The Legal 500 Country Comparative Guides

France: Private Client

This country-specific Q&A provides an overview to private client laws and regulations that may occur in France.

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1. **Which factors bring an individual within the scope of tax on income and capital gains?**

   Two factors bring an individual within the scope of tax on income and capital gains in France. The individual is resident of France (1.1.) and the income and/or capital gains is generated in France or assets are located in France (1.2.).

   1.1. The individual is resident of France for tax purposes

   Article 4B of the French tax code defines the residence in the same way for all tax purposes (income tax, wealth tax, IFI, gift and inheritance tax). Four alternative tests are provided for determining whether an individual is treated as a resident for tax purposes:

   - He/she has his/her home in France;
   - His/her primary place of residence is in France;
   - He/she performs an activity in France;
   - His/her centre of economic interest is in France.

   Individuals who are resident of France under article 4B of the French tax code are liable to French taxes in respect of their worldwide income and/or assets, except when a tax treaty provides otherwise.

   1.2. French source income/capital gains and French located assets

   French source income/capital gains as well as French located assets may entail French tax burden on individuals who do not qualify as French resident for French tax purposes as defined by article 4B of the French tax code (see §1.1.).

   Withholding taxes are generally levied at different rates depending on the nature of the income/capital gains received.

2. **What are the taxes and rates of tax to which an individual is subject in respect of income and capital gains and, in relation to those taxes, when does the tax year start and end, and when must tax returns be submitted and tax paid?**

   Income/capital gains earned by individuals are taxable, as a general rule, on a cash basis.

   The French tax year begins on January 1st of each year for individual income tax purposes.

   By way of exception to this general rule, the transfer of residence abroad entails the payment of an exit tax on latent capital gains incurred by financial assets owned by an individual who has been resident of France for more than six years during the last ten years.

The death of the taxpayer does not entail the payment of capital gains on assets he/she owned but gives rise to inheritance tax as explained in § 5.2.

The tax treatment is different depending on whether the individual is resident (see §2.1) or non-resident (see § 2.2.) of France and on the nature of the income/capital gains received.

2.1. Income/capital gains tax regime applying to French resident taxpayers

- Wages and salaries are subject to a progressive tax scale with a marginal tax rate of 45 % for 2020. Social contributions are also due at the rate of 9.7 % for 2020.
- Real estate income is also subject to the same progressive tax scale with a marginal tax rate of 45% for 2020. Social contributions are due at the rate of 17.2% for 2020.
- Since January 1st 2018, investment income are subject to a flat tax of 30% including income tax at the rate of 12.8% and social contributions at the rate of 17.2%. Nevertheless, if more favourable the taxpayer may elect for the application of the progressive scale rates.
- Capital gains on real estate are subject to tax at the flat rate of 19% and social contributions at the rate of 17.2%. Rebates for duration of ownership apply allowing a total exemption of income tax after 22 years of ownership and a total exemption of social contributions after 30 years of ownership. An additional tax applies on capital gains exceeding 50,000 € varying from 2% to 6%.
- Capital gains on the sale of pass through entities' shares owning French real estate are subject to tax under similar conditions than those applying upon the sale of French real estate properties (see just before).
- Since January 1st 2018, capital gains on securities and shares are subject to a flat tax of 30% including income tax at the rate of 12.8% and social contributions at the rate of 17.2%. Rebates for the duration of ownership will not apply any longer. Once again, the taxpayer may elect for the application of the progressive scale rates.

A supplementary contribution also applies amounting to 3% for the fraction of income between 250,000 € and 500,000 € for a single (500,000 € and 1,000,000 € for a couple) and to 4% for the fraction exceeding 500,000 € for a single (1,000,000 € for a couple).

2.2. Income/capital gains tax regime applying to non-French resident taxpayers

- The tax regimes applying to Wages and salaries and real estate income as described in § 2.1 on residents also apply to non-resident taxpayers. However, a minimum tax rate of 20% for the fraction of French source income under €27,794 and 30 % above applies to non-resident taxpayers.
- Dividends distributed are subject to a 12.8% withholding tax.
- Interests benefit from an exemption under certain conditions.
- Royalties are subject to a 28% withholding tax.
- Capital gains on real estate are subject to the same tax regime than those which applies to resident taxpayers. However, individuals that are affiliated to a social security scheme

in the EU, the European Economic Area (EEA) or Switzerland are subject to social contributions at a rate of 7.5% on the sale of French real estate (instead of a flat rate of 17.2% for French resident individuals and individuals not affiliated to a social security scheme in the EU, the EEA or Switzerland). Rebates for duration of ownership applies allowing a total exemption of income tax after 22 years of ownership and a total exemption of social contributions after 30 years of ownership. An additional tax applies on capital gains exceeding 50,000 € varying from 2% to 6%.

