on their capital assets located in France, with the exception of financial investments made in France (eg, shares, securities, bonds, deposits). Most treaties impose French tax on property situated in France.

Wealth tax is payable only by individuals whose private wealth, after the deduction of debts, exceeds a certain limit on 1 January each year (€1.3 million for 2016).

For 2017, individuals liable to wealth tax will be subject to a progressive tax scale. The rate, applicable to the net estate, varies as follows:

- up to €800,000: zero per cent;
- €800,000 to €1.3 million: 0.5 per cent;
- €1,300,001 to €2.57 million: 0.7 per cent;
- €2,570,001 to €5 million: 1 per cent;
- €5,000,001 to €10 million: 1.25 per cent; and
- more than €10,000,001: 1.5 per cent.

Note that as of 2018, this tax may be replaced by a tax solely based on the real property assets owned by individuals (see 'Update and trends').

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

See question 8.

In addition to VAT that may be due on imported and exported assets (except if they are second-hand assets), custom duties may also apply depending on the nature of the assets when they are imported from or exported to states that are not EU members.

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

VAT

French legislation has applied the VAT Sixth Community Directive since 1 January 1979. Article 256, I of the FTC provides that the sale of goods, the 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 that 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 per cent. A reduced VAT rate of 10 per cent applies to certain goods and services (eg, agricultural products, non-reimbursable medication, books) and a reduced VAT rate of 5.5 per cent applies to basic necessities such as food products. Nevertheless, a number of specific rates should be added to this list (eg, newspapers) as well as various specific rates applicable in Corsica and the overseas territories.

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

Up until the adoption of the Law of 29 July 2011 (the Law on Trusts), 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 benefited from a very favourable tax treatment in France.

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

The Law on Trusts is particularly difficult to analyse as it does not follow the concepts generally applicable in common law jurisdictions and tries to tax the trust's assets as if no trust had been set up. The Law on Trusts only affects the tax treatment of trust's assets. It does not interfere with the French or foreign legal treatment of the trust (notably in matters of successions and estate devolutions), which remains unchanged.

Inheritance or gift tax

The Law on Trusts introduced a fiction under which upon the death of the original settlor, beneficiaries (appointed by the trust settlement or by default by the trustee) become deemed settlor. This is because French law does not allow for a trusts' assets to be under the ownership of a legal owner different from the economic owner.

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 either the transfer to beneficiaries or the death of the original settlor or beneficiary deemed settlor. The tax rate is determined in accordance with the relationship between the original settlor (or deemed settlor) and the beneficiary (see question 4).

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 per cent: if the class of beneficiaries only contains descendants of the settlor; or
- 60 per cent: if the class of beneficiaries contains non-descendants.

The 60 per cent rate will always apply if the trust either:

- is governed by the law of other non-cooperative states or territories; or
- was settled by a French resident after 11 May 2011.

Wealth tax

Since 1 January 2012, the original settlor (or the beneficiaries treated as deemed settlors after the original settlor's death) must pay French wealth tax 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 wealth tax.

A specific tax applicable to trusts is also being introduced, at a rate of 1.5 per cent. 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, or if the trustee failed to comply with its French reporting obligations.

10 How are charities taxed in your jurisdiction?

Tax exemption for qualifying purposes

As a general rule, a favourable tax regime applies to public utility foundations and under certain conditions to 'associations'. Article 206-5 of the FTC provides that public utility foundations and associations benefit from a corporate tax exemption in respect of their income deriving from non-profit activities. Reduced corporate tax rates also apply, under certain conditions, on other income derived from 'business activities'.

Donations from individuals

Individuals making donations to public utility foundations and foundations under the aegis of a public utility foundation can deduct 60 per cent of the contribution from their French income tax, and up to 20 per cent of the donor's taxable income (article 200-1 of the FTC). A gift or inheritance tax exemption is also granted under certain conditions.

Trusts and foundations

11 Does your jurisdiction recognise trusts?

The concept of a trust is alien to the CC, which makes 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.

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.

12 Does your jurisdiction recognise private foundations?

Public utility foundations (*fondations reconnues d'utilité publique*) cannot be used in France for estate planning purposes because they are always controlled by a representative of the state, and only acquire legal personality and the right to receive gifts or legacies upon special authorisation that 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 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 as a substitute for trusts (except, to a limited extent, in the case of charitable trusts).

Same-sex marriages and civil unions

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

A same-sex couple as well as two persons of the opposite sex can conclude a contract to organise their life in common (PACS). They are not treated as spouses for succession purposes, but they are fully exempt from inheritance tax under certain conditions.

