

ANTICIPATE A MOVE TO FRANCE



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If you are thinking about moving to France, taxes should not be a reason to refrain you from this project!

As with all projects and in order to avoid unpleasant surprises, it is always better to prepare beforehand.

WHAT FRANCE HAS TO OFFER?

France has a lot to offer, going through its quality of life, its gastronomy, and many beautiful places to visit.

France is also a country with a particularly developed conventional network. Indeed, more than 120 double tax treaties are applicable to income tax and wealth tax and around 40 double tax treaties are applicable in matter of inheritance tax.

This allows new French tax residents with foreign source income

to avoid double taxation in most cases.

The French tax authorities must respect different bodies of rules, including European law and French constitutional law.

When it comes to international estate planning, one of the most notable Regulation is the one relating to Successions which entered into force in August 2015 (Regulation (EU) 650/2012) (hereafter “the Regulation”).

WHAT IS THE PRICE TO BENEFIT FROM THIS?

The most notable taxes to take into account before moving to France are income tax, wealth tax and inheritance tax or gift tax.

- **INCOME TAX**

As a general rule, 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 €157,806 for 2020).

In addition to income tax, additional so-called social contributions are due in respect of savings income and income from capital assets at an effective flat rate of 17.2%.

A supplementary contribution also applies to an individuals' high annual income, at a rate of 3% for the fraction of income between € 250,001 and € 500,000 for single taxpayers (between € 500,001 and € 1,000,000 for couples subject to joint taxation), and 4% for the fraction of income over €500,001 for single taxpayers (over € 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.

Although France does not levy a separate general capital gains tax as such (such as, for example, in the UK), some specific gains of a capital nature 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.

Unrealized capital gains can, however, be taxable under the so-called "exit tax". This only apply to individuals who were residents of France for more than six years during the last ten years before leaving the Country.

We are convinced that the so-called "exit tax" does not comply with the constitutional and European fundamental principles.

The taxable base and applicable tax rates depend on the nature of the asset which is sold.

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 2020 (19% plus social contributions at the rate of 17.2%).

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Capital gains on the sale of other real properties can be reduced by yearly allowances leading to in-

come tax and social contributions exemptions after respectively 22 and 30 years.

An additional tax is assessed on capital gains exceeding € 50,000 realised upon the sale of real property. This tax applies to the whole amount of the capital gain at a flat rate varying from 2% to 6% (for capital gains exceeding € 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”) 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 37.2%.

The same rebates as those applying to real estate properties apply.

Since 1st January 2018, capital gains on shares and securities of “business companies including companies subject to corporation tax” are, as a general rule, subject

to a flat tax rate of 30% (including 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.

• WEALTH TAX

Resident taxpayers who have been domiciled in France any time during the five preceding years are liable to wealth tax on their worldwide real estate properties and rights they directly or indirectly own (so-called “impôt sur la fortune immobilière” or “IFI”).

On the other hands, individuals who have been non-French domiciled during the five years preced-

ing years are subject to IFI on their sole French located real estate properties and rights.

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 2020).

The IFI payable for 2020 is determined by applying to the individuals’ taxable assets over € 800,000 the following sliding scale:

Up to € 800,000: 0%.

€800,000 to €1,300,000: 0.5%.

€1,300,001 to €2,570,000: 0.7%.

€2,570,001 to € 5,000,000: 1%.

€5,000,001 to €10,000,000: 1.25%.

More than €10,000,000: 1.5%.

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.

• INHERITANCE / GIFT TAX

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.

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.

As a consequence, when the donee (or heir) has been resident of France for less than six years on the preceding 10 years, only French assets received will be subject to French gift or inheritance tax.

Inheritance tax is imposed upon the recipient and the rates vary according to the relationship between the heir and the deceased.

Surviving spouses and civil partners are fully exempt from inher-

itance tax (but not from gift tax). The rates vary from 5% to 45% above € 1,805,677 for direct family members (after deduction of an allowance of € 100,000 for descendants for each 15-year period).

They increase to 60% in the absence of a family relationship. 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 is calculated at the same graduated rates that apply to inheritance tax.

WOULD YOU BE ABLE TO FREELY DISPOSE OF YOUR ASSETS?

Since the entry into force of the Regulation on Succession, 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 Country is a member of the European Union.

Under this Regulation, it is however possible for a person to choose the law of the 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.

Individuals wishing to relocate to France must have in mind that France applies rules which restrict testamentary freedom (the so-called French 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.

It is possible to avoid the effect of these rules by setting up a proper estate planning which would consist in the adaptation of the Will

and/or the creation of a trust before becoming French tax resident. Indeed, even though the concept of trust is alien to the French Civil

Code and it is impossible to set up a trust under French law, French courts recognize the effects of common law trusts.

WHAT ARE THE WAYS TO LIMIT THE POTENTIAL ADVERSE CONSEQUENCES OF A MOVE TO FRANCE?

Is it important to reorganize the ownership structure before the taxpayer becomes a French tax resident. This is because some assets may remain qualified 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 taxpayer becomes resident in France. This will allow a lower inheritance tax rate to be due upon his death.

Due to high income and capital gains tax rate, it might also be appropriate to accelerate the realization of foreign-source income or to

realize 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.

New French tax residents benefit from an IFI exemption granted on real estate assets which 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.