- Capital gains on securities and shares of companies owning real estate properties located in France having a market value exceeding those of other assets they own are subject to tax at the rate of 19% and social contributions at the rate of 17.2%. However, social contributions are levied at a rate of 7.5% for individuals that are affiliated to a social security scheme in the EU, the EEA or Switzerland. Rebates for duration of ownership applies allowing a total exemption of income tax after 22 years of ownership and a total exemption of social contributions after 30 years of ownership. An additional tax applies on capital gains exceeding 50,000 € varying from 2% to 6%.
- Capital gains on securities and shares are only taxable in France if the participation of the family members (including the spouse, ascendants, descendants and their spouses) exceeds 25% of the voting rights of the sold company at any time during the five-year period preceding the sale. Since January 1st 2018, capital gains on securities and shares are subject to a flat tax of 12.8% (in that case, rebates for duration of ownership do not apply any longer). However, if more favourable the taxpayer may elect for the application of the progressive scale rates with application of rebates for duration of ownership.

The rate of withholding taxes may also amount to 75% when payments are made to individuals resident in non-cooperative states or territories.

The supplementary contribution amounting to 3% and 4% also applies to non-resident taxpayers.

The tax regime described in this paragraph may be altered when a tax treaty applies.

3. **Are withholding taxes relevant to individuals and, if so, how, in what circumstances and at what rates do they apply?**

Traditionally, French resident taxpayers have reported in their annual return their income received during the preceding year. The tax bill was assessed by the French tax authorities and paid in three instalments during the following year the income was received.

This tradition has been progressively repealed. Social contributions on wages and salaries are levied by the employer, dividends and interest are subject to withholding taxes which are considered as a prepayment of income tax. Some capital gains on the sale of real estate properties or on the sale of securities and shares are also subject to withholding tax upon the sale.

Besides, as from January 1st 2019, employment income, pensions, self-employment income and rental income are also subject to withholding taxes considered as prepayment for income tax purposes.

As already developed in §2.2. non-resident taxpayers are subject to withholding taxes at rates varying depending on the nature of income or capital gains received.

4. **Is there a wealth tax and, if so, which factors bring an individual within the scope of that tax, at what rate or rates is it charged, and when must tax returns be submitted and tax paid?**

A wealth tax was applicable in France up until January 1st 2017 (see § 4.1.) a new one only based on real estate properties is applicable since January 1st 2018 (see § 4.2.).

4.1. ISF ("impôt de solidarité sur la fortune")

Up until January 1st 2017, a wealth tax applied in France (so called "*impôt de solidarité sur la fortune*" "ISF") based on worldwide assets owned by French resident individuals and on French assets owned by non-resident taxpayers. Some exemptions applied on pieces of arts and business assets.

Non-resident individuals were also exempted from wealth tax on their French financial assets. Real estate properties located in France owned directly, through French or foreign companies or through companies qualifying as "*société à prépondérance immobilière*" (real estate holding companies) or companies owned for more than 50% by the same family members were also subject to wealth tax as qualifying as French assets.

In a nutshell are qualified as "*société à preponderance immobilière*" companies owning (directly or indirectly) French real estate properties having a market value exceeding those of other French assets they own. The concept of "*société à prépondérance immobilière*" for ISF purposes is defined in the same way than for gift and inheritance taxes (see § 5). This definition is however different from those applicable for capital gains tax purposes (see § 2) and from those applying for transfer duties purposes (see § 8.1.)

Finally, settlors of trusts, as well as, after their death, beneficiaries **who are appointed** as deemed settlors by the deed of trust and/or by the trustees were also subject to wealth tax as if they were the owners of trust's assets (see § 20).

Wealth tax (ISF) has been repealed by the Finance law for 2018 and replaced by a new wealth tax only based on real estate properties owned directly or indirectly by individuals. This new tax is called "*Impôt sur la Fortune Immobilière*" ("IFI").

Certain rules applying to ISF also apply to IFI such as the freehold under which the tax is due and the progressive scale rates (see §4.2).

On the other hand, other rules are different. This is the case of the concept of "*société à prépondérance immobilière*" (real estate company) which does not apply for IFI purposes. Since real estate properties owned by a company are subject to IFI whatever the companies' assets composition is. New rules also limit the deduction from IFI taxable basis of the debts incurred by French resident and non-resident taxpayers.

The statute of limitation period for ISF as well as IFI is as a general rule, six years, but can be limited to three years under certain circumstances.

4.2. IFI (*"impôt sur la fortune immobilière"*)

Since January 1st 2018, French resident individuals as defined by article 4B of the French tax code (see § 1.1.) are subject to IFI on real estate properties they own directly or through entities, companies or trusts regardless of their place of location (France or abroad). As from the same date, non-resident individuals are subject to IFI on real estate properties located in France they own directly or through entities, companies or trusts.

French resident taxpayers who were tax-resident of another country during the five preceding years benefit from a five-year exemption of IFI in respect of their real estate properties located abroad.

IFI is payable by individuals whose real estate properties' market value after deduction of qualifying debts exceeds a certain limit on January 1st each year (1.300.000 € for 2020).

As a general rule, all real estate properties owned directly or indirectly, through trusts, entities or companies (French or foreign) are subject to IFI.