Since 17 May 2013, a marriage can be contracted by two persons of the same sex pursuant to article 143 of the CC. Married couples can choose their matrimonial regime by marriage contract before getting married, which they may change during the marriage (see question 16).

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

See question 13 with regard to the PACS.

Succession

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

French civil law makes no distinction between legal and equitable ownership.

However, under French law, ownership can be divided into two distinct elements: usufruct and bare ownership. Article 578 of the CC defines usufruct as the right to enjoy property owned by another as if one were the beneficial owner, but subject to a duty to conserve its substance. Although a usufruct that allows a person to use the property and to receive any income thereon bears some resemblance to the common law concept of 'life interest', the two concepts are significantly different.

A usufruct comes to an end with the death of the usufructuary, as a result of the expiry of the period for which it was granted or by reuniting in the same person the two qualities of usufructuary and bare owner. A usufruct may be created by operation of law (eg, the rights of a surviving spouse) or by gift or sale. Although generally granted for life, usufruct may also be granted for a fixed term.

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

Lifetime freedom of disposition can be restricted under certain circumstances due to applicable ownership rules or family relationships.

Co-ownership

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

Matrimonial regimes

Spouses can enter into a contract before marriage to regulate their property rights but they may also change it during 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, spouses automatically fall under the regime of 'community reduced to acquisitions'. Moveable and real property owned separately at the time of the marriage, or subsequently acquired by gift or inheritance, remain the sole property of the original owner. Common property is then limited to the assets acquired by the couple during the marriage. Both spouses hold a 50 per cent 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 CC provides two main alternatives:

- the separation of property: 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 own property by will; and
- the universal community: all of the assets acquired by the spouses before or after the marriage are common property. Spouses hold together the interest in the assets composing the common property and can, therefore, dispose of his or her share in the common property by will. Upon the death of one of the spouses, the surviving spouse becomes the sole owner of the assets, as from their acquisition.

A person who lived with the deceased without being married to them (such as a common law spouse or a civil partner) is not acknowledged by the intestate succession rules and is treated as a third party.

Forced heirship rules

There is a forced heirship regime. Dispositions of property made in contravention of forced heirship rules are valid, but they can be reduced to protect the hereditary reserve (see question 17). Only spoiled heirs may request for the application of the forced heirship rules.

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

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: 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 per cent of the estate, provided that no divorce proceeding is pending.

Other restrictions

Two other restrictions to the freedom of disposition on death may apply:

- the 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 CC; and
- the prohibition of 'substitutions': any provision under which a donee or an heir is obliged to conserve property and transfer it to a third party is prohibited, except in the cases expressly allowed by the law.

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

Applicable law

As from 17 August 2015, a new EU Regulation has considerably modified the rules on the jurisdiction and the applicable law governing matters of successions in France.

Under the new EU Regulation, the law applicable to the succession as a whole (immoveable and moveable succession) shall be the law of the country in which the deceased had his or her habitual residence at the time of the death.

The EU Regulation, however, allows a person to choose the law of the country whose nationality he or she possesses at the time of making the choice, or at the time of death, as the law to govern the succession.

Devolution of intestate estates under French law

In the absence of a valid will, article 731 of the CC establishes five hierarchical categories of heirs:

- children or their descendants inherit from their parents, grandparents and other ascendants. They inherit equal, per capita shares,

without any distinction on the basis of sex or primogeniture and irrespective of whether they are legitimate children from different marriages, illegitimate children or illegitimate children of adulterous origin (where one parent is married to a third person at the time of conception) with the exception in the last case of children born in the marriage during which they were conceived. The presence of such descendants excludes all other relatives. Moreover, descendants of a predeceased child are allowed to inherit by 'representation';

- parents and brothers and sisters share the estate if the deceased had no living descendants in accordance with the following principles:
  - if there are no living parents, the brothers and sisters (including half-brothers and sisters), or their surviving descendants are entitled to the whole estate. All other relatives are excluded;
  - if there is one surviving parent, the brothers and sisters share three-quarters of the estate between them and the other quarter goes to the surviving parent;
  - if both parents are living, the brothers and sisters receive half of the estate and the remaining half is shared equally between the parents; or
  - if both parents are living but there are no brothers and sisters, the parents receive the entire estate (half for the mother and half for the father);
- grandparents, etc: if there are no living parents or brothers and sisters or their descendants, the surviving grandparents or other ascendants in each line (the father's family is one line, the mother's family is another) share half the estate between them. If there are no ascendants in one line the estate devolves entirely to the ascendants in the other line;
- ordinary collateral relations (cousins, uncles, aunts): if there are no descendants, ascendants, brothers or sisters on either side of the family, the nearest relations in each family line share half the estate between them on a per capita basis. However, collateral relatives do not inherit beyond the sixth degree; if there are neither any closer relatives nor a surviving spouse (see below), the State will be entitled by the court to take over the estate; and
- the surviving spouse has varying rights depending on whether the deceased leaves descendants:
  - if there are only descendants from both spouses, the surviving spouse can elect to receive either the whole of the estate in usufruct or a quarter in full ownership;
  - if the deceased leaves descendants who are not also the descendants of the surviving spouse, the surviving spouse receives a quarter of the estate in full ownership without the option to receive the usufruct;
  - in the absence of descendants, a distinction should be made depending on whether the deceased leaves either of his or her parents. The surviving spouse receives half of the estate if both the parents survive and three-quarters if only one of the deceased's parent survives; and
  - in the absence of descendants and surviving parents, the surviving spouse is entitled to the whole of the estate even if siblings survive.