Only real estate properties used for the business activity of their owners can benefit from an exemption, under certain conditions. Rental activities of buildings do not qualify as a business activity.

As a general rule, the market value of shares corresponding to the value of real estate properties owned by the companies are subject to IFI.

The shares of companies running a business activity or representing less than 10 % of the share capital or voting rights benefit from an exemption for IFI purposes even if they own real estate properties.

Only debts incurred for the acquisition, refurbishment, repairs or maintenance of the real estate properties are deductible, under certain limited conditions.

Bullet loans are not fully deductible. Only a fraction of the principal corresponding to the total amount remaining due divided by the duration of the loan can be taken into consideration on January 1st of each year.

Loans granted from affiliated companies held by the ultimate owner of the real properties are not deductible.

Loans borrowed by family members can only be taken into consideration if their terms and conditions correspond to arm's length transactions.

Finally, for real estate properties having a market value exceeding five million euros the deduction of the debts exceeding 60% of their market value is limited to 50%.

For 2020 individuals liable to IFI will be subject to the following progressive scale rates:

- Up to 800,000 € 0%
- From 800,000 € to 1,300,000 € 0.50%
- From 1,300,000 € to 2,570,000 € 0.70%
- From 2,570,000 € to 5,000,000 € 1.00%
- From 5,000,000 € to 10,000,000 € 1.25%
- More than 10,000,000 € 1.50%

Besides, the total amount of income tax, IFI and some specific local taxes cannot exceed 75% of the taxpayer's reference tax income ("*revenu fiscal de référence*"). However, as a general rule, this limit does not apply to non-residents. We consider that this measure is discriminatory.
Market value of assets subject to IFI and corresponding deductible debts should be reported in the annual income tax returns of resident and non-resident tax payers. They should be filed before 31 May of each year. The corresponding tax should be paid upon receipt of the tax notice established by the French tax authorities.

5. **Is tax charged on death or on gifts by individuals and, if so, which factors cause the tax to apply, when must a tax return be submitted, and at what rate, by whom and when must the tax be paid?**

In France, gift tax is due by the donee on lifetime gifts (see § 5.1.) and inheritance tax is due by the heir/legatee on death of the deceased (5.2.).

The same territorial principles apply to gift tax and inheritance tax. When the donor or deceased is or was a French tax-resident, gift or inheritance tax are due on all movables and

real property situated in or outside France. When the donor or deceased is not or was not French tax-resident the following distinction has to be made:

– When the beneficiary is French tax-resident at the transfer date or has been domiciled there for at least six of the previous ten years, gift or inheritance tax is due on movables and real property situated in or outside France;

– When the beneficiary is not a French tax-resident, gift or inheritance tax is due only on the received assets deemed as located in France.
The main assets which are considered as located in France for gift tax, inheritance tax and wealth tax (see §4) purposes are the following:

- real estate properties located in France
- movable assets (i.e. furniture, pieces of art) located in France
- shares of companies registered in France
- debts when the debtor is resident of France
- shares of companies (French or foreign) owning real estate properties located in France having a market value exceeding those of their other French movable assets ("*société à prépondérance immobilière*").
- shares of companies (French or foreign) owning real estate properties located in France directly or indirectly held for more than 50% by the same family members (only for the fraction of their market price which represent the market value of real estate properties located in France).

Transfers for no consideration of the above mentioned French assets between non-resident individuals are subject to either French gift tax or French inheritance tax.

5.1. Gift tax

Gift tax is due by the donee but can be paid by the donor. When this is the case the gift tax paid by the donor is not treated as additional gift.

Various allowances, for each fifteen-year period may apply depending on the donor's relationship with the donee:

- parent and children in direct line: 100,000 €
- brothers and sisters: 15,932 €
- nephews and nieces: 7,967 €
- spouses or partners: 80,724 €
- grandchildren: 31,865 €
- great-grandchildren: 5,310 €
- disabled people: 159,325 €
- other beneficiaries: 1,594 €

Cash gifts benefiting to children, grandchildren, great grandchildren (nieces and nephews in the absence of direct descendants) are exempted from gift tax up to 31,865 € assuming the donor is under 80 years old and beneficiaries are over 18 years old or emancipated for each fifteen-year period.

The rates of gift tax for 2020 are also different depending on the donor's relationship with the donee.

Lifetime gifts to spouse or civil partners do not benefit from the exemption which applies to inheritance tax (see below). They are subject to the following progressive scale rates:

- up to 8,072 € 5 %
- from 8,072 € to 15,932 € 10 %
- from 15,932 € to 31,865 € 15 %
- from 31,865 € to 552,324 € 20 %
- from 552,324 € to 902,838 € 30 %
- from 902,838 € to 1,805,677 € 40 %
- more than 1,805,677 € 45 %

Lifetime gifts between parents and children in direct line are subject to the same progressive scale rates from 5 % to 45% than those which applies between spouses or civil partners (see above).

Lifetime gifts between brothers and sisters are subject to the same progressive scale rates from 35% to 45% than those applying for inheritance tax (see § 5.2.).

Lifetime gifts between relatives up to the fourth degree, including nephews, nieces, grandnephews and grandnieces, aunts and uncles, grandaunts and granduncles, first cousins are subject to a 55% gift tax.

Other gifts are subject to a 60% gift tax.

Gift tax should be paid within 30 days after the lifetime gift or after its disclosure to the French tax authorities (for manual gifts).

5.2. Inheritance tax

Inheritance tax is due by the heirs.

Allowances described in § 5.1. apply to inheritance tax if they were not already used on gifts made during the fifteen-year period preceding the death.

The rates of inheritance tax for 2020 are also different depending on the deceased's relationship with the heir.

A total exemption of inheritance tax applies between spouses and civil partners.

The progressive inheritance tax scale rates between parents and children is as follows:

- up to 8,072 € 5 %
- from 8,072 € to 12,109 € 10 %
- from 12,109 € to 15,932 € 15 %
- from 15,932 € to 552,324 € 20 %
- from 552,324 € to 902,828 € 30 %
- from 902,838 € to 1,805,677 € 40 %
- more than 1,805,677 € 45 %

The progressive scale inheritance tax rates applying between brothers and sisters is as follows:

- up to 24,430 € 35 %
- more than 24,430 € 45 %

The inheritance tax rate applying between relatives up to the fourth degree is 55%.

The inheritance tax rate applicable for more distant relatives and unrelated persons is 60%.

Inheritance tax should be paid within six months following the death if the deceased was resident of France upon his/her death and within one year if he/she was non-resident.

6. **Are tax reliefs available on gifts (either during the donor's lifetime or on death) to a spouse, civil partner, or to any other relation, or of particular kinds of assets (eg business or agricultural assets), and how do any such reliefs apply?**

   As explained in § 5.1, several allowances apply depending on the relationship between the donor and the donee.

   Transfer by death of shares of operational companies may, under certain restrictive conditions benefit from a partial inheritance tax exemption amounting to 75%.

7. **Do the tax laws encourage gifts (either during the donor's lifetime or on death) to a charity, public foundation or similar entity, and how do the relevant tax rules apply?**

   Gifts during the donor's lifetime or on death benefit from a total exemption of gift and/inheritance tax provided the beneficiary is qualified as charities of public interest

(“*fondation d’utilité publique*”).

Reductions of income tax, ISF and IFI are also granted when gifts are made to qualified charities.

8. **How is real property situated in the jurisdiction taxed, in particular where it is owned by an individual who has no connection with the jurisdiction other than ownership of property there?**

Several French taxes may be due by a non-resident individual owning a real estate property located in France, upon its acquisition (§ 8.1.), during its ownership period (§ 8.2.) upon its sale (8.3.) and upon its transfer by gift or by death (8.4).

8.1. French taxes due upon the acquisition of a French real estate property by a non-resident individual

Transfer duties at the rate of approximately 6% (computed on the purchase price of the real estate property) as well as French notary’s fees should be paid by the purchaser regardless it is an individual or a company resident or non-resident of France.

The purchase of the shares of a company (French or foreign) owning a French real estate property which qualify as “*société à prépondérance immobilière*” is also subject to 5% transfer duties computed on the purchase price of the shares.

The definition of “*société à prépondérance immobilière*” for transfer duties purposes is different from those applying to wealth taxes (ISF/IFI), gifts and inheritance taxes and to capital gains taxation (see below).

8.2. French taxes due during the ownership period of a French real estate property by a non-resident individual

- Income tax is due on rental income received as explained in § 2.2.
- ISF was due up until January 1st 2017 as explained in § 4.1.
  The concept of “*société à prépondérance immobilière*” (real estate company) and of real estate properties indirectly held by companies controlled (more than 50%) by the same family members allowed France to tax non-resident individuals regardless the ownership structure used to hold the French real estate properties.
- IFI is due as from January 1st 2018 as explained in § 4.2.The scope of IFI is broad enough to include real estate properties indirectly owned by a non-resident individual through a trust, intermediate entities or companies (French or foreign) regardless their activities.
- Taxe foncière is a local tax which is annually due by the owners of French real properties regardless their quality (individuals or companies) and their country of residence.
- Taxe d’habitation is another local tax which is annually due by the users of French real

properties regardless their quality (individuals or companies) and their country of residence.

8.3. French taxes due upon the sale of a French real estate property owned by a non-resident individual

The sale of a French real estate property by non-resident individuals is subject to French income tax on capital gains realised as explained in § 2.2.
Capital gains realised on the sale by non-resident individuals of shares of companies (French or foreign) qualifying as "*sociétés à prépondérance immobilière*" is also subject to income tax.

8.4. Transfers by gift or by death of a French real estate owned by a non-resident individual

They are subject either to gift tax or to inheritance tax as explained in § 5.

The concept of "*société à prépondérance immobilière*" (real estate holding company) and of real estate properties indirectly held by companies controlled by the same family members allowed France to levy gift and inheritance tax on non-resident individuals regardless the ownership structure used to hold the French real estate.