Moreover, the spouse can claim, under certain conditions, a life right to inhabit the principal accommodation that is part of the estate (article 764 CC). It should also be noted that a person who lived with the deceased without being married to them (including those having the status of a common law spouse or PACS), is not acknowledged by the intestate succession rules and is treated as a third party.

People who have concluded a PACS are not treated as spouses for succession purposes (see above), but they are fully exempt from inheritance tax (see question 5).

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

All children are treated equally (see question 18).

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

As explained in question 18, the law applicable to the succession as a whole (immoveable and moveable succession) shall be either the law of the country in which the deceased had his habitual residence at the time of the death, or the law of the country of is citizenship.

Update and trends

Newly elected President Macron promised several tax reforms, chief among which was to replace the current wealth tax. As a result, as of 1 January 2018 a new tax based solely on real estate will replace the existing wealth tax which was based, for French residents, on their worldwide net estate value on the first of January every year (see question 6).

In addition, as of 2018, all investment income and capital gains on financial assets should be subject to a 30 per cent flat tax (income tax at a rate of 12.8 per cent and social contributions at a rate of 17.2 per cent). The social contributions' rate on rental income and real estate capital gains should increase to 17.2 per cent, instead of the existing 15.5 per cent rate.

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

There are two main forms of wills under French law:

- a holographic will: this must be handwritten by the testator but does not need to be witnessed. This is the most common type of will; and
- an authentic will: this must be made in the presence of a notary and two witnesses.

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

Wills valid in another jurisdiction are recognised as valid in France. French law also recognises the effect of a foreign grant of representation.

23 Who has the right to administer an estate?

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

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

Heirs are deemed to inherit property from a deceased person immediately upon death without a common law estate administration (thus the distinction between common law 'probate' and civil law 'succession').

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 an affidavit drafted by a notary. It is prepared by 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 a French resident and within one year if he or she was a non-French resident.

Distributing the estate

The concept of personal representatives does not exist in French law. It is therefore necessary to have arrangements to vest the deceased's property in the beneficiaries, which will depend on whether the deceased died intestate or left a will:

- 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 (see question 16); and
- in the case of a will, the testator decides to allocate, by inter vivos gift or legacy, a part of his or her estate to the person he or she chooses, provided that this complies with the forced heirship rules (see question 17).

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

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

Only reserved heirs (ie, those entitled under the forced heirship regime) can bring a court action to challenge gifts made by the deceased during his or her life that harm their heirship rights. The reserved heirs must act within five years of the opening of the succession.

Capacity and power of attorney

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

Under French law a minor (that is, under the age of 18) can own assets. Legal administration is, however, attributed either to parents or to a guardian in certain circumstances.

When an heir is a minor, only his or her parents can accept any inheritance on his or her behalf. Until the age of 16, an heir's parents represent him or her and act for him or her.

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

See question 26.

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

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 or she must be represented by another person. In other cases he or she will only be advised or supervised.

Immigration

29 Do foreign nationals require a visa to visit your jurisdiction?

In principle, foreign nationals entering and staying on 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.

As a general rule, only nationals of member states of the European Union, the European Economic Area, Andorra and Monaco are exempt from entry and long-stay visa requirements.

30 How long can a foreign national spend in your jurisdiction on a visitors' visa?

A short stay is a stay in the Schengen area lasting less than 90 days or a succession of stays totalling less than 90 days in any period of six months. For short stays, European regulations specify the list of countries whose nationals are exempt from visa requirements to enter the Schengen area.

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

No.

32 If so, does this programme entitle individuals to bring their family members with them? Give details.

Not applicable.

33 Does such a programme give an individual a right to reside permanently or indefinitely in your jurisdiction and, if so, how?

Not applicable.

34 Does such a programme enable an individual to obtain citizenship or nationality in your jurisdiction and, if so, how?

Not applicable.

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