However the definition of "*société à prépondérance immobilière*" given by the French tax code is different for wealth taxes (ISF/IFI), gift and inheritance tax purposes, for transfer duties purposes and for capital gains taxation purposes (see our comments in § 2.2.).

9. **Are taxes other than those described above imposed on individuals and, if so, how do they apply?**

   All French taxes potentially due by non-resident individuals on French real estate also apply to French resident persons. As described in § 2 the tax treatment may however differ.

10. **Is there an advantageous tax regime for individuals who have recently arrived in or are only partially connected with the jurisdiction?**

    Individuals who have recently transferred their tax residence in France benefit from a five-year exemption of ISF on assets located abroad (up to January 1st 2017) and of IFI (as from January 1st 2018) on real estate properties located abroad.

    They also benefit from an exemption of gift tax on non-French assets they receive during the first six years of their residence in France from non-resident donors.

Finally exit tax is not due when new resident individuals transfer their tax residence abroad less than six years after their arrival.

11. **What steps might an individual be advised to consider before establishing residence in (or becoming otherwise connected for tax purposes with) the jurisdiction?**

    Before becoming French residents, individuals may contemplate setting up trusts in order to hold their assets (see §.20) and plan the transfer of their estate upon their death without the intervention of a French "*notaire*". They may also contemplate deferring the payment of French income tax. Other estate planning arrangements including intermediate holding and/or operational companies should be considered in order to mitigate the legal consequences of becoming resident in a Civil law jurisdiction.

    All steps involved in the structuring of ownership should however be properly handled with adequate substance. They should also have another purpose than avoiding taxes. Otherwise they might be challenged under the doctrine of abuse of law.

12. **What are the main rules of succession, and what are the scope and effect of any rules of forced heirship?**

    Under the French forced heirship rules, a certain portion of estate cannot be freely disposed of by lifetime gift or Will other than to descendants or under certain circumstances, 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
    - three children or more: one quarter.

13. **Is there a special regime for matrimonial property or the property of a civil partnership, and how does that regime affect succession?**

    Opposite sex as well as same sex couples may conclude a contract to organise their life in common (PACS). They are not treated as spouses for succession law purposes but benefit, under certain conditions, from a total inheritance tax exemption.

    A marriage may also be contracted by opposite sex couples as well as same sex couples. Spouses can enter into a contract before marriage to regulate their property rights. The matrimonial regime may also be modified during the marriage. Spouses can freely choose their regime from a strict separation of assets to a universal community regime for all assets they own.

The applicable matrimonial regime should be taken into consideration before applying the succession rules.

Couples married without choosing a matrimonial contract fall under the regime of "community reduced to acquisitions". Movable and immovable assets owned by each spouse upon the marriage and those gifted and inherited during the marriage remain the sole property of the original owner. Common property is limited to assets acquired by the couple during their marriage. Each spouse equally holds 50% of common property which can freely be transferred by Will.

14. **What factors cause succession laws to apply on the death of an individual?**

Since August 2015, under the EU Succession Regulation 650/2012, the law applicable to the succession, including immovable and movable assets, is the law of the country in which the deceased has his habitual residence at the time of death. This rule applies whether or not the deceased is a member of the EU.

The EU Succession Regulation 650/2012 allows, however, a person to choose the law of country whose nationality he/she possesses at the time of making the choice, or at the time of death, as the law to govern his/her succession. A person with several nationalities can choose the law of any of the countries whose nationality he/she possesses. As a consequence, when a person who is not a French national dies having his/her last habitual residence in France, the French "*notaire*" should check the choice made during his/her life. If no choice has been made, the French "*notaire*" should apply the French law of succession. If a choice has been made, the French "*notaire*" should apply the law of succession chosen by the deceased.

15. **How does the jurisdiction deal with conflict between its succession laws and those of another jurisdiction with which the deceased was connected or in which the deceased owned property?**

Before the EU Succession law entered into force (in 17 August 2015, see §14), France applied its law of succession to persons having their last habitual residence in France and to immovable properties located in France owned by non-French domiciled persons. Movables were governed by the law of the deceased's place of domiciled. French courts accepted a renvoi back if, for example, immovable properties were located in another jurisdiction than France.

From 17 August 2015, French courts should only accept the renvoi back when either:

- The law of succession is that of the deceased's habitual domicile at the time of his/her death and that no election for another law was made,
- The law of succession is that of a third state (including Denmark, Ireland and the UK) where the EU Succession regulation does not apply,
- The applicable law of succession refers:

– to another law of a State where the EU succession Regulation either applies or
– to a third state which would apply its domestic law.

16. **In what circumstances should an individual make a Will, what are the consequences of dying without having made a Will, and what are the formal requirements for making a Will?**

The Civil code provides rules which automatically apply to French domiciled deceased and French nationals electing for the French law of succession, in the absence of a Will. Rules are simple and of general application, regardless of the importance of the wealth and the wishes of repartition of assets of the deceased. This is the reason it is recommended that any French domiciled person and any French national electing for the application of the French succession law should make a Will.

In the absence of a valid Will, article 731 et seq. of the Civil Code provides five hierarchical classes of heirs:

- Children (or their descendants) which inherit per capita shares

If there are no living child or descendant,

- Parents and brothers/sisters share the estate as follows:

– If both parents are living and there is no brother or sister, each of them receive 50% of the estate.
– If both parents are living as well as brothers and sisters, each parent receive 25% of the estate and the brothers and sisters receive all together half of the estate shared per capita.
– If there is one living parent as well as brothers and sisters, the surviving parent receives 25% of the estate and brothers and sisters receive all together 75% of the estate shared per capita
– If there is only brothers and sisters they receive the total amount of the estate shared per capita.
If there is neither living parent nor brother or sister,

- Grandparents of each line (one for the father the other for the mother) receive together half of the estate which is shared per capital between each grandparent of the same line.

If there is no living grandparent,

- Uncles, Aunts and cousins who are nearest relations on each line receive half of the estate to be shared between them.
- The surviving spouse

– If there are descendants of both spouses, the surviving one receives either the whole of the

estate in usufruct or a quarter in full ownership.
– If there are descendants who are not descendants of the surviving spouse, he/she receives a quarter of the estate in full ownership and cannot elect for the whole of the estate in usufruct.
– If there are both surviving parents, the surviving spouse receives half of the estate and each parent 25% of the estate.
– If there is only one surviving parent, the surviving spouse receives 75% of the estate and the surviving parent 25 % of the estate.
– In the absence of descendant and living parent, the surviving spouse receive the whole of the estate.

Two main forms of Will can be used: the holographic Will which should be handwritten by the testator (no witnesses are needed) and the authentic Will which is made in the presence of a "*notaire*" and two witnesses.

17. **How is the estate of a deceased individual administered and who is responsible for collecting in assets, paying debts, and distributing to beneficiaries?**

Even if heirs inherit the deceased's assets immediately on death without probate, French "*notaires*" are responsible for collecting assets, paying debts and preparing the "*acte de notoriété*" which identifies the persons who are entitled to inherit. Heirs can choose to remain co-owners or to allocate the assets between them.

The filing of the inheritance tax return as well as the payment of inheritance tax is the responsibility of the heirs.

The trustees may also be responsible for the payment of inheritance tax when the trust's assets are not reported in the inheritance tax established by the heirs.

18. **Do the laws of your jurisdiction allow individuals to create trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession to private family wealth and, if so, which structures are most commonly or advantageously used?**

French law allows to create (or does not prevent individuals from creating) trusts, private foundations, family companies, family partnerships or similar structures to hold, administer and regulate succession. It is however unfortunate that trusts (and private foundations) set up by French resident since 11 May 2011 are subject to inheritance tax at the rate of 60% upon the death of the settlor regardless the degree of relationship between the settlor and the beneficiaries. The authors are however of the opinion that this provision is discriminatory.

19. **How is any such structure constituted, what are the main rules that govern it, is there any requirement for registration with or disclosure to any authority or**

regulator, and what information about the structure is available to the public?

In order to be efficient, any structure of ownership should be carefully designed and taking into consideration the family members' personal situation, the importance of the wealth, the nature and location of the assets as well as the objectives of the family.

As already explained, all trusts and companies used in the ownership structure should be properly set up and managed. They should also have another reason than reducing or avoiding taxes.

As a general rule, any trusts, private foundations, French companies involved in the structure of ownership having a connection with France should be disclosed.

The disclosure regime of trusts (which also include foundations and any similar arrangement) illustrates the French tax authorities' appetite for receiving information.
As from January 1, 2012, if the settlor or one of the beneficiaries is resident in France or if the trust fund contains French assets, the trustee must disclose to the French tax authorities the formation of the trust, any variation of its terms and its termination as well as the market value of the trust assets on the 1st January of each year.

The French Constitutional Court, in a decision dated March 16, 2017, held that the proportional penalties of 5% and 12.5% of the trust's assets value due in case of absence of reporting were unconstitutional, as disproportionate in regards to the infringement they sought to sanction. As a consequence, as from December 31, 2016, failing to comply with the above reporting requirements triggers the application of a fixed penalty amounting to € 20,000 per missing return (€ 10,000 before December 8, 2013).

In addition, failing to report may also give rise to an additional 80% surcharge (with a minimum of € 20,000) applying to all French tax consequences bearing on the trustee(s), the settlor(s) or the beneficiarie(s) – income tax, wealth tax (ISF and/or IFI), inheritance/gift tax, trustees' specific 1.5% levy – which may be due in respect of the trust assets and distributions or reportable modifications which may have occurred.

The French Constitutional Court, in a decision dated 21 October 2016 held that the register of trusts cannot be available to the public on the ground that it would allow anyone, in violation to the fundamental right of privacy, to collect information in relation to the settlors and beneficiaries of French connected trusts, as well as in relation to the trust itself. The register is now only accessible to certain authorities such as the French tax authorities, the judicial authorities or the customs.

20. **How are such structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?**

Originally the only tax law referring to trusts was article 120-9° of the French tax code which provides that distributions of income made by trusts are assimilated to dividends from foreign sources. The Law of 29 July 2011 (Trust Tax Law) introduced a comprehensive wealth, gift and inheritance tax regime.

The tax regime of trusts currently applicable in France can be summarised as follows.

20.1 Income tax

- Income tax on the trustee

Trustees investing in France in their capacity as trustees of foreign trusts are taxable on income and capital gains as apparent owners of the trusts' assets. The applicable regime depends on the quality of the trustees. Individual trustees owning directly French assets are taxable in France as explained in 2.2. Corporate trustees are subject to the tax treatment applicable to foreign corporations.

Finally, when the trustees (individual trustees or corporate trustees) use intermediate companies to own French located assets (see our comments in § 21), the French tax treatment depends on the tax regime applicable to the intermediate company.

As a consequence, assuming, for example, a pass through French company ("*société civile immobilière* "SCI") is used by the trustee to own a French real estate, individual income tax rules would apply if the trustee is an individual trustee and corporate tax rules would apply if the trustee is a corporation.

Rental income received by a corporation (French or foreign) is subject to corporation tax at the rate of 28 % (progressively reduced to 25% from 2018 to 2022). Because the taxable basis for corporate tax is determined in depreciating the building, the taxation of rental income is, as a general rule, less expensive for corporation than for individuals despite the limitation of interest which only applies for corporation tax purposes.

Financial income received by foreign companies are subject to a withholding tax at the rate of 30%. Certain exemptions or reduction of rates apply depending on the country of residence of the companies.

Capital gains taxation is also different depending on the quality of the trustee (individual or corporation). Individual trustees are taxable as explained in §2.2. Corporate trustees are subject either to corporation tax at the current rate of 28 % (progressively reduced to 25% from 2018 to 2022) or to withholding taxes depending on the nature of the capital gains realised and the country of residence of the trustee.

- Income tax on the beneficiaries

When the income generated by the trust is distributed by the trustees to French resident beneficiaries either at the trustees' discretion or because the beneficiaries have a vested entitlement to the income, the latter are subject to French tax under the provisions of Article 120-9° of the French Tax Code.

Distributions of capital or accumulated income and gains upon the death of the original settlor are not subject to income tax but to inheritance tax (see below).

According to this article, distributions made by trusts are assimilated to dividends from foreign sources. Irrespective of the nature of the income generated by the trust property (dividends, interest, capital gains…), distributions of trust income to French resident beneficiaries are subject to income tax and social contributions at a flat rate of 30% (including income tax at the flat rate of 12.8% and social contributions at the rate of 17.2%). The beneficiary may however elect for the application of the progressive scale rates (up to 45%) and social contributions (at the rate of 17.2%).

- Application of the CFC rules to trusts

Article 123 bis of the French tax code provides in substance for the taxation, under specific conditions, of all undistributed income capitalized within "entities" established in low tax jurisdictions, in the hands of their beneficial owners who are French resident individuals.

The Constitutional Court ruled in a decision of 1st March 2017 that the difference in treatment depending on the jurisdiction where the "entity" is established was contrary to the principle of equality before public burdens.

As a result, French tax resident settlors and/or beneficiaries of non-EU trusts are now allowed to bring the proof that the trust was not created for tax avoidance purpose in order to avoid application of the CFC rules.

Similarly, assuming Article 123 bis of the French tax code should apply, French tax resident settlors and/or beneficiaries of trusts established in jurisdictions having no exchange of information agreement with France can now bring the proof that the trust's real income is inferior to that determined by application of a theoretical rate of return.

As a conclusion, if properly created and managed, an irrevocable and discretionary trust prevents against the application of the French CFC rules provided by article 123 bis of the French tax code.

20.2 Wealth tax (ISF or IFI)

Up until December 31, 2011, according to case law, wealth tax (ISF at this time) was due neither by the settlor nor by the beneficiaries of a discretionary trust even when the trust held French assets. One of the main purpose of the Law was to close what the French tax authorities considered unsurprisingly to be a loophole.

As from January 1, 2012, assets or rights held in trusts (including irrevocable and discretionary trusts) as well as income or capital gains which are capitalized in said trusts are taxable in the hands of the original settlor or if he/she died in the hands of the beneficiaries thereafter deemed to be settlors irrespective of the nature of the trust.

The French resident settlors (or deemed settlors) must therefore include in their wealth tax return (ISF or IFI as from 1st January 2018) the worldwide assets of the trust as if they were their own assets, irrespective of the terms of the trust and its characterization as revocable or irrevocable, even if they are not beneficiaries and/or do not receive any distributions.

In case of failure by the settlor (or deemed settlor) to comply with the wealth tax (IFI/ISF) obligations of reporting and payment (when the tax is due) a sui generis tax applies at the flat rate of 1.5 % regardless of the value of the assets (as opposed to the wealth tax there is no threshold). The 1.5 % tax should be paid by the trustees before June 15 of the relevant tax year. If they do not pay the tax, the law provides that the beneficiaries are jointly liable to pay it.

20.3. Gift and inheritance tax regime applicable to trusts

The transfer of assets from the settlors to trusts is not treated as a taxable event for French gift tax purposes.

As from July 31, 2012, when a transfer of assets made through a trust is treated under civil law as a transfer on death (succession) or transfer inter vivos (donation), taxation occurs under the same regime which would apply in the absence of a trust. In other words, upon distribution of the assets (including accumulated income) of the trust, the beneficiaries should benefit from the standard tax-free allowances and tax rates corresponding to the family relationship between them and the settlor or deemed settlors (see § 5).

Even when no distribution occurs, the death of the settlor (or deemed settlors) is treated as a taxable event for inheritance tax purposes subject to the following rates:

- If at the date of the death the share of the assets which is due to a particular beneficiary is determined, this share is subject to inheritance tax according to the rates corresponding to the family relationship between the settlor (or deemed settlor) and the beneficiary. The trust’s assets have to be included in the inheritance tax return to be filed by the heirs.
- If at the date of the death a specific share of assets is globally due to the descendants of

the settlor (and only to the descendants) these are subject to inheritance tax at the flat rate of 45 %.
    - If at the date of the death a specific share of assets is globally due to the surviving spouse of the settlor, no inheritance tax is due.
    - In all other cases, inheritance tax is due at the flat rate of 60 %. The rate of 60% also applies to trusts created by French resident settlors after May 11, 2011.

21. **Are foreign trusts, private foundations, etc recognised?**

    Although it is impossible to create a trust under French law and France has not ratified the Hague convention on the recognition of trusts, French courts recognise the effects in France of common law trusts, provided they comply with the mandatory provisions of French law.

    However, because there is no distinction in French law between legal and equitable ownership acquiring an asset located in France by a trustee may entail difficulties.

    The real estate registry ("*registre cadastral*") cannot register the acquisition of a French real estate by an individual or a corporate acting in her/his/its capacity as trustee. This can be achieved by interposing at least one company between the French real estate properties and the trust represented by its trustee.

    The ownership of French movable assets may also entail difficulties as the trustee is treated as the apparent owner of any trust's assets located in France. This is the additional reason why the authors strongly recommend to interpose at least one company between the French movable assets and the trustee representing a foreign trust.

22. **How are such foreign structures and their settlors, founders, trustees, directors and beneficiaries treated for tax purposes?**

    As already explained, trusts, private foundations and any other similar arrangements are treated as trusts for French tax purposes. The tax treatment of trust is explained in § 20.

23. **To what extent can trusts, private foundations, etc be used to shelter assets from the creditors of a settlor or beneficiary of the structure?**

    Trusts and private foundations can be used to shelter assets from the creditors of a settlor or beneficiary of the structure with caveat already explained before (§21.).

    Obviously, trusts and/or private foundations cannot be used for organising the insolvability of the settlor.

24. **What provision can be made to hold and manage assets for minor children and grandchildren?**

As already explained, because minors (children and grandchildren) are protected by the Civil Code, there is no standard provisions allowing holding and managing assets for them.

The trust remains a very efficient tool to achieve the protection of minors despite the caveat already explained in § 21.

25. **Are individuals advised to create documents or take other steps in view of their possible mental incapacity and, if so, what are the main features of the advisable arrangements?**

Because the Civil Code organises the protection of persons losing capacity, nothing is provided allowing the individual to make his/her own arrangement in view of his/her mental incapacity and decisions about medical treatment.

It is however the authors' opinion that because nothing in the law prohibits the possibility for an individual to provide his/her wishes, it is suitable to prepare such a document. One may expect that the mentality will shift in the future encouraging the French judge considering such a document as binding.

A "mandate for future protection" (*Mandat de protection future*) can however be drawn up (either under the form of a notarial deed or a private document) in the view for the "mandator" to appoint in advance one or more persons (agent) to represent him. At the moment the mandator will no longer be able, physically or mentally, to provide for his own interests, the agent may then act to protect the mandator's personal and / or patrimonial interests.

Offering more flexibility, the trust remains an appropriate tool to organise the mental incapacity and other decisions despite the fact that trusts set up by French resident individuals are subject to inheritance tax at the rate of 60% if set up after 11 May 2011.

26. **What forms of charitable trust, charitable company, or philanthropic foundation are commonly established by individuals, and how is this done?**

France also strictly controls charitable and philanthropic matters. This is the main reason why it is not a common practice for French resident individuals to establish charitable trusts, company or philanthropic foundations subject to French law.

However, very wealthy individuals wishing to establish charitable or philanthropic structures may consider creating charitable trusts or philanthropic foundations governed by laws of countries (other than France) which encourage private charitable initiatives.

27. **What important legislative changes do you anticipate so far as they affect your**

advice to private clients?

There is no important legislative changes the authors anticipate as our advice already take into account the provisions of the Finance Act for 2